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**The Vulnerability of Migrant Women to Violence:  
A Report on Employer and State-Based Violence Against Migrant Women, and  
Recommendations for Prevention**

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## I. Introduction: The Special Concerns and Vulnerabilities for Women Migrants

Since the 1970's there has been a steady increase in the number of migrant women leaving their home countries to pursue better opportunities and employment abroad. In 2005, it was estimated that there were 90 million women residing outside of their home country, and this number is only increasing.<sup>1</sup> As women migrate, they become vulnerable to new forms of discrimination, particularly violence based discrimination. And as this phenomenon, often referred to as the "Feminization of Migration," increases, preventing violence against migrant women becomes an increasing priority for all countries.<sup>2</sup> This violence is often employment-based violence, but due to the intensifying criminalization of immigration in many countries, violence is often committed by the state as part of immigration detention programs.

The Commission on the Status of Women has emphasized the importance of combating all forms of violence against women.<sup>3</sup> The definition of violence against women is broad, and can include "[p]hysical, sexual and psychological violence occurring within the general community."<sup>4</sup> In this paper I will discuss both the violence committed against migrant women by their employers, as well as those committed by the State in detention centers, both of which are included within this definition of violence under the Beijing Declaration.

The vulnerabilities of migrant women to violence, due to their marginalized status as women, as migrants, and as people living in poverty has been recognized in some form by each World Conference on the Status of Women. The drafters of the Beijing Declaration and Platform for Action point out that:

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<sup>1</sup> Beijing at 10, Achieving Gender Equality, Development and Peace, [hereinafter Beijing at 10]

[http://www.un.org/womenwatch/daw/Review/documents/press-releases/Beij\\_Migration\\_stats\\_Eng\\_1.pdf](http://www.un.org/womenwatch/daw/Review/documents/press-releases/Beij_Migration_stats_Eng_1.pdf)

<sup>2</sup> Preventing Discrimination, Exploitation and Abuse of Migrant Women Workers, [hereinafter Preventing Discrimination] [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/instructionalmaterial/wcms\\_116360.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/instructionalmaterial/wcms_116360.pdf)

<sup>3</sup> United Nations Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF.177/20 [hereinafter Beijing Declaration] and U.N. Doc. A/CONF.177/20/Add.1 [hereinafter Beijing Platform].

<sup>4</sup> Beijing Declaration and Platform for Action, paragraph 113(b).

“[s]ome groups of women, such as women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, women in poverty... women in institutions or in detention, . . . are also particularly vulnerable to violence.”<sup>5</sup>

At Beijing +5, there was also a recognition that the patterns of labor have changed, as

“[w]omen and girls are increasingly involved in internal, regional and international labour migration to pursue many occupations, mainly in farm labour migration to pursue many occupations. . . While this situation increases their earning opportunities and self-reliance, it also exposes them. . . [to] other forms of abuse. . .”<sup>6</sup>

Language has been drafted to implement changes in national governments to eliminate violence against migrant women. In the original Beijing Declaration and Platform for Action, establishing “linguistically and culturally accessible services for migrant women and girls, including migrant workers, who are victims of gender-based violence” was emphasized.<sup>7</sup> The Declaration emphasized that governments needed to “ensure the full human rights of all women migrants, including women migrant workers, and their protection against violence and exploitation.”<sup>8</sup>

Yet despite previous efforts to address violence against migrant women, abuses against migrant women remain prevalent all over the globe. Solutions should be sought which address the root causes of violence against migrant women, while considering the connections between the global economy, laws promulgated by governments, and culture-based discrimination against migrant women.

## II. Violence Against Migrant Women Workers by Employers

Due to the nature of global migration today, where migrants are often poor and disempowered, much of the violence committed against migrant women is employer-based

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<sup>5</sup> Beijing Declaration and Platform for Action, paragraph 116.

<sup>6</sup> Beijing + 5, Resolution Adopted by the General Assembly, paragraph 27.

<sup>7</sup> Beijing Declaration paragraph 125(b).

<sup>8</sup> Beijing Declaration and Platform for Action paragraph 58(k).

violence. There have been reports of violence committed against migrant women workers by their employers in all corners of the world, which becomes of greater concern as more women migrate, increasing the number of potential victims. While much of this violence has been identified in the Middle East, particularly in countries such as Kuwait, Saudi Arabia, Lebanon, and Jordan, it occurs worldwide.<sup>9</sup>

The causes of employer violence against migrant women stem from many international phenomena. Factors such as economic globalization and poverty often affect a woman's decision to migrate.<sup>10</sup> The reduction of state welfare programs has resulted in an increase in the demand for workers in domestic and social services fields as caregivers, and therefore women are working in homes- a close and private setting with their employers.<sup>11</sup> The combination of a poverty stricken migrant, working in domestic and other low paying, unregulated jobs often creates an unequal bargaining position between employers and employees. Migrant domestic workers, by working in the "private sphere" are also subjected to different forms of abuse. We must keep these various causes in mind in order to prevent and address violence against migrant women workers around the globe.

Examining the progress made in various countries helps elucidate what policies work, in addition to giving us a chance to critically examine what further steps can be made to end violence against migrant women. Jordan and Canada have created laws that have the potential to be helpful in improving migrant women's human rights in some respects and can be used as an example, but have still fallen short of important protections. Of recent years, sending countries such as Indonesia have taken steps to reduce violence against migrant women abroad.

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<sup>9</sup> Human Rights Watch, *Slow Movement: Migrants Rights in 2009*, [hereinafter *Slow Movement*] [http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/MUMA-7YT3A6-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/MUMA-7YT3A6-full_report.pdf/$File/full_report.pdf)

<sup>10</sup> Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, [hereinafter Report of the Special Rapporteur on Violence Against Women], UN Doc. A/HRC/11/6/Add.6, paragraph 53, <http://www2.ohchr.org/english/issues/women/rapporteur/docs/A.HRC.11.6.Add.6.pdf>

<sup>11</sup> *Supra*.

a. Jordan: Leading in the Middle East

Jordan has been one of the countries cited for having high levels of sexual, psychological and physical violence against migrant women.<sup>12</sup> However, Jordan became the first Arab country to include its 70,000 domestic workers under the protection of its labor laws in July 2008, in part due to the encouragement of United Nations Development Fund for Women (UNIFEM). This put Jordan at the forefront of preventing violence against migrant women in the Middle East. The new regulations contained rights for migrant women workers, including requiring the employer to pay salaries into a bank account, provide medical insurance and 14 days of medical leave, in addition to 14 days of annual leave. It provided domestic workers with limits to daily working hours, and a weekly day of rest. In addition to putting women in their labor code, Jordan has also set up a monitoring committee to assess the situation of migrant women workers in their employer's homes.<sup>13</sup> This is important, because when domestic work takes place within the house, the government cannot supervise abuses, and the abuses remain unregulated.<sup>14</sup> They have also used media campaigns to raise awareness.<sup>15</sup>

While these regulations say nothing about violence against women in particular, the fact that Jordan has included migrant women in their labor code is important in altering the nature of the relationship between the migrant women and the employer. It is often the nature of this employer-employee relationship, where the legality of the migrant is often in doubt, which leads to violence against migrant woman. The International Labor Organization has recognized that the trend of "feminization" in the world "is sometimes characterized by a strong bond of subordination between the employer and the employee and, above all, because those sectors are

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<sup>12</sup> Slow Movement.

<sup>13</sup> Violence against women migrant workers, Report of the Secretary General, [hereinafter Violence Against Women Migrant Workers] UN Doc. A/64/152, of July 2009, <http://www.unhcr.org/refworld/pdfid/4a9e2c180.pdf>

<sup>14</sup> Glenda Labadie-Jackson, Reflections on Domestic Work and the Feminization of Migration, 31 Campbell L. Rev. 67 at 85.

<sup>15</sup> Supra.

generally excluded from the scope of legal protection on employment, notably from the Labour Code.”<sup>16</sup> Jordan’s steps to legalize the status of migrants in their country will be particularly important in curbing the power that employers often exercise over migrant women domestic workers.

It should be noted that the abuses in Jordan have continued despite the new legislation, proof that although the regulation reforms are meaningful in that they are a step towards the changes that ultimately must be made, they should be considered only the beginning. On January 23, 2010, the unidentified bodies of two Asian women were found in a dumpster.<sup>17</sup> They had been strangled to death, and put in plastic bags. The women were thought to have been working in Jordan as domestic workers.<sup>18</sup>

As Human Rights Watch also recommends, the future reforms that should take place in Jordan should include a way to move beyond giving migrant domestic workers legal status, and allow migrant domestic workers freedom of movement. The current regulations allow employers to lock their live-in workers inside the house, stipulating that the worker cannot leave without the consent of the employer, even after working hours.<sup>19</sup> Preventing the migrant women worker from leaving the employer’s home can often lead to violence against them and encroaches on their human rights. Therefore, in the next set of reforms, it is important that migrant women be given the right to reside in a place separate from their employment.

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<sup>16</sup> International Labour Office, Migrant Workers International Labour Conference, 87th Session 1999 (Geneva: ILO, 1999), at 245.

<sup>17</sup> Migrant’s Rights, Jordan: Two Bodies of Asian Women Found in Dumpster, 1/29/2010 <http://www.migrant-rights.org/2010/01/23/jordan-bodies-of-two-asian-women-found-in-dumpster/> ; also Yahoo News, Jordan Police Recover Bodies of Two Asian Women, [http://news.yahoo.com/s/afp/20100123/wl\\_mideast\\_afp/jordancrimelabourwomen;\\_ylt=ApVUZE1ez36j2ZhsbDmVuz4LewgF;\\_ylu=X3oDMTJ1a2dpYnZqBGFzc2V0A2FmcC8yMDEwMDEyMy9qb3JkYW5jcmltZWxhYm91cndybWVubHBvcwMzMQRzZWMDDeW5fcGFnaW5hdGVfc3VtbWFyeV9saXN0BHNsawNqb3JkYW5wb2xpY2U-](http://news.yahoo.com/s/afp/20100123/wl_mideast_afp/jordancrimelabourwomen;_ylt=ApVUZE1ez36j2ZhsbDmVuz4LewgF;_ylu=X3oDMTJ1a2dpYnZqBGFzc2V0A2FmcC8yMDEwMDEyMy9qb3JkYW5jcmltZWxhYm91cndybWVubHBvcwMzMQRzZWMDDeW5fcGFnaW5hdGVfc3VtbWFyeV9saXN0BHNsawNqb3JkYW5wb2xpY2U-)

<sup>18</sup> Supra.

<sup>19</sup> Slow Movement.

b. Canada: Paving the Way for Ending Violence Against Migrant Women

Canada has often been seen as one of the best countries for immigrants, having had a warm policy towards immigrants for years.<sup>20</sup> It is no surprise then, that Canada has some of the more progressive programs for migrant women workers. Canada has had a Live-In Caretaker Program, which provides legal immigration status for migrant women domestic workers and includes them in the labor code. This is another example of how to give migrant domestic workers legal status, which would pave the way towards preventing the violence that is often perpetrated against them. In many ways, the program is more progressive than most because, after two years of living and working for a family, an immigrant woman is given a path to Canadian citizenship.

While this path to citizenship can help women empowerment, certainly more than a situation where an employer can take advantage of their undocumented status, the program has a number of problems that have resulted in abuses and violence. There is concern, as has been discussed about the Jordan labor code, that the live-in requirement, which requires that the migrants live in the home of the sponsor for two out of the first three years of their stay, often results in additional abuses.<sup>21</sup> It has been reported that many of these migrant women workers have suffered physical, sexual and mental abuses at the hands of their employers.<sup>22</sup> The Canadian government has also been criticized for not investigating the employers who request foreign caregivers carefully enough, as employment agencies often take advantage of immigrants, take the money they pay to be a part of the programs, leaving many with little

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<sup>20</sup> Khaleej Times, Canada Bucks Global Trend on Immigration, 1/10/2010, [http://www.khaleejtimes.com/DisplayArticleNew.asp?col=&section=opinion&xfile=data/opinion/2010/January/opinion\\_January19.xml](http://www.khaleejtimes.com/DisplayArticleNew.asp?col=&section=opinion&xfile=data/opinion/2010/January/opinion_January19.xml)

<sup>21</sup> Amnesty International, Unequal Rights: Ongoing Concerns about Discrimination Against Women in Canada, 10/1/2008, at 12, <http://www.amnesty.org/library/info/AMR20/008/2008/en>

<sup>22</sup> Susan McClelland, Nanny Abuse, <http://www.walrusmagazine.com/articles/2005.03-politics-international-labour-migration/>

options other than to work illegally.<sup>23</sup> While the Live-In Caretaker Program helps to curtail some of the problems seen in other countries by providing legal employment, and a path to citizenship, a lack of government oversight and the live-in requirement are barriers to preventing violence against migrant women in Canada.

c. Indonesia: Lessons from a Sending Country

While efforts at improving the treatment of migrant domestic women often focus on the receiving countries, policies by sending countries can be equally important in preserving the rights of migrant women domestic workers. When poverty and a lack of opportunity in home countries is often a sending factor, figuring out how to solve this problem at home may be an effective way to curtail abuses abroad, by reducing the number of emigrants.

Indonesia has a special interest in protecting the rights of their women migrant workers, as many of their citizens leave the country to pursue work abroad. Preventing Indonesians from emigrating to other countries where they are going to meet violence and abuse by employers is one way of protecting their workers. The provincial government of East Java in Indonesia has taken action in order to prevent more of their people, especially women, from emigrating out of their country, due to the violence against Indonesian women in abroad.<sup>24</sup> East Java Governor Soekarwo has said that they are going to try and send less workers abroad in 2012 and 2013 by improving the vocational schools in their province, including international classes which are meant to prepare women workers with better skills in order to obtain better employment opportunities abroad.<sup>25</sup> Indonesia has also had a repatriation program to take back immigrants

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<sup>23</sup> Robert Cribb, Federal Agencies Fail to Protect Migrant Nannies, 3/15/2009, <http://www.parentcentral.ca/parent/article/602649>

<sup>24</sup> Viva News, E Java to Stop Send Migrant Workers, January 13, 2010, [http://en.vivanews.com/news/read/120964-e\\_java\\_to\\_stop\\_send\\_migrant\\_workers](http://en.vivanews.com/news/read/120964-e_java_to_stop_send_migrant_workers)

<sup>25</sup> Supra.



who have been abused, and the new foreign minister of Indonesia also has laid out such a program.<sup>26 27</sup>

However, measures should also be taken to ensure that the policies do not become too restrictive against migrant women, as migrant women also suffer discrimination by their home governments.<sup>28</sup> While they may in some cases prevent abuse, they still hurt women's empowerment by hurting their economic welfare, and by limiting their freedom of movement.<sup>29</sup> The movement of migrants is often the result of larger, global economic trends, and while providing opportunities at home may prevent some abuses, it still may not provide much help for improving the economic plight of women, who migrate in order to improve their lives.

### III. Violence Against Migrant Women in Detention Centers

While migrant women domestic workers are often victims of violence committed by their employers, the policies that many countries have used to arrest, detain, and deport undocumented migrant women have led to similar forms of violence. While their undocumented statuses may result in less rights and protections under the national law of the country they are detained in, migrant women are still protected by international human rights standards. The International Convention on the Protection of the Rights of All Migrant Workers is one of the international human rights documents codifying migrant rights, which entitles migrant workers to effective protection by the State against violence, physical injury, threats and intimidation, and protects migrants against arbitrary arrest and detention," among many other protections.<sup>30</sup>

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<sup>26</sup> The Jakarta Post, House Ministers Quiz New FM on 100-Day Program, 12/03/2009, <http://www.thejakartapost.com/news/2009/12/03/house-members-quiz-new-fm-first-100day-program.html>

<sup>27</sup> Migrant's Rights, Thousands of Indonesians Go Without Pay in the Middle East, 1/24/2010, <http://www.migrant-rights.org/2010/01/24/thousands-of-indonesians-go-without-pay-in-mid-east/>

<sup>28</sup> Margaret A. Satterwaith, "Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers," 8 Yale Hum. Rts. & Dev. L.J. 1

<sup>29</sup> Supra at 60.

<sup>30</sup> International Convention on the Protection of All Migrants and Their Families, <http://www2.ohchr.org/english/law/cmw.htm>, Articles 16, section 2, and section 4.

Violence against women in detention centers is occurring in countries all over the world, as many countries attempt to manage and control the growing immigrant populations within their borders. The United States immigration detention system is an example of a system- of which there are many in the world- that does not do enough to prevent violence against detained migrant women. The United States government sought to criminalize more undocumented workers, and some states have stripped away some of the humanitarian precautions that were once in place. Incidents of violence against migrant women that have occurred in immigration detention centers in the United States helps to shed light upon the scope and nature of the problem, in addition to some of the policies that have led to such violence.

a. Violence Against Women Migrants During Immigration Raids

There have been reports of ICE officers physically and mentally abusing women when they are arrested and taken into detention centers.<sup>31</sup> One example of this occurred on February 20<sup>th</sup>, 2007, ICE officials in New York arrested Nelly Amaya, responded to her request for a warrant by “roughing her up” as they arrested her and took her away in her pajamas to the detention center.<sup>32</sup> The arrest resulted in the aggravation of an existing injury, and her arm became swollen and bruised. Ms. Amaya suffered from physical and psychological pain as a result of the detention. More recently, Celia Alejandra Alvarez Herrera is suing the Maricopa County, Arizona Sheriff for assault and illegal search and seizure.<sup>33</sup> During an immigration raid in Arizona in February 2009, officers slammed Ms. Alvarez Herrera against a wall and hit her forcefully with a metal clipboard, resulting in a detached meniscus of the jaw.<sup>34</sup>

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<sup>31</sup> National Network for Immigrant and Refugee Rights, “Over-Raided, Under Seige,” [hereinafter, “Over-Raided] at 7, [http://www.nnirr.org/resources/docs/UnderSiege\\_web.pdf](http://www.nnirr.org/resources/docs/UnderSiege_web.pdf)

<sup>32</sup> Over-Raided.

<sup>33</sup> Phoenix New Times, Joe Arpaio Victims Celia Alvarez, of Busted Jaw Fame, and Armando Nido File Suit, February 16, 2010, [http://blogs.phoenixnewtimes.com/bastard/2010/02/joe\\_arpaio\\_victims\\_celia\\_alvar.php](http://blogs.phoenixnewtimes.com/bastard/2010/02/joe_arpaio_victims_celia_alvar.php)

<sup>34</sup> Phoenix New Times, Ones Mother’s Suffering, <http://www.phoenixnewtimes.com/2009-10-15/news/one-mother-s-suffering-joe-arpaio-s-bigotry-and-stories-of-racial-profiling-by-the-mcso/>

## b. Restraints on Pregnant Women

Some of the more egregious violence against women in detention centers has been the shackling of pregnant women.<sup>35</sup> Many of the violence against women has not been well documented, and there has been a lack of transparency of the U.S. government's actions in general, as only recently has it emerged that ICE hid the truth about immigrant's deaths during the past few years.<sup>36</sup> Therefore, it is difficult to know to what extent the shackling has occurred.

One example is of Juana Villegos was nine months pregnant when she was arrested for a traffic violation on July 3, 2008 and taken into immigration custody.<sup>37</sup> An Amnesty International report details how Villegos went into labor and was taken by ambulance to a hospital, while chained to a gurney, and then, was shackled again mere six hours after giving birth. Subsequent to the bad press this incident received, it was announced that pregnant detainees would no longer be restrained unless they were combative, but that they would be placed in what was called a "restraint chair"- the same device which had resulted in 18 deaths in detention facilities in recent years.<sup>38</sup> The UN Committee Against Torture had also advised against using these same "restraint chairs" in 2000.<sup>39</sup> There have been other reports of women shackled during the two months prior to giving birth, and after they give birth to the child, the baby taken away, without informing the mother of where they are going.<sup>40</sup> A pregnant woman in a detention center was also reported in August 2007 to have died while in custody.<sup>41</sup>

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<sup>35</sup> Amnesty International Report, Migration-Related Detention, A Global Concern, [hereinafter A Global Concern], <http://www.amnesty.org/en/library/asset/POL33/004/2008/en/c4b6797b-c873-11dd-b5e7-cf1e30795cb4/pol330042008eng.pdf>

<sup>36</sup> Officials Hid Truth of Immigrant Deaths in Jails, 1/9/2010, <http://www.nytimes.com/2010/01/10/us/10detain.html?scp=2&sq=nina%20bernstein&st=cse>

<sup>37</sup> A Global Concern at 8.

<sup>38</sup> Supra.

<sup>39</sup> A Global Concern at 8; also Report of the Committee Against Torture, A/55/44, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/434/06/PDF/G0043406.pdf?OpenElement>

<sup>40</sup> Detained Pregnant Immigrants Chained, Malnourished in Arizona, 1/28/2010, [http://immigration.change.org/blog/view/detained\\_pregnant\\_immigrant\\_chained\\_malnourished\\_in\\_arizona](http://immigration.change.org/blog/view/detained_pregnant_immigrant_chained_malnourished_in_arizona)

<sup>41</sup> Washington Post, Three Jailed Immigrants Die in a Month, 8/15/2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/14/AR2007081401690.html>

The practice of shackling pregnant women poses not only a health risk, but is also a form of physical and psychological violence against a women who are already in a painful and delicate state.<sup>42</sup> While the Eighth Circuit Court of Appeals has outlawed the shackling of incarcerated women during childbirth, this does not outlaw the shackling of migrant women before and after childbirth.<sup>43</sup> Furthermore, undocumented migrant women, unlike their U.S. citizen counter-parts, are not allowed to post bail in many states because they are considered a “flight risk.” In Arizona is one such state, where voters recently approved a law that prevented undocumented immigrants from posting bail, even if they were pregnant.<sup>44</sup>

### c. Rape In Detention Centers

In 2008 an Immigration and Customs Enforcement Official plead guilty to raping a migrant women he was transferring between detention centers.<sup>45</sup> Migrant women from the detention center in Pearsall, Texas, have also reported various instances of sexual assault against women in the centers.<sup>46</sup>

There have recently been incidents of violence against transgender women while detained in immigration detention in the United States.<sup>47</sup> A transgender woman has recently spoken out about being forced to perform oral sex on an immigration guard.<sup>48</sup> The guard pled

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<sup>42</sup> ACLU, Federal Appeals Court Condemns Shackling of Pregnant Prisoners in Labor, 10/2/2009, [http://www.aclu.org/prisoners-rights\\_reproductive-freedom/federal-appeals-court-condemns-shackling-pregnant-prisoners-la](http://www.aclu.org/prisoners-rights_reproductive-freedom/federal-appeals-court-condemns-shackling-pregnant-prisoners-la)

<sup>43</sup> Supra.

<sup>44</sup> New America Media, Pregnant and Shackled: Hard Labor for Arizona’s Immigrants, 1/26/2010, [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=bc96e9bf40ad9ac97a78dba165ea2448](http://news.newamericamedia.org/news/view_article.html?article_id=bc96e9bf40ad9ac97a78dba165ea2448)

<sup>45</sup> First Coast News, Former Immigration Agent Pleads Guilty to Raping Detainee, 4/3/2008, <http://www.firstcoastnews.com/news/florida/news-article.aspx?storyid=106333>; also Fox News, Former ICE Agent Pleads Guilty to Rape, 4/3/2008, <http://www.foxnews.com/wires/2008Apr03/0,4670,ImmigrationAgentRape,00.html>

<sup>46</sup> Claims of Sexual Assault at Detention Facility, 5/6/2008, <http://www.woai.com/content/troubleshooters/story/Claims-of-Sexual-Assault-at-Immigration-Facility/foOQJipcoE6S3S5kpUmWsg.csp>

<sup>47</sup> UN High Level Dialogue on International Migration and Development 2006; Panel Discussion on Migrant LGBTQ. Transgender immigrants are more vulnerable to sexual abuse when crossing borders, as there have been cases of visible LGBT migrants raped by border patrols/police.

<sup>48</sup> Transgender Asylee Speaks Out About Immigration Detention, [Hereinafter Asylee Speaks Out] <http://prernalal.com/2009/11/trangender-asylee-speaks-out-about-immigration-detention/>

guilty to six month in prison.<sup>49</sup> While she was still in immigration detention center, she suffered from severe depression and became suicidal, but was not allowed to seek therapy. After leaving for Mexico, and then returning a second time, she was placed in immigration detention with men, but this time was granted asylum.<sup>50</sup> There has been a growing concern for Lesbian, Gay, Bisexual, and Transsexual migrants in detention centers in the United States because like women, they are particularly vulnerable to violence when they are arrested or in immigration detention.

#### e. Conclusion

The accounts of sexual, psychological and physical violence against migrant women reveals that the United States' policies and practices for dealing with migrant women do not work to prevent State-based violence against migrant women. The practice of detaining non-violent immigrant women and putting them in restraints grants immigration officers too much power over the detainees. Furthermore, the lack of humanitarian bail and policies of shackling pregnant women cause physical harm to women who are already in a vulnerable state. The United States' immigration detention system has policies that prioritize perceived security over human rights, including the right to be free from arbitrary detention,<sup>51</sup> and the right to be free from sexual violence.<sup>52</sup>

#### IV. Recommendations for Preventing Violence Against Migrant Women

Due to the increase in the immigrant population throughout the world, combined with the “feminization of migration,” it is clear that violence against migrant women is only going to increase while nations fail to find a solution.

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<sup>49</sup> Asylee Speaks Out

<sup>50</sup> Supra.

<sup>51</sup> Universal Declaration of Human Rights, [UDHR], article 9.

<sup>52</sup> Vienna Declaration, paragraph 18.

a. Preventing Employer-Based Violence Against Migrant Women

The CSW must take action in order to understand, prevent, and end these acts of violence committed by employers against migrant women. Due to the fact that violence against migrant women workers derives from a variety of causes, and includes the topics of employment, poverty, migration, and violence against women, to address one such aspect of the problem is not sufficient. There is existing language which seeks to “punish and prevent violence against women”<sup>53</sup> and to “act to increase knowledge and understanding” of violence against women.” The language stating that governments “prevent violence against women” is not broad enough, so adding the language “governments should seek to include migrant workers into their labor codes” maybe be more effective in preventing violence against this vulnerable group.

The legalization of domestic work, and bringing it under regulation by governments, may be one of the first steps towards ending the root causes of violence against women. Another broader set of language would be “to create laws, programs, and labor codes which address the causes of violence against women and which monitor the treatment of migrant women by their employers.”

b. Preventing State-Based Violence Against Migrant Women

As the examples from the United States presents, violence against women in immigration detention centers is a problem which requires immediate action, and all countries in the world must take greater steps to ensure that they are taking proper care of women while they are in immigration custody.<sup>54</sup> As the “feminization of migration” has become a global trend, all countries who receive immigrants, and not just the United States, should take greater precautions to ensure the safety of women while in detention centers.

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<sup>53</sup> Beijing Declaration and Platform for Action, paragraph 124(b)

<sup>54</sup> ACLU, Detention of Immigrants, Women and Children, <http://www.aclu.org/human-rights/detention-immigrants-women-and-children>

Existing recommendations give us a starting point for what can be done in order to prevent and end violence against women in immigration detention centers. The Human Rights Council has recommended that immigrants in irregular situations should not be qualified or treated as criminals nor viewed only from the perspective of national security.<sup>55</sup> Human Rights Watch has expanded this recommendation against the criminalization of immigrants to demand that pregnant women should be able to receive humanitarian parole from detention centers.<sup>56</sup> The Beijing Declaration and Platform for Action make particular recommendations for preventing state-based violence against women. Paragraph 121 points out that “training of those in authority positions regarding humanitarian and human rights law is necessary to assure human rights are respected by the government.” Paragraph 122(n) states that governments should

“[c]reate, improve or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuses of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured.”

More specific language is needed in order to address the vulnerability of women in detention centers. While the training of those in authority positions is important, the shackling of pregnant women and other abuses towards migrant women in detention center is more of a policy, and may not be universally recognized as a form of violence against women. Therefore, additional language is needed to address this problem. Human Rights Advocates recommends that all nations take appropriate precautions to avoid the use of restraints on pregnant women in immigration detention centers. Furthermore, Human Rights Advocates recommends that national governments should allow humanitarian parole for women and children in order to avoid violence against migrant women in detention centers.

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<sup>55</sup> Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Human Rights Council: Report of the Working Group on Arbitrary Detention. U.N. Doc. A/HRC/10/2116, <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>

<sup>56</sup> Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Healthcare in United States Immigration Detention*. 2009. [http://www.hrw.org/sites/default/files/reports/wrd0309web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf)

### c. Ratify Key Treaties to Prevent and End Violence Against Migrant Women

In addition to adding language to address the needs of migrant women, and learning from the implementation of different laws and practices that have been implemented internationally, it is important that all countries ratify key international human rights treaties in order to protect migrant women, including the Convention on the Elimination of Discrimination Against Women and the Convention on the Protection of the Rights of All Migrant Workers.

CEDAW is one of the most widely ratified international human rights treaties, and has the potential of providing migrant women workers with additional rights. Due to CEDAW's broad applicability, it can be applied to migrant women. Also important to migrant women is that CEDAW requires the State to not only eliminate discrimination against women perpetrated by the government, but also violence against women perpetrated by non-state actors. Violence against women is recognized as a form of discrimination against women, and therefore CEDAW could be used to work to eliminate violence against migrant women that is imposed by both employers and by the government. Therefore, all countries who have not already ratified CEDAW should do so in order to ensure the human rights of all women within their borders. These countries are Iran, Nauru, Palau, Tonga, Somalia, Sudan, and the United States of America.