

**Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls**

REFERENCE:  
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19 October 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 42/16, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a bill introduced to provide menstrual hygiene products to low-income women and girls, as well as those deprived of liberty, which was passed in Congress but vetoed by the President.**

According to the information received:

In 2019, bill 4.968 was introduced in the Brazilian Congress to create the Program for Protection and Promotion of Menstrual Health. The bill would ensure "the offer free of charge of feminine sanitary pads and other basic menstrual care" (art 1), and include among its beneficiaries "I – low income students enrolled in public schools; II – homeless women or those in a situation of extreme social vulnerability; III – women detained and imprisoned in the penitentiary system; and IV – women detained in facilities for serving juvenile justice sanctions" (art. 3). Finally, the bill would include sanitary pads among the items provided by the Government in its food donations to vulnerable families (art. 7).

On 26 August 2021, the bill was passed by the Chamber of Deputies, and on 16 September 2021, by the Senate. The bill was then sent to presidential sanction.

On 7 October 2021, the bill was sanctioned by the President as Law 14.214/2021. However, the articles that instituted the free distribution of menstrual pads and other menstrual hygiene products were vetoed, namely articles 1, 3, 5, 6 and 7.

In informing of the veto, the President argued that the bill was opposed to the public interest since it did not adequately identify the budget sources for funding the program; and the restricted number of beneficiaries went against the universal and equitable nature of the public health system.

Congress may vote to override the presidential vetoes up to 30 days after they took place.

We would like to express our concern that the aforementioned bill was vetoed in its most crucial provisions, which would ensure free access to menstrual hygiene products for low-income women and girls and those deprived of liberty. Ample access to menstrual hygiene products, alongside adequate water and sanitation facilities, and access to healthcare services and care, are key conditions to ensure women and girls' right to health, as well as other rights related to their full participation in public, economic and social life. For women deprived of liberty, who are under custody of the State, the lack of access to menstrual hygiene products may pose significant risks to their physical and mental health, and may amount to ill-treatment. The obligations to ensure women and girls' rights to non-discrimination, health, education, participation on equal terms with men in the political, social, economic and cultural life of their countries, are enshrined in international human rights law under the Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Economic, Social and Cultural Rights ratified by your Excellency's Government in 1984 and 1992 respectively, among other instruments.

In its report on health and safety ([A/HRC/32/44](#)), the Working Group on Discrimination against Women and Girls highlighted that menstruation is surrounded by stigma, resulting in the ostracism and discrimination against women and girls. Many of them lack access to hygienic materials for menstruation, which are either unavailable or too costly; they are forced to use improved, unhygienic materials that may lead to leaking and infections. The Working Group noted that the absence of hygienic items and the stigma and shame generated by stereotypes around menstruation may lead women and girls to feel obliged to stay home from school or work every month. The Working Group recommended that States should take measures to prevent the exclusion of women and girls from the public space during menstruation, which would include ensuring schools and public facilities, have adequate sanitation and that women and girls have access to menstrual products. In its most recent report on women's and girls' sexual and reproductive health rights in crisis, the Working Group further elaborated that the stigma often assigned to sexual and reproductive health conditions, such as menstruation, is rooted in discriminatory gender stereotypes and patriarchal norms that must be dismantled through appropriate policies and interventions, including to address period poverty (as the bill in question would be) ([A/HRC/47/38](#)). Likewise, in his report to the General Assembly ([A/62/214](#)), the Special Rapporteur on the right to health elaborated on the different needs of women and men regarding water and sanitation, yet regretted that women and girls are often neglected in discussions about sanitation and hygiene.

As noted by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 (2000), while the Covenant on Economic, Social and Cultural Rights provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of article 12, which establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. This right extends to the underlying determinants of health, including access to safe and potable water and sanitation.

The Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 24 (1999) on women and health, noted that societal factors that are determinative of the health status of women can vary among women themselves; for that reason, the Committee recommended that special attention be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups. The Committee also recommended that States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.

Likewise, in its General Recommendation No. 36 (2017) on the right of girls and women to education, the Committee on the Elimination of Discrimination against Women noted that adequate infrastructure must be provided in educational institutional in order to remove the barriers to successful completion of school faced by girls, including water and sanitation and hygiene facilities segregated by gender, trained and supportive staff, appropriate sanitary protection materials and information on puberty and menstrual issues. It also recommended that policy initiatives be instituted, including the provision of sanitary protection materials, to increase school attendance.

In a recent report on menstrual poverty among girls in Brazil, UNICEF and UNFPA<sup>1</sup> noted its negative impact on girls' enjoyment of their rights to health, education and livelihood when they lack proper access to water, sanitation and hygiene at home and school. Analysing the negative impact of menstrual poverty (understood broadly as including but not limited to access to menstrual products), the entities point out the risks to girls' physical and mental health; attendance and permanence in school; engagement with sports activities; and long-term economic impacts of inadequate access to education. They note, in particular, the specific challenges faced by girls as compared to adult women, since they may lack influence in defining the spending priorities of the family budget; and may struggle with irregular periods and therefore an increased fear of leaks and being shamed, which may reduce their willingness to participate in education, sports and social activities. The report indicates that black Brazilian girls face even greater restrictions than their white counterparts when accessing menstrual hygiene products.

Women and girls deprived of liberty have historically faced a lack of facilities suited to their needs, including access to water and sanitation and to menstrual hygiene products. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offender (the Bangkok Rules) (A/RES/65/229) stipulates in rule 5 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 the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating".

However, as the Special Rapporteur on the right to health noted in his report on deprivation of liberty ([A/HRC/38/36](#)), it is frequently the case that little or no attention is paid to women-specific health-care needs, such as those related to menstruation, pregnancy and childbirth, menopause and sexual and reproductive health. The lack of attention to women-specific needs in detention centres, such as

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<sup>1</sup> UNICEF and UNFPA, *Pobreza Menstrual no Brasil: Desigualdades e Violações de Direitos*, 2021. Available at: [https://www.unicef.org/brazil/media/14456/file/dignidade-menstrual\\_relatorio-unicef-unfpa\\_mai2021.pdf](https://www.unicef.org/brazil/media/14456/file/dignidade-menstrual_relatorio-unicef-unfpa_mai2021.pdf)

menstruation, was also noted by the Special Rapporteur on violence against women in her report on the pathways to, conditions and consequences of incarceration of women ([A/68/340](#)). Intentionally denying access to menstrual hygiene products has even been documented to be used as forms of ill-treatment and torture of prisoners, especially in cases of detained activists or human rights defenders. The Special Rapporteur highlighted the need for a paradigm shift from incarceration to community-based sentencing of female offenders, taking into account the impact of unsanitary conditions in prisons, among others. In that same sense, the Working Group on Discrimination against Women and girls ([A/HRC/41/33](#)) recommended that States should make available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, and integrate into the national system the standards provided in the Bangkok Rules.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the issues mentioned.
2. Please provide information on the presidential veto to bill 4.968, the justification and evidence motivating it and how this is compatible with Brazil's international human rights obligations.
3. Please provide any readily available information on measures, legislative, administrative, budgetary or otherwise, to be taken by your Excellency's government to ensure women and girls' access to menstrual hygiene products, particularly those in institutions of vulnerability or deprived of liberty.
4. Please provide information on how your Excellency's Government intends to identify and make available the necessary budget sources to cover the costs of policies aimed at combatting menstrual poverty.
5. Please provide information on measures, legislative, administrative, budgetary or otherwise, to be taken by your Excellency's government to ensure women and girls' access to water and sanitation, particularly in schools and in detention centres. In particular, please explain how your Excellency's Government intends to identify and make available the necessary budget sources to cover these costs.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Taking into account the potential impact of bill 4.968 to the fulfilment of women and girls' human rights, and particularly their rights to health and education, we urge your Excellency's Government to take the necessary steps to pass this bill into law in full, including articles 1, 3, 5, 6 and 7 that were vetoed. We also urge your Excellency's Government to take additional measures to improve women and girls'

access to water and sanitation in their homes, schools, workplaces and public facilities, as well as to promote education and awareness campaigns on menstruation and sexual and reproductive health to combat stigma and harmful stereotypes.

Please accept, Excellency, the assurances of our highest consideration.

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