

# FRANCE

## Menstrual insecurity in French prisons



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Menstrual precariousness, or lack of material or financial resources to meet the needs imposed by menstruation, affects about 2 million French people in 2022. These concerning stats worsen in the context of incarceration, a situation that affects at least 4% of the inmate population. Through an analysis of the policies implemented by the French ministry of justice and its carceral administration, compared to testimonies of menstruating inmates, this article highlights the alarming rate of menstrual insecurity, the unsafe practices that result from it in French prisons and the national and international public inaction, when facing these shameful incarceration condition, which now constitute a menace to the health of the prisoners concerned. Finally, this article suggests potential intervention measures and encourages the facilitation of access to the fundamental right that menstrual security is.

translated by Gabriel Capitolo & Solange Meurier

by **Jade Lemoine**

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## Introduction

*“I was depressed, I felt like less than anything”*, were the discourses held by a French detainee during a testimony on menstruations under custody<sup>1</sup> by the International Prison Observatory (OIP). In France, women detainees represent about 4% of the prison population, a strong minority that makes that feminine matters are often set as a second plan of the penitentiary administration’s agenda, with the public service having the responsibility of applying penal decisions, under the authority of the Ministry of Justice. For this reason, discussion around precariousness and menstrual insecurity in prison are not apprehended correctly and do not have room for progress.

By definition, the term “menstruation” designates the “process during which the uterus evacuates blood and tissue through the vagina”, they are part of a broader process called “menstrual cycle”, being the preparation of a potential pregnancy in the feminine reproductive system activated by hormones, according to the United Nations Population Fund (UNPF)<sup>2</sup>. Menstruation is seen majoritarily as an essentially feminine matter, but the challenges involved are greater, and defining them as a uniquely feminine matter prevents the understanding of a much less binary reality. In fact, it is necessary to underline that menstruation is not a strictly feminine process, as transgender men are equally concerned, as are all people with a female reproductive system that do not identify as female. Moreover, we must take into consideration that other women, such as transgender women, and women who are subject to amenorrhoea, the absence of menstruations, although they are not menopausal, are not concerned. Furthermore, limiting the implications of menstruation to the female population is a wrong perception: everyone has a role to play in the dynamics that surround this matter, and men are those who are particularly invested in these discriminatory dynamics. In order to stop this, it is necessary to amplify this global taboo and educate the population on the challenges implied.

In the prison context, questions surrounding menstruations have become noticeably more urgent, as they are the top reasons for which detention is painful for menstruating people. Yet, the taboo surrounding periods is what has prevented the topic to be discussed in the political sphere. From these taboos come ignorance and neglect, of which French prisoners shall not be suffering, as it translates to discriminations but also result in an important menstrual precarity situation.

What is the situation of menstruating prisoners in French prisons? How does the French government and the Penitentiary Administrative Direction react to the menstrual problems of its detainees? Is it really possible to consider that the detention of menstruating people takes place with dignity in a context of menstrual insecurity? This article aims at giving an analysis of the reality in French prison establishments and the actions taken by the concerned authorities to address the situation vis-à-vis international and European legislation in order to establish recommendations for a more complete menstrual hygiene for the French detainees. The article underlines the greatest dangers of menstrual insecurity under detention, calls for the recognition of the right to menstrual hygiene, and reminds of the need for initiative for free protection.

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<sup>1</sup> BOSQUET, S. (2020). Précarité Menstruelle en prison : à quand la gratuité? *OIP.org* [online] 13 Mars. Available at: <https://oip.org/analyse/precarite-menstruelle-en-prison-a-quand-la-gratuite/> [Accessed on Jan 15th 2023].

<sup>2</sup> UNFPA. (2022). Menstruations et droits de la personne – questions fréquemment posées. *Unfpa.org*. [online] Available at: <https://www.unfpa.org/fr/menstruations-questions-fr%C3%A9quemment-pos%C3%A9es> [Accessed on Jan 15th 2023].

## Menstruations & Detention: The reality of a double *sentence*

### When period becomes a luxury: menstrual precariousness

Each person experiences their menstrual cycle and experiences menstruating in a different way, for what the financial expenses linked to this may vary as well. We know however that the average age of a first menstruation is at 12,6<sup>3</sup> years old in France; whilst the average age on menopause, the point in life where menstruation stops, is of 50 years of age<sup>4</sup>. In light of this information, a person menstruates on average 38 years of their life. In France, in 2020, the government estimates there were 15.5 million menstruating people.

Millions of menstruating French must assume additional costs for a majority of their life regarding their period. It is difficult to determine with precision the average monthly cost of menstrual necessities, as the different variables such as brands, stores, type of protection, may affect the budget accordingly. The government estimates that each menstrual cycle costs approximately €10, to which must be added medical costs for painkillers and gynaecologist appointments, all which have varying price points, although the social security covers part of these expenses. According to this, the French government estimates that in France, a menstruating person will spend between €8000 and €23000 according to their menstrual hygiene throughout their life<sup>5</sup>, without taking into consideration determinants such as inflation, variation of flow requiring the purchase of specific period protection, potential diseases such as endometriosis, etc.

For many French people menstruating, it is an important cost: according to the organisation 'Règles Élémentaires', between 1,7 and 2 million French people in 2022 are in what is called "menstrual precariousness", a term that defines *"the difficulty of many women and girls to pay for their hygienic protection due to their poor incomes [and] economic vulnerability of which women suffer due to the financial weight of hygienic protection in their budget"* according to UNPF<sup>6</sup>.

### Zooming into menstrual precariousness in prison

There is no real statistic on the reality of menstrual precariousness of French detainees, however, multiple testimonials show that it's a daily struggle for a major part of those concerned. In March of

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<sup>3</sup> INED. (2014). L'âge aux premières règles. *Ined.fr*. [online] Available at: <https://www.ined.fr/fr/tout-savoir-population/memos-demo/focus/l-age-aux-premier-es-regles/#:~:text=L'%C3%A2ge%20m%C3%A9dian%20aux%20premi%C3%A8res.r%C3%A8gles%20pour%20la%20premi%C3%A8re%20fois>. [Accessed on Jan 15th 2023].

<sup>4</sup> Ameli. (2021). Ménopause : définition, symptômes et diagnostic. *Ameli.fr*. [online] Available at: <https://www.ameli.fr/assure/sante/themes/menopause/symptomes-diagnostic#:~:text=Elle%20intervient%20g%C3%A9n%C3%A9ralement%20entre%2045.d'un%20ovule%20chaque%20mois> [Accessed on Jan 15th 2023].

<sup>5</sup> ROMEIRO DIAS, L. & TAURINE, B. (2020). Rapport d'information fait au nom de la délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes sur les menstruations. *Assemblée Nationale*. [online]. Available at: [https://www.assemblee-nationale.fr/dyn/15/rapports/ega/l15b2691\\_rapport-information#\\_Toc256000030](https://www.assemblee-nationale.fr/dyn/15/rapports/ega/l15b2691_rapport-information#_Toc256000030) [Accessed on Jan 15th 2023].

<sup>6</sup> UNFPA. (2022). Menstruations et droits de la personne – questions fréquemment posées. *Unfpa.org*. [online] Available at: <https://www.unfpa.org/fr/menstruations-questions-fr%C3%A9quemment-pos%C3%A9es> [Accessed on Jan 15th 2023].

2020, the OIP mentioned that 40 testimonies were shared of detainees being forced to buy more expensive hygienic protection<sup>7</sup>.

Since 1985, menstrual inmates arriving to prison are given an “arrival kit” which is supposed to respond to their “feminine hygiene” needs, for which the content is not regulated by any national legislation and varies from one establishment to another. According to censuses from different prison establishments, the kit contains between 4 and 20 hygienic pads provided by the same supplier, which makes for an equal distribution of low-standard protections. Said kit also includes other feminine hygiene products, in which according to a guard in Rennes penitentiary establishment, there would be a toothbrush, a soap bar, a hairbrush, 18 pads, nonetheless, a former inmate confirms affirms having only received two toilet paper rolls and dish soap<sup>8</sup>.

During the rest of their detention, the detainees may be divided into two categories<sup>9</sup>. Firstly, the “needy”, those that rely on the decision of the establishment’s assembly to decide whether or not to redistribute an arrival kit, or yet, an envelope containing €20 to cover personal expenses. Nonetheless, the councils are so slow in the renewal of kits, making that the “needy” cannot always rely on them for hygienic protection. The second category of detainees concerns the detainees capable of “canteening” a term used in the carceral environment that describes the buying and consuming of products from the prison store, of the establishment’s canteen, that traditionally works on an order system. This option is not available to all as not all prisoners have the financial means that can be obtained through their family, or salary obtained by a prison job, an option that is not available to all Female detainees, as they have less job offers than male detainees<sup>10</sup>.

The reality of those being able to canteen is however not the best. There are two types of canteens in the penitentiary establishments, which implies different managements, all having significant challenges<sup>11</sup>. Some canteens are managed by the national penitentiary administration, and are provided by a national provider, in order to get competitive tariffs, and by consequence, offer only certain products and protections, sold at the purchased price of €0.95 for a pack of pads and €2.65 for a box of tampons. In 2016, Adeline Hazan, who was at the time the Controller-General for Places of Deprivation of Liberty (CGPDL) underlined oftentimes the lack of diversity of products in the canteens, options that in consequence could not adapt to the needs of all detainees as they have different flows, implying different needs of protection. This had been justified when the national provider didn’t want to better the

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<sup>7</sup> BOSQUET, S. (2020). Précarité Menstruelle en prison: à quand la gratuité ? *OIP.org* [online] 13 Mars. Available at: <https://oip.org/analyse/precarite-menstruelle-en-prison-a-quand-la-gratuite/> [Accessed on Jan 15th 2023].

<sup>8</sup> ATTIA M., BENDA E. & CINCINATIS J. (2019). Précarité Menstruelle: en prison, des femmes fabriquent des cups avec des bouteilles en plastique. *Nouvelobs.com* [online] 19 Mai. Available at: <https://www.nouvelobs.com/nos-vies-intimes/20190319.OBS10781/precarite-menstruelle-en-prison-les-femmes-fabriquent-de-s-cups-avec-des-bouteilles-en-plastique.html> [Accessed on Jan 15th 2023].

<sup>9</sup> *Ibid*

<sup>10</sup> Georgette Sand. (2019) Précarité Menstruelle en milieu carcéral : Georgette Sand dénonce la double peine. *Georgettesand.com*. [online] Available at: <http://georgettesand.com/2019/10/30/precarite-menstruelle-en-milieu-carceral-georgette-sand-denonce-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>11</sup> BOSQUET, S. (2020). Précarité Menstruelle en prison : à quand la gratuité ? *OIP.org* [online] 13 Mars. Available at: <https://oip.org/analyse/precarite-menstruelle-en-prison-a-quand-la-gratuite/> [Accessed on Jan 15th 2023].

catalogue of offers to the detainees because they would encounter storage problems. In confrontation with these problems, the local administrators are unpotent. Despite that, in order to try and adapt a better offer, some prison guards such as in Rennes, will buy the specific branded protections in the nearby supermarkets, but the price remains oftentimes too high for a larger part of the detainees.

In parallel, there are also some canteens that have been associated with private providers. They offer products that are generally pricier, on average of 10%, even though the margin depends on the provider. In order to avoid the consequences of privatisation of a part of the public service and that providers don't make large benefits on the back of detainees, the penitentiary administration controls this every other year. However, the reality behind this is blurry, and it is tough to determine if the administration does the necessary procedures. The perceived reality is that the administration does not do these controls. In fact, the Georgette Sand collective revealed the tariffs of several canteens, where the price of a 16 Tampax Pearl Contact is €6.97 against €3.05 for the same brand box of 18 tampons at Carrefour supermarket. Over the top margins are the same for pads, where the pack of unbranded 12 pads costs €5.81 in prison against €1.65 for a 16 pack Maxi Super at Monoprix supermarket<sup>12</sup>. It is clear that having the means to canteen doesn't mean having the means to canteen hygienic protection.

To these difficulties we may add that to the canteen, detainees must order two weeks prior for products, for them to be delivered<sup>13</sup>. This creates space for wrongly calculated menstrual cycles or implies that detainees won't have the money to purchase their order on time, and may find themselves without protection for the entirety of their period. It is clear that no plan has been done to allow menstrual detainees to access the right menstrual hygiene measure, violating their dignity.

### “D systems”

Whilst many detainees are restrained to what they call “D-Systems”, which means, expensive protection, where the main goal is to “limit the damages” somehow. They can be exceptional due to a delay in the placed orders from the canteen or the kit distribution, but can also be used in a recurrent way, as some detainees are completely unable to provide themselves with the right protection, which points out that there is a systemic issue at play.

Some of these solutions may appear to be more “classic” options, although they are all more undignified and unhealthy than others, such as cloths, sheets or shower towels cut with the teeth, because the possession of scissors by prisoners is forbidden in prison. The testimony that really shocks is the one collected by *l'Obs*, which gives voice to inmates who are forced to use plastic water bottles, of which they cut the bottom to keep only the upper part with the cap, and of which they file the edges against the walls in order to limit its dangers, in order to be able to use it as a “menstrual cup”<sup>14</sup>. This is an absolutely

<sup>12</sup> Georgette Sand. (2019) Précarité Menstruelle en milieu carcéral : Georgette Sand dénonce la double peine. *Georgettesand.com*. [online] Available at: <http://georgettesand.com/2019/10/30/precarite-menstruelle-en-milieu-carceral-georgette-sand-denonce-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>13</sup> FONTENELLE E. (2021). Avoir ses règles en prison : la double peine. *BondyBlog.fr* [online] 30 Avr. Available at: <https://www.bondyblog.fr/societe/sante/avoir-ses-regles-en-prison-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>14</sup> ATTIA M., BENDA E. & CINCINATIS J. (2019). Précarité Menstruelle : en prison, des femmes fabriquent des cups avec des bouteilles en plastique. *Nouvelobs.com* [online] 19 Mai. Available at: <https://www.nouvelobs.com/nos-vies-intimes/20190319.OBS10781/precarite-menstruelle-en-prison-les-femmes-fabriquent-de-s-cups-avec-des-bouteilles-en-plastique.html> [Accessed on Jan 15th 2023].

alarming practice, since the traditional use of menstrual cups is very specific: it is usually made of medical silicone, so it can not hurt the inside of their reproductive system, but above all, it requires sterilisation with hot water after each use. There is a rigorous protocol, rarely compatible with detention and, which does not apply in any case to the makeshift plastic cup.

Even with poor conditions for menstruation, the prisoners who are regulated and who do not have access to a private shower, a frequent situation in view of the alarming evolution of prison overcrowding in France<sup>15</sup>, and who must therefore use the communal showers, do not have an exemption during their menstruation. Thus, in some prisons, such as Rouen, Metz or Saintes, menstruating prisoners are only allowed, like their non-menstruating counterparts, to wash three times a week<sup>16</sup>, a practice which considerably increases the risk of complications for those who have to use unhygienic protection.

It is important to underline that to all this is added the difficulty of obtaining gynaecology care, since in 2017, only 43.5% of establishments offered gynaecology consultations on site. That increases the sanitary risk and health risk for all prisoners with a uterus, but especially of detainees that suffer from disease related to the menstrual cycle such as Sandrine, who has endometriosis, as she testifies for *Bondy Blog*, having had to go through a full removal of her uterus after facing complications caused by a lack of treatment whilst under detention<sup>17</sup>. The penitentiary administration admits not being able to provide gynaecology care for all those in need, and justifies this by “having a scheduling problem with gynaecologists”, placing the problem out of their own matters, nonetheless it being the only authority able to allow change.

### **Supervisors: between help and humiliation**

Although some prison guards, such as those at the Rennes prison, try to compensate for the lack of obvious action on the part of the government and the prison administration, for example, by regularly going to the supermarket to buy more suitable protection for menstruating prisoners in need, this is not the case for all prison guards, many of whom are unable to cooperate and assist prisoners. As a result, prisoners, being poorly accompanied, frequently put themselves in delicate situations related to their menstrual precariousness, exposing themselves to additional sanctions, which can range from a ban on television to “solitary confinement”, disciplinary cells<sup>18</sup>.

The most frequent instance is the fact that many refuse to leave their cells during their menstruation, particularly when they are forced to use makeshift protection that they simply cannot trust. Indeed, if the taboo around menstruation is strong in French society, it is even more so in the microclimate of prisons, and prisoners with menstrual blood stains are exposed to mockery and humiliation, worsening their conditions of detention by representing a direct attack on their dignity. Despite this, some detention centres, such as the Sequedin prison, refuses to accept menstruation as an excuse not to leave their cells,

<sup>15</sup> See our Instagram post “Focus : La surpopulation carcérale en France” [“Focus: Penitentiary overcrowding in France”] from the 29th of December 2022: [https://www.instagram.com/p/CmwLPZHIApk/?utm\\_source=ig\\_web\\_copy\\_link](https://www.instagram.com/p/CmwLPZHIApk/?utm_source=ig_web_copy_link)

<sup>16</sup> Dans Ma Culotte Blog (2019). Précarité Menstruelle : Qu'en est-il en prison ? *Dansmaculotte.com*. [online] Available at: <https://dansmaculotte.com/fr/blog/precarite-menstruelle-prison> [Accessed on Jan 15th 2023].

<sup>17</sup> FONTENELLE E. (2021). Avoir ses règles en prison : la double peine. *BondyBlog.fr* [online] 30 Avr. Available at: <https://www.bondyblog.fr/societe/sante/avoir-ses-regles-en-prison-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>18</sup> BOSQUET, S. (2020). Précarité Menstruelle en prison : à quand la gratuité ? *OIP.org* [online] 13 Mars. Available at: <https://oip.org/analyse/precarite-menstruelle-en-prison-a-quand-la-gratuite/> [Accessed on Jan 15th 2023].

even if it is not due to a fear of humiliation, but to pain symptomatic of menstruation<sup>19</sup>. The reaction of some supervisors reinforcing this rule can accentuate this feeling of humiliation and of being “less than nothing”, as in 2018, at the Bapaume detention centre, where a detainee was placed in a disciplinary ward for having insulted staff after they were unable to provide her with sanitary protection during her menstruation<sup>20</sup>.

While menstrual precariousness in prisons continues to have disturbing consequences, both from a health and a human rights perspective, are the French government and its prison administration really trying to work towards an improvement of the situation?

## Plastering actions of French authorities

In June 2019, Marlène Schiappa, Secretary of State for Gender Equality, announced a rally considered as exceptional by the French government before the violation of fundamental human rights represented by menstrual precariousness. La République en Marche’s (LREM) senator Patricia Schillinger was the first to respond to the political call emitted by the French government and handed out, in October 2019, a report named “Précarité Menstruelle : Changeons les Règles”<sup>21</sup>. It underlines the delay of action of the French government regarding menstrual precariousness, and even more in prison, compared to other similar societies, such as the State of New York in the United States, working on making the products of menstrual hygiene freely available for their inmates since 2016. Consequently, it calls for the implementation of a block of menstrual hygiene products larger in prison canteens, as well as selling protections considered “basics” at a reduced price<sup>22</sup>.

Following her is LREM’s MP Laetitia Romeiro-Dias, who published in February 2020, alongside Benedicte Taurine, a La France Insoumise (LFI) MP, a parliamentary report about menstruation, with 47 propositions focusing on the menstrual precariousness issue, and 3 of them being directly about the inmates. With this, they encourage the extension of the protection offer in canteens, a facilitation of the machine cleaning of the dirty clothes and fabrics, to ensure a better hygiene and a better consideration of the inmates’ menstrual health<sup>23</sup>.

<sup>19</sup> ATTIA M., BENDA E. & CINCINATIS J. (2019). Précarité Menstruelle : en prison, des femmes fabriquent des cups avec des bouteilles en plastique. *Nouvelobs.com* [online] 19 Mai. Available at: <https://www.nouvelobs.com/nos-vies-intimes/20190319.OBS10781/precarite-menstruelle-en-prison-les-femmes-fabriquent-de-s-cups-avec-des-bouteilles-en-plastique.html> [Accessed on Jan 15th 2023].

<sup>20</sup> BOSQUET, S. (2020). Précarité Menstruelle en prison : à quand la gratuité? *OIP.org* [online] 13 Mars. Available at: <https://oip.org/analyse/precarite-menstruelle-en-prison-a-quand-la-gratuite/> [Accessed on Jan 15th 2023].

<sup>21</sup> [Translator’s note] This could be literally translated to “Menstrual precariousness: let’s change the Rules/Menstruation.” The title used the double meaning in French of “règles” which refers at the same time to periods/menstruation and to rules.

<sup>22</sup> SCHILLINGER, P. (2019). Changeons les règles : Remise de mon rapport sur la précarité menstruelle. *Patricia-schillinger.com*. [online] Available at: <https://www.patricia-schillinger.com/?p=3332> [Accessed on Jan 15th 2023].

<sup>23</sup> ROMEIRO DIAS, L. & TAURINE, B. (2020). Rapport d’information fait au nom de la délégation aux droits des femmes et à l’égalité des chances entre les hommes et les femmes sur les menstruations. *Assemblée Nationale*. [online]. Available at: [https://www.assemblee-nationale.fr/dyn/15/rapports/ega/115b2691\\_rapport-information#\\_Toc256000030](https://www.assemblee-nationale.fr/dyn/15/rapports/ega/115b2691_rapport-information#_Toc256000030) [Accessed on Jan 15th 2023].

The limit of these recommendations, and more generally, of the French political debate surrounding the issue of menstruation in prison, lies in the fact that they only aim to assist the inmates whose gender is feminine and not to all the ones that have a feminine reproductive system. This can be due to the fact that the prison administration usually do not differentiate sex and gender<sup>24</sup>, resulting in many inmates who do not identify as women, although born with a feminine reproductive system, end up automatically treated as female inmates, but being separated from the inmates who identify as women. It becomes then even more complicated for them to benefit from a menstrual assistance.

Nonetheless, these reports show an improvement in the resolution of the menstrual precariousness in prison issues. An improvement to which the government allows, in 2020, 1 million euros towards the trial of free access of hygienic protections in collective places. This trial is afterwards extended to inmates, thanks to Schillinger, who underlined this programme in prisons. As a consequence, the management of prison administration started, in September 2020, an initiative of monthly distribution of free hygienic protections. To benefit from it, inmates only had to fill up a form, highlighting two preferences in terms of protections, and the delivery was automatically executed monthly, and could even be repeated within the same month if needed<sup>25</sup>. Unfortunately, similarly to many other trials in prisons, there exists very little feedback on the trial and the discussions surrounding the concrete implementation of permanent measure still stay blurry.

Although little feedback can be found on this trial, it pushed the French government to dedicate 5 million euros to the fight against menstrual precariousness in 2021, with a particular attention to incarcerated women. The goal here is, following the recommendations of both reports, providing a bigger product offer in canteens, but also to ensure the free protection distribution and a good menstrual hygiene<sup>26</sup>. However, one year later, the effects of this inversion in the suppression of menstrual precariousness are still not felt yet, be it at the structural level or at the local level, since an improvement of the situation has yet to be noted by prisoners.

Therefore, it is under association and civil society organisations, such as the French Red Cross, that falls the responsibility to provide for French prisons bigger quantities of free hygienic protections. Some civic initiatives have therefore been more impactful than those promulgated by the French government. It is the case for the Breton company Marguerite & co, which installed, for free, a distributor of free organic hygienic protections in a prison of Brittany, taking in charge the diminution of menstrual precariousness

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<sup>24</sup> The series of episodes “Gabrielle” from the *Insider Podcast* podcast “Les Détenues” [The Inmates] presents a transgender woman whose civil status has been changed, who is incarcerated in a French detention centre, where she ends up being placed in a wing of male inmates’ wards, dedicated to transgender women.

<sup>25</sup> FONTENELLE E. (2021). Avoir ses règles en prison : la double peine. *BondyBlog.fr* [online] 30 Avr. Available at: <https://www.bondyblog.fr/societe/sante/avoir-ses-regles-en-prison-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>26</sup> Ministère chargé de l’Égalité entre les femmes et les hommes, de la diversité et de l’égalité des chances. (2020). Olivier Véran et Elisabeth Moreno portent à 5 millions d’euros le budget alloué par l’État pour lutter contre la précarité menstruelle en 2021. *Gouv.fr*. [online]. Available at: <https://www.egalite-femmes-hommes.gouv.fr/cp-commun-olivier-veran-et-elisabeth-moreno-5-millions-deuros-pour-la-precarite-menstruelle-en-2021#:~:text=Apr%C3%A8s%20des%20exp%C3%A9rimentations%20men%C3%A9es%20en,la%20opr%C3%A9carit%C3%A9%20menstruelle%20en%202021.> [Accessed on Jan 15th 2023].

and, but also health risks to which are exposed persons using low quality protections, usually full of toxic chemicals<sup>27</sup>.

Before concrete actions, which impacts the daily life of inmates, the lack of engagement towards menstrual hygiene from the French government seems even bigger. Is France violating international regulation, by providing irregular access to its inmates to a decent menstrual hygiene? That being said, do mechanisms whose goal is to encourage better detention and better access to decent protections exist?

## Menstruations and human rights: what regulation at the international level?

### The European prison rules

After a first edition in 1973, the second edition of the European prison rules was passed by the entirety of the Council of Europe member States on the 11th of January 2000, before being re-examined in 2020. This text of international law falls under the soft law determination, meaning that it is not legally binding and only gives out recommendations on the treatment that inmates should receive in detention. Soft law presents a few advantages in the fact that States have less of a feeling of losing their sovereignty and are more likely to compromise in order to find solutions, as they know that they have a lot of freedom in the way they can apply the measures, encouraging cooperation. In this sense, it can constitute a first step in the establishment of a mandatory legislation, falling under the hard law determination, meaning a constraining right. Nevertheless, soft law is usually vague and obscure, a source of negotiation with sometimes too much compromise and blank spaces prone to interpretation. As a consequence, there is no mechanism that can control its respect, not to punish a potential violation of the law; States are thus free to avoid their responsibilities<sup>28</sup>. Almost a year following the elaboration of the first European prison rules, nothing seems to point towards the elaboration of a stronger legislation. Therefore, it seems clear that the strength of this text of international law is more symbolic than it is legal; these European prison rules are especially used as a tool by the European Court of Human Rights (ECHR) to justify some decisions given about the custody conditions in detention centres of its member States.

The purpose of the European prison rules is to give out recommendations on custody conditions in jails of the Council of Europe countries, in order to give States a clear base for a more decent and respectful detention. They cover only briefly the menstruation issue in the prison context. It enters in the “Hygiene” category, the key recommendation being the 19.7 which indicates that “special provision shall be made for the sanitary needs of women”, specifying that “provision for the sanitary needs of women referred to in Rule 19.7 includes ensuring that women have access to sanitary protection as well as means of disposal”. It thus seems obvious that there exists here, at all levels, loopholes in the legislation regarding trans men and other menstruating persons who do not identify with being a woman. Recommendation

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<sup>27</sup> FONTENELLE E. (2021). Avoir ses règles en prison : la double peine. *BondyBlog.fr* [online] 30 Avr. Available at: <https://www.bondyblog.fr/societe/sante/avoir-ses-regles-en-prison-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>28</sup> POLLACK A. & SHAFFER G. (2009) Hard vs Soft Law: Alternatives, Complements and Antagonists in International Governance. *Minnesota Law Review*, 94(3) Available at: [https://www.researchgate.net/publication/228160047\\_Hard\\_vs\\_Soft\\_Law\\_Alternatives\\_Complements\\_and\\_Antagonists\\_in\\_International\\_Governance](https://www.researchgate.net/publication/228160047_Hard_vs_Soft_Law_Alternatives_Complements_and_Antagonists_in_International_Governance) [Accessed on Jan 15th 2023].

19.3 and 19.4 are put in practice, the first one focuses on access to intimate sanitary installations, and the other focusing on common showers, which should be offers to inmates at least two times a week<sup>29</sup>.

Under this light, it is possible to understand that France is not going against these rules literally: the national prison administration tries to adapt itself to the needs of inmates who do not have the means to take care of themselves and allows access to showers higher than two times a week. Despite all of this, is it really possible to say that French inmates have access to the entirety of necessary means to fulfil their specific needs related to their menstruation? Do these measures really allow one to go through one's menstrual cycle decently?

Prisoners are generally financially dependent on their families, but they on occasions do not always have the means to support the costs of the prison canteen, which are usually inflated prices. Women are particularly more vulnerable, since they are usually surrounded by a fragile support circle, linked to the higher chance to lose all family support once in detention<sup>30</sup>. The other way would be to pay for their own menstrual hygiene costs, through a salary obtained thanks to a job while in custody. Not only, women are less likely to have a job contract than their men counterparts, but the incarcerated workers are generally poorly paid. Indeed, a pay stub from January 2014 of a male inmate, made public by the OIP on the 1st of May 2015, reveals a net salary of €282.1 for 204h, being the equivalent of a little bit more than a month full time salary<sup>31</sup>. In 2022, the first article of the Decree n°2022-655 of the 25th of April 2022 stated the minima hourly rates in the context of a prison employment: €5.07 for production activities and for general service; €3.72 for general service in class I; €2.82 in class II and €2.25 in class III<sup>32</sup>. Thus, even though adequate protections are sold in French prison canteens, it does not guarantee access for all menstruating inmates to the necessary products to fulfil their menstrual hygiene needs, especially for those in a situation of true economic vulnerability.

Moreover, some testimonies about the private sanitary facilities are far from reflecting a decent reality: the systemic and exponentially increasing carceral overcrowding in French prisons results in the progressive reduction of inmates' personal space; the same pattern is observed for the private sanitary installations in cells. Dominique Simmonot, current CGPDL, says on this topic having received mails from inmates suffering from intestinal obstruction after not being able to go to the lavatory for lack of intimacy<sup>33</sup>, a non-favourable situation in case of menstruation. If inmates can only access showers three

<sup>29</sup> Conseil de l'Europe. Règles Pénitentiaires Européennes. *Coe.int*. [online] June. Available at: <https://rm.coe.int/16806ab9b6> [Accessed on Jan 15th 2023].

<sup>30</sup> Georgette Sand. (2019) Précarité Menstruelle en milieu carcéral : Georgette Sand dénonce la double peine. *Georgettesand.com*. [online] Available at: <http://georgettesand.com/2019/10/30/precarite-menstruelle-en-milieu-carceral-georgette-sand-denonce-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>31</sup> FAVIER O. (2015) Le travail en prison : une zone de non-droit sociale et un laboratoire de la flexibilité néolibérale. *bastamag.net* [online] Available at: [https://infoprison.ch/wp-content/uploads/2020/11/bulletin\\_15\\_travail\\_en\\_prison-bastamaag-09.09.2015.pdf](https://infoprison.ch/wp-content/uploads/2020/11/bulletin_15_travail_en_prison-bastamaag-09.09.2015.pdf) [Accessed on Jan 15th 2023].

<sup>32</sup> Décret n°2022-655 dy 25 avril 2022, relatif au travail des personnes détenues et modifiant le code pénitentiaire, NOR: JUSK2207278D, Article D412-64. Available at: <https://www.legifrance.gouv.fr/codes/id/LEGIARTI000045678794/2023-01-23/?isSuggest=true>

<sup>33</sup> N.D. (2022). Surpopulation carcérale : la contrôlease des prisons exhorte le gouvernement à « affronter la réalité ». *FranceTVInfo.fr* [online] 12 Nov. Available at:

times a week, with no possibility of asking for an exemption, it results in high levels of insalubrity in certain cases and increased risks of infection, especially given the unsanitary replacements for hygienic protections.

### **The Bangkok rules**

Faced with a rise in the number of women inmates worldwide and the degradation of the detention conditions, the UN General Assembly passed, in December 2010, the Bangkok rules<sup>34</sup>. It constitutes the merge of 70 rules in order to encourage a better treatment of women inmates and comes as a supplement to the UN Standard minimum rules for the Treatment of Prisoners, also known as Nelson Mandela Rules, which passed firstly in 1955, trying to adapt detention in measures mainly established for male prisoners to their specific female needs. Thus, similarly to the European prison rules, their first weakness is that they fall under the soft law determination and therefore have no ways to ensure an adaptation of the national policies as a response to these recommendations.

It is interesting to specifically focus on rule n°5, which is dedicated to menstruations and the measures that should be implemented to ensure that menstruation cycles are faced with dignity while in detention. It underlines singularly the importance of access to adequate sanitary installations, and the decent provision (be it through a woman or in free access) of hygienic products, so that inmates do not have to carry the mental or financial burden of getting sanitary products. Additionally, other rules apply to menstruating inmates to dignity menstrual hygiene, such as rule n°11 which highlights the importance of providing services of gynaecological health in order to ensure the good functioning of the menstrual cycle of each inmate concerned. Similarly, rule 18 which reminds that everyone benefits from the right to health, a human right, and more specifically economical, social and cultural, fundamental. As such, this right also applies to inmates and is an important criterion for a decent detention, it therefore must be adapted to the specific needs related to the feminine reproductive system, such as access to contraception, pregnancy follow-up or even a treatment in case of painful menstruation.

Before the Bangkok rules, France seemed to indulge in the biggest violations, and looks like it has implemented an environment that does not favour a decent conduct of a detention. Firstly, it is obvious that there is no free access to hygienic protections in French prisons, and it completely depends on the menstruating inmate to provide for themselves, except for exceptional cases. When it comes to gynaecological care, the prison administration itself admits that it is not enough and even sometimes almost non-existent. This could have catastrophic consequences for some, such as Sandrine, who has had to go through a full removal of the uterus after serving her time in detention. She denounces the lack of care provision, since, during the entirety of her time in detention, she has been able to meet up with a gynaecologist only one time. In said appointment the doctor administered only one test, and she never received the results, despite suffering from endometriosis making her part of a category of inmates even

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[https://www.francetvinfo.fr/societe/prisons/surpopulation-carcerale-la-controleuse-des-prisons-exhorte-le-gouvernement-a-af-fronter-la-realite\\_5472822.html](https://www.francetvinfo.fr/societe/prisons/surpopulation-carcerale-la-controleuse-des-prisons-exhorte-le-gouvernement-a-af-fronter-la-realite_5472822.html) [Accessed on Jan 15th 2023].

<sup>34</sup> UNODC. (2010). Règles Des Nations Unies Concernant Le Traitement Des Détenues et l'Imposition de Mesures Non-Privatives de Liberté Aux Délinquantes (Règles de Bangkok). *Assemblée générale des Nations unies*. 21 Dec. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/BKKrules/UNODC\\_Bangkok\\_Rules\\_FRE\\_web.pdf](https://www.unodc.org/documents/justice-and-prison-reform/BKKrules/UNODC_Bangkok_Rules_FRE_web.pdf) [Accessed on Jan 15th 2023].

more vulnerable. Sandrine also underlines the lack of access to medicine when menstruating, testifying that she has had to pretend to have headaches in order to get painkillers for her period pain<sup>35</sup>.

Seeing this, French prisons do not seem to provide any appropriate scheme to allow their prisoners to decently go through their period. Nonetheless, international law does not provide for a mechanism which would demand the improvement of legislations and custody conditions in terms of menstruation.

### **Establishing the right for menstrual hygiene as a universal right**

It is one of the main failures of international institutions regarding the general and global menstrual issues: to have excluded menstrual hygiene from the international agenda by not including it in the 17 Sustainable Development Goals (SDGs) of the United Nations (UN), established in 2015 by the UN General Assembly. However, it is related to issues that have an almost direct link to three goals: those about health (SDG 3), gender equality (SDG 5), and the access to water (SDG 6). Nevertheless, the process of menstruation is not mentioned once in any of the 169 targets of the SDGs. This has limited the implementation of projects for the improvement of menstrual hygiene in more vulnerable environments, such as prisons, but it also prevented lifting the taboo surrounding the subject in order to put it on the table in hope to make it a fundamental right or at least facilitating its access for all.

Beyond the SDGs, menstruation is directly linked to various fundamental human rights<sup>36</sup>. It falls under the right to health, since the lack of adequate hygienic products and lack of clean facilities can have consequences -sometimes critical ones- on the health of menstruating people and constitute real risks for their lives. Periods also play a primary role in the right to non-discrimination and gender equality, since the taboos and thus stigmatisation surrounding periods contributes greatly to the creation of barriers at school, at work, in social life etc for menstruating people, which reinforce gender inequalities. These stigmas are found to be even stronger in prison, where inmates are terrified to have period stains in public, to the point that they refuse to get out of their cell. As a consequence, they also enter into the dynamics of the rights to education and work. Not having access to hygienic protections and adequate medicine can indeed lead students to not attend classes. This phenomenon is recurrent in French prisons, which means that young inmates expose themselves to punishments, and can lead some adults to refuse jobs, even for a better salary. This can also be justified by the fact that some structures, such as French carceral facilities, are simply not appropriate for managing the prerequisites of menstrual hygiene, which pushes to an increase of absences of menstruating persons in education and work structures. Finally, it is also an issue closely linked to the fundamental right to water and sanitation, as menstruation requires a sufficient water supply, as well as private and safe sanitary installations for sanitary and human dignity concerns.

All in all, many of these human rights can be and are questioned when it comes to menstruation, be it in France, and particularly in its prisons, or in other countries and cultures. This underlines the need to clarify some of the issues in order to find ways to make the experience of menstruating a decent one, as it is the taboos on this subject that prevent us from engaging in a discussion about these numerous human rights violations related to menstruation. This is why, establishing a fundamental and universal right for

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<sup>35</sup> FONTENELLE E. (2021). Avoir ses règles en prison : la double peine. *BondyBlog.fr* [online] 30 Avr. Available at: <https://www.bondyblog.fr/societe/sante/avoir-ses-regles-en-prison-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>36</sup> HRW. (2018). Comprendre la gestion de l'hygiène menstruelle et les droits humains qui s'y rapportent. *Human Rights Watch*. [online] Available at: [https://menstrualhygieneday.org/wp-content/uploads/2018/03/mhmdoc\\_fr.pdf](https://menstrualhygieneday.org/wp-content/uploads/2018/03/mhmdoc_fr.pdf) [Accessed on Jan 15th 2023].

menstrual hygiene would open up the debate and make a first step towards deconstructing myths about periods which block the development of inclusive and comprehensive legislations.

Menstruation is not a question of luxury or of optimal hygiene, but really a question of physical and psychological health as well as a social issue, and these dimensions should be understood with all their primordial importance to ensure even the simplest expression of human dignity. The inscription of the right to menstrual hygiene as a fundamental human right could allow highlighting the niche areas of the issue, which are for now far from being addressed by policymakers, such as the situation of incarcerated menstruating people. This would constitute a significant step towards the improvement of custody conditions, but also on a broader level, towards the achievement of various SDGs.

### When will sanitary protections be free for all inmates?

However, without reaction from international institutions, the situation is not likely to change, especially for the most invisible populations such as the inmates. A guard from the Rennes prison, dedicated to the detention of women solely, testifies that: “in reality, it is a national problem, not a local one”<sup>37</sup> underlining the need to establish a national legislation and thus common to all carceral facilities to allow a general improvement of detention conditions and a tangible and durable change.

As a reaction, in October 2019, the Georgette Sand Collective (Collectif Georgette Sand) organised a protest in front of the Ministry of Justice, to which depends on the prison administration, in Paris, Place Vendôme, in order to highlight the menstrual precarity of inmates, but also the lack of governmental actions towards this crisis. About this matter, they established various demands, including the implementation of a quick and easy access to gynaecological care, which represents for now a service rarely offered to inmates. They also claimed tangible improvement in canteens, particularly through the creation of a supply of feminine hygiene with preferential prices, without profit margins, in canteens specifically destined to menstruating people as well as suppressing the over margin on menstrual products. Finally, they asked for, obviously, organic and eco-friendly sanitary protections to be freely available in distributors first, so that furnishers cannot send products which cannot be sold in supermarket due to their toxicity, but also and in particular so that inmates do not have to handle the mental charge to have to ask their protections to people.

Free access to hygienic protections for all inmates who need them would have, without a doubt, various non-negligible positive aspects, and significantly improve life conditions in detention. First and foremost, it would allow the setting up of different prisons and detention centres on an equal step, thanks to equal access to the same protections. As of right now, it is not the case, especially with canteens, which can present different management and thus different products offered. More than this, the free access to sanitary products could relieve inmates from this burden, especially for those who need to rely on external factors to be able to buy their hygienic protections. This external factor is represented for the “needy” ones, by the prison administration, and for the others, usually by their family, although women

<sup>37</sup> [Free translation] Original quote in French: “*en réalité, il s’agit d’un problème national, et non local*”.

ATTIA M., BENDA E. & CINCINATIS J. (2019). Précarité Menstruelle : en prison, des femmes fabriquent des cups avec des bouteilles en plastique. [Nouvelobs.com](https://www.nouvelobs.com/nos-vies-intimes/20190319.OBS10781/precarite-menstruelle-en-prison-les-femmes-fabriquent-de-s-cups-avec-des-bouteilles-en-plastique.html) [online] 19 Mai. Available at: <https://www.nouvelobs.com/nos-vies-intimes/20190319.OBS10781/precarite-menstruelle-en-prison-les-femmes-fabriquent-de-s-cups-avec-des-bouteilles-en-plastique.html> [Accessed on Jan 15th 2023].

inmates are noticeably less supported by their family (partner, parents, children, etc.) than their men counterparts<sup>38</sup>, as if an imprisoned woman were more a source of shame than a man.

Belgium, France's neighbour, just authorised in May 2022 the provision of 300 000 free protections (both tampons and sanitary towels) for its 500 inmates. Belgium used to follow a similar system than the French one, in which only inmates without any income could benefit from a “hygienic kit” with hygienic protections. Those who can support themselves financially, thanks to a salary or allowances, had to supply themselves by ordering their protections, thus adding the delivery fee to the original price. However, Karine Lalieux, the current minister of the Fight against Belgian Poverty, reckons “*may it be at work, at school or in prison, women have to be able to protect themselves when they are menstruating and live a decent life. The access to menstrual protections is a basic need, not a luxury, nor vanity*”<sup>39</sup>. Eyes are now turning to the French government to implement a similar measure, Belgium being the proof that a system similar to the French one, can go through reforms to better attend the needs of its carceral population.

## Conclusion

It seems clear that French inmates are still far from getting access to decent menstrual hygiene, and also respectful of human dignity. However, it seems like the French government and its national prison administration do not give much attention to the situation of the general extreme menstrual precariousness, in sight of the little change on the initiative of the policymakers. Indeed, they leave their responsibility of supporting prisoners to French civil society but also to local staff of carceral facilities, which is already carrying an important responsibility with the inmates.

Nonetheless, it appears as though no mechanism at a European level nor at an international one exists, to encourage France to act in favour of the improvement of menstrual hygiene in the carceral context. Moreover, nothing points to a potential change in the near future, except for the possibility of a debate on the issue thanks to the discussions started by Marlène Schiappa. However, this would probably not even give the prisoners a temporary relief while waiting for a change in the legislation. Nevertheless, the menstruating French prisoners cannot continue to suffer this inhumane treatment, which backs them into a corner and creates situations of insalubrity constituting non-negligible risks for their survival. Facilitating the access to healthy and decent products and infrastructures becomes of primary importance in terms of carceral conditions, human rights, but also humanity.

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<sup>38</sup> Georgette Sand. (2019) Précarité Menstruelle en milieu carcéral : Georgette Sand dénonce la double peine. *Georgettesand.com*. [online] Available at: <http://georgettesand.com/2019/10/30/precarite-menstruelle-en-milieu-carceral-georgette-sand-denonce-la-double-peine/> [Accessed on Jan 15th 2023].

<sup>39</sup> N.D. (2022). Des protections menstruelles gratuites pour les détenues. *Rtbf.be* [online] 17 Mai. Available at: <https://www.rtbf.be/article/des-protections-menstruelles-gratuites-pour-les-detenu-es-10994342> [Accessed on Jan 15th 2023].

## Recommendations

- GROW begs the French State, alongside of the Georgette Sand Collective (Collectif Georgette Sand), to implement a system of free access to organic sanitary protections for all French menstruating inmates, for sanitary and financial reasons;
- GROW claims the diversification of the gynaecological care offer, in order to, amongst other things, ensure a good follow-up of the health of the reproductive system and of the menstrual cycle of each person.
- GROW asks for a diversification of the menstrual hygiene products in all prison canteens, with regulation at national level, resold at the original purchase price, to allow everyone to find an appropriate solution to their personal and specific needs;
- GROW asks for the inclusion of transgender men and every other inmates who doesn't identify as a woman, but is subject to menstruation, in the measures implemented for the improvement of access to sanitary protections and in the writing of potential futures legislations;
- GROW encourages the French government, and the entirety of the international community, to lead the debates on menstruation issues, in order to ensure that the right to menstrual hygiene becomes a fundamental human right, or be perceived as a human right issue;
- GROW encourages the development of better international legislation regarding menstrual hygiene, but also on a more general aspect, regarding the conditions of detention to ensure going through menstruation with dignity.

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