

Submission to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences

Thematic Report on Mistreatment and Violence Against Women During Reproductive Health Care and Facility-Based Childbirth

Mistreatment and Violence Against Women Seeking Menstrual Health Care

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In response to the call for submissions for the Thematic Report on Mistreatment and Violence Against Women During Reproductive Health Care and Facility-Based Childbirth by the *UN Special Rapporteur on Violence Against Women, its Causes and Consequences*, we have the pleasure to put forth this submission regarding the mistreatment of, and violence against, women seeking menstrual health care. Menstruation is a monthly reality for many women and girls across the globe,² yet the silence and stigma surrounding the issue leave many of them without the information, psycho-social support, products, and facilities necessary for tending to menstrual needs.³

In recent years, menstruation has begun to emerge from the shrouds of secrecy and taboo to gain recognition as a cross-cutting issue that is integral to the realization of human rights.⁴ A group of Special Procedures recently recognized that “[t]he stigma and shame generated by stereotypes around menstruation, have severely impacted aspects of women’s and girls’ human rights, including their human rights to equality, health, housing, water, sanitation, education, freedom of religion or belief, safe and healthy working conditions, and to take part in cultural life and public life without discrimination.”⁵

Amidst such progress, it is important to take precautions against leaving behind individuals and populations that are marginalized and discriminated against, and who subsequently face increased risk of mistreatment and violence when seeking to maintain or improve their

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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 Special Rapporteur’s upcoming report, this submission will focus on the experiences of women seeking menstrual health care.

³ Inga T. Winkler and 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 Sydney D. Amoakoh and Inga T. Winkler, “Carrying on the Flow: Expanding the Discourse on Menstruation in the Sustainable Development and Human Rights Agendas”, *Impakter* (2019).

⁵ Ivana Radačić, Karima Bennoune, Dainius Pūras, Kombou Boly Barry, Léo Heller, Dubravka Šimonovic and Surya Deva, “Women’s Menstrual Health Should No longer be a Taboo, Say UN Human Rights Experts,” *UN OHCHR* (2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24256&LangID=E>.

menstrual health. For these individuals, marginalization amplifies the implications of the lack of adequate spaces, information, knowledge and open discussion that has long surrounded menstruation. Such implications include physical and verbal abuse, humiliation, coercive or forced medical procedures, denial of pain relievers and other medication, and violations of privacy, among others.

To exemplify these multifaceted forms of human rights violations, this submission draws on findings from reports and studies conducted regarding menstruating persons with disabilities as well as women deprived of liberty in the United States. These cases demonstrate the need to strengthen provisions for menstrual health in human rights frameworks as a means for protecting menstruating women and girls, particularly those who are compoundingly marginalized, against violence and mistreatment.

Menstrual Suppression and Forced Sterilization of Persons with Disabilities

The practice of forced sterilization is performed on many young girls and women with disabilities across the globe for multiple purposes, including for menstrual suppression, and evidences their systematic exclusion from comprehensive reproductive and sexual health care.⁶ In many cases, forced sterilization in this context constitutes physical abuse, coercive or unconsented medical procedures, and a gross violation of privacy.

But these abuses often go unchecked given societal attitudes which construct disability as a burden, and given the reality that many legal guardians and caretakers hold control over the life-altering decision that is medical sterilization. Consequently,

“the practice of forced sterilization continues to be debated and justified by governments, legal, medical and other professionals and family members and carers as being in the ‘best interests’ of women and girls with disabilities. However, arguments for their ‘best interests’ often have little to do with the rights of women and girls with disabilities, and more to do with social factors, such as avoiding inconvenience to caregivers, the lack of adequate measures to protect against the sexual abuse and exploitation of women and girls with disabilities, and the lack of adequate and appropriate services to support women with disabilities in their decision to become parents.”⁷

The lack of information, services, facilities, and products for menstruating persons with disabilities also feeds misguided justifications of forced sterilization as a means of menstrual suppression. Those with limited physical mobility often find that products and facilities do

⁶ Human Rights Watch, “Sterilization of Women and Girls with Disabilities: A Briefing Paper,” *Human Rights Watch* (10 November 2011), available at: <https://www.hrw.org/news/2011/11/10/sterilization-women-and-girls-disabilities>; Horacio Márquez-González, Edith Valdez-Martinez, and Miguel Bedolla, “Hysterectomy for the Management of Menstrual Hygiene in Women with Intellectual Disability. A Systematic Review Focusing on Standards and Ethical Considerations for Developing Countries,” *Front. Public Health* (28 November 2018), available at: <https://www.frontiersin.org/articles/10.3389/fpubh.2018.00338/full>.

⁷ Human Rights Watch, “Sterilization of Women and Girls with Disabilities,” op. cit.

not accommodate their range of motion. For them, as well as those with cognitive disabilities, tailored guidance on using products and making informed decisions on modes of periods care are often also lacking.⁸ Blogger-activist, Crippledscholar has written about the lack of guidance and support for menstruators of differing physical and cognitive abilities in the context of the United States. She shares that a lot of information is “about control and often menstrual cessation in order to make the menstruating person more convenient for a care giver. This sometimes goes as far as sterilization of the disabled person.”⁹ Parents and guardians have won court approval to forcibly sterilize women and girls, with menstrual suppression being one of the main arguments used to justify the procedure.¹⁰

Advocacy against this practice has grown. For example, the American College of Obstetricians and Gynecologists (ACOG) strongly encourages parents and guardians to explore all possible alternatives to sterilization. They also urge physicians to consider that, in some cases, guardians’ interests may conflict with those of the people they care for, and have also created a guide to “menstrual manipulation” for persons with disabilities.¹¹

Lack of Gender-Specific Protocols and Conditions for Adequate Menstrual and Reproductive Health Care in Prisons

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.¹² Access to adequate gynecological care is imperative to maintaining basic menstrual health throughout the entire menstrual cycle, as well as in diagnosing and treating any menstruation-related conditions 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.¹³

Beyond barriers to professionally administered reproductive health care services, the lack of adequate policies, products and facilities to safeguard menstrual health for persons deprived of liberty hinders the ability of menstruating women to carry out vital forms of self-administered health care during their incarceration. In light of this, Rule Five of the Bangkok

⁸ Clár McWeeney, “Menstruating While Disabled,” *Hello Clue* (11 February 2018), available at: <https://helloclue.com/articles/cycle-a-z/menstruating-while-disabled>.

⁹ Crippledscholar, “Let’s Talk About Disability, Periods, and Alternative Menstrual Products,” *Crippled Scholar Blog* (8 July 2016), available at: <https://crippledscholar.com/2016/07/08/lets-talk-about-disability-periods-and-alternative-menstrual-products/>.

¹⁰ *Ibid*, op. cit.

¹¹ The American College of Obstetricians and Gynecologists, “Committee Opinion Number 668: Menstrual Manipulation for Adolescents with Physical and Developmental Disabilities,” *ACOG* (August 2016), available at: <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Adolescent-Health-Care/Menstrual-Manipulation-for-Adolescents-With-Physical-and-Developmental-Disabilities/>.

¹² A/HRC/38/26, op. cit., Para. 80.

¹³ *Ibid*.

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.”¹⁴

The lack of access to menstrual products that is the result of prison policies and practices which unintentionally neglect, or willfully flout, the menstrual needs of women in detention often leads to multiple human rights violations. Incarcerated individuals in several states in the United 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,¹⁵ which only allows for one change a day in an average five-day period. Additional pads available for purchase at the commissary are reportedly often unaffordable for most incarcerated persons.¹⁶ Women in Arizona prisons have reported being given toilet paper or being flatly denied when they ask for menstrual products.¹⁷

Furthermore, a lack of access to menstrual products leaves women deprived of liberty vulnerable to violent and coercive treatment at the hands of prison administrators who weaponize menstrual products into a bargaining tool. 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.”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.¹⁹

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.²⁰

Recent developments have shown some progress towards modifying the operations of detention facilities in the United States to accommodate women and their menstrual needs. For example, last year, following backlash for a policy that restricted the maximum number

¹⁴ A/RES/65/229, The Bangkok Rules, op. cit., Rule 5.

¹⁵ 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>.

¹⁶ Bozelko, op. cit.

¹⁷ 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>.

¹⁸ *Ibid.*

¹⁹ Fettig, op. cit.

²⁰ Bozelko, op. cit.

of pads individuals could receive, the Arizona Department of Corrections increased the limit to 36 pads per month.²¹ In 2016, New York Governor, Andrew Cuomo directed all state prisons to ascertain that menstrual products were freely available to menstruating women.²² These state initiatives inspired the United States Department of Justice to issue a guidance in 2017 to ensure the same standard was met in federal prisons.²³ The United States Federal Bureau of Prisons also issued an *Operations Memorandum on the Provision of Feminine Hygiene Products*, which expanded the availability of products to women in federal detention facilities.²⁴

The barriers to menstrual health outlined for the United States are a reality for many in countries across the globe. In light of this, norms, policies and practices are necessary at all levels to ensure that women and girls do not encounter violent and degrading treatment when seeking to maintain or improve their menstrual health. Initiatives to increase the availability and accessibility of materials to women in detention can serve as an example and starting point to develop policies and practices that fully ensure women and girls living in conditions that limit their autonomy can access menstrual health care.

²¹ Fettig, op. cit.

²² Roxanne J. Persaud, "Bill that Provides Free Feminine Hygiene Products for Inmates, Sponsored by Senator Persaud, Signed into Law," *The New York State Senate* (2018), <https://www.nysenate.gov/newsroom/press-releases/roxanne-j-persaud/bill-provides-free-feminine-hygiene-products-inmates>.

²³ 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>.

²⁴ Office of the Inspector General of the U.S. Department of Justice (Evaluation and Inspection Division 18-05), *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population* (2018), 29.