Submission to the Working Group on the Issue of Discrimination Against Women in Law and Practice in Preparation for the Thematic Report on Women Deprived of Liberty

Menstrual Health of Women Deprived of Liberty

Reporting Organization: Institute for the Study of Human Rights (ISHR), Program on Economic, Social and Cultural Rights, Columbia University[1]

I. Summary

In response to the call for submissions for the Thematic Report on Women Deprived of Liberty by the Working Group on the Issue of Discrimination Against Women in Law and Practice, we have the pleasure to put forth this submission regarding the menstrual health of women deprived of liberty. Menstruation is a monthly reality for many women and girls across the globe,[2] yet the silence and stigma that surround the issue leave many of them without the information, psychosocial support, products and facilities necessary for tending to menstrual needs.[3]

In recent years, menstruation has begun to emerge from the margins of international agendas, towards the center of discussions occurring in global human rights and sustainable development forums. Global upticks in attention directed towards menstrual health and existing UN language have increasingly recognized that neglect of the matter negatively impacts the human rights of many women and girls to education, just and favorable working conditions, health, water and sanitation, personal liberty, freedom from discrimination on the basis of gender and other intersecting factors, freedom from torture and inhuman and degrading treatment, and human dignity.[4] Amidst such progress, it is important to take precautions against leaving behind individuals and populations that are marginalized and discriminated against, particularly women deprived of liberty.

Women deprived of liberty may experience unique infringements on their enjoyment and exercise of the aforementioned rights due to the lack of gender-specific considerations in the planning of correctional facilities, and in the protocols used to dictate the daily lives of women. Overcrowding, violence and unsanitary conditions reported in prisons pose a threat to the health of all people deprived of liberty, regardless of gender.[5] The threat to women's health, including their menstrual

[1] This submission was prepared by Sydney D Amoakoh, under the supervision of Dr. Inga Winkler. Sydney Amoakoh (sda2130@columbia.edu) is a Human Rights Studies MA candidate and menstrual health advocacy fellow for ISHR. The submission does not purport to represent the institutional views of the Institute for the Study of Human Rights or Columbia University, if any.

[2] We recognize that not all individuals who have a menstrual cycle identify as a woman, and not all those who identify as a woman have a menstrual cycle, which may lead to intersecting forms of discrimination for many individuals. Yet, given the focus of the working group's upcoming report, this submission will focus on the experiences of women deprived of liberty.

[3] Inga T. Winkler, Virginia Roaf, "Taking the Bloody Linen out of the Closet: Menstrual Hygiene as a Priority for Achieving Gender Equality," *Cardozo Journal of Law & Gender* (2015), 7 – 9.

[4] Ibid., 13 – 14.

[5] A/HRC/38/36, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, (2018), Para. 80.

health, is compounded by the fact that many existing prison facilities and operating protocols worldwide were designed for male prisoners, and have not been adjusted to accommodate females.[6] Women deprived of liberty may face additional challenges in meeting their menstrual health needs based on their ethnicity, religion, and if they are living with disabilities or disorders, among other intersectional elements of their identities.[7]

Menstruating incarcerated individuals are vulnerable to multifaceted forms of human rights violations throughout their menstrual cycle. This submission draws on findings from reports and studies conducted in the US states of Connecticut and Arizona, as well as from Malawi to provide examples of the absence of adequate and sufficient products and facilities and a lack of gender-conscious prison operating procedures and protections for incarcerated individuals, which pose a threat to the human rights and wellbeing of incarcerated individuals at every stage of their menstrual cycles.

II. Inadequate Protocols and Conditions: Restrictions on Availability of, Access to and Use of Menstrual Products and Sanitation Facilities

Rule five of the Bangkok Rules stipulates that, "the accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for […] women […] who are […] menstruating".[8]

Recent developments have shown some progress towards realizing this standard in detention facilities that accommodate women. For example, this year, following backlash for a policy that restricted the maximum number of pads individuals could receive per month to 12 pads, the Arizona Department of Corrections increased the limit threefold to 36 pads per month.[9] In 2016, New York Governor, Andrew Cuomo directed all state prisons to ascertain that menstrual products were freely available to menstruating women.[10] This move inspired the US Department of Justice to issue a guidance in 2017 to ensure the same standard was met in federal prisons.[11] The US Federal Bureau of Prisons issued an Operations Memorandum on the Provision of Feminine Hygiene Products, which expanded the availability of products to women in US detention facilities, and they have since followed up to identify areas of improvement for the memorandum.[12]

---

[6] A/RES/65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), (2011), Preamble.
[7] Winkler and Roaf, op. cit., 10 – 11.
[8] A/RES/65/229, The Bangkok Rules, op. cit., Rule 5.
[9] Amy Held, "Arizona Department of Corrections Changes Sanitary Pad Policy Following Backlash", *NPR* (15 February, 2018), available at: https://www.npr.org/sections/thetwo-way/2018/02/15/586134335/arizona-department-of-corrections-changes-sanitary-pad-policy-following-backlash.
[10] Kathy Hochul, Jennifer Weiss-Wolf, "It's time for menstrual equity: The state Legislature should require free menstrual products in public schools", *City & State New York* (27 February, 2018), available at: https://www.cityandstateny.com/articles/opinion/opinion/its-time-menstrual-equity.html.
[11] Hochul and Weiss-Wolf, op. cit.
[12] Office of the Inspector General of the U.S. Department of Justice (Evaluation and Inspections Division 18-05), *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population* (2018), 29.

However, restrictions on the availability of, access to and use of said products and facilities may obstruct an incarcerated individual's rights to health, water and sanitation, working in just and favorable conditions, gender equality, and human dignity.

Incarcerated individuals in Malawi and several US states including Connecticut and Arizona have reported restrictions on their use of, and denial of their requests for adequate quantities of, menstrual products such as pads and tampons. Scarcity of free menstrual products was reported in Connecticut's York Correctional Institution, where individuals claimed to receive a maximum of 10 pads per month,[13] which only allows for one change a day in an average five-day cycle. Additional pads available for purchase at the commissary are reportedly often not financially attainable for most incarcerated persons.[14] Women in Arizona prisons have reported being given toilet paper or being flatly denied when they ask for menstrual products.[15] Meanwhile, women in Malawi's police and court cells reported to be forced to wear for multiple days the same piece of menstrual cloth that they were wearing upon their arrest. Women whose clothing became soiled absent sufficient amounts of menstrual cloth, or who arrived prior to starting their period and therefore did not have a cloth, were often denied new absorbents.[16]

Even when supplies of free products exist in correctional facility stocks, incarcerated women have reported being subjected to begging or going to undignified lengths to convince officers to give them supplies. Incarcerated women in Arizona have claimed they have to plead with officers and show them their used pads before receiving a new one. Tampons were entirely unavailable to them as they were deemed a 'security risk'.[17]

Keeping menstrual products and care out of reach, and eliminating the ability of women to choose which products to use in menstrual care, are noted tactics for depleting incarcerated women's self-esteem. It serves as a reminder of one's powerlessness in detention and places incarcerated individuals at the mercy of officers who exercise discretion to meet or deny requests for what should be basic provisions.[18]

Such restrictions often result in leaks, which leave women spending days with blood-stained clothing and bedding before being allowed to wash themselves, their clothing, or sheets. Incarcerated women in Arizona have reported not being allowed to shower or do laundry even when they have blood-stained clothes and bedding.[19] The study on police and court cells in Malawi revealed conditions characterized by limited or no access to water in cells and/or communal shower

[13] Chandra Bozelko, "Prisons that withhold menstrual pads humiliate women and violate basic rights," *The Guardian* (12 June 2015), available at: https://www.theguardian.com/commentisfree/2015/jun/12/prisons-menstrual-pads-humiliate-women-violate-rights.
[14] Bozelko, op. cit.
[15] Amy Fettig, "Arizona Needs Laws that Protect Women Prisoners' Menstrual Health", ACLU, (9 February, 2018), available at: https://www.aclu.org/blog/prisoners-rights/women-prison/arizona-needs-laws-protect-women-prisoners-menstrual-health.
[16] Esme Jynet Chombo, "Who is Fooling Who? Women and the (Non)Management of Menstruation in Police and Court Cells in Malawi," (2008), available at: https://searcwl.ac.zw/index.php?option=com_docman&task=cat_view&gid=58&limit=5&limitstart=5&order=date&dir=DESC&Itemid=96.
[17] Fettig, op. cit.
[18] Bozelko, op. cit.
[19] Fettig, op. cit.

rooms; broken down, dirty, or entirely absent toilets; and co-ed sanitation facilities without doors for privacy, which subjected women to ridicule by their male peers.[20]

III. Broader Context of Lack of Gender-Specific Health Care

In a 2018 report on health in the contexts of deprivation of liberty and confinement, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted the lack of gender-specific health care in prisons, including the absence of specialized obstetric and reproductive health services, medical neglect and denial of medicines, lack of privacy, medical exams and confidentiality, as well as discrimination regarding access to harm reduction services.[21] Access to adequate obstetric and reproductive care is imperative to maintaining basic menstrual health throughout the entire menstrual cycle, as well as in diagnosing and treating any menstruation-related disorders such as endometriosis. Lack of such care hinders an incarcerated individual's aforementioned human rights, most directly the right to health, and in some cases may amount to ill-treatment or torture.[22]

IV. Menstruation and Degrading Practices During Strip Searches

Strip searches pose human rights complications to incarcerated women, particularly those who are menstruating. An example of this is provided by the judgment in the 2017 case, *Mary Amador, et al. v. Leroy D Baca, et al*. The US District Court of the Central District of California found that the conditions under which visual body cavity (VBC) searches were conducted at a California-based facility from 2006 to 2013 were unconstitutional.[23] Before the searches, which involved 20 to over 40 inmates at a time, menstruating women were ordered to remove menstrual products such as tampons or pads. They were instructed to, "pull down [their] underwear, … spread [their] feet wide, and bend at [their] waist[s]… spread open [their] vagina lips, and cough,"[24] all within view of one another. The Court granted summary judgement in the Plaintiffs' favor finding the conditions of the search (not the strip search itself) unconstitutional.

V. Concluding Remarks

In light of this, norms, policies and practices are necessary at all levels to ensure the specific needs and realities of menstruating women deprived of liberty are fully taken into consideration. [25] Initiatives to increase the availability and accessibility of materials to women in detention can serve as example and a starting point to develop policies and practices that fully ensure menstrual health for women deprived of liberty.

---

[20] Chombo, op. cit.
[21] A/HRC/38/36, op. cit., Para. 80.
[22] Ibid.
[23] United States District Court, Central District of California, *Mary Amador, et al. v. Leroy D. Baca, et al.*, 7 June 2017, Case No. CV 10-01649-SVW-JEM.
[24] Ibid., p. 3.
[25] A/RES/65/229, The Bangkok Rules, op. cit.