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Illegal migration: how gender makes a difference

Marlou Schrover
Joanne van der Leun,
Leo Lucassen and
Chris Quispel

Summary This policy brief is based on the IMISCOE publication *Illegal Migration and Gender in a Global and Historical Perspective* (Amsterdam University Press 2008). Edited by Marlou Schrover, Joanne van der Leun, Leo Lucassen and Chris Quispel, the book addresses questions such as: How can differences between male and female migrants in the context of illegal migration be explained? How do mechanisms of inclusion and exclusion work out differently for men and women? The studies span the nineteenth and twentieth centuries and cover a breadth of geography including Germany, the Netherlands, the UK, the US, Mexico, Malaysia, the Middle East, the Horn of Africa, the former Soviet Union and Pakistan.

This policy brief presents illegal migration in a gender based analysis

This policy brief specifically presents illegal migration in a gender-based analysis. It argues the following points:

- To understand a migrant's choice to migrate illegally and to remain illegal in the receiving country, his or her position prior to migration must be considered.
- Women often experience unfavourable circumstances in their country of origin: in this respect, migrating illegally and/or remaining illegal become attractive options for them.
- Debates on illegal migration frequently regard only female migrants as victims.
- Policymakers acknowledge differences between men and women within illegal migration, but this mainly manifests itself in the political discourse as an oversimplified dichotomy: women as being at risk and men as posing a threat.
- There is a lack of awareness that differences within migration are also the outcome of government policies.
- An institutionalised perception – of illegally migrant women being at risk and illegally migrant men as posing a threat – creates different circumstances for the men and women who try to migrate illegally.

Migrant's position prior to migration must be considered

There are differences between women and men

Differences are influenced by policies

Defining migrant illegality The illegal exit, entry and residence of migrants is often associated with other illegal activities. Whether in an academic, public or political discussion, the underlying assumption is that one illegal activity will lead to another. For the purposes of this

Migrant illegality: exit, entry and residence

policy brief, the construction of what is considered ‘legal’ and ‘illegal’ in migration should be restricted to matters of exit, entry and residence. Illegal migration is currently defined in Western states as:

- 1) exiting or entering a country or crossing national borders without the consent of authorities;
- 2) crossing a national border in a seemingly legal way through use of false documents, legal documents applied in a fraudulent way, a bogus marriages or impostor relatives; or
- 3) staying in a country after the expiration of a legal status.

The status of a migrant can alternate between legal and illegal. Moreover, the meaning of illegality shifts over time and space. It is a fluid construction, being the result of increased state control over mobility.

The benefits and losses of legalisation

Benefits and losses What are the benefits and losses of legalisation – for migrants, for societies? This question is at the core of understanding the position of illegal migrants vs. legal migrants and judging how migration policy measures affect both. Endeavouring to answer this question also sheds light on how illegality is constructed and, in so doing, helps explain differences in this respect between men and women.

Comparison of illegal migrants with legal migrants and status in sending countries

The persistent inhumane conditions of illegal migrants worldwide and the continually ineffective policies meant to deal with them call for a new approach to understanding illegal migration. It is not enough to compare the rights of illegal migrants with those of legal migrants in the receiving country: The rights of (potential) migrants in sending societies must also be held up to those in receiving societies. When great disparities exist between the rights experienced by illegal migrants vs. legal migrants, with circumstances almost always favouring the latter, legal migrants gain from being legalised or at least trying to migrate legally. However, if individuals have fewer rights in their country of origin than they do in the receiving country anyway, an illegal position will be perceived as an improvement. Despite illegality’s disadvantages, overall social betterment will disincentivise individuals to migrate legally or to become legal.

Case: women might have little to lose from illegal migration

To illustrate, women with very few rights in their country of origin – with no access to formal labour participation and strong restriction on their movement – have little to lose from becoming illegal through migration. Their illegal position in the receiving society may have its disadvantages, but the position proves no worse. Quality of life may even be better than it was in their country of origin. In this sense, illegality is hardly a disadvantage in the migrant’s view.

In some situations, legal migrants have no more rights than illegal ones.

Case: legal female migrants might face more restrictions than illegal migrants

For instance, domestic servants in the Middle East working illegally – i.e. without a sponsor and thus without a permit to stay – have greater opportunities than those whose residence is legal. Compared to their legal counterparts, illegal domestics are less dependent on their employers because a permit to stay is not tied to them. By contrast, legal migrants cannot just leave their employers if they are dissatisfied with their working hours or pay. Leaving an employer means being evicted from the country. Because legal domestics cannot negotiate their wages or working hours, they usually work longer and for less pay. The same is true for the many women from Latin America working as domestic servants in Israel. It is almost impossible to migrate legally to Israel as a non-Jewish labour migrant, and the rights of those who do are severely restricted. Despite other drawbacks, it is thus more advantageous for some women to migrate illegally to Israel.

The ‘cost’ of illegality is influenced by risk chances

Because illegality has benefits, some migrants actually prefer to become – or, for that matter, to stay – illegal. The ‘cost’ of illegality is influenced by the chances migrants run of being discovered, arrested and deported. Both the risks of being found out and deportability vary between men and women.

Case: illegal female migrants might have more latitude

To give another example, in Malaysia, domestic servants – because they are considered ‘non-workers’ – are not covered by the national Employment Act. As a result, this group – largely comprising women – are the only foreign labourers not obliged to leave the country after five or seven years of residence. Domestic servants can reside in Malaysia practically forever as eternal temporary migrants, while the majority of male migrants (who rarely work as domestics) cannot. Illegal migrants to Malaysia, furthermore, do not pay recruitment fees, exit costs, annual levies or insurance premiums, and they have no medical check-up expenses. They have more latitude than legal migrants when it comes to changing jobs, negotiating wages and setting labour conditions.

Policies perceive threats that male and female migrants pose differently

Perpetuating differences between illegal men and female migrants

The threats that male and female migrants pose are perceived very differently. While the illegal migration of men is fuelled by state fears of losing control over the labour market and threats to national security, that of women is strongly associated with questions of morality and sexuality. Both connotations produce their own set of restrictions on exit, entry and residence. Governments generally offer protection to women, while they impose punishments on men. Distinctions are drawn along the lines of sex and gender to separate the ‘violated innocents’ from the ‘illegal immigrants’.

Victims versus threats to national security

In research as much as social debates, the illegal migration of women is often dominated by a discourse of victimhood. Particularly as

A discourse of victimhood has led to protective policy measures

trafficked women, illegal migrants have gained high visibility in academic, public and political discussions. Migrant women and their spokespersons often tap into these discourses, typically indexing a combination of perceived female powerlessness and sexual vulnerability. Victims are frequently cited as vulnerable women and children who have been forced from the safety of their homes into gross sexual exploitation; they are distinguished from the economic migrants often regarded as men who have willfully violated national borders for individual gain. The generalisation that women are more frequently trafficked than men has fed into an image that portrays almost all migrant women as being at risk of rape and other sexual harassment. This narrative of victimhood and the assumption that women are forced to migrate and work in prostitution has led to protective policy measures: sometimes they help women, but other times they restrict their choices.

Case: protection leads to restriction

A case in point: Bangladesh, Indonesia, Burma and Nepal, in an attempt to protect women, have restricted if not altogether banned female emigration.

States aim to control their borders

One explanation for the perpetuation of this dichotomous perception is that European governments today are first and foremost worried about the loss of control over their borders. States both today and in the past have prioritised protection of their labour markets and the broader public's safety. Because European governments currently feel they have lost control over issues of migration, however, they defer to the sex-trafficking discourse. The evocation of 'innocent victims,' 'violated borders' and 'criminality' is thus a means of problematising immigration and justifying anti-immigration policies.

Current discourse justifies anti-immigration policies

Such discourses focus on the life-threatening risks that come with the illegal migration of women. The discourses have frequently been exploited to legitimise state restrictions or to put a humanitarian spin on them. This is not new. The beginning of the twentieth century witnessed the so-called White Slavery Scare, in which European women were believed to be exported to the colonies and elsewhere and then forced into prostitution. Novels, pamphlets, newspaper articles and a box-office success film, *Traffic in Souls* (1913), fuelled the scare and eventually catalysed the US to increase restrictions on mobility. The protection of 'innocent' foreign women was thus used to legitimise the general restrictions on mobility established in the US after the First World War.

Case: gender-based bias in border control

An example from the present day can be found among Eastern Europeans. Migrant sex workers from this part of the world are almost always portrayed as a group of innocents who need protection from the state. While Eastern European women are portrayed as victims, the men, regardless of the sectors they work in, are associated with crime. Yet another illustration of the gender-based bias can be seen in the British government's extremely costly efforts to stop illegal

	<p>migrants from entering the UK via the Eurotunnel. Media portrayal and political discussions of this spectacular entry, however, only feature men. Unsurprisingly, the heroic fight by British and French law enforcers to stop it also only features men. In reality, most illegal migrants to the UK – many of whom are women – enter in legal ways (e.g. as tourists, au pairs or exchange students) and then overstay their visas.</p>
<p>Case: gender-based bias in border control</p>	<p>Meanwhile on the other side of the ocean, US policy for controlling illegal migration across the Mexican border has persisted long enough to show that it is ineffective. Still, the policy remains useful for convincing the general public that politicians have not lost control over immigration. In a post-9/11 era, American immigration control and anti-terrorism efforts have become conflated; a continuing display of force exerted on the border symbolises the nation’s resolve to fight terrorism even if it does nothing to enhance security. This association between illegality and security is highly gendered: the discourse on illegality along the US-Mexico border never mentions women.</p>
<p>Opportunities for becoming legal differ for men and women</p>	<p>Becoming legal vs. staying illegal The opportunities for becoming legal clearly differ for men and women, though it is difficult to say whether women actually stand a better chance. Female migrants can legalise their residence through various channels: marriage, asylum, work, giving birth to a legal baby or special regularisation programmes for prostitutes who testify against traffickers. Differences also exist per country. Domestic work, which is often done by migrant women usually does not give access to legalisation programmes, and thus tends to disadvantage women. Yet recent cases have shown that sometimes domestic work is the only form of employment with opportunities for legal residence.</p>
<p>Case: annual national quotas</p>	<p>Currently, one of the few legal ways to enter Italy and Spain is through annual national quotas established in sectors of the economy where labour shortages appear to exist, e.g. domestic service. A simple note issued by an employer in this sector is sufficient means for a migrant to apply for legal status.</p>
<p>Case: legalisation through giving birth</p>	<p>Illegally resident women in the US can legalise their status by giving birth to a so-called ‘anchor baby’. Birth on US soil makes the child <i>de facto</i> a US citizen. Some immigrants are thus granted permanent residency status by becoming the mother of a US citizen. By contrast, babies born on German soil do not automatically receive local citizenship. In Germany, all women must acquire a birth certificate for their locally born children. The situation poses a double-bind for illegal migrants: appealing to the authorities to get the certificate puts women at risk of being deported. Still, if no birth certificate is obtained, they run the risk of not having any parental rights over the</p>

child. Not only does the child become an illegal resident, but the mother is not legally recognised as his or her parent.

Case: pregnancy and deportation

In some situations, pregnancy itself makes women vulnerable to deportation. In 1900, Polish women found to be pregnant were routinely evicted from Germany. Today in Malaysia, all immigrant women, including those whose residence is legal, are submitted to annual gynaecological tests. Should pregnancy be detected, they are immediately deported. If the women manage to evade deportation, or the testing to begin with, they become illegal.

Asylum procedures: options for women have improved

Asylum procedures initially seemed to create more options for men, but, in recent years, options for women have improved. According to the 1951 United Nations Geneva Convention Relating to the Status of Refugees, the ground for asylum is a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group. Women who had been raped were not seen as persecuted, even if the rape was part of genocide or coercion, for example, in order to retrieve information about the whereabouts of a woman's husband or son. Circumstances have changed in recent years. In the US, women have been granted asylum on the basis of female circumcision, honour killings, domestic violence, coercive family planning, forced marriages and repressive social norms. This is also true for some European countries such as Germany. Asylum seekers in the US stand a better chance of having their request approved if they mention female circumcisions at their hearing, rather than explaining the political role they may have had in a resistance movement. Though they are for men, stories about resistance are almost never acknowledged as grounds for asylum for women.

Conclusions:

Conclusions Creating policies that effectively combat illegal migration must involve more than a look at how the rights of illegal migrants compare to those of legal migrants: policymakers must also compare the rights of men and women in the sending society with those – who are legal or not – in the receiving society. The opportunities and risks of migration are different for men and women, and are determined along with a host of other context-specific variables. Consciously or not, individuals make their migration choices accordingly. If there is great disparity between the rights of illegal and legal migrants in the receiving society, migrants will gain from legalisation programmes or from migrating legally.

Compare illegal with legal status

Compare status in sending and receiving society

Acknowledge gender based differences

What a society considers legal and illegal hinges on gender-based constructs, as do the responses of sending and receiving states towards the illegal migration of men and women. Gender-based differences are seen as a given, without any acknowledgement that such disparities are also the outcome of government policies based on political and public

discourses. Institutionalised perceptions of illegal migrants founded in normative ideas about sex and gender create different circumstances for the men and women who try to migrate illegally.

**Avoid
oversimplified
dichotomy**

Policymakers are well aware that disparities exist between male and female illegal migration, though the awareness too often manifests itself in an oversimplified dichotomy: as women being at risk and as men posing a threat. Policymakers should therefore take care not to over-generalise the provisions or prohibitions set forth for migrants. Awareness of gender-based differences should be put into concrete effect: to show how disparities between male and female migration are as much – if not more – the result of policy rather than a reason for it. At a practical level, this means that policymakers should analyse to what extent protective measures are in fact restrictive measures, for men and women migrants both.

**Analyse to what
extent protective
measures become
restrictive**

Marlou Schrover is senior lecturer in migration studies, Joanne van der Leun is professor of criminology, Leo Lucassen is professor of social history and Chris Quispel is researcher in migration history, all at the University of Leiden

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