



30 January 2012

Mr. François Crépeau
Special Rapporteur on the human rights of migrants
Civil Society Section, Office of the High Commissioner on Human Rights
Via email: migrant@ohchr.org

Re: Request for Information on the detention of migrants in an irregular situation

Distinguished Special Rapporteur,

The Center for Reproductive Rights is a non-governmental legal advocacy organization dedicated to advancing the reproductive rights of women and men worldwide. We write in response to your request for civil society consultations on the “detention of migrants in an irregular situation” to assist in the preparation of your first thematic report to the Human Rights Council. This letter provides information regarding the “special needs and protection concerns of vulnerable groups of migrants (including children, women, families, and migrants with mental health issues).” Using the example of women in immigration detention in the United States, we draw your attention to the gender-specific risks women face in detention and their particular vulnerability to violations of their reproductive rights.

I. Reproductive and Sexual Rights Are Human Rights

All women and men have reproductive and sexual rights. Reproductive rights are based on a number of fundamental human rights including the rights to health, life, equality, information, education, privacy, freedom from discrimination and violence, and freedom from torture and cruel treatment.¹ At the 1994 International Conference on Population and Development (ICPD) in Cairo, states explicitly acknowledged that reproductive rights are human rights, grounded in both national laws and existing human rights instruments. As stated in Paragraph 7.3 of the ICPD Programme of Action:

[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.²

Human rights treaty bodies have emphasized states' obligation to ensure the ability of marginalized groups to access reproductive rights without discrimination.³

II. Violations of Detained Immigrant Women's Reproductive Rights in the United States

In the United States, as elsewhere, migrant⁴ women experience multiple forms of discrimination based on gender, ethnicity, race, class and immigration status, placing them at heightened risk of human rights abuses. Several Special Procedures, including the former Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, have identified immigration detention as a site where these vulnerabilities often manifest and, as a result, have called for alternatives to detention.⁵

The delays and denials of medical attention in the U.S. immigration detention system, particularly reproductive healthcare such as pre-natal and obstetric and gynecological care, have been thoroughly documented.⁶ One particular violation of migrant women's reproductive rights has been less visible: the U.S. practice of forcibly restraining women during childbirth. The Human Rights Committee and Committee against Torture have expressed their concern to the United States regarding the frequency of this practice in federal prison.⁷ But shackling is also used in immigration detention against civil detainees who have not been accused or convicted of any crime.⁸ Inadequate and non-legally binding policies, lack of enforcement of existing policies, insufficient oversight of detention facilities, and lack of available remedies create a situation where women in immigration detention are often more vulnerable to rights violations than those incarcerated in the U.S. criminal justice system.⁹

Attached to this letter is a list of references to documentation and media articles regarding the problem of shackling in detention. A recent report by Human Rights Watch documented testimonies of migrant women who stated that the use of restraints on pregnant women was typical during transportation between detention facilities and to and from off-site medical providers.¹⁰ The New York Times and Huffington Post articles tell the stories of three undocumented migrant women who gave birth with their legs shackled to the hospital bed with an armed guard in the room.¹¹ The recent report of the Special Rapporteur on Violence against Women from her U.S. mission describes testimony she heard from women in the immigration detention system about the practice of shackling during transport, labor and childbirth.¹²

The practice of forcibly restraining migrant women in detention during labor, transport, delivery and recovery violates migrants' fundamental reproductive rights, including the rights to life, health, equality, freedom from discrimination, and freedom from cruel, inhuman and degrading treatment. Shackling pregnant women during the final stages of pregnancy can cause otherwise avoidable health risks for the woman and the fetus.¹³ It is also needlessly punitive and traumatizing for women. For example, Itzya N. told Human Rights Watch, "They only use shackles in transportation, but that is a trauma that lasts for three days. It's just that on top of

being chained you are being treated like an animal. It is more about the way they treat you, how they yell at you, how it's like being caged."¹⁴

In the first thematic report to the Human Rights Council, we respectfully urge the Special Rapporteur to draw attention to the range of reproductive rights violations migrant women experience in detention, from inadequate reproductive healthcare to shackling during childbirth. We will be happy to provide additional information about women's reproductive rights, or the specific vulnerabilities women face in U.S. immigration detention, upon request.

Kind regards,

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¹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, arts 2(1), 6(1), 17, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976; International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, art 5(e) (iv), U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969; Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, arts. 1, 10, 12, U.N. Doc. A/34/46 (1979), *entered into force* Sept. 3, 1981; International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, arts. 2(2), 12, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976. *See also* Committee on Economic, Social, and Cultural Rights (CESCR), *General Comment No. 14: the Right to the Highest Attainable Standard of Health (Art. 12)*, para. 12, U.N. Doc. E/C.12/2000/4 (4 July 2000); K.L. v. Peru (1153/2003), para. 6.4, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); 13 IHRR 355 (2006).

² *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, Principle 8 and para. 7.3, U.N. Doc. A/CONF.171/13/Rev.1 (1995). *See accord Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15 1995, paras. 94-97, U.N. Doc. A/CONF.177/20 (1996).

³ CESCR, General Comment No. 14, *supra* note 1, paras. 43-44.

⁴ We use the term 'migrant' consistently with the definition of the former Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, in his 2008 country report on the U.S., where he stated that "migrants" refers to all non-citizens living in the United States, including, among others, undocumented non-citizens and non-citizens with legal permission to remain in the country...". *Report of the Special Rapporteur on the Human Rights of Migrants, Mr. Jorge Bustamante, to the Human Rights Council, Addendum: Mission to the United States of America*, Summary, U.N. Doc. A/HRC/7/12/Add.2 (2008) [hereinafter *Report of the former Special Rapporteur on Migrants, Mr. Bustamante*].

⁵ *Id.*, para. 121 ("Whenever possible, migrant women ... who are pregnant or nursing infants should not be detained. If these vulnerable women cannot be released from ICE custody, the Department of Homeland Security should develop alternative programmes such as intense supervision or electronic monitoring, typically via ankle bracelets. These alternatives have proven effective during pilot programmes. They are not only more humane for migrants who are particularly vulnerable in the detention setting or who have family members who require their presence, but they also cost, on average, less than half the price of detention); *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, to the Human Rights Council*, para. 41, U.N. Doc. A/HRC/7/3 (2008) (stating that pregnant women "should not be deprived of their liberty unless there are absolutely compelling reasons to do so and their particularly vulnerability should be borne in mind"); *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum: Mission to the United States of America, to the Human Rights Council*, paras. 41-49 and 115, U.N. Doc. A/HRC/17/26/Add.5 (2011) [hereinafter *Report of the Special Rapporteur on violence against women, Ms. Rashida Manjoo*].

⁶ *See, e.g.*, Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* 35 (March 2009), available at http://www.hrw.org/sites/default/files/reports/wrd0309webwcover_0.pdf; University of Arizona, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* 3 (2009), available at <http://sirow.arizona.edu/files/UnseenPrisoners.pdf>.

⁷ CAT Committee, *Concluding Observations: United States*, para. 33, U.N. Doc. CAT/C/USA/CO/2 (2008); Human Rights Committee, *Concluding Observations: United States*, para. 33, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (2006); *Report of the Special Rapporteur on torture, supra* note 5, para. 41; *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum: Report of the mission to the United States of America on the issue of violence against women in state and federal prisons*, paras. 53-54, 133, U.N. Doc. E/CN.4/1999/68/Add.2 (1999); *Report of the Special Rapporteur on violence against women, Ms. Rashida Manjoo, supra* note 5, para. 115.

⁸ Immigrant women comprise ten percent of the population of detained migrants and are held in over 300 facilities owned or operated by Immigration and Customs Enforcement. These women include many asylum seekers and other undocumented immigrants in removal proceedings who have not been convicted of any crimes, as well as others convicted of non-violent drug-related offenses. HRW, *Detained and Dismissed, supra* note 6, pp. 11-12; Univ. of Arizona, *Unseen Prisoners, supra* note 6, at 3.

⁹ *See Report of the former Special Rapporteur on Migrants, Mr. Bustamante, supra* note 4 (finding that "the United States has failed to adhere to its international obligations" to respect migrants' rights in its deportation and detention policies, and

calling for “a clear, consistent, long-term strategy to improve respect for the human rights of migrants”); *Special Rapporteur on violence against women, Ms. Rashida Manjoo*, *supra* note 5, paras. 43-44 (finding little evidence that detention policies, which lack the status of federal regulations, are ever enforced or implemented).

¹⁰ HRW, *Detained and Dismissed*, *supra* note 6, at 33-36.

¹¹ Julia Preston, *Immigrant, Pregnant, Is Jailed Under Pact*, N.Y. TIMES, July 20, 2008, at A13; Christina Costantini, *Undocumented Women Forced to Give Birth While Shackled and In Police Custody*, HUFFINGTON POST, 21 Sept. 2011, available at http://www.huffingtonpost.com/2011/09/20/undocumented-pregnant-woman-gives-birth-in-shackles_n_971955.html.

¹² *Report of the Special Rapporteur on violence against women, Ms. Rashida Manjoo*, *supra* note 5, paras. 41-49.

¹³ When a woman is shackled while being transported to the hospital, she is at an increased risk of falling and may not be able to protect herself by breaking her fall due to the restraints. During the birthing process, shackles hamper a woman's ability to move to alleviate the pain of her contractions, which increases stress on the woman's body and may decrease the flow of oxygen to her baby. Leg shackles also inhibit a woman's recovery, as many experts recommend walking to rehabilitate muscles after a delivery. See Jenni Vainik, *The Reproductive and Parental Rights of Incarcerated Mothers*, 46 FAM. CT. REV. 670, 678 (2008); Kendra Weatherhead, *Cruel But Not Unusual Punishment: The Failure to Provide Adequate Medical Treatment to Female Prisoners in the United States*, 13 HEALTH MATRIX 429, 450 (2003). For these reasons, leading professional organizations in the United States have spoken out against the practice of shackling incarcerated women during labor and delivery. AM. PUB. HEALTH ASS'N, TASK FORCE ON CORRECTIONAL HEALTH CARE STANDARDS, STANDARDS FOR HEALTH SERVICES IN CORRECTIONAL INSTITUTIONS 108 (2003); Letter from Ralph Hale, Executive Vice President, American College of Obstetricians and Gynecologists, to Malika Saada Saar, Executive Director, The Rebecca Project for Human Rights (June 12, 2007), available at http://www.rebeccaproject.org/images/stories/factsheets/ACOG_Letter_Shackling.pdf.

¹⁴ HRW, *Detained and Dismissed*, *supra* note 6, at 36.