
**Breaking the silence on menstruation in Zimbabwe:
Where does the female prisoner stand?**

Jill Makarati

A long essay submitted in partial fulfilment for the Masters Degree in Women's Law,
Southern and Eastern African Regional Centre for Women's Law Centre, University of
Zimbabwe, 2003

Skewed management of menstruation in prison: an introduction

Menstruation is a normal female function. It occurs every 21 to 28 days for three to five days. Although women are homogeneous in the sense that they all experience menstruation between the ages of about eleven and 50 years, it affects individual women differently. There are variations in both the duration and density of the flow, among others. And so while one woman menstruates for two days, it can last for as long as five days in another woman. Even where two women menstruate for the same number of days, one woman's flow may be heavier.

Generally, menstruation is manageable with adequate resources and women are able to go about their business while it is taking place. The same may not, however, be said about women who are confined to institutions such as prisons.

These women are dependent on the prison authorities for control over their menstrual experience. The question is whether they are given adequate resources to manage their menstrual requirements. They are not.

Shylet, who served a prison term at Chikurubi Female Prison, recounted her prison experience in a magazine article, on her release (*Parade*, 2000:19):

I shared a zinc-walled cell with 40 other inmates...a number of us would be having periods and we were not provided with cotton wool. One had to mess herself first for the prison officers to be convinced that she indeed needed some [cotton] wool and would be provided with only one pad.

When I read this article, it seemed like just another magazine story. However, on two occasions in the same year, in my capacity as a lawyer, I attended workshops held to train senior prison officers in the human rights of prisoners and offered advice to participants on any issues pertaining to prison legislation and its application. The Ministry of Justice, Legal and Parliamentary Affairs administers prison legislation and consequently all policy issues that may touch on prison legislation are handled by the ministry's Department of Policy and Legal Research, under which I work. Participants who had served prison terms had been invited to share their experiences of prison life. In relating their stories, three female participants recounted their menstrual experiences and these were similar to the story in *Parade* magazine.

It was difficult to imagine how any woman could survive under the circumstances they described. What emerged from the women's stories was the flawed state of their menstrual lives. Yet some of the officers present at the workshops, in particular those at the administrative level, expressed complete ignorance of the prison conditions described.

Around the same period, I had enrolled for the post-graduate Diploma in Women's Law with the University of Zimbabwe, which was scheduled to take place the following year (2001). It was then that I decided to conduct research into the menstrual experiences of female prisoners, in fulfillment of my dissertation requirements.

There are three main female prisons in Zimbabwe, namely Chikurubi, Mulondolozhi and Shurugwi female prisons, the other facilities for women being units annexed to male prisons. My field research covered only two of the main prisons. I chose Chikurubi because of its proximity to the

capital city and the fact that it had been the subject of the article in *Parade* — hence my desire to see it for myself. On the other hand at the time of my research, Shurugwi considered one of the cleanest prisons in the country and I believed, therefore, that it would provide a good basis for comparison with Chikurubi. It is located in the Midlands province in the town called by its name, Shurugwi.

What about the menstrual lives of female prisoners?

Flawed — the ‘one-pad-a-day’ claim is a reality. In fact, some women said they received only half a pad for use the whole day, regardless of their flow. Disposal facilities are either insufficient or absent altogether and the essential underwear is either absent or limited.

The purpose of this article is to explore the ways in which female prisoners have attempted to cope with their menstrual lives. In the foregoing, I have briefly discussed the skewed nature of the management of menstruation in prisons. What follows is an outline of my research findings and an analysis of the issues emanating from the women’s experiences.

Who is breaking whose silence?

In this article I problematize the inability of female prisoners to speak out about their menstrual experiences, resulting in the officials’ professed ignorance of what is happening in female prisons. I describe how the truth as revealed through this research has, to some extent, improved the situation in the prisons. I also discuss the national concern about the shortage of sanitary wear in the country, originating from a parliamentary debate on the subject which coincided with the completion of my research.¹ So while female prisoners have spoken out, ordinary women who have been beset by widespread shortages of sanitary wear have also decided to talk about this much-hidden subject. This has made the availability of menstrual supplies a national issue which is discussed towards the end of the chapter. The question is where does the female prisoner stand?

The findings: menstrual life inside prison walls — telling it like it is

One had to mess herself first for the prison officers to be convinced that she indeed needed some [cotton] wool and would be provided with only one pad.

Revisiting the magazine story begs such questions as, ‘Why one pad a day?’ ‘What happens to those with heavy flows?’ The distribution of pads alone illustrates the flawed system of managing menstruation in prison.

The standard practice, as it emerged from interviews with female prisoners, is that pads are distributed twice a day during medicine rounds.² Prisoners are given one pad for the day during the morning round and another for the night during the afternoon round.

According to Tatenda,³ however, the pads are not always complete:

Sometimes they cut them, so we get half a pad each, instead of one.

Female prisoners find it difficult to cope with inadequate sanitary wear. Although one pad may serve a prisoner with a light flow, it will not be adequate for women with a medium or heavy flow. They then find ways of making do with the insufficient sanitary protection that is provided to them. One of the ways they do this is to pull pieces of wool from the pad that is cut in half. They roll them into small balls and insert them in the manner tampons are inserted. This way the one or half a pad lasts for the intended duration. However, this solution is not without problems, as most prisoners find it uncomfortable and painful. As expressed by Mercy:

It is very...painful because I push mine quite deep to avoid embarrassment. I get stomach pains and each time I pull out the little balls I notice a lot of clots of blood...but I have to feel secure.

Female prisoners also resort to using pieces of blankets, prison uniforms and woollen hats meant for babies who are in prison with their mothers. These are mostly stolen from washing lines. Chipo explained how the female prisoners use some of the alternatives:

We ended up tearing blankets on the fence...the material was very rough, it grazed our skin... some used newspapers by rubbing them to make them soft and absorbent...others bathed frequently during the day.

It is therefore evident that female prisoners cannot cope with inadequate sanitary wear and hence resort to unsafe alternatives.

Prison within prison at night: the disposal predicament

Prison cells are opened at around 7.30am and locked at around 4.30pm for the night. During the day prisoners are able to dispose of used sanitary wear in the facilities that are placed in the day-ablution blocks, which contain toilets, showers and washing facilities. They are in the form of plastic trash bags and buckets.

During my field research at Chikurubi, I noticed used sanitary wear on the floor around the disposal buckets and trash bags. Prisoners maintain their own surroundings and so the responsibility of cleaning up such a mess is theirs. They are provided with detergents and other cleaning equipment, although, as expressed by one prisoner:

[The] gloves...are not always clean, so we normally use sticks...one day I found human waste in a glove...but even if they were clean ...just the idea of seeing and picking up somebody else's used pads makes the whole process so uncomfortable. I just feel sorry for the mental patients who do not even use gloves...they use their bare hands.⁴ They touch other people's used sanitary wear and they also move around without any form of protection during their menstrual periods, thereby dropping blood on the floors.

Prisoners have no disposal problems during the day other than the maintenance of their environment. However, they face a real disposal predicament at night as their cells do not have any disposal facilities. Some of the cells contain built-in-toilets, while others have none.

Prison officials explained the absence of disposal facilities as a security requirement. According to them, prisoners get involved in fights and may, for example, use plastic to suffocate their foes. A question that arises is, 'Where, then, do they dispose of their used sanitary wear?' Nowhere — prisoners keep whatever form of sanitary wear they have on until the following morning. According to Thandi:

It would be unfair to others if we expose wet pads...you know how blood smells. Where do we keep them anyway? We get itchy rash, which normally clears off by washing with soap and applying Vaseline. We only get Betadine solution from the clinic if it is serious.

Although neither the prisoners nor the prison medical personnel referred to any case of toxic shock, prolonged use of sanitary wear is known to cause toxic shock.

The risks of using the improvised toilet

The cells without built-in-toilet facilities contain 25-litre plastic containers for use as toilets. In the *Parade* article referred to earlier, Shylet also gave an account of her experience with the improvised toilet:

There was no toilet facility in the cell...we used a 25-litre plastic bucket. By the following morning the bucket would be a total mess.

The 'total mess' ranges from human waste, tissue paper and even the alternative forms of sanitary wear. However, for their own convenience and due to an understanding reached among them, prisoners tend to limit the use of the improvised toilet. According to Sharon:

Inmates were encouraged not to use the bucket throughout the night. I learnt not to use it.*

There are two major risks involved with the use of the improvised toilet. To begin with waste can cause infection and disease if mismanaged. The most likely victims are those sleeping on the floor, where the waste may spill. In cells where children are accommodated with their mothers they too are exposed. Children may want to crawl on these same floors. But perhaps even more exposed to infection are the people who use the improvised toilets themselves. As expressed by Sara:

You get splashes when using it...and when you have periods...it is just difficult.

Since prisoners have to maintain their own surroundings, that overflowing container has to be lifted, emptied and cleaned the following morning. Although detergents and gloves are provided for cleaning, female prisoners find the process unbearable.

Secondly, any accidental staining of the improvised toilet or the floor, for that matter, with menstrual blood, is met with punishment. All menstruating prisoners in that particular cell are punished for seven consecutive days.

One therefore either risks getting infected from using the toilet or being punished for a stained bucket, despite the difficulty prisoners encounter in using it.

Menstruating with limited underwear

Female prisoners are entitled to two pairs of underpants at any given time, irrespective of their source. They can bring or receive some from home. If they cannot do so, the prison administration will provide them with some. However as Joyce observed:

We were given ...used pants. It was disgusting to wear pants that were used by someone else. I was afraid of contracting diseases...we were forced to wear them especially during menstruation.*

These pairs of underpants, according to a prison clinic nurse:

...are normally referred to as *maparashuti* (parachutes). These are a baggy type of panties made from strong material; they last long and they serve the purpose.*

However, due to the scourge of HIV/AIDS and other communicable diseases, the *maparashuti* no longer circulate.

Two pairs of underpants are not adequate for ordinary use, let alone during menstrual periods. Consequently, most prisoners have resorted to using the underwear during the day only and washing it at night. This further explains why some resort to inserting little balls of wool to make them feel more secure. However, others use pads even without underwear. They sleep with their legs crossed to keep the pad in place. This makes it very difficult to avoid soiling their blankets. Yet being able to wash them is not guaranteed. As observed by Pamela on her admission to prison:

Sometimes you get blankets soiled with menstrual blood...it is unbearable...for you to get detergents or plain soap to wash those blankets... it's something else.*

Clearly, the limited availability of underwear is a factor which aggravates the problems already experienced by menstruating prisoners.

Better management at smaller prisons: the Shurugwi experience

Chikurubi is a big prison with a holding capacity of over two hundred prisoners, while Shurugwi has a holding capacity of fewer than a hundred inmates. It emerged that the smaller prison was better managed, as none of the prisoners I interviewed at Shurugwi complained of inadequate sanitary wear.

Both Chikurubi and Shurugwi obtain their sanitary wear supplies from stores located at male prisons. In the case of Shurugwi this source is about thirty kilometres away but the distribution of the supplies to the prisoners at Shurugwi is not timed to coincide with medicine rounds. There prisoners get sanitary wear three times a day and are at liberty to request more, according to their different needs.

What I found common, however, was the lack of disposal facilities. Even at Shurugwi, prisoners do not change their sanitary wear at night.

As far as the improvised toilet is concerned, the smaller number of prisoners at Shurugwi enabled them to each have their own five-litre containers, and so the risk of infection is reduced and they don't have the discomfort of cleaning other women's mess.

Is this, therefore, an indicator that a solution to the skewed management of menstruation necessarily lies in reducing the size of female prisons? To some extent, yes. As Borrey (1992:29) observed in a study of female prisoners in Papua New Guinea, there are many complaints in large institutions. She observed during a visit to a big female prison that:

Only three toilets were available for about 60 women. Since they were locked up from 5pm to 6am, the toilets would block up.

With a smaller number of prisoners such blockages would probably not have occurred. This is indicative of the difficulties the prison system encounters in sustaining the needs of large numbers of prisoners.

For Shurugwi, however, the better management cannot entirely be associated with the small number of prisoners. A lot had to do with the ability of the officer-in-charge to use her discretion. When asked how she managed to keep a constant supply of sanitary wear, for example, she said:

Government does not have enough money to cater adequately for all the needs of prisoners, especially in these times of economic hardship. I use my own discretion to get round this problem. I allow those with relatives who can afford it, to provide the prisoners with cotton wool.

And so, whereas the population density of a prison can affect its management, the discretionary efforts of its manager also play a role.

Dealing with the male space: implicit legal and policy provisions

There are several issues that arise from the experiences of female prisoners. Firstly, it emerged that there are gaps in the legislation and policies that govern the operation of prisons which, it would seem, have resulted in the male prisoner being regarded as the 'standard' prisoner. The consequence of this is the admission of female offenders into male space, thereby rendering the management of the prisons sex insensitive.

When I conducted my field research I did not consider the policies that informed the establishment of prisons in Zimbabwe. However it emerged from an account by a former prison officer that there is no prison in Zimbabwe that was built with women in mind. According to her:

We have a temporary prison for women in Harare, the Chikurubi female section. We also have one prison in Shurugwi. It is a small prison which houses females only. Way back they used to keep male prisoners there... these prisons were built initially for males and were not modified for the use of female prisoners.*

It seems that when arrangements had to be made to incarcerate women, they were to be accommodated within the already existing structures. The former prison officer attributed this to the small number of female prisoners compared to that of male prisoners. At any given time, the prison population is approximately 21000, of whom only about 800 are female. She intimated that:

Investing in a very small number of people against a big number is not the normal practice.

The male prisoner's needs, therefore, determined what was provided to women by the prison establishment. And so it would seem that since men do not menstruate, sanitary wear was not considered. Consequently, it does not appear on the list of allocations promulgated in the prison regulations, as indicated in the tables below:

Table 1: Allocation for female prisoners

ITEM	QUANTITY
<i>Personal Issue</i>	
Brassiere	2
Brush, tooth	1
Comb	1
Dress	2
Handkerchief	2
Hat or Doek	1
Jersey or Cardigan	1
Knickers	2pr
Night Dresses	2
Petticoats	2
Shoes, canvas	1pr
Spoon, desert	1
Towel, hand	2
<i>Periodical issue</i>	
Soap, toilet	As required
Toothpaste	As required

Table 2: Allocation for male prisoners

ITEM	QUANTITY
<i>Personal Issue</i>	
Brush, shaving	As required
Brush, tooth	1
Comb	1
Handkerchief	2
Hat	1
Jacket or jersey	1
Razor	As required
Shirt	2
Shoes, canvas	1pr
Shorts, sleeping	2pr
Socks or stockings	2pr
Spoon, dessert	1
Towel, hand	2
Trousers or shorts	2pr
Vests	2
<i>Periodical issues</i>	
Soap, shaving	As required
Soap, toilet	As required
Toothpaste	As required

This is as far as the law goes in distinguishing the needs of the two sexes. Yet, as Carlen (1987:13) argues:

Greater recognition by prison authorities, of women's ...needs during menstruation...should result in the enforcement of minimum standards of sanitation and a more sophisticated woman-oriented system of health provision in the women's prisons.

The dominance of male space in female prisons has resulted in discrimination against female prisoners in the sense that while the male prisoner's peculiarity is recognized, the law is blind to that of the female prisoner. Menstruation is a consequence of a woman's biological make-up and is thus a sex function but the needs of the male space have overshadowed the female prisoner's menstrual reality. This bias has rendered the prison system sex insensitive.

In the coming section I discuss the factors that have resulted in female prisoners' difficult menstrual experiences. To this end, I examine the procurement system and complaint mechanism in the prisons.

Procurement of sanitary wear: blinded to menstrual reality

In the course of my fieldwork I established that sanitary wear is procured from National Pharmaceuticals⁶ as part of the medical consignment for use in prison hospitals. It is then stored at the prison hospitals until the need for it arises. As confirmed by a former male prison officer:

These hospitals are essentially male...but provision has been made to accommodate female prisoners in some of them. The stores are usually manned by male officers.

In order to access sanitary wear, female prison officers request it from the male-controlled hospital stores but effectively no procurement is made specifically for menstrual use. Although female officers would not necessarily ensure efficient procurement, they would be more empathetic to the needs of female prisoners and their presence would enhance sex sensitivity in the prison procurement system.

Sex insensitivity is also evident from the association of menstrual requirements with medical provisioning. While medical supplies are necessary to deal with illnesses that are not predetermined, menstruation is a normal and predetermined female function that occurs regularly. The treatment of both as 'medical' needs implies that the procurement system is blind to the reality of managing menstruation in female prisons and is thus sex insensitive.

Interrogating the efficacy of prison inspections

In terms of the prison legislation⁷ prison medical officers are charged with the responsibility of overseeing the living conditions in prisons so that no condition exists that could be injurious to the health of prisoners. To ensure that such regulations are implemented, the law has put in place the prison inspection mechanism as conducted by judicial officers.⁸ In terms of these regulations, judicial officers inspect prison premises and at the same time ask if there are complaints from prisoners.

Judicial officers are expected to adhere to the regulations when conducting prison inspections and, therefore, inspect the facilities listed in the regulations such as toilets, kitchens and even sleeping facilities. An examination of their reports indicated that menstrual facilities are never inquired into. If judicial officers do not inquire into menstruation because menstrual facilities are not included in the regulations, one wonders why female prisoners do not complain to the officers about their experiences during inspections.

Menstruation — a ‘behind closed doors’ issue: questioning cultural influence

As far as the female prisoner is concerned, the failure to note the inadequacy of menstrual provisions is not necessarily a consequence of inexplicit legal provisions, rather it is an adherence to cultural expectations. Women rarely discuss menstruation openly, particularly in the presence of men, as they feel culturally barred from doing so. As expressed by one prisoner: ‘*azwiite*’.⁹

The composition of the judicial delegations that visit the prisons is problematic because they are dominantly male. Female members of such delegations would normally be junior magistrates with no significant role to play. As expressed by one female magistrate:

We just move around with them...some of them treat us like secretaries.

Despite the inexplicit legal and policy provisions, what the conspiracy of silence has done is conceal the reality of menstruation in prisons, thereby making its management skewed.

Breaking the silence

In this section, I discuss the possible benefits of speaking out on menstruation.

The culture of silence around menstruation is not peculiar to Zimbabwe. Perhaps this explains the scarcity of writings on menstruation in the wide range of literature that exists on prisons. In a study undertaken in Papua New Guinea, for example, menstruation was only mentioned under a discussion on clothing for female prisoners. What was problematized in that study was the prohibition of underpants generally. As Borrey reports (1992:28):

Only during menstruation are inmates allowed underpants. Punishment...for those inmates who retain their underwear after menstruation, often includes having the offending item confiscated and burned. This practice leaves the inmate with no underwear for her next cycle.

The study does not go further to discuss how female prisoners then cope without underwear during menstruation. Perhaps female prisoners did not raise this experience as a problem, which is indicative of the conspiracy of silence on this issue.

The purpose of this section is to explore the developments that followed my research recommendations, as an avenue through which female prisoners broke their silence. It also seeks to discuss the national concern that developed on the shortage of sanitary wear in the country, which coincided with the aftermath of the research. Parallel processes have taken place that are neither linked to my research results nor the national concern, yet they have contributed to the

alleviation of the female prisoners' problems. I will discuss these processes in the following sections. Finally, I will examine the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, assessing what opportunities it has created for the recognition of the peculiarities of female prisoners.

The period after the research has been characterized by a shift in policies designed to improve the welfare of the female prisoner. As regards prison administration, policy changes included efforts to increase the supplies of sanitary wear through a budgetary allocation and other supplementary measures. Although not a direct consequence of the research, other players like the magistrates courts' administration and the executive have adopted policies designed to reduce the number of females in prison. This will indirectly highlight the need for women's menstrual amenities and supplies. I now discuss each effort in detail.

'A place on the prisons' budget': an initiative from prison administrators

The prisons administration accepted the outcome of my research in so far as it recommended the adoption of policies that would increase the supply of sanitary wear (Samakayi-Makarati , 2001:60). Sanitary wear has finally been included on the prison's budget, while still maintaining its place in medical consignments. The result is that there are now two sources of sanitary wear, thereby increasing the supplies to prisoners.

Although not measurable, a third source of sanitary wear has been opened up as a response to the research recommendation. Family and friends of female prisoners are now at liberty to provide them with sanitary wear. Effectively, prisoners who are beneficiaries of this source do not benefit from the prison supplies. During the fieldwork, female prisoners had strongly requested that this recommendation be made. Their argument was based on the fact that some of them would be in a position not only to cater for themselves, but also to share with their colleagues. As Melody explained:

I have to do with pieces of blankets when my parents can afford to by me cotton wool. They have tried to bring me some, but they would not let them, they say for security reasons...They bring other stuff that I share with my friends...given a chance to receive wool from home, I would not use it alone.

These interventions are a clear indication of an administration that has become alive to the menstrual needs of female prisoners.

However, the efforts of the prison administration alone are a drop in the ocean of constraints associated with the management of menstruation in prison. Prison authorities, for example, have no say on the number of persons admitted to prisons except, perhaps, to raise concerns on such matters as over- crowding. Courts hold the power to decide who goes to prison and who does not, depending on the legal provisions pertaining to sentencing. The executive, on the other hand, has prerogative powers that it can use to extend its hand of mercy to decongest prisons.

In the coming section I discuss the impact that executive and judicial interventions can have on the welfare of female prisoners.

Executive interventions

The executive arm of the government has taken a policy stance on the reduction of the number of women in prison, although not as a direct consequence of the research. Through presidential amnesties, female prisoners falling into certain categories of crime are released from time to time. In particular women who have committed infanticide, concealment of birth and abortion, as well as nursing mothers, often benefit from this executive indulgence. The effect of imprisonment on the children of these women has also been considered.

Studies have shown that most women who commit such crimes are not criminals in the strict sense. They are women who are pushed into crime by societal expectations and pressures. A police officer observed that when a woman who commits one of these offences is apprehended following the discovery of a foetus, she:

... would break down and cry professing that she is sorry and showing evident signs of distress (Stewart *et al.*, 2001:79).

The executive's policy stance is commendable as it serves not only to remove undeserving women from prison, but also to reduce the female prison population.

'Prison is no place for expectant and nursing mothers': a judicial directive

During the course of 2003, the Chief Magistrate's office issued a directive to magistrates to remand expectant and nursing mothers out of custody as prisons are unable to sustain their requirements. The directive was influenced by the concerns raised by the prisoners themselves and observations made by visiting officials. As expressed by one official:

Why should a baby be subjected to a prison birth or life, just because of its mother?

Although the directive was targeted at unconvicted prisoners, it is indicative of a system that is open to change once alerted of underlying issues.

Prisoners' menstrual rights: a national concern?

Sanitary wear became one of the items in short supply in the country, triggering a discussion as to whether or not sanitary wear should be classified as a basic commodity. This culminated in a parliamentary debate on the issue which then extended into the media.

The plight of the confined woman, the prisoner, was not left out of the debate. As expressed by a male speaker during a parliamentary debate on sanitary wear, on 11 March 2003 (*Hansard*, 2003:2652-2553):

When women are arrested into prison where those facilities are not available, it is absolutely necessary that every prison authority is so equipped in order to be able to respond to those needs...We have a responsibility as government to make sure that happens. We are face to face with a matter of human rights...Now that it has been

fully exposed, particularly the ramifications of it, it is unquestionable that we can let this matter continue one more day.

Although a female member of parliament moved the motion, some male members took it up seriously and debated towards an amicable solution. This clearly indicates that the conspiracy of silence that has surrounded menstruation in the past has impacted negatively on its management. As the male members of parliament themselves realized (*Hansard*, 2003:2651 & 2653-2654):

For the first time in our lives, perhaps it will indict us men into being sensitive about these issues...we are now being told by our wives as we travel...to bring these items because they are in short supply. Suddenly we discover how essential they are. I buried my face in shame when my daughter¹⁰ stood up to introduce this matter. We owe it to our women and our children that a matter of this kind should not have been left for so long without the due attention it deserves. It is, therefore, a question of ignorance about the goings-on in prison that has caused the flawed management rather than reluctance on the part of the authorities. The interest shown by parliamentarians, and male parliamentarians for that matter, is indicative that full exposure of the skewed nature of management of menstruation in prison will bring the situation to an end.

Also indicative of the interest in the welfare of female prisoners was the forum constituted by the Women's Resource Centre and Network. At the forum, stakeholders in the women's rights movement formed the audience while manufacturers of sanitary wear were invited to shed light on the scarcity of sanitary wear.

As a direct consequence of the research, a network was established, through the Women's Law Centre.¹¹ The centre linked me to Zimbabwe Women Writers who decided to write a book on female prisoners with my participation. Inevitably the prisons became part of the network. This saw the invitation of all players in this network to the forum referred to above. Again, the plight of the female prisoner formed part of the discussion, as a consequence of which one of the manufacturers pledged to donate a consignment of sanitary wear to female prisoners.¹²

A thought that comes to mind is, if mere voices of female prisoners have earned such response, what opportunities would specific legal provision then create?

Legal precision based on grounded reality: a principle of women's law

I discovered during my research that the prison administration makes a concerted effort to ensure all allocations stipulated by prisons regulations are available to prisoners, such as soap and tissue paper.

This section examines the opportunities created by the Constitution of Zimbabwe for the advocacy of rights emanating from biological differences. In terms of Section 23 of the constitution, it is not considered discriminatory to accord different treatment to a person who is physiologically different from another. Taking special consideration of women's menstrual rights should therefore not be seen as discriminatory against men, as menstruation is peculiar to women and a result of their biological make-up. Omitting women's particular needs from legislation, as is

the case with the prison legislation, amounts to discrimination against them. More so because the same piece of legislation explicitly recognizes the male prisoner's need to shave. Such legislation is divorced from the reality on the ground and thus violates the principle of women's law.

Women's law is a grassroots-oriented research methodology which analyzes the interplay between women's biological roles and cultural considerations of such roles. Cultural ascriptions often result in imbalances between the treatment of men and women, which women's law seeks to redress (Bentzon, 1998:92). In this case what is happening on the ground is flawed management of menstruation which is not sex based.

Since women's law is a branch of human rights and most constitutions derive their human rights from international instruments, the discussion will also touch on one such instrument.

Is equality without differential treatment equality in the true sense? An examination of the African regional effort

Bills of rights contained in most constitutions are born out of international human rights instruments. It would therefore be of great significance if such instruments create opportunities for the recognition of peculiarities attributed to one sex as opposed to the other. Experiences such as pregnancy have already received wide attention.¹³

Closer to home from the international arena is the Protocol to the African Charter on the Rights of Women in Africa. Has it created any opportunities for the special recognition of the peculiar needs of women and of female prisoners in particular? Article 24 of the Protocol to the African Charter states:

If failure to mention menstruation has disadvantaged the female prisoner, then according it specific recognition will not be discriminatory to her male counterpart.

The term 'gender' denotes the socially ascribed roles of women and men, while 'sex' distinguishes women from men biologically. Beards for men and menstruation for women are consequences of their biological make-up and are thus sex functions. Unlike gender-related functions which are interchangeable, sex functions are not avoidable. A woman cannot opt out of menstrual periods.

By making specific reference to sex, the African Charter creates a platform for the advocacy for such rights as menstrual rights. Under Article 2:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as...sex.

However, since the Charter makes no special mention of menstruation, it was necessary to examine the protocol which emerged out of a concern that 'women in Africa still continue to be victims of discrimination and harmful practices'.¹⁴

Article 24 of the protocol makes specific reference to women in distress, including those in detention or prison. In terms of paragraph (b) of Article 24, State Parties have undertaken to:

...ensure the right of women in distress to freedom from...discrimination based on their condition and the right to be treated with dignity.

The term 'dignity' provides an opportunity for the advocacy of the menstrual rights of female prisoners, in particular in situations where authorities are alerted to their lived realities. As far as Zimbabwe is concerned, the protocol provides an opportunity for the enhancement of a process that has already commenced.

However, menstruation, as opposed to pregnancy, is a hidden female function. The continued specific mention of pregnancy in human rights instruments pushes it further 'behind closed doors'. Article 24 is useful to Zimbabwe because the conspiracy of silence has already been broken and so any interpretation of the word 'dignity' will recognize that the skewed management of menstruation compromises women's dignity. In a jurisdiction where nothing has yet occurred to trigger open talk on menstruation, Article 24 may not be used to advocate for the menstrual rights of female prisoners, as dignity will be applied only to what is visible. To this end I agree with the concern raised in the protocol that women's rights have still been violated despite the existence of so many human rights instruments.

Worth noting is the outlawing of cruel and degrading treatment in a number of instruments,¹⁵ yet the skewed management of menstruation has not been read into them, despite it being degrading to women. Anything that is degrading is not dignifying. **In terms of Article 12 of the Standard Minimum Rules for the Treatment of Prisoners:**

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

A provision of this nature, read together with those that outlaw inhuman and degrading treatment should have led to the recognition of the need to provide adequate menstrual requirements, yet it has not. The only instrument in which specific mention of menstruation is made is Recommendation 24 by the Committee on the Elimination of all forms of Discrimination Against Women, under Article 12 of the convention.¹⁶ The committee adopts recommendations based on the interpretation of specific provisions in order to enhance their application. Although Article 12 is related to health care, and menstruation is a normal occurrence in women which has health implications only if it is mismanaged, its specific mention in the article is a milestone. This could have been used to recognize the menstrual rights of female prisoners, yet again it has not been so used.

The protocol will, therefore, meet its purpose only if its interpretation recognizes and leads to differential treatment based on biological differences. What is dignifying to women should be interpreted from women's points of view and not simply how they can be treated equally to men. Only then can true equality be achieved.

Opening up opportunities for female prisoners: a conclusion

Specific legal or policy provisions would certainly have enhanced better management of menstruation. Its flawed nature, however, has been caused to a large extent by the conspiracy of silence surrounding the issue.

The principles of international law on the prohibition of inhuman and degrading treatment have not been used in Zimbabwe as a platform for the advocacy of women's menstrual rights, in particular those in prison. With the illumination that has so far occurred in Zimbabwe, the protocol can now be used as a tool to eliminate the degrading treatment of women in prison. However, this will be better achieved by the specific mention of needs such as menstruation that can, if mismanaged, rob women of their dignity.

The parliamentary debate on the subject showed how authorities can react to situations that compromise the dignity of women. The discourse around women's menstrual rights in Zimbabwe creates an opportunity for the adoption of a national policy on the management of menstruation, in particular in institutions like prisons. With efforts already being made by the executive and judicial arms of government, there is now an opportunity for the criminal justice system to address the peculiar needs of women and ensure that they are not subject to inhuman and degrading treatment in prison.

¹ This was one of the few times that women have taken their menstrual experiences into the public.

² At Chikurubi female prison medical personnel issue medicine to sick prisoners twice a day, hence the term 'medicine rounds'.

³ Names or real names have been withheld throughout this paper.

* All quotes with this symbol were taken from an upcoming book entitled: '*A tragedy of lives: Women in prison in Zimbabwe*'

⁴ Some of the prisoners with psychological problems have no understanding of menstruation.

⁵ Third schedule, Prison (General) Regulations

⁶ This is a successor company to the former government Medical Stores, from which all government institutions obtain their medical supplies.

⁷ Section 37 of the Prisons Act and Section 30(1) of the Prisons (General) Regulations.

⁸ Section 46 of the Prisons (General) Regulations.

⁹ This is a Shona expression denoting impossibility...It is taboo.

¹⁰ The male member of parliament referred to his female counterpart as his daughter, as a term of respect due to the difference in age.

¹¹ A department of the Law Faculty at the University of Zimbabwe, under which I undertook my postgraduate research on female prisoners.

¹² A prison clinic nurse confirmed that the donation was made in the course of the year (2003).

¹³ Article 12 (2) of the Convention on the Elimination of all forms of Discrimination Against Women, UN Standard Minimum Rules for the Treatment of Prisoners

¹⁴ Preamble to the protocol.

¹⁵ Article 5, Universal Declaration of Human Rights; Article 10, International Convention on Civil and Political Rights; Article 16, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and so on.

¹⁶ The committee is formed under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

References

Bentzon, A.W., *et al.*, *Pursuing grounded theory in law, North-South experience in developing women's law*, Mond Books and TANO, Harare and Oslo, 1998.

Borrey, A., *Oi kalabus meri: A study of female prisoners in Papua New Guinea*, Law Reform Commission, 1992.

Carlen, P., *Gender, crime and justice*, Open University Press, Philadelphia, 1987.

Government printers, *Hansard* (Parliamentary Debates) 11 March 2003.

Radosh, P. F., *Reflections on women's crime and mothers in prison: A peacemaking approach*, SAGE Publications, 2002.

Samakayi-Makarati, J.N., *Skewed management of menstruation in the Zimbabwe Prison Service: How does the female prisoner cope?* Women's Law Centre, University of Zimbabwe, Harare, 2001.

Stewart, J., *et al.*, *Pregnancy and child Birth: Joy or despair*, WLSA, Harare, 2001.

Venganayi, R., 'Shylet, welcome to hell', *Parade magazine*, Harare, 2000.

Table of Legislative Instruments

The Constitution of Zimbabwe

The Prisons Act [Chapter 7:11]

The Prisons (General) Regulations, 1996

Table of International Instruments and Documents

African Charter on Human and Peoples' Rights, 1981

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

International Convention on Civil and Political Rights, 1966

Protocol to the African Charter on Human and **People's Rights on the Rights** of Women in Africa, 2003

CEDAW Committee, Recommendation 24, 1999

UN Standard Minimum Rules on the Treatment of Prisoners, 1955

