**Submission to the United Nations Special Rapporteur on the Human Rights of Migrants for the thematic report on how to expand and diversify regularisation mechanisms and programs to enhance the protection of the human rights of migrants.**

1. About GAATW

The Global Alliance Against Traffic in Women (GAATW) is an Alliance of almost 100 non-governmental organisations from Africa, Asia, Europe, and the Americas. Member organisations provide assistance to migrants, survivors of trafficking, sex workers, informal workers, victims of gender-based violence, and others. The GAATW International Secretariat is based in Bangkok, Thailand and coordinates the activities of the Alliance, initiates research, and advocates on behalf of the Alliance.

Over the past two years, GAATW, together with members and partners, has interviewed a total of 970 migrants and survivors of trafficking (953 women and 17 men) in 18 countries across Europe, Asia, and the Americas. This submission is based on the findings of these conversations, as well as the invaluable expertise of GAATW’s members and partners (with special thanks to ASBRAD in Brazil, AMKAS in Nepal, Southeast and East Asian Centre in the UK, FLEX in the UK, and Ban Ying in Germany).

1. Introduction

Obtaining a legal migration status remains one of the most significant priorities for migrant women. For most of the women we have spoken to, a legal migration status is the key to the realisation of their human rights and their socioeconomic inclusion in countries of destination and upon return.

This submission addresses what a regularised migration status looks like, how it can facilitate the enjoyment of migrant women’s human rights and their integration into the host communities, and the specific challenges facing migrant women during the period of our research, which covered the COVID-19 pandemic.

1. Submissions
   1. Temporary residence permits and labour migration schemes do not protect the rights of migrants.

Whilst short-term visas, such as temporary labour migration schemes or temporary residence permits for victims of crime or asylum seekers, may grant a person a legal migration status, they are not a regularisation process.

A regular migration status is one that is secure and long-term, gives access to services and the labour market, counts towards settlement and citizenship, and does not depend on anyone else.

Temporary labour migration schemes, which are common across the world, and “tied” visa arrangements fall short of this definition. They are not secure and long-term, nor do they count towards settlement and citizenship in most instances. They are also dependent on the migrant’s employer. The experience of migrant workers on temporary or tied residence permits can be almost identical to the experience of those who are undocumented – both may be forced to endure bad working conditions for fear of being reported to the immigration authorities. For example, in research carried out in 2020, women from across South Asia who returned from working in the Gulf countries as domestic workers reported being forced to endure abusive working and living conditions as to escape would render them immediately undocumented and at risk of administrative, and even criminal, penalties.[[1]](#footnote-1) Similarly in the UK, overseas domestic workers are subjected to a tied visa scheme which forces them into extremely precarious and unstable working and living conditions.[[2]](#footnote-2) They are given a maximum of six months permission to live and work in the UK meaning that if a domestic worker wishes to leave an abusive employer, she must find a new employer within those six months or lose her immigration status.[[3]](#footnote-3) The same risks face domestic workers in the households of diplomats in Germany, whose residence permit is tied to their employer, and they cannot change employer even in cases of exploitation.

Temporary residence permits for asylum seekers, potential victims of trafficking, and other victims of crime also fall short of being a process for regularisation, as they are often short-term, with restricted or no access to the labour market. In several European countries, asylum seekers are prohibited from working and the women we spoke with described the severe effect this had on their physical and mental wellbeing and sense of socioeconomic inclusion and security.[[4]](#footnote-4)

Most of these temporary residence permits also fail to offer migrants any route to a long-term, settled status. The only option for a secure long-term status is usually dependent on an individual’s identity as a victim.Migrant workers have described how they are forced into a “victim” or “villain” narrative where they are unable to gain a regularised status until their exploitative employment situation has deteriorated to the point of enslavement. This has had a profoundly negative impact on many of the women we spoke with, *“I should be recognised as a worker and not a victim. Domestic work is decent work. We are a profession and we are looking after the elder people and families*”.[[5]](#footnote-5)

* 1. The failure by Member States to provide access to regularisation processes exposes migrant women to a greater risk of rights violations.

The inability to regularise one’s status exposes migrant women to a greater risk of abuse and exploitation. Migrant women without a regular migration status often find it extremely difficult to find decent work once their visa has expired. Many can only find short-term hourly work and are often paid well below minimum wage. As explained by a Venezuelan woman in Brazil “*the employers see [undocumented] Venezuelans as an opportunity to avoid signing work permits*” and therefore avoid the ordinary labour standards afforded to migrant workers with a work permit.[[6]](#footnote-6) In Canada, migrant women reported similar experiences with employers “taking advantage” of their vulnerability due to their precarious immigration status.[[7]](#footnote-7) One Southeast Asian woman in Germany described how she was made homeless and was often starving due to the precarity of the work she was able to find once her visa expired.[[8]](#footnote-8) In Germany, there is no procedure for regularisation for undocumented migrants, no matter how long a migrant has stayed. In fact, they can face a greater penalty the longer they stay.[[9]](#footnote-9)

Migrant women without a regular immigration status are also denied access to healthcare, housing and other vital public services. For example, in Peru, migrants are required to carry the *carnet de extranjería* (foreigner’s card) in order to receive medical assistance, resulting in the exclusion of irregular migrants.[[10]](#footnote-10) In Argentina and Brazil, whilst healthcare is universal and access to medical assistance is ensured for everyone, regardless of migratory status, in practice undocumented migrants are subjected to exclusionary practices and experience discrimination in hospitals and healthcare centres.[[11]](#footnote-11) Whilst firewalls can help to mitigate against this, very few Member States have such firewalls in operation. It is worth acknowledging recent efforts in Germany to establish a firewall between public services and immigration authorities, which our partners are hopeful will be approved in the near future.

A lack of opportunities to regularise one’s immigration status whilst in the host country can also inhibit migrant women’s access to assistance and support when they return home. This is often the case in countries where there are strict restrictions on women’s ability to migrate for work overseas, particularly those who wish to migrate for domestic work and/or to the Gulf countries. For example, in Nepal, if a woman migrates outside of legal channels and returns to Nepal having never “regularised” her status, she is denied access to any of the Government “reintegration” services and support that are ordinarily offered to returnee migrant women workers.[[12]](#footnote-12)

* 1. Regularisation processes are necessary to facilitate the cultural, social and economic integration of migrants into the host communities.

The ability to regularise one’s status is a critical first step for survivors of trafficking and other forms of exploitation to rebuild their lives. In France, a survivor explained, “*I will be happy if I have papers. I cannot work, it’s very difficult when you don’t have papers, you cannot move on*.”[[13]](#footnote-13)

The lack of opportunities to regularise one’s status also inhibits migrant women’s ability to socialise and seek psychosocial support to help them recover from trauma. For undocumented migrant women, the fear of immigration law enforcement is very strong and tends to determine with whom they socialise. This compounds the existing fear and isolation survivors may be experiencing - several women in the UK who had experienced trafficking were afraid of going outside for fear of being found by their traffickers.[[14]](#footnote-14)

* 1. Member States are losing out on the valuable contribution migrants can and want to make to the economy and society.

Time and time again, migrant women report that their lack of legal status prevents their inclusion in the community, in the formal job market, and in political processes.

This desire for a regular migration status is linked by many migrant women to their desire to contribute to the economies of their host country. As put by one woman in France who has experienced trafficking, but continues to be refused a regularised immigration status, *“[To feel integrated], I would need papers and a legal job on which I pay taxes. This for me would be true integration. If irregular migrants living in France had papers, they could bring a lot to this country*!”[[15]](#footnote-15) Another Southeast Asian woman in Europe expressed how it was “*even just the right to pay taxes and to contribute*” that she was desperately seeking.[[16]](#footnote-16) In Canada, groups working with undocumented women reported that “*migrant women are ready to contribute to Canadian society if given the opportunity”*.[[17]](#footnote-17)

* 1. The policies of Member States towards undocumented migrants put them particularly at risk during the COVID-19 pandemic.

The impact of the COVID-19 pandemic for undocumented workers was particularly difficult as most were unable to access any social protection schemes, and were often therefore unable to refuse work, not matter how dangerous or exploitative the conditions. For example, one woman in Europe has described how she caught the virus from her employer but was forced to keep working while sick “*When my boss got infected with COVID, they let me clean their house. That’s why I get infected. I don’t have a proper PPE. I just improvised my own PPE which is I used a plastic bag or a bin bag. When I got infected with COVID, for just two days they still let me work from day to night. My body was trembling*.”[[18]](#footnote-18)

In Latin America, women described how migration services were overwhelmed and understaffed during the pandemic, which resulted in increased difficulty for migrants to access or renew necessary documentation to remain in regular status as well as to access public services. For example, in Brazil, the processes to regularise one’s migration status were temporarily halted, which caused many migrants to be denied access to the Brazilian Health System, which is ordinarily free and universal for Brazilians and foreigners alike.[[19]](#footnote-19) This was similar to the situation in Germany where the digitisation of immigration services during the pandemic slowed down processes for renewing and obtaining residence permits, forcing migrants to live in an undocumented limbo.[[20]](#footnote-20)

In other cases, governments’ responses included discriminatory practices towards migrants and migrants were often blamed for the spread of the virus. Most of the interviewed East and Southeast Asian women in Europe had experienced racism on the basis that the COVID-19 virus was first discovered in China.[[21]](#footnote-21)

1. Recommendations

GAATW recommends that Member States:

1. **Abolish tied-visas and temporary labour migration schemes:** Tied-visas and temporary labour migration schemes force migrants to endure exploitative and abusive employment conditions for fear of losing their immigration status if they try and escape.
2. **Establish regular labour migration pathways:** Migration restrictions do not prevent people from migrating, but only contribute to more migrants living and working without a regular immigration status. Destination countries must therefore create more regular and long-term pathways for migrant workers to fill shortages in their labour markets.
3. **Create firewalls between public authorities:** The lack of firewalls between on the one hand, law enforcement, healthcare and other public services, and immigration authorities, on the other, prevents migrants from reporting situations of abuse and exploitation and prevents their access to life-saving public services, particularly during emergencies such as the COVID-19 pandemic.
4. **Give asylum seekers and potential victims of trafficking the right to work:** Denying asylum seekers and potential victims of trafficking the right to work results in their social isolation, exposes them to a risk of further rights violations, and hinders their recovery from trauma.
5. **Facilitate integration between local and migrant communities:** Member States must combat racism, xenophobia and negative social attitudes towards undocumented migrants by, for example, facilitating interactions between local and migrant communities, promoting evidence-based information about migration, and punishing xenophobic speech in the media and policy discourse.

1. GAATW, “Sustainable Reintegration – What Do Women Migrant Workers in the South Asia-Middle East Corridor Say?”, February 2022, available at: <https://www.gaatw.org/publications/Return_Reintegration_SA-ME.pdf> [↑](#footnote-ref-1)
2. FLEX and SEEAC Joint Blog, “International Migrants Day 2022: A Call for Stronger Protection for all Migrant Workers,” 18 Dec 2022, available at: <https://www.labourexploitation.org/news/international-migrants-day-2022-call-stronger-protection-all-migrant-workers> [↑](#footnote-ref-2)
3. Research conducted by GAATW in 2020-2022, report forthcoming in spring 2023. [↑](#footnote-ref-3)
4. *Ibid*. [↑](#footnote-ref-4)
5. *Ibid.* [↑](#footnote-ref-5)
6. GAATW, “I spent many days on the road but I made it here: Socioeconomic inclusion of migrant and trafficked women in South America”, September 2022, available at: <https://www.gaatw.org/publications/SouthAmericaSocioeconomicInclisionReport.pdf> [↑](#footnote-ref-6)
7. GAATW, “Of course people will hire the white person: Social and economic inclusion of migrant women in Vancouver, Canada”, 2022, available at: <https://www.gaatw.org/publications/Canada_FPAR_Report.pdf> [↑](#footnote-ref-7)
8. Research conducted by GAATW in 2020-2022, report forthcoming in spring 2023. [↑](#footnote-ref-8)
9. *Ibid*. [↑](#footnote-ref-9)
10. GAATW, “I spent many days on the road”. [↑](#footnote-ref-10)
11. *Ibid.* [↑](#footnote-ref-11)
12. GAATW, “Sustainable Reintegration”. [↑](#footnote-ref-12)
13. Research conducted by GAATW in 2020-2022, report forthcoming in spring 2023. [↑](#footnote-ref-13)
14. *Ibid*. [↑](#footnote-ref-14)
15. *Ibid*. [↑](#footnote-ref-15)
16. *Ibid*. [↑](#footnote-ref-16)
17. GAATW, “Of course people will hire the white person”. [↑](#footnote-ref-17)
18. Research conducted by GAATW in 2020-2022, report forthcoming in spring 2023. [↑](#footnote-ref-18)
19. GAATW, “I spent many days on the road”. [↑](#footnote-ref-19)
20. Research conducted by GAATW in 2020-2022, report forthcoming in spring 2023. [↑](#footnote-ref-20)
21. *Ibid*. [↑](#footnote-ref-21)