

## TAKING THE BLOODY LINEN OUT OF THE CLOSET: MENSTRUAL HYGIENE AS A PRIORITY FOR ACHIEVING GENDER EQUALITY

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*Regular menstruation signals a woman's health and fertility. Yet, menstruation is surrounded by shame, secrecy, embarrassment, fear, humiliation, silence, taboo, and stigma. Linked to this taboo, many cultural and religious norms—often grounded in patriarchal assumptions—seek to prevent contact with menstruating women and girls in order to avoid 'contamination' or 'becoming impure'. To some extent, this perception of menstruation is a paradox, given that motherhood is glorified. However, menstruation is not perceived as 'feminine', and it does not conform to the stereotypical role and behavior of women. Such stereotypes require women to be beautiful and beautified, deodorized and fresh, not bloody and smelly. Hence, women and girls are expected to hide menstruation and go to great length to conceal it.*

*Against this background, the Article explores challenges for menstrual hygiene at the practical and policy level. It examines how menstrual hygiene is situated in the human rights framework, in particular gender equality, how menstrual hygiene can be defined in human rights terms and how using the framework of human rights and substantive equality may contribute to giving menstrual hygiene greater visibility and prioritizing the development of appropriate strategies and solutions.*

*The taboo and silence around menstruation makes menstruation a non-issue. Despite making up half of the population, women's requirements are overlooked and neglected, sometimes even deliberately ignored. This low priority and lack of attention at all levels—from international policy-making to the private sphere—has devastating impacts on women and girls' lives. It prevents women from reaching their full potential and achieving gender equality. Women and girls lose days of*

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*school and work with far-reaching implications for their education, well-being, and livelihoods; they are subjected to cultural prescriptions that may amount to harmful practices.*

*The contribution of the human rights framework lies in drawing attention to the plight of women and girls who are not able to manage their menstruation adequately by highlighting States' and other actors' obligations and responsibilities with respect to menstruation and its hygienic management. The framework of human rights and substantive equality requires guaranteeing women the exercise and enjoyment of human rights on the basis of equality. Poor menstrual hygiene, stigmatization, or cultural, social, or religious practices that limit menstruating women and girls' capacity to work, to get an education or to engage in society must be eradicated. Considering menstruation as what it is—a fact of life—and integrating this view at all levels, will contribute to enabling women and girls to manage their menstruation adequately, without shame and embarrassment—with dignity.*

## TABLE OF CONTENTS

Introduction: Mentioning the Unmentionable.....	3
I. Challenges for Menstrual Hygiene .....	7
A. How Women and Girls Cope .....	7
B. A Low Priority in Policy and Practice .....	11
II. Situating Menstrual Hygiene in the Human Rights Framework .....	13
A. Human Dignity and the Right to Privacy .....	14
B. Gender Equality .....	15
C. Non-Discrimination and Equality: Intersectionality.....	17
D. The Human Right to Education.....	18
E. The Human Right to Work and Just and Favorable Working Conditions .....	19
F. The Human Right to Health .....	20
G. The Human Rights to Water and Sanitation.....	20
III. Defining Menstrual Hygiene in Terms of Human Rights .....	21
A. Materials for Absorbing Blood.....	22
B. Private Space for Changing and Washing .....	23
C. Facilities for Disposal.....	24
D. Information, Education and Awareness .....	25
IV. Identifying Appropriate Strategies Based on Human Rights Obligations .....	25
A. Ensuring Human Rights in the Private Sphere.....	25
B. Creating an Enabling Environment .....	26
C. Ensuring Participation .....	27
D. Adapting Technical Solutions and Facilities.....	28
E. Raising Awareness and Providing Education .....	28

2014]	TAKING THE BLOODY LINEN OUT OF THE CLOSET	3
	F. Breaking the Taboo Around Menstruation .....	29
	G. Making Sure that Cultural Prescriptions Do Not Result in Harmful Practices.....	30
	H. Involving Men and Boys .....	33
	I. Embedding Menstrual Hygiene in Policies and Programs.....	34
	V. Conclusion.....	36

### INTRODUCTION: MENTIONING THE UNMENTIONABLE

Regular menstruation signals a woman’s health and fertility. Over the course of an average woman’s life, she will menstruate for 3000 days.<sup>1</sup> Women and girls of menstruating age constitute roughly a quarter of the global population.<sup>2</sup> A girl starts menstruating as part of reaching puberty—a moment celebrated in many of the world’s cultures, with rituals, ceremonies, and rites of passage.<sup>3</sup>

Yet, menstruation remains a taboo, spoken of through euphemisms. In many cultures, menstruating women and girls are seen variously as ‘smelly’, ‘dirty’, ‘shameful’, ‘impure’, or even ‘contaminated’. Many women have internalized the stigma around menstruation describing that they feel dirty, unclean, and ashamed of their menstruation.<sup>4</sup> It is a paradox that “we shroud this natural phenomenon which is responsible for the birth and regeneration of humanity in shame, silence and indignity.”<sup>5</sup>

Menstruation is an integral part of female identity. Yet, it is concealed and devalued by a double silence. Menstruation is not perceived as feminine. It goes against ‘feminine’ attributes, by being bloody, smelly, and natural.<sup>6</sup> At a broader level, the taboo around menstruation is a signifier of the devaluation of the female

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<sup>1</sup> Rokeya Ahmed & Kabita Yesmin, *Menstrual Hygiene: Breaking the Silence*, in BEYOND CONSTRUCTION: USE BY ALL: A COLLECTION OF CASE STUDIES FROM SANITATION AND HYGIENE PROMOTION PRACTITIONERS IN SOUTH ASIA, 283, 283 (2008), available at <http://www.ircwash.org/resources/beyond-construction-use-all> [hereinafter Ahmed & Yesmin, *Menstrual Hygiene*].

<sup>2</sup> *Id.* at 283.

<sup>3</sup> Elizabeth Arveda Kissling, *On the Rag On Screen: Menarche in Film and Television*, 46 SEX ROLES 5 (2002).

<sup>4</sup> Janet Lee, *Menarche and the (Hetero) Sexualization of the Female Body*, in THE POLITICS OF WOMEN’S BODIES: SEXUALITY, APPEARANCE AND BEHAVIOR 85, 85 (Rose Weitz ed. 2003) [hereinafter Lee, *Menarche*].

<sup>5</sup> Archana Patkar, *quoted in* ROSE GEORGE, CELEBRATING WOMANHOOD: BREAK THE SILENCE! 20 (Water Supply and Sanitation Collaborative Council ed., 2013), available at [www.wsscc.org/sites/default/files/content/Research\\_article\\_files/mhm\\_-\\_celebrating\\_womanhood\\_final\\_report.pdf](http://www.wsscc.org/sites/default/files/content/Research_article_files/mhm_-_celebrating_womanhood_final_report.pdf).

<sup>6</sup> See Tomi-Ann Roberts, Jamie L. Goldenberg, Cathleen Power & Tom Pyszczynski, “*Feminine Protection*”: *The Effects of Menstruation on Attitudes Towards Women*, 26 PSYCH. OF WOMEN Q. 131, 131 (2002).

as Other and inferior. In *The Second Sex*,<sup>7</sup> Simone de Beauvoir analyzes how women's position as Other and inferior is created and maintained historically and culturally through processes of socialization, customs, laws, and institutions.<sup>8</sup> With regard to menstruation she points out:

Just as the penis gets its privileged value from the social context, the social context makes menstruation a malediction. One symbolizes virility and the other femininity: it is because femininity means alterity and inferiority that its revelation is met with shame.<sup>9</sup>

This observation is confirmed by a recent experiment: The Tampon Experiment, conducted by a group of psychologists in the United States, which examined the influence of being reminded of a woman's menstruation on how she is perceived by others. The study found that dropping a tampon (i.e. a visible reminder that a woman menstruates) led to a lower evaluation of a woman's competence, a decrease in liking for her, and a marginal tendency to sit further apart from her.<sup>10</sup> The experiment demonstrates how the status of a menstruating woman—as an inherently female characteristic—is linked to her devaluation.

Despite being an integral part of being female, menstruation goes against 'feminine' attributes, with such attributes being deeply influenced by gender stereotypes. In their book on the topic, Cook and Cusack distinguish sex, sexual, sex role, and compounded gender stereotypes. While sex and sexual stereotypes focus on the biological differences and sexual interaction, respectively,<sup>11</sup> sex role stereotypes relate to what is considered an appropriate role or behavior for women or men.<sup>12</sup> One such stereotype is that women should be beautiful and beautified adhering to social norms, such as wearing make-up, jewelry, and 'feminine' hairstyles. The tampon experiment included a control condition: dropping a hair clip instead of a tampon—a highly feminine item—which is not linked to natural bodily functions, but rather represents a woman's own efforts to beautify herself.

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<sup>7</sup> SIMONE DE BEAUVOIR, *THE SECOND SEX* (unabridged ed., 2011) [hereinafter SIMONE DE BEAUVOIR, *THE SECOND SEX*].

<sup>8</sup> On the perception of females as inferior see more broadly NANCY TUANA, *THE LESS NOBLE SEX: SCIENTIFIC, RELIGIOUS AND PSYCHOLOGICAL CONCEPTIONS OF WOMEN'S NATURE* (1993); JUDITH LORBER, "Night to His Day": *The Social Construction of Gender*, in *PARADOXES OF GENDER* (1994). More specifically, the devaluation of female occupation has been discussed extensively, see, e.g., Paula England, *The Gender Revolution: Uneven and Stalled*, 24 *GENDER & SOCIETY* 149 (2010); Charlotta Magnusson, *Gender, Occupational Prestige and Wages: A Test of Devaluation Theory*, 25 *EUR. SOC. REV.* 87 (2009). The perception of women as subordinate and inferior has also been discussed as underlying violence against women, see, e.g., U.N. Human Rights Council, Rep. of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Rashida Manjoo, ¶ 34, U.N. Doc. A/HRC/17/26 (May 2, 2011), available at [www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf).

<sup>9</sup> DE BEAUVOIR, *supra* note 7, at 329.

<sup>10</sup> Roberts, et al., *supra* note 6, at 136.

<sup>11</sup> REBECCA J. COOK & SIMONE CUSACK, *GENDER STEREOTYPING, TRANSNATIONAL LEGAL PERSPECTIVES* 25 (2010).

<sup>12</sup> *Id.* at 28.

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 5

The different results demonstrate perceptions and stereotypes around femininity: Whereas the hairclip is perceived as feminine, the tampon (as a signifier of menstruation) reminds us of the bodily, smelly, bloody—unfeminine—functions of the female body.<sup>13</sup> This perception of menstruation as not conforming to sex role stereotypes—a real paradox given that menstruation is inherently female—helps to explain the taboos around the issue.

Linked to the taboo around menstruation, many cultural and religious norms—often grounded in patriarchal assumptions—seek to prevent contact with menstruating women and girls in order to avoid ‘contamination’ or ‘becoming impure’. They restrict menstruating women and girls from full engagement in their usual everyday activities and social lives—limiting their mobility, and preventing them from taking part in cultural, social, and religious activities. In extreme cases, women and girls who are menstruating may not sleep in their own beds or inside the house. In other cases, they may not cook or eat with the rest of the family, may have dietary restrictions, or be banned from using the usual water sources or toilets.<sup>14</sup>

Even where menstruating women and girls are not faced with such restrictions, menstruation remains invisible. No one is supposed to know when a woman or girl is menstruating, and if she is facing a problem or suffering pain, she is expected to cope in silence.<sup>15</sup> Women and girls should refrain from discussing menstruation, certainly in public and in mixed company, but often even in family circles,<sup>16</sup> internalizing the stigma around menstruation. This silence—sometimes even between mothers and daughters—results in many girls being ignorant of their own development, of puberty, and of what is happening to their bodies when they first menstruate. Studies in Rajasthan and Uttar Pradesh, India, found that more than half of girls had no information about menstruation prior to menarche.<sup>17</sup> When such understanding is lacking, girls may be frightened and anxious about menarche

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<sup>13</sup> Roberts, et al., *supra* note 6, at 136.

<sup>14</sup> See, e.g., Suneela Garg, Nandini Sharma & Ragini Sahay, *Socio-Cultural Aspects of Menstruation in an Urban Slum in Delhi, India*, 9 REPROD. HEALTH MATTERS 16, 20 *et seq.* (2001); See also VARINA TJON-A-TEN, MENSTRUAL HYGIENE: A NEGLECTED CONDITION FOR THE ACHIEVEMENT OF SEVERAL MILLENNIUM DEVELOPMENT GOALS 6 *et seq.* (Oct. 10, 2007) (for examples of restrictions faced in various countries across the world).

<sup>15</sup> Shannon A. McMahon, Peter J. Winch, Bethany A. Caruso, Alfredo F. Obure, Emily A. Ogutu, Imedla A. Ochari & Richard Rheingans, *The Girl with Her Period is the One to Hang Her Head, Reflections on Menstrual Management among Schoolgirls in Rural Kenya*, 11 BMC INT’L. HEALTH & HUM. RTS. 1, 7 (2011); Xóchitl Castañeda, Cecilia García & Ana Langer, *Ethnography of Fertility and Menstruation in Rural Mexico*, 42 SOC. SCI. MED. 133, 135-139 (1996).

<sup>16</sup> See Elizabeth Arveda Kissling, *Bleeding out Loud: Communication About Menstruation*, 6 FEMINISM & PSYCHOL. 481, 484; SOPHIE LAWS, ISSUES OF BLOOD: THE POLITICS OF MENSTRUATION, at 42 *et seq.* (Jo Campling ed., 1990).

<sup>17</sup> MARNI SOMMER, EMILY VASQUEZ, NANCY WORTHINGTON & MURAT SAHIN, WASH IN SCHOOLS EMPOWERS GIRLS’ EDUCATION: PROCEEDINGS OF THE MENSTRUAL HYGIENE MANAGEMENT IN SCHOOLS VIRTUAL CONFERENCE 2012, UNICEF, 17 (2013), [www.unicef.org/wash/schools/files/WASH\\_in\\_Schools\\_Empowers\\_Girls\\_Education\\_Proceedings\\_of\\_Virtual\\_MHM\\_conference.pdf](http://www.unicef.org/wash/schools/files/WASH_in_Schools_Empowers_Girls_Education_Proceedings_of_Virtual_MHM_conference.pdf) [hereinafter WASH IN SCHOOLS].

instead of understanding it as a natural process. Where women and girls suffer from period pain—often from entirely treatable problems—rather than seeking assistance, they tend to suffer in silence, with mothers often equally ignorant of simple remedies and unwilling to discuss the problems for cultural reasons.

The taboo around menstruation is further demonstrated by an extraordinary array of euphemisms and slang expressions in all languages for menstruation—in English alone, women talk of being ‘visited by Auntie Flo’, ‘riding the cotton pony’, being ‘on the rag’, ‘in that time of the month’, and—perhaps most tellingly—suffering ‘the curse’—evidence of the uneasiness most women feel when speaking about menstruation.<sup>18</sup> Commercial advertisements add to the perceived need of having to hide menstruation, through usually using blue liquid to demonstrate the absorptive quality of sanitary products, concealing that it is meant to absorb blood. They emphasize secrecy, embarrassment, and the need to feel ‘fresh’.<sup>19</sup>

The uneasiness, taboo, embarrassment, shame, and stigma around menstruation not only affect how women and girls feel and speak about menstruation, but also make it difficult for women and girls to cope at a very practical level. More broadly, they hinder the development of adequate solutions for ensuring good menstrual hygiene practices, giving the issue a low priority among policy-makers.

Gloria Steinem, in a famous quote, challenged all actors in society to consider the gender stereotypes linked to menstruation, and to ask why menstrual hygiene is accorded such low priority:

So what would happen if suddenly, magically, men could menstruate and women could not? Clearly, menstruation would become an enviable, worthy, masculine event: Men would brag about how long and how much . . . Congress would fund a National Institute of Dysmenorrhea to help stamp out monthly discomforts . . . Sanitary supplies would be federally funded and free.<sup>20</sup>

Against this background, this paper explores challenges in managing menstruation at the practical and policy level (Part I), it examines how menstrual hygiene is situated in the human rights framework, in particular gender equality (Part II), how menstrual hygiene can be defined in human rights terms (Part III) and how using the framework of human rights and substantive equality may contribute to giving menstrual hygiene greater visibility and prioritizing the development of

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<sup>18</sup> See Elizabeth Arveda Kissling, “*That’s Just a Basic Teen-Age Rule*”: *Girls’ Linguistic Strategies for Managing the Menstrual Communication Taboo*, 24 J. APPL. COMM. RES. 292, 298 (1996).

<sup>19</sup> Ingrid Johnston-Robledo & Joan C. Chrisler, *The Menstrual Mark: Menstruation as Social Stigma*, 68 SEX ROLES 9, 11 (2013); ELIZABETH ARVEDA KISSLING, CAPITALIZING ON THE CURSE: THE BUSINESS OF MENSTRUATION 12 (2006) [hereinafter KISSLING, CAPITALIZING ON THE CURSE].

<sup>20</sup> GLORIA STEINEM, *If Men Could Menstruate: A Political Fantasy*, in OUTRAGEOUS ACTS AND EVERYDAY REBELLIONS 338 (1983).

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 7

appropriate strategies and solutions (Part IV).

## I. CHALLENGES FOR MENSTRUAL HYGIENE

### A. *How Women and Girls Cope*

In many developing countries, women and girls often lack access to or the financial means for safe and hygienic menstrual materials, and will use tissue paper, rags, straw, sand, mud, or newspaper.<sup>21</sup> They also frequently lack a private and safe place to change sanitary materials, to wash themselves, and to wash and dry sanitary materials, when they are re-used.

With limited access to waste management systems, disposal of sanitary materials can also be challenging. One commentator speaking from her personal experience of growing up in Sierra Leone explained, “that [she] hid [her] sanitary cloths under the bed to dry, out of shame.”<sup>22</sup> Women and girls then often have no choice but to re-use soiled and damp materials.<sup>23</sup> Where women and girls do not have access to adequate, private sanitation facilities, changing menstrual pads can be a particular challenge. During her mission to Slovenia, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation met with women who felt ashamed about the conditions for practicing menstrual hygiene.<sup>24</sup> Women and girls in the Mukuru slum in Nairobi (and many other places around the world) feel similarly embarrassed. Living in one-room dwellings with their children, siblings and fathers and no bathrooms or toilets, they often have no choice but to squat in front of everyone else to change sanitary pads. In these situations, people sometimes use tins for urinating, in particular at night. However, one woman pointed out: “During my monthly period I can’t urinate in the tin so I have to wait until morning. Because sometimes some drops of blood can remain in the tin and everyone uses the tin so it’s embarrassing.”<sup>25</sup>

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<sup>21</sup> GEORGE, *supra* note 5, at 4.

<sup>22</sup> Anita Koroma, *quoted in* GEORGE, *supra* note 5, at 11.

<sup>23</sup> ADAM BIRAN, VAL CURTIS, OM PRASAD GAUTAM, KATIE GREENLAND, SIRAJUL ISLAM, WOLF-PETER SCHMIDT, CHRISTINE SIJBESMA, COLIN SUMPTER & BELEN TORONDEL, BACKGROUND PAPER ON MEASURING WASH AND FOOD HYGIENE PRACTICES: DEFINITION OF GOALS TO BE TACKLED POST 2015 BY THE JOINT MONITORING PROGRAMME 58 (2012), [www.wssinfo.org/fileadmin/user\\_upload/resources/Hygiene-background-paper-19-Jun-2012.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/Hygiene-background-paper-19-Jun-2012.pdf); SALLY PIPER-PILLITTERI, SCHOOL MENSTRUAL HYGIENE MANAGEMENT IN MALAWI: MORE THAN TOILETS 10 (2011), [www.shareresearch.org/Resource/Details/menstrualhygienemanagement\\_malawi](http://www.shareresearch.org/Resource/Details/menstrualhygienemanagement_malawi).

<sup>24</sup> U.N. Human Rights Council, Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Addendum: Mission to Slovenia, ¶ 36, U.N. Doc. A/HRC/18/33/Add.2 (July 4, 2011), *available at* [www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add2_en.pdf) [hereinafter UN Special Rapporteur on Water and Sanitation, Mission to Slovenia].

<sup>25</sup> Extract from story prepared by Edith Kalela from Muungano wa Wanavijiji/Akiba Mashinani Trust, on file with the authors.

Girls often do not attend school during the days they menstruate, and in some cases drop out entirely from the onset of their first menstruation.<sup>26</sup> This is particularly marked where schools do not provide adequate sanitary facilities, or where facilities do not ensure privacy or gender-separation. Many girls often also feel vulnerable to bullying by other students, self-conscious due to the smell, and worried that they will stain their clothes.<sup>27</sup> A male commentator pointed out that “it had never occurred to [him] that women and girls ‘never wear white’ when they have their period. As it will never have occurred to the thousands and thousands of headmasters of schools over the world that burden girls with light colored uniform dresses.”<sup>28</sup>

Studies show that the lack of access to adequate facilities to manage menstruation safely and privately increases school absenteeism. For instance, a study in India found that girls drop out for approximately five days per month.<sup>29</sup> Similarly, in relation to employment, a study in Bangladesh showed that women tend to not attend work for up to six days per month.<sup>30</sup>

As far as the health impacts of poor menstrual hygiene are concerned, itching and discharges have been reported, but it is uncertain whether or not this is attributed to poor management of menstruation. One study found a higher incidence of reproductive tract infections in cases of inadequate menstrual hygiene management, in particular for socio-economically deprived women.<sup>31</sup> Moreover, many women and girls experience pain during their periods, and access to and affordability of health services—even as simple as pain relief—can be difficult. There has been very little comprehensive research on the impacts on health, largely due to the lack of importance given to this issue. More research is needed to verify

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<sup>26</sup> Fareda Banda, *Article 10, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* at 268 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., 2012) [hereinafter Banda, Article 10]; U.N. Human Rights Council, Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation on Stigma and the Realization of the Human Rights to Water and Sanitation, ¶ 18, U.N. Doc. A/HRC/21/42 (July 2, 2012), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42_en.pdf).

<sup>27</sup> Teresa Mahon & Maria Fernandes, *Menstrual Hygiene in South Asia: A Neglected Issue for WASH (Water, Sanitation and Hygiene) Programmes*, 18 *GENDER & DEV.* 99, 104-5 (2010), *Menstrual Hygiene in South Asia*; BIRAN ET AL., *supra* note 23, at 59.

<sup>28</sup> GEORGE, *supra* note 5, at 7.

<sup>29</sup> *Id.* at 3; See also Peter K. Mutunga, *Girls' Participation in Primary Schools*, in PETER MUTUNGA & JULIE STEWART, *LIFE SKILLS, SEXUAL MATURATION AND SANITATION: WHAT'S (NOT) HAPPENING IN OUR SCHOOLS? AN EXPLANATORY STUDY FROM KENYA* 141 (2003) (on the lack of opportunities for managing menstruation hygienically and its link to school absenteeism).

<sup>30</sup> GEORGE, *supra* note 5, at 3.

<sup>31</sup> SANITATION AND HYGIENE APPLIED RESEARCH FOR EQUITY (SHARE) & WATER SUPPLY AND SANITATION COLLABORATIVE COUNCIL (WSSCC), *SOCIAL AND PSYCHOLOGICAL IMPACT OF LIMITED ACCESS TO SANITATION: THE LINK BETWEEN MHM AND REPRODUCTIVE TRACT INFECTIONS, AND BETWEEN WASH PRACTICES AND PREGNANCY*, RESEARCH BRIEFING NOTE (Oct. 2014), [http://www.sharesearch.org/LocalResources/Limited\\_Access.pdf](http://www.sharesearch.org/LocalResources/Limited_Access.pdf).



## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 9

the health impacts of poor menstrual hygiene.<sup>32</sup>

For most women and girls in the developed world, there is—generally—adequate opportunity for safe and convenient management of their periods. Sex education, including about menstruation, is commonly part of school curricula. Days of school or work are generally no longer missed due to period management needs. There is a wide range of sanitary materials available to manage menstruation, including sanitary towels, tampons, ‘mooncups’, and other options. They are generally affordable, with sales taxes often waived or reduced on sanitary products.<sup>33</sup> Water and soap for washing the body, hands, and clothing are generally available, and—if not directly next to a toilet—in close proximity.

However, the stigma and silence surrounding menstruation still has implications for the perception of menstruation, and for some women practical challenges persist. Women and girls feel the need to conceal when they are menstruating. Many women describe how they hid soiled underwear in the back of the closet when they first started menstruating, how they modify clothes and activities to prevent anyone from noticing that they are menstruating, and how they avoid buying sanitary materials in stores where they would be recognized.<sup>34</sup>

Moreover, women may have more difficulties finding adequate sanitation facilities when outside the home or at their place of work.<sup>35</sup> Women with disabilities may face particular challenges in accessing facilities and managing menstruation. Further, there is still often a problem when it comes to unnecessary pain, with women waiting an average of seven years before they seek medical assistance and relief for heavy periods or period pain that cannot be managed with simple pain relief medications.<sup>36</sup> Health problems related to menstruation are generally straightforward to manage if they are caught early, or treated properly. Endometriosis and other gynecological health issues can have a negative effect on women’s periods, whether through period pain, heavy bleeding, or other symptoms, such as headaches, iron deficiency etc., and can be treated adequately.<sup>37</sup>

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<sup>32</sup> BIRAN ET AL., *supra* note 23; *see also* Colin Sumpter & B. Torondel, *A Systematic Review of the Health and Social Effects of Menstrual Hygiene Management*, PLOS ONE 8 (2013), [www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0062004](http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0062004).

<sup>33</sup> *See* the example of the UK, where the value-added tax for menstrual products is reduced: HM REVENUE AND CUSTOMS, NOTICE 701/18 WOMEN’S SANITARY PROTECTION PRODUCTS (2011), *available at* [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_ShowContent&id=HMCE\\_CL\\_000098&propertyType=document#downloadopt](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000098&propertyType=document#downloadopt).

<sup>34</sup> Lee, *Menarche*, *supra* note 4, at 86, 94.

<sup>35</sup> Public toilets often do not meet human rights standards for safety and hygiene. Some professions not working in an office environment entirely rely on such facilities. For others, facilities at the work place may also be inadequate.

<sup>36</sup> Nawroth et al. *in* BEATE RICHTER & KLAUS RICHTER, ENDOMETRIOSE: AKTUELLE ASPEKTE DER HISTO-PATHOLOGISCHEN UND MOLEKULARPATHOLOGISCHEN DIAGNOSTIK 2 (2013).

<sup>37</sup> *Id.*

Whether in the developing or the developed world, some groups of women face exacerbated challenges in managing menstruation. For instance, homeless women, women living in informal settlements, prisoners, women with disabilities, or sex workers may experience aggravated challenges in meeting their menstrual hygiene needs.<sup>38</sup> A study on pavement dwellers found that adolescent girls living on the streets in Hyderabad usually cannot afford commercial sanitary napkins. Moreover, they find it impossible to wash and dry cloths for managing menses due to a lack of safe places. As a result, they end up “using pieces of old cloth or garments they found on the streets.”<sup>39</sup>

Women in detention often face appalling conditions for the management—or rather non-management—of their menstruation. A study conducted in Malawi on police and court cells found that cells have mostly no water and no toilets, that there are no clean facilities, and that women are not provided with any materials.<sup>40</sup> Women have no privacy, but are exposed to other prisoners and officers including men when using the toilet or otherwise trying to manage their menstruation.<sup>41</sup> If women are menstruating at the time they have to appear in court, women often had no opportunity to manage their menses and consequently soil their clothes while in court.<sup>42</sup> Overall, the study demonstrates that the requirements of women managing their menstruation have not been thought about in prison and detention policies.<sup>43</sup> But beyond neglecting their needs, women are sometimes deliberately denied access to facilities and materials needed to manage menstruation.<sup>44</sup> One of the women interviewed for the study stated: “Menstruation makes women vulnerable and we end up being punished twice by the law enforcers because they refuse to help us.”<sup>45</sup> Conditions in detention facilities for menstrual hygiene are inadequate in many other countries. In Europe, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found inadequate provisions for menstrual hygiene in several prisons.<sup>46</sup>

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<sup>38</sup> SARAH HOUSE, THÉRÈSE MAHON & SUE CAVILL, MENSTRUAL HYGIENE MATTERS: A RESOURCE FOR IMPROVING MENSTRUAL HYGIENE AROUND THE WORLD 152 (2012), [www.wateraid.org/~media/Files/Global/MHM%20files/Compiled\\_LR.pdf](http://www.wateraid.org/~media/Files/Global/MHM%20files/Compiled_LR.pdf).

<sup>39</sup> Joshi Deepa & Joy Morgan, *Pavement Dwellers' Sanitation Activities – Visible but Ignored*, 25 WATERLINES 19, 21 (2007).

<sup>40</sup> ESME JYNET CHOMBO, WHO IS FOOLING WHO? WOMEN AND THE NON-MANAGEMENT OF MENSTRUATION IN POLICE AND COURT CELLS IN MALAWI 44 (2008).

<sup>41</sup> *See, e.g., id.* at 35, 41-42.

<sup>42</sup> *Id.* at 51.

<sup>43</sup> *Id.* at 58.

<sup>44</sup> *E.g., id.* at 35.

<sup>45</sup> CHOMBO, *supra* note 40, at 50 quoting Pamela Nyrienda).

<sup>46</sup> *See, e.g.,* Council of Europe, Rep. to the Bulgarian Government on the Visit to Bulgaria Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2006, ¶¶ 51, 85, Doc. CPT/Inf. (2008) 11 (Feb. 28, 2008), available at <http://www.cpt.coe.int/documents/bgr/2008-11-inf-eng.pdf>. *See also* a study on menstrual hygiene in prisons conducted in England, Catrin Smith, *A Period in Custody: Menstruation and the*

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 11

Moreover, women and girls with disabilities often face particular challenges with regard to menstrual hygiene due to a lack of access to adequate facilities that are designed according to their needs. They might also face difficulties in accessing water for hygiene. Apart from these practical challenges, women with disabilities are even more likely to be excluded from decision-making on appropriate services and facilities with the result that their particular needs and preferences are not being met.<sup>47</sup> In some instances, women with disabilities are involuntarily sterilized or subjected to long-term contraceptive methods based on a claim that this would simplify their menstruation needs.<sup>48</sup> Where taken without the consent of the individual, such methods may violate human rights and amount to torture and ill-treatment.<sup>49</sup>

All in all, women and girls face significant challenges and develop an extraordinary array of coping mechanisms to manage menstruation, including adapting the materials they use to absorb blood, staying away from school and work, and finding ways to hide the sheer fact of menstruating. These coping mechanisms not only demonstrate the difficulties women and girls face, but also the extent to which they have internalized the stigma of menstruation.

*B. A Low Priority in Policy and Practice*

The fact that menstruation is still a taboo has implications at the policy level. Menstrual hygiene continues to receive limited attention in policies, research priorities, programs, and resource allocation. For instance, very few countries have established national targets for hygiene promotion programs,<sup>50</sup> and out of the total water, sanitation, and hygiene (“WASH”) expenditure, only about two percent is spent on hygiene promotion.<sup>51</sup> Most sanitation programs do not consider the needs for managing menstruation, latrine design usually does not address the specific needs of women and girls, and where hygiene promotion programs exist, many exclude the issue of menstrual hygiene, focusing instead largely on hand washing practices.<sup>52</sup> Although an integral part of WASH requirements, menstrual hygiene is still largely absent from the discourse, policy, and practice on WASH.

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*Imprisoned Body*, INTERNET J. OF CRIMINOLOGY (2009), [www.internetjournalofcriminology.com/Smith\\_A\\_Period\\_in\\_Custody.pdf](http://www.internetjournalofcriminology.com/Smith_A_Period_in_Custody.pdf).

<sup>47</sup> HOUSE ET AL., *supra* note 38.

<sup>48</sup> Jackie Rodgers, *Pain, Shame, Blood, and Doctors: How Women with Learning Difficulties Experience Menstruation*, 24 WOMEN’S STUDIES INT’L. F. 523, 532, 536 (2001).

<sup>49</sup> U.N. G.A., *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Note by the Secretary General*, ¶¶ 40, 46, and 60, U.N. Doc. A/63/175 (July 28, 2008), available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/GA63session.aspx>.

<sup>50</sup> UN WATER AND WHO, GLASS 2012 REPORT, UN-WATER GLOBAL ANALYSIS AND ASSESSMENT OF SANITATION AND DRINKING-WATER REP., THE CHALLENGE OF EXTENDING AND SUSTAINING SERVICES 16 (2012), [http://www.un.org/waterforlifedecade/pdf/glaas\\_report\\_2012\\_eng.pdf](http://www.un.org/waterforlifedecade/pdf/glaas_report_2012_eng.pdf).

<sup>51</sup> *Id.* at 29.

<sup>52</sup> See Ahmed & Yesmin, *supra* note 1.

Looking at other policy areas linked to menstrual hygiene, there are similar gaps. The Beijing Platform for Action adopted at the Fourth World Conference on Women in 1995 addresses reproductive health and calls for sexual education<sup>53</sup> but does not mention menstrual hygiene explicitly. Similarly, the Cairo Programme of Action from 1994 addresses sexual and reproductive health,<sup>54</sup> but without explicit reference to menstruation and the needs it creates. Turning to the most recent resolutions of the World Health Assembly, neither the resolution on drinking water and sanitation,<sup>55</sup> nor the resolution on reproductive health,<sup>56</sup> nor the resolution on child and adolescent health and development<sup>57</sup> mention menstrual hygiene.

Similarly, in the context of the UN human rights system, the issue of menstruation and menstrual hygiene is barely mentioned. None of the international human rights instruments explicitly refer to menstruation. While one would not expect reference to such a specific issue in the general human rights treaties, other instruments are more specific. For instance, while the Standard Minimum Rules for the Treatment of Prisoners mention water and toilet articles necessary for health and cleanliness<sup>58</sup> as well as sanitary installations<sup>59</sup> and then go into as much detail as spelling out that men should be enabled to shave regularly<sup>60</sup>—no comparable provision is made to enable women to deal with menstruation adequately. Moreover, the UN human rights mechanisms including the treaty bodies and Special Procedures very rarely consider the issue of menstruation and its management.<sup>61</sup> The UN Human Rights Council acknowledged in 2014, for the

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<sup>53</sup> U.N. Rep. of the Fourth World Conference on Women, Beijing, Sept. 4-15, 1995, ¶ 83, U.N. Doc. A/CONF.177/20, (1996), [www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf](http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf).

<sup>54</sup> U.N. Rep. of the International Conference on Population and Development, Cairo, Sept. 5-13, 1994, ¶ 128, U.N. Doc. A/CONF.171/13/Rev.1 (1995), *available at* [www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd\\_eng.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_eng.pdf) [hereinafter Cairo Programme of Action].

<sup>55</sup> World Health Assembly, Res. 64.24 Drinking-Water, Sanitation and Health (2011).

<sup>56</sup> World Health Assembly, Res. 57.12 Reproductive Health: Strategy to Accelerate Progress Towards the Attainment of International Development Goals and Targets (2004).

<sup>57</sup> World Health Assembly, Res. 56.21 Strategy for Child and Adolescent Health and Development (2003).

<sup>58</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted by the First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, ¶ 15, *available at* [www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx) [hereinafter UN Minimum Rules for the Treatment of Prisoners].

<sup>59</sup> *Id.* ¶ 12.

<sup>60</sup> *Id.* ¶ 16.

<sup>61</sup> A search in the Universal Human Rights Index brings very few results. The U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation has regularly touched on the issue in her country and thematic reports: U.N. Human Rights Council, Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to Tuvalu, ¶¶ 29, 32, U.N. Doc. A/HRC/24/44/Add.2 (2013), [hereinafter UN Special Rapporteur on Water and Sanitation, Mission to Tuvalu]; U.N. Human Rights Council, Rep. of the Special Rapporteur on Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to Kiribati, ¶¶ 3, 35, 36, U.N. Doc. A/HRC/24/44/Add.1 (2013), [hereinafter UN Special Rapporteur on Water and Sanitation, Mission to Kiribati]; U.N. Human Rights Council, Rep. of the

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 13

first time, that the lack of menstrual hygiene management and the stigma associated with menstruation have a negative impact on gender equality.<sup>62</sup>

The human rights framework has a lot to offer: it provides an approach to clarifying the challenges associated with ensuring good menstrual hygiene practices and the underlying structural causes for the difficulties women and girls face, as well as identifying measures responding to and limiting these difficulties. In the following section, this Article therefore seeks to situate menstrual hygiene in the human rights framework, examining the linkages with various human rights and defining menstrual hygiene in human rights terms before turning to the identification of appropriate strategies for ensuring greater priority and enabling women and girls to practice adequate menstrual hygiene.

## II. SITUATING MENSTRUAL HYGIENE IN THE HUMAN RIGHTS FRAMEWORK

Adequate hygiene practices—including menstrual hygiene—are a significant factor in the realization of many human rights. The lack of adequate facilities for the management of menstrual hygiene raises issues for an individual's right to privacy, human dignity, gender equality, and for non-discrimination and equality more broadly. As pointed out above, not being able to manage her menstruation with safety and dignity has significant repercussions for a woman's or girl's education, livelihood, and productive opportunities. As such, a lack of adequate facilities for menstrual hygiene also has negative impacts on the right to education, the right to work, and the right to health. Moreover, hygiene is closely associated

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Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to Thailand, ¶¶ 3, 25, U.N. Doc. A/HRC/24/44/Add.3 (2013), [hereinafter UN Special Rapporteur on Water and Sanitation, Mission to Thailand]; UN Special Rapporteur on Water and Sanitation, Mission to Slovenia, *supra* note 24, ¶ 36; U.N. Human Rights Council, Joint Rep. of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepulveda Carmona, and the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to Bangladesh, ¶¶ 18, 69, 125(e), U.N. Doc. A/HRC/15/55 (2010), [hereinafter Independent Expert on Water and Sanitation, Mission to Bangladesh]. All reports *available at* [www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx). The Committee on Economic, Social, and Cultural Rights has addressed menstruation in its Concluding Observations on Nepal: Committee on Economic, Social, and Cultural Rights, Concluding Observations on Nepal, ¶ 15, U.N. Doc. E/C.12/NPL/CO/2 (2008), *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/NPL/CO/2&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/NPL/CO/2&Lang=En). Moreover, situations where women have been denied access to sanitary materials or facilities have been mentioned in: U.N. Human Rights Council, Rep. of the Special Rapporteur on Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, Juan E. Mendez, Addendum: Mission to Jamaica, ¶ 163, U.N. Doc. A/HRC/16/52/Add.3 (Oct. 11, 2010), *available at* [www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-52-Add3.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-52-Add3.pdf); and U.N. Human Rights Council, Rep. of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance, ¶ 201, U.N. Doc. A/HRC/15/21 (Sept. 27, 2010), *available at* [www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf).

<sup>62</sup> U.N. Human Rights Council, Res. The Human Right to Safe Drinking Water and Sanitation, Preamble, U.N. Doc. A/HRC/RES/27/7 (Oct. 2, 2014), *available at* [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=24180](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=24180).

with water and sanitation as evidenced in the common sector acronym “WASH” (Water, Sanitation and Hygiene), and there are therefore clear links between hygiene and the human rights to water and sanitation.

It may be in the aspects of dignity, privacy, and gender equality where the human rights perspective helps most to develop the understanding of what is needed for women and girls to be able to manage their menstruation adequately and make menstrual hygiene a priority for decision-makers.

#### *A. Human Dignity and the Right to Privacy*

Human dignity is the foundation of all human rights. Article 1 of the Universal Declaration of Human Rights starts by proclaiming that “[a]ll human beings are born free and equal in dignity and rights.”<sup>63</sup> It further states that “everyone . . . is entitled to realization . . . of the economic, social and cultural rights indispensable for his [or her] dignity.”<sup>64</sup> Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) state in their preambles that the rights enshrined therein derive from the inherent dignity of the human person.<sup>65</sup>

Dignity is difficult to maintain for women and girls when one of the signifiers of being female is a source of embarrassment and shame. For women who do not have the means to manage their menstruation discreetly, there is a constant fear of smelling, leaking, or staining. Dignity is also difficult to maintain when menstruating women and girls use damp and soiled materials that cause discomfort, itching, and even infections. When menstruating women and girls are ostracized and face restrictions in their everyday life, based on beliefs that menstruation is impure and unclean, this adds further to feelings of embarrassment and shame.<sup>66</sup>

Human dignity is closely related to the right to privacy. Article 17(1) ICCPR stipulates that “no one shall be subjected to arbitrary or unlawful interference with [her] privacy, family, home or correspondence, nor to unlawful attacks on [her] honor and reputation.”<sup>67</sup> Privacy is compromised when menstruating women and girls have no private and safe space to change sanitary materials, dispose of or wash used materials, and clean themselves, as evidenced in the above examples of girls lacking adequate facilities in schools, women in detention, or women living in dense settlements. For such a deeply personal matter, steeped in cultural and religious taboos, privacy must be guaranteed. At the same time, the taboos

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<sup>63</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at [www.un.org/en/documents/udhr/](http://www.un.org/en/documents/udhr/).

<sup>64</sup> *Id.*

<sup>65</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>66</sup> Deepa & Morgan, *supra* note 39, at 21.

<sup>67</sup> ICCPR, *supra* note 62, at Art. 17(1).

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 15

surrounding menstruation must be tackled without depriving women and girls of the privacy they need to manage menstruation. Art. 17(2) ICCPR continues by stating that “[e]veryone has the right to the protection of the law against such interference or attacks,” thus referring to the State’s obligation to protect privacy against interference by others.<sup>68</sup> States’ obligations hence clearly reach into the private sphere, as will be further discussed below.<sup>69</sup>

### B. Gender Equality

Non-discrimination and equality, including gender equality, are keystones of human rights law. The understanding of gender equality is not limited to formal equality—which would only examine the explicit use by a State of distinctions or categories such as gender and their legitimacy—but a broad notion of substantive equality.<sup>70</sup> Formal equality cannot adequately address situations of indirect discrimination, which is where no overt distinction is made, but certain measures, or the lack thereof, have a disproportionately negative impact on women and girls.<sup>71</sup>

The substantive approach to equality protects against both situations: applying when a law or practice formally distinguishes between men and women, impermissibly treating them differently, and also extending to situations in which facially neutral laws, policies, or actions that are neutral on paper have the practical effect—actual results—of disadvantaging women and girls without adequate justification.<sup>72</sup> In such situations, human rights law requires States to dismantle the discriminatory law, policy, or practice, and to take steps to reverse the impact of such discrimination. Art. 3 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly requires States to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”<sup>73</sup>

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<sup>68</sup> *Id.* at Art. 17(2); *see also* House ET AL., *supra* note 38.

<sup>69</sup> *See infra* Part IV.

<sup>70</sup> UN Comm. on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 25, on Article 4, ¶ 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures, ¶ 4, (2004), *available at* [www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf) [hereinafter CEDAW, General Recommendation No. 25]; *see also* Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

<sup>71</sup> *Id.* at 8; Andrew Byrnes, *Article 1*, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY at 53, 54 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., 2012) [hereinafter Byrnes, Article 1].

<sup>72</sup> Byrnes, *Article 1*, *supra* note 71, at 54, 55.

<sup>73</sup> CEDAW, *supra* note 70, at Art. 3.

Equal does not mean ‘the same’. Achieving substantive equality does not mean identical treatment under all circumstances—on the contrary—the UN Human Rights Committee has explained that “the enjoyment of rights and freedoms on an equal footing . . . does not mean identical treatment in every instance.”<sup>74</sup> Accordingly, equality does not imply treating what is unequal, equally. Rather, what is unequal may require different treatment in order to achieve substantive equality. States may indeed need to adopt measures to treat certain groups and individuals preferably to achieve substantive equality. With regard to gender equality, the CEDAW Committee points out:

It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.<sup>75</sup>

Recognizing biological differences between men and women and their different needs is crucial for the full realization of everyone’s human rights and to achieve substantive equality. In the context of menstrual hygiene, States are required to take the necessary measures to enable women and girls to deal with their periods adequately.

However, in order to achieve substantive equality, measures need to go beyond addressing different biological needs. Substantive equality rests upon transforming institutional and societal structures. Such transformation must seek to eliminate underlying stereotypes and stigma and must strengthen women’s voice and participation.

Menstruation and societal perception of menstruation are linked to gender stereotypes and the stigma surrounding the issue. Women both experience stigmatization through others and internalize the stigma of menstruation. As outlined above, menstruation is often met with embarrassment and shame, being a signifier of women’s position of inferiority and Otherness. The framework of substantive equality demands working against such devaluation. In this regard, Art. 5(a) CEDAW requires States to take measures “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>76</sup> Similarly, in the African Context, Art. 2(2) of the

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<sup>74</sup> U.N. GAOR, 45th Sess., Supp. No. 40, at 174 ¶ 8, U.N. Doc. A/45/40 (Vol.I)(Supp) (July 24, 1990) (General Comment No. 18 (Non-Discrimination), Article 40, ¶ 4, of the ICCPR), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f45%2f40\(VOL.I\)\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f45%2f40(VOL.I)(SUPP)&Lang=en).

<sup>75</sup> CEDAW, General Recommendation No. 25, *supra* note 70, at ¶ 8.

<sup>76</sup> On gender stereotyping *see*, Cook & Cusack, *supra* note 11.



## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 17

Maputo Protocol requires States parties “to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”<sup>77</sup>

Beyond stereotypes and taboos, the fact that menstrual hygiene is accorded such low priority is not accidental, but also reflects the limited role women play in decision-making and priority setting. The Committee on Economic, Social and Cultural Rights (CESCR) has pointed out that:

Gender affects the equal right of men and women to the enjoyment of their rights. Gender refers to cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.<sup>78</sup>

States must take appropriate measures to remedy gender inequalities and seek to involve women on the basis of equality with men, in particular in decisions that directly concern their lives.

These different dimensions of substantive equality are valuable in identifying appropriate strategies for enabling women and girls to manage their menstruation adequately with a particular focus on the underlying structural causes responsible for the current lack of such strategies.<sup>79</sup>

*C. Non-Discrimination and Equality: Intersectionality*

More broadly, the right to be free from discrimination is central to human rights law and cuts across the entire human rights framework. Art. 2(2) ICESCR, Art. 2(1) ICCPR and Art. 26 ICCPR oblige States to guarantee that human rights will be exercised without discrimination. The Committee on Economic, Social and Cultural Rights explained that “[m]any women experience distinct forms of

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<sup>77</sup> *Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa*, AFR. COMM’N ON HUM. AND PEOPLES’ RTS. Art. 2 § 2, (July 11, 2003), available at [www.achpr.org/instruments/women-protocol/](http://www.achpr.org/instruments/women-protocol/).

<sup>78</sup> U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 16, The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights), ¶ 14, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) [hereinafter CESCR, General Comment No. 16].

<sup>79</sup> See *infra* Part IV.

discrimination due to the intersection of sex with such factors as race, color . . . , property, . . . disability . . . resulting in compounded disadvantage.”<sup>80</sup> “Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.”<sup>81</sup>

As described above, homeless women, women living in informal settlements, prisoners, women with disabilities, sex workers, or women who work outside may experience particular challenges in managing their menstruation, which may amount to multiple discrimination. To meet their obligations under human rights law, States must adopt targeted measures aimed particularly at meeting the requirements of women and girls with disabilities, homeless women, and women in detention, among others, during their menses and find adequate solutions based on their participation.

#### *D. The Human Right to Education*

The human right to education is guaranteed in Art. 13 ICESCR.<sup>82</sup> Moreover, Art. 10 CEDAW stipulates that “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.”<sup>83</sup> Art. 10(f), requires States specifically to adopt measures, *inter alia*, to the reduce the female school drop-out rate.<sup>84</sup>

As outlined above, the lack of facilities and opportunities to adequately deal with menstruation prevents girls from attending school when they are menstruating. In its Concluding Observations on Yemen, the CEDAW Committee—as the human rights treaty body overseeing the implementation of CEDAW—explicitly raised school absenteeism and premature departure from school as a concern.<sup>85</sup> Adequate facilities, services, and materials to ensure good menstrual hygiene practice might be as important as textbooks and school supplies to ensure that girls receive a quality education and do not drop out of school prematurely or miss hours or full days when having to manage their menstruation. The human rights perspective puts particular emphasis on the need to ensure that schools and other learning institutions are structural environments that do not discriminate against girls, so that girls do not fall behind their male peers simply because of biological

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<sup>80</sup> CESCR, General Comment No. 16, *supra* note 78 at ¶ 5.

<sup>81</sup> U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights, Art. 2, ¶ 2, of the ICCPR, ¶ 17, U.N. Doc. E/C.12/GC/20 (July 2, 2009), *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11) [hereinafter CESCR, General Comment No. 20].

<sup>82</sup> ICESCR, *supra* note 65.

<sup>83</sup> CEDAW, *supra* note 70.

<sup>84</sup> *Id.*

<sup>85</sup> U.N. Comm. on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Yemen, ¶ 25, U.N. Doc. CEDAW/C/YEM/CO/6 (2008).

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 19

differences.<sup>86</sup>

Finally, the right to education includes the right to comprehensive sex education,<sup>87</sup> including on menstruation, an aspect that will be further explored below.<sup>88</sup>

*E. The Human Right to Work and Just and Favorable Working Conditions*

Article 6(1) ICESCR guarantees “the right to work, which includes the right of everyone to the opportunity to gain his [or her] living by work which he [or she] freely chooses or accepts.”<sup>89</sup> The right to work does not imply “an absolute and unconditional right to obtain employment.”<sup>90</sup> It is commonly agreed that States have no obligation to provide everyone with work.<sup>91</sup> However, the right to work does entail a right of access to employment, with accessibility meaning that the labor market must be open to everyone,<sup>92</sup> including men and women. Article 11(1) CEDAW points out explicitly that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.”<sup>93</sup>

This implies that menstruation must not prevent women from seeking employment or attending work. Moreover, Art. 7(b) ICESCR<sup>94</sup> and Art. 11(1)(f) CEDAW<sup>95</sup> put particular emphasis on just and favorable working conditions, in particular to ensure safe and healthy working conditions. This requires States to ensure that women have access to private, safe, and hygienic facilities for managing their menstruation at the work place.

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<sup>86</sup> See further on structural environments in schools and how they influence girls’ ability to manage their menstruation: Marni Sommer, *Structural Factors Influencing Menstruating School Girls’ Health and Well-Being in Tanzania*, 43 J. COMP. & INT’L. EDUC. 323 (2012).

<sup>87</sup> U.N. G.A., Rep. of the United Nations Special Rapporteur on the Right to Education, U.N. Doc. A/65/162 (July 23, 2010), <http://www.ohchr.org/EN/HRBodies/SP/Pages/GA65session.aspx>.

<sup>88</sup> See *infra*, Part IV.

<sup>89</sup> U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 18, The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights, ¶ 2, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) [hereinafter CESCR, General Comment No. 18].

<sup>90</sup> *Id.* at ¶ 6.

<sup>91</sup> MATTHEW C. R. CRAVEN, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, A PERSPECTIVE ON ITS DEVELOPMENT 203 *et seq.* (1995); EIBE H. RIEDEL, THEORIE DER MENSCHENRECHTSSTANDARDS, FUNKTION, WIRKUNGSWEISE UND BEGRÜNDUNG WIRTSCHAFTLICHER UND SOZIALER MENSCHENRECHTE MIT EXEMPLARISCHER DARSTELLUNG DER RECHTE AUF EIGENTUM UND ARBEIT IN VERSCHIEDENEN RECHTSORDNUNGEN 47 (1986); Krzysztof Drzewicki, *The Right to Work and Rights in Work*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS – A TEXTBOOK at 223, 235 *et seq.* (A. Eide, C. Krause and A. Rosas eds., 2nd ed., 2001).

<sup>92</sup> CESCR, General Comment No. 18, *supra* note 89, at ¶ 12(b).

<sup>93</sup> CEDAW, *supra* note 70, at Art. 11(1).

<sup>94</sup> ICESCR, *supra* note 65, at Art. 7(b).

<sup>95</sup> CEDAW, *supra* note 70, at Art. 11(1)(f).

*F. The Human Right to Health*

Art. 12 ICESCR guarantees the right to the highest attainable standard of health.<sup>96</sup> Complementing this general provision, Art. 12 CEDAW stipulates that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”<sup>97</sup> The CEDAW Committee points to the need for health care to address the “distinctive features and factors which differ for women in comparison to men, such as: (a) [b]iological factors which differ for women in comparison with men, such as their menstrual cycle.”<sup>98</sup> The Vienna Programme of Action reaffirms these rights by calling on States to ensure the human rights of women throughout the life cycle,<sup>99</sup> while the Cairo Programme of Action on Population and Development reaffirms women’s reproductive rights.<sup>100</sup>

Moreover, according to Art. 12(2) CEDAW, States Parties “shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period.”<sup>101</sup> This must be understood broadly to also cover menstrual hygiene as an underlying determinant of women’s reproductive health. This is complemented by Art. 10(h) CEDAW, which calls on States to ensure “access to specific educational information to help to ensure the health and well-being of families,”<sup>102</sup> highlighting the need for hygiene promotion and education.

It is imperative that more research is carried out on the impact of poor menstrual hygiene on health, and how potential health risks are best alleviated in order to promote the types of solutions that are acceptable—both in cultural and in health terms—and to avoid those that endanger the health and fertility of women and girls.

*G. The Human Rights to Water and Sanitation*

The human rights to water and sanitation are guaranteed as implicit components of the right to an adequate standard of living as included in Art. 11(1) ICESCR<sup>103</sup> and many other human rights treaties.<sup>104</sup> The UN General Assembly

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<sup>96</sup> ICESCR, *supra* note 65, at Art. 12.

<sup>97</sup> CEDAW, *supra* note 70, at Art. 12.

<sup>98</sup> U.N. Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 24, Article 12 of the Convention—Women and Health, ¶ 12(a), U.N. Doc. A/54/38/Rev.1, chap. I (1999), *available at* [www.un.org/womenwatch/daw/cedaw/reports/21report.pdf](http://www.un.org/womenwatch/daw/cedaw/reports/21report.pdf) [hereinafter CEDAW, General Recommendation No. 24].

<sup>99</sup> World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, at 7 ¶ 18, U.N. Doc. A/CONF.157/23 (July 12, 1993), *available at* <http://www.un.org/en/development/devagenda/humanrights.shtml>.

<sup>100</sup> Cairo Programme of Action, *supra* note 54.

<sup>101</sup> CEDAW, *supra* note 70, at Art. 12(2).

<sup>102</sup> *Id.* at Art. 10(h).

<sup>103</sup> ICESCR, *supra* note 65, at Art. 11(1).

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 21

and the Human Rights Council explicitly recognized the right to water and sanitation in 2010.<sup>105</sup>

The rights to water and sanitation are inextricably linked to hygiene, including menstrual hygiene. In 2014, the UN Human Rights Council recognized the link between water, sanitation, and menstrual hygiene, expressing its concern “that the lack of access to adequate water and sanitation services, including menstrual hygiene management, and the widespread stigma associated with menstruation have a negative impact on gender equality and the human rights of women and girls.”<sup>106</sup> The human right to water covers not just water for drinking, but also for personal hygiene,<sup>107</sup> including during menstruation. While sanitation facilities are primarily built for the purpose of defecation and urination, women and girls usually also use these facilities for the purpose of managing their menstruation. Facilities for menstrual hygiene management are therefore needed wherever there are sanitation facilities, and should include facilities for the adequate disposal of materials. Moreover, relating back to the stigma around menstruation, it must be ensured that women and girls can actually use sanitation facilities—including on the days they menstruate—rather than being excluded from using them due to cultural beliefs of ‘impureness’ and ‘contamination.’

### III. DEFINING MENSTRUAL HYGIENE IN TERMS OF HUMAN RIGHTS

The human rights framework and the links between menstrual hygiene and these varied human rights highlight the need for a holistic understanding of menstrual hygiene. It is not just an infrastructure issue, it is at least as much an issue of having the voice and space to articulate and meet one’s needs. It requires access to accurate and pragmatic information and raising the awareness and confidence of women and girls to manage menstruation with safety, privacy, and dignity.

However, menstruation also creates very practical needs, namely (1) materials for absorbing blood, (2) private space for changing and washing, and (3) facilities for adequate disposal of sanitary materials—where these are disposable. Just as important, and as a pre-condition to be able to meet these practical needs,

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<sup>104</sup> See INGA T. WINKLER, *THE HUMAN RIGHT TO WATER, SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION* 41-45 (2012) on the right to water.

<sup>105</sup> G.A. Res. 64/292, ¶ 1, U.N. Doc. A/RES/64/292 (Aug. 3, 2010), [www.un.org/en/ga/64/resolutions.shtml](http://www.un.org/en/ga/64/resolutions.shtml); U.N. Human Rights Council, *Res. Human Rights and Access to Safe Drinking Water and Sanitation*, ¶¶ 2, 3, U.N. Doc. A/HRC/RES/15/9 (Oct. 6, 2010), [www.ohchr.org/en/Issues/WaterAndSanitation/SRWater/Pages/Resolutions.aspx](http://www.ohchr.org/en/Issues/WaterAndSanitation/SRWater/Pages/Resolutions.aspx).

<sup>106</sup> H.R.C. Res. 27/7, *supra* note 62.

<sup>107</sup> U.N. Comm. on Econ., Soc., and Cultural Rights, General Comment No. 15 The Right to Water, Arts. 11 and 12 of the Covenant, ¶¶ 2, 12(a), U.N. Doc. E/C.12/2002/11 (2003), *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11) [hereinafter CESCR, General Comment No. 15].

are (4) information, education, and awareness in order to allow women and girls to manage their menstruation safely and with dignity.

The human rights framework helps to specify what is required to manage menstruation with dignity. It requires that hygiene services are available, safe, acceptable, accessible, and affordable. These criteria have evolved in a common typology that is used more generally by human rights bodies to define the normative content of human rights.<sup>108</sup>

#### *A. Materials for Absorbing Blood*

First of all, in practical terms, women and girls require materials to absorb blood during menstruation. Personal hygiene is a highly sensitive issue across regions and cultures and differing perspectives about which hygiene practices are acceptable must be taken into account regarding the use of materials. From a human rights perspective, it is crucial that hygiene facilities and services are culturally acceptable. For some women and girls, tampons may be the product of choice, while others find vaginal insertion unacceptable. Others use disposable or reusable pads and sanitary napkins, while some prefer menstrual cups. Many women and girls across the developing world use cloth that is then washed and re-used, often torn from old saris in South Asia or *kangas* in East Africa, not only because other materials may be unaffordable, but also because of cultural preferences.<sup>109</sup> Regardless of the specific material—whether cloth, disposable pads, tampons, menstrual cups, or other material—it must be safe and comfortable, it must not cause infections, and it must be suitable for the purpose of absorbing menstrual blood so as to avoid leaking and staining.

Finally, adequate menstrual hygiene management must be affordable to all women and girls. Paying for materials, as well as water and soap for washing, must not limit people's capacity to acquire other basic goods and services guaranteed by human rights, such as food, housing, health services, and education. However, in many countries commercially produced sanitary products are too expensive for people living in poverty.<sup>110</sup> This has been confirmed by the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation during various of her country missions, who found that sanitary pads are unaffordable for many families.<sup>111</sup> While human rights neither require nor prescribe the use of

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<sup>108</sup> See U.N. Comm. on Econ., Soc., and Cultural Rights, General Comment No. 13, The Right to Education (Art. 13 of the Covenant), U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999), available at <http://tb.ohchr.org/default.aspx?Symbol=E/C.12/1999/10> [hereinafter CESCR, General Comment No. 13]; see also U.N. Comm. on Econ., Soc., and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health, Art. 12 of the Covenant, ¶ 12, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en) [hereinafter CESCR, General Comment No. 14].

<sup>109</sup> HOUSE ET AL., *supra* note 38, at 64.

<sup>110</sup> BIRAN ET AL., *supra* note 23, at 59.

<sup>111</sup> U.N. Special Rapporteur on Water and Sanitation, Mission to Kiribati, *supra* note 61, at ¶ 36;

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 23

disposable commercial sanitary products, they do require that materials are safe, hygienic, and culturally acceptable as outlined above. Girls and women must have the opportunity to choose the materials that are acceptable to them. Affordability does not necessarily require materials to be provided free of charge, but the additional costs for women and girls must be considered. Therefore, assistance should be provided to individuals who are unable to afford sanitary products.

Yet, whether women and girls have access to sanitary materials does not only depend on the cost of materials but also on the priorities made in the family budget. Where the male “head of household” determines such priorities, sanitary materials, but also sanitation and hygiene more broadly, may not feature highly. In order to make materials accessible to women and girls, subsidies and tax exemptions are therefore not the only measures required, as will be further examined below.<sup>112</sup>

*B. Private Space for Changing and Washing*

Women and girls must have access to a safe and hygienic place for changing their sanitary materials when required, and sufficient water and soap for washing. Regular cleaning, emptying, and maintenance of the facilities for managing menstruation are essential for good hygiene.

Facilities for managing menstruation must be physically accessible for everyone within, or in the immediate vicinity of, each household, probably adjacent to toilets. Access to the facility itself should be safe, secure, and convenient for all users. The risk of attack from animals or people must be minimized. Moreover, the hygiene facility needs to be accessible on a reliable and continuous basis as to meet women and girls’ needs day and night. Apart from access at home, hygiene facilities must also be supplied at work, at school, and in public institutions and places to be able to satisfy needs throughout the day.

Some women, for instance women with disabilities, have particular sanitation and hygiene requirements. Handrails, slopes instead of stairs for access, increased space inside the latrine, and wide doors may help women and girls with physical disabilities to access latrines. Others may require caregivers to support them in their personal hygiene, whereas women and girls with mental or developmental disabilities may need simplified information and careful explanation on how to manage their menstruation.<sup>113</sup>

While the types of services and facilities will vary, common in almost all cultures is the requirement for a space and facilities that protect privacy and dignity, requiring lockable doors and usually implying the need for gender-specific

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U.N. Special Rapporteur on Water and Sanitation, Mission to Tuvalu, *supra* note 61, at ¶ 32; UN Special Rapporteur on Water and Sanitation, Mission to Thailand, *supra* note 61, at ¶ 25.

<sup>112</sup> See *infra* Part IV.

<sup>113</sup> HOUSE ET AL., *supra* note 38, at 166-67.

facilities in public places.<sup>114</sup> Where women and girls use re-usable cloths or rags, they also need space for washing and drying these in private.

In some cultures—in particular in school environments—girls prefer to have an opportunity to wash themselves and/or used cloths inside the latrine or toilet stall to ensure their privacy rather than using water outside the latrine building where everyone can see them.<sup>115</sup>

### C. Facilities for Disposal

One aspect that is often overlooked is the availability of adequate facilities for disposal of sanitary materials. Where disposable materials are used, an average woman uses about 125 to 150 kg of tampons, napkins, and pads during her lifetime.<sup>116</sup> When materials are inappropriately disposed of—i.e. in toilets or latrines—this can result in system blockages or failures, creating problems in sewers or wastewater treatment plants or when pits are emptied.<sup>117</sup> Yet, women and girls often have no other option for disposal. Therefore, bins, pits, or incinerators need to be available. What is culturally acceptable, again, varies: In some cultures, incinerators are an adequate solution to dispose of used materials; in others, burning would be unacceptable and bins are preferred.<sup>118</sup> Regarding the location, some girls have voiced their preference to have an incinerator nearby to avoid having to walk with used materials where boys and other students can see them disposing of their menstrual materials,<sup>119</sup> similarly to having the opportunity to wash themselves and menstrual cloths in privacy.

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<sup>114</sup> The Committee on the Rights of the Child highlights the need for gender sensitive sanitation facilities. See, UN Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, ¶ 60(c), U.N. Doc. CRC/C/AGO/CO/2-4 (Oct. 19, 2010), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAGO%2fCO%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAGO%2fCO%2f2-4&Lang=en). Likewise, CEDAW stresses the need for girl-friendly schools including separate hygienic toilets; See CEDAW, Concluding Observations on the Combined Fourth and Fifth Periodic Rep. of India, ¶ 27(a), U.N. Doc. CEDAW/C/IND/CO/4-5 (July 24, 2014), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IND/CO/4-5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IND/CO/4-5).

<sup>115</sup> Marni Sommer, *An Early Opportunity for Promoting Girls' Health: Policy Implications of the Girls' Puberty Book Project In Tanzania*, 14 INT'L ELECTRON. J. HEALTH EDUC. 77, 82 (2011), [www.susana.org/docs\\_ccbk/susana\\_download/2-1222-11m-sommer.pdf](http://www.susana.org/docs_ccbk/susana_download/2-1222-11m-sommer.pdf) [hereinafter Sommer, Promoting Girls' Health].

<sup>116</sup> SOWMYAA BHARADWAJ & ARCHANA PATKAR, MENSTRUAL HYGIENE AND MANAGEMENT IN DEVELOPING COUNTRIES: TAKING STOCK 6 (2004), available at [www.washdoc.info/docsearches/title/163390](http://www.washdoc.info/docsearches/title/163390).

<sup>117</sup> MARIANNE KJELLEN, CHIBESA PENSULO, PETTER NORDQVIST & MADELEINE FOGDE, *Global Review of Sanitation System, Trends and Interactions with Menstrual Management Practices*, in REPORT FOR THE MENSTRUAL MANAGEMENT AND SANITATION SYSTEMS PROJECT, STOCKHOLM ENVIRONMENT INSTITUTE, 15 (2012).

<sup>118</sup> See Mahon & Fernandes, *supra* note 27, at 110; see also, SOMMER ET AL., WASH IN SCHOOLS, *supra* note 17, at 5.

<sup>119</sup> Sommer, *Promoting Girls' Health*, *supra* note 115, at 82.



#### *D. Information, Education and Awareness*

Apart from the practical and infrastructure issues, ensuring adequate menstrual hygiene practice requires accurate information, hygiene promotion and comprehensive sex education not only to raise awareness among women and girls and teach proper hygiene behavior, but also to change the perceptions around menstruation and create broader awareness. These aspects are just as important as—and indeed are a pre-condition for—addressing the more practical issues. The human rights framework puts a particular emphasis on the necessary structures, such as policies, programs, institutions, and sufficient personnel able to promote good hygiene practices and to make pragmatic information available to girls on how to manage menstruation. The next section on appropriate strategies for making adequate menstrual hygiene a reality for all therefore puts a particular focus on these dimensions.

### IV. IDENTIFYING APPROPRIATE STRATEGIES BASED ON HUMAN RIGHTS OBLIGATIONS

#### *A. Ensuring Human Rights in the Private Sphere*

Human rights are often understood to focus on the relationship between the individual and the State. While this is true, it is only part of the human rights framework. Human rights law also obliges States to protect individuals from abuses of their human rights by others—whether companies or other individuals. Thus, human rights reach into the private sphere, including the very private sphere of menstrual hygiene. States must enact measures to enable girls and women to manage their menstruation in privacy and with dignity. Moreover, other actors also have responsibilities to respect the rights of others and contribute to their full realization. For instance, companies should take measures to ensure that women can manage their menstruation adequately while at work.<sup>120</sup> Other actors can and should contribute to a positive perception of menstruation. For example, advertising companies and the media should refrain from advertising campaigns that present menstruation as something of which women should be ashamed. Even at the individual level, classmates, friends, and family members can change their attitude towards and interaction with menstruating women and girls, helping to

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<sup>120</sup> The World Business Council for Sustainable Development (“WBCSD”) pledge on WASH at the workplace includes a provision about sanitary product proposals. Undersigning companies commit to the following: “Appropriate provisions for the safe disposal of sanitary products must be provided. Feminine care products should be discarded in waste containers that are properly lined with plastic, wax paper or other appropriate bags to protect others from coming into direct contact with soiled products. PLEDGE AND GUIDING PRINCIPLES: WATER, SANITATION AND HYGIENE IMPLEMENTATION AT THE WORKPLACE, WBCSD WATER 16 (2013), [www.wbcd.org/work-program/sector-projects/water/WASHatworkplace.aspx](http://www.wbcd.org/work-program/sector-projects/water/WASHatworkplace.aspx).

present menstruation as a normal, natural occurrence and making sure that women and girls have access to the materials they require.

*B. Creating an Enabling Environment*

Human rights law does not impose a general obligation on States to immediately and directly build facilities and provide materials and services to everyone. States have the obligation to create an enabling environment, to raise awareness, and to promote adequate hygiene. Generally speaking, human rights impose an obligation on States to progressively realize human rights to the maximum of their available resources.

They do not have an obligation to fully realize the rights to health, water, sanitation, education and other human rights immediately, but they must do so as quickly and efficiently as possible, taking deliberate, concrete, and targeted steps towards their full realization.<sup>121</sup>

Moreover, the human rights framework does not oblige the State to provide direct services and facilities to everyone. It expects all individuals to contribute to the realization of human rights up to their means and capacity. What human rights do require in relation to menstrual hygiene is that services and materials are affordable to women and girls as outlined above. This may require subsidies for women and girls with a low income. For instance, the Indian Ministry of Health and Family Welfare put a scheme in place to distribute sanitary napkins to adolescent girls in rural areas at a nominal cost.<sup>122</sup> Moreover, all across the developing world, initiatives are underway to produce low-cost sanitary pads, ranging from small-scale efforts that train women and girls in making their own pads to large-scale marketing.<sup>123</sup> States should support such initiatives through measures such as tax exemptions or putting simple administrative procedures for entrepreneurs in place to promote such efforts.

Apart from the general obligation to create an enabling environment, States have an obligation of direct provision where individuals cannot otherwise access materials and services, for instance in prisons or in emergency situations. The Standard Minimum Rules for the Treatment of Prisoners referred to above stipulate that “sanitary installations shall be adequate to enable every prisoner to comply

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<sup>121</sup> U.N. Comm. on Econ., Soc. and Cultural Rights, CESCR General Comment No. 3, The Nature of States Parties’ Obligations, Art. 2, ¶1, of the Covenant, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) [hereinafter CESCR, General Comment No. 3];

<sup>122</sup> Aarti Dhar, *Low-Cost Sanitary Napkins for Rural Girls*, THE HINDU (June 16, 2010), <http://www.thehindu.com/todays-paper/tp-national/lowcost-sanitary-napkins-for-rural-girls/article458648.ece>; see also Rajesh Garg, Shobha Goyal & Sanjeev Gupta, *India Moves Towards Menstrual Hygiene: Subsidized Sanitary Napkins for Rural Adolescent Girls – Issues and Challenges*, 16 MATERNAL CHILD HEALTH J. 767, 769 (2012).

<sup>123</sup> See, SOMMER ET AL., WASH IN SCHOOLS, *supra* note 17, at 18.

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 27

with the needs of nature when necessary and in a clean and decent manner.”<sup>124</sup> While not referring to menstruation explicitly, the ‘needs of nature’ must be interpreted to cover menstrual hygiene.<sup>125</sup> In the context of emergency situations, the ‘Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response’ has taken up the need for including menstrual hygiene in hygiene promotion and recommends consultation with the concerned population on preferred items and the provision of the necessary materials and facilities including cloth, underwear, and provision for laundering or disposal.<sup>126</sup>

### C. Ensuring Participation

With a topic as personal and culturally specific as menstruation, participation and understanding and incorporating women’s and girls’ views and preferences into programs and policies cannot be overstated. However, the taboo surrounding menstruation, harbored as internalized stigma, makes the participation of women and girls and the strengthening of their voice and agency a challenging task. The above-mentioned study on menstruating women in prisons points to the uneasiness, shame and embarrassment women felt in raising the issue of menstruation, and having to make officials aware of the very practical requirements they face.<sup>127</sup> The same holds true for many other women.

Yet, once women and girls feel comfortable speaking about menstruation – perhaps by creating a personal, non-threatening atmosphere—their experiences and preferences can greatly enhance the impact and sustainability of any measures seeking to improve menstrual hygiene. In fact, the provision of services, facilities, and materials must be grounded in the local context according to personal preferences based on culture and attitudes, which can only be elicited from the women and girls who are going to use the services. In developing the books ‘Growth and Changes’, [www.GrowAndKnow.org](http://www.GrowAndKnow.org) directly works with girls to elicit menstrual stories, questions, and concerns in order to assure that all the books provide culturally appropriate and meaningful guidance on puberty and menstrual hygiene to girls in each country.<sup>128</sup>

Emergency settings pose particular challenges due to the need for a rapid response. In such circumstances, it might be preferable to include a standard response for menstrual hygiene management in terms of distribution of sanitary kits

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<sup>124</sup> U.N. Minimum Rules for the Treatment of Prisoners, *supra* note 58, at ¶ 12.

<sup>125</sup> CHOMBO, *supra* note 40, at 37-38.

<sup>126</sup> *Humanitarian Charter and Minimum Standards in Humanitarian Response*, THE SPHERE PROJECT, (4<sup>th</sup> ed., 2011), available at [www.spherehandbook.org](http://www.spherehandbook.org); see also Deepthi Wickramasinghe, *Managing Menstrual Hygiene in Emergency Situations: How far from reality?*, in ASIA REGIONAL SANITATION AND HYGIENE PRACTITIONERS WORKSHOP (2012); Marni Sommer, *Menstrual Hygiene Management in Humanitarian Emergencies: Gaps and Recommendations*, 31 WATERLINES 83, 86 (2012).

<sup>127</sup> CHOMBO, *supra* note 40, at 58.

<sup>128</sup> *Growth and Changes*, GROW & KNOW, available at [www.growandknow.org/books.html](http://www.growandknow.org/books.html).

in emergency interventions to make sure that immediate needs are met based on cultural preferences as far as they are known. Subsequently, this response should be monitored to assess whether it meets women's and girls' needs and then be adjusted according to their preferences.<sup>129</sup>

#### *D. Adapting Technical Solutions and Facilities*

Adapting technical solutions to meet the menstrual hygiene needs of women and girls does not have to be complicated or cost-intensive. It is essential that solutions are developed in a participatory process to respond to the actual needs and preferences of women and girls, and if this is carried out in the early stages of program development, the additional costs will be minimized. With the support of WaterAid Bangladesh, for instance, which developed a new design for toilet blocks in public spaces that includes facilities for washing rags used for managing menstruation, a hanger to dry them, as well as disposal facilities.<sup>130</sup> Similarly, the Nepali government recently committed funding to building girl-friendly toilets in schools.<sup>131</sup>

#### *E. Raising Awareness and Providing Education*

Improving menstrual hygiene must not only focus on materials, facilities, and infrastructure—i.e. the hardware of disposal units, incinerators, menstrual cups, and sanitary napkins. The hardware must be complemented by raising awareness and education. Otherwise, interventions to improve adequate hygiene frequently turn out to be unsustainable.<sup>132</sup>

The CEDAW Committee points out that “States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality.”<sup>133</sup> Young girls, before and when experiencing menarche, in particular, require pragmatic, non-judgmental guidance. Such information should combine scientific, biological, and physical information with practical guidance on how to manage menstruation.<sup>134</sup> Apart from the physical, it should also cover psychological aspects. Such information must be tailored to the local context, taking into account social and cultural preferences. Girls using pads or tampons will require guidance on how to use them, whereas

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<sup>129</sup> Sommer, *Menstrual Hygiene Management in Humanitarian Emergencies*, *supra* note 126, at 96.

<sup>130</sup> Ahmed & Yesmin, *supra* note 1, at 286.

<sup>131</sup> *Nepal: Govt. to Construct Girl-Friendly Toilets in 5500 Schools*, SANITATION UPDATES (Feb. 10, 2011), <http://sanitationupdates.wordpress.com/2011/02/10/nepal-govt-to-construct-toilets-in-5500-schools/>; *see also*, SOMMER ET AL., WASH IN SCHOOLS, *supra* note 17, at 18.

<sup>132</sup> *See* Garg et al., *supra* note 122, at 770.

<sup>133</sup> CEDAW, General Recommendation No. 24, *supra* note 98, at ¶ 18; *see also*, Banda, *Article 10*, *supra* note 26, at 270.

<sup>134</sup> Kissling, *supra* note 16, at 493.

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 29

girls using menstrual cloths need education on how to properly clean them to avoid infections, such as washing them with soap and clean water and drying them in the sun.<sup>135</sup>

The way information is presented is equally important as the information itself. Ideally, menstruation should be presented as a natural and normal phenomenon that does not warrant secrecy.<sup>136</sup> While parents, relatives, and friends have a crucial role to play here, sex education—including on menstrual hygiene—should be part of school education and firmly embedded in curricula.<sup>137</sup> The books ‘Growth and Changes’ developed by [www.GrowAndKnow.org](http://www.GrowAndKnow.org) and adapted to various country-specific contexts are one example for puberty education that covers menstrual hygiene.<sup>138</sup> A pilot study conducted in Ghana demonstrated positive changes in school attendance after providing girls with pads combined with education on puberty, or even education on puberty alone.<sup>139</sup> Teachers also need to understand the needs of girls in puberty, and enable girls to manage their periods safely and without stigma.

The ministries responsible for education and health have a particular role to play in promoting adequate hygiene practice. Moreover, other actors can significantly contribute to awareness and promotion activities. In India in 2012, the Nirmal Bharat Yatra—or Great WASH Yatra—took place, a 50-day travelling carnival crossing several Indian states with performances, activities, and games to promote awareness around sanitation and hygiene. One component provided opportunities for women and girls to talk about menstruation without embarrassment and shame.<sup>140</sup> In Bangladesh, UNICEF started a program to train community hygiene promoters in rural areas to contribute to practicing improved menstrual hygiene.<sup>141</sup> Also in Bangladesh, a WaterAid initiative aimed at raising awareness not only reached out to girls and women in villages, slums, and schools to improve hygiene behavior, but simultaneously sought to overcome cultural barriers and embarrassment through counseling.<sup>142</sup>

#### *F. Breaking the Taboo Around Menstruation*

The powerful taboos and stigma surrounding menstruation cannot be combatted by hygiene promotion and education alone. The shame, secrecy, and embarrassment around it must also be tackled. No one should perceive

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<sup>135</sup> Mahon & Fernandes, *supra* note 27, at 102.

<sup>136</sup> Kissling, *supra* note 16, at 496.

<sup>137</sup> See Garg et al., *supra* note 122, at 772.

<sup>138</sup> *Growth and Changes*, *supra* note 128.

<sup>139</sup> Paul Montgomery, Caitlin R. Ryus, Catherine S. Dolan Sue Dopson & Linda M. Scott, *Sanitary Pad Interventions for Girls' Education in Ghana: A Pilot Study*, 7 PLOS ONE 3 *et seq.*, (2012).

<sup>140</sup> NIRMAL BHARAT YATRA, WASH UNITED & QUICKSAND (2012), [www.nirmalbharatyatra.org](http://www.nirmalbharatyatra.org).

<sup>141</sup> Independent Expert on Water and Sanitation, Mission to Bangladesh, *supra* note 61, at ¶ 69.

<sup>142</sup> Ahmed & Yesmin, *supra* note 1, at 286.

menstruation as taboo. In this regard, it is essential to clearly articulate the paradox around menstruation as described above: While it is an integral part of the female identity, due to stereotypes on what is perceived as appropriate roles and behavior, menstruation is not perceived as feminine. Lifting the stigma requires broader awareness-raising activities that—as a first step—acknowledge the stigma for what it is. To overcome the embarrassment and taboos, menstruation must be presented as a natural process. Efforts should be targeted at addressing stigma in both its external and internalized dimensions.

In this respect, some contemporary artists explicitly tackle the taboo around menstruation in their activism, for example with controversial performances<sup>143</sup> or by holding a menstrual poetry slam.<sup>144</sup> While the producers of commercial sanitary products often contribute to the secrecy around menstruation, “Always” recently shifted for the first time from using a bluish liquid to showing a red liquid, to better represent blood (admittedly only a red dot) in one of its ads.<sup>145</sup> May 28 has been introduced by a broad alliance of organizations as International Menstrual Hygiene Day, with the aim of breaking the silence around menstruation.<sup>146</sup> Moreover, there is a need for more research on menstruation. Giving menstruation and menstrual hygiene greater priority in research would contribute to its perception as a “normal” issue and as such, would contribute to combating stigma.

#### *G. Making Sure that Cultural Prescriptions Do Not Result in Harmful Practices*

What makes stigma so difficult to tackle is that cultural beliefs surrounding menstruation are so deeply entrenched in society. As explained above, many cultures have certain prescriptions for women and girls’ behavior during menstruation seeking to prevent ‘contamination.’

Many such practices and prescriptions are rooted in patriarchal assumptions, often under the umbrella of culture and religion. Some of these prescriptions may amount to harmful traditional and cultural practices.<sup>147</sup> From a human rights

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<sup>143</sup> *Countering Menstrual Hygiene Taboos in Nepal*, SANITATION UPDATES (Mar. 14, 2010), <http://sanitationupdates.wordpress.com/2010/03/14/countering-menstrual-hygiene-taboos-in-nepal/>.

<sup>144</sup> SOCIETY FOR MENSTRUAL CYCLE RESEARCH, MAKING MENSTRUATION MATTER: SOCIETY FOR MENSTRUAL CYCLE RESEARCH 20<sup>TH</sup> BIENNIAL CONFERENCE (2013), [www.menstruationresearch.org/2013-conference](http://www.menstruationresearch.org/2013-conference).

<sup>145</sup> Laura Stampler, *Always Runs First Feminine Hygiene Ad To Show Blood*, THE HUFFINGTON POST (July 6, 2011), [www.huffingtonpost.com/2011/07/06/always-runs-first-feminin\\_n\\_891546.html](http://www.huffingtonpost.com/2011/07/06/always-runs-first-feminin_n_891546.html).

<sup>146</sup> See 28 May is Menstrual Hygiene Day, <http://www.menstrualhygieneday.org>. For a report on the range of activities undertaken on May 28, 2014 including trainings, panel discussions, film screenings, games, exhibitions, and other events see WASH UNITED, 28 MAY, MENSTRUAL HYGIENE DAY, 2014 EVENT REPORT (Aug. 2014).

<sup>147</sup> Harmful traditional and cultural practices have been discussed in more depth in other contexts e.g. the context of female genital mutilation; see, e.g., Henriette Dahan Kalev, *Cultural Rights or Human Rights: The Case of Female Genital Mutilation*, 51 SEX ROLES 339 (2004); Hope Lewis, *Between Irua and “Female Genital Mutilation”: Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (1995); Sylvia Tamale, *The Right to Culture and the Culture of Rights: A Critical Perspective on Women’s Sexual Rights in Africa*, in SEX MATTERS 148 (2007), <http://fahamu.org>

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 31

perspective, cultural rights, religious rights, women's rights, women's health and bodily integrity are all relevant in this context. Assessing such prescriptions and identifying entry points for societal change requires asking: Is this practice imposed on women and girls? Or do women freely choose a particular behavior? Does a certain practice cause harm? Does it violate women or girls' bodily integrity, their health, or other human rights? Where women and girls are forced to sleep outside the house with accompanying risks to their health and security, the human rights framework demands that such practices are changed. On the other hand, if a woman deliberately chooses to avoid certain dietary products on the days she menstruates—as long as this does not compromise a nutritious diet and the right to adequate food—or avoids certain activities such as swimming—whether as part of her culture, her religious beliefs, or for other reasons—this may be her personal choice and must be respected.

Prescriptions based on cultural norms or religious beliefs must not lead to harmful practices that violate human rights. In this regard, a group of UN human rights experts has pointed out that:

Cultural diversity . . . can only thrive in an environment that safeguards fundamental freedoms and human rights, which are universal, indivisible, interconnected and interdependent. No one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope, nor should cultural diversity be taken to support segregation and harmful traditional practices.<sup>148</sup>

The Committee on the Rights of the Child and the CEDAW Committee have recently issued a joint General Recommendation/Comment on harmful practices. Several of the submissions received in response to the call for papers address

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/mbbc/wp-content/uploads/2011/09/Tamale-2007-Right-to-Culture.pdf [hereinafter Tamale, *Right to Culture*]; WORLD HEALTH ORGANIZATION, ELIMINATING FEMALE GENITAL MUTILATION: AN INTERAGENCY STATEMENT UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, UNIFEM, WHO (2008); on the effects female genital mutilation may have on menstruation see, *Female Genital Mutilation ("FGM") and Menstruation*, THE PERIOD BLOG (November 9, 2010), <http://myperiodblog.wordpress.com/2010/11/09/female-genital-mutilation-fgm-and-menstruation/>. On culture and human rights more generally see e.g., Lynda Bell et al., *Introduction: Culture and Human Rights*, in NEGOTIATING CULTURE AND HUMAN RIGHTS (Lynda S. Bell, Andrew J. Nathan, Ilan Peleg eds., 2001); RIKKI HOLTMAAT & JONNEKE NABER, WOMEN'S HUMAN RIGHTS AND CULTURE (2001); Celestine Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimation of Gender Hierarchy in Developing Countries*, 41 HARV. INT'L. L. J. 381 (2000); U.N. Human Rights Council, *Study of the Human Rights Council Advisory Committee on Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind*, ¶¶ 11, 12, 32, 41, 45, 51, 56, 76, U. N. DOC. A/HRC/22/71 (Dec. 6, 2012), [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session22/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session22/Pages/ListReports.aspx).

<sup>148</sup> *Human Rights are Essential Tools for an Effective Intercultural Dialogue, Statement by a Group of United Nations Experts on the World Day on Cultural Diversity for Dialogue and Development*, (May 21, 2010), available at, [www2.ohchr.org/english/issues/cultural\\_rights/docs/statements/Statement\\_cultural\\_diversity21052010.doc](http://www2.ohchr.org/english/issues/cultural_rights/docs/statements/Statement_cultural_diversity21052010.doc).

practices related to menstruation that may cause harm to women and girls.<sup>149</sup> The General Recommendation/Comment considers that “[h]armful practices are persistent practices and behaviors that are grounded on discrimination on the basis of sex, gender, age and other grounds as well as multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.”<sup>150</sup> It establishes criteria for determining whether practices are harmful practices,<sup>151</sup> and it explains that harmful practices can best be combatted through “changing social and cultural norms, empowering women and girls, building the capacity of all relevant professionals who are in regular contact with victims, potential victims and perpetrators of harmful practices at all levels, and raising awareness of the causes and consequences of harmful practices, including through dialogue with relevant stakeholders.”<sup>152</sup>

Importantly, culture is not static. In finding entry points for change in practices related to menstruation and the perception of menstruation, women’s and girls’ participation is essential.<sup>153</sup> In the African context, Art. 17(1) of the Maputo Protocol explicitly refers to the participation of women in the determination of cultural policies. Women and girls have the right to participate in the development and interpretation of culture.<sup>154</sup> As such, cultural and religious norms and beliefs around menstruation can change, and must change where they violate the human rights of women and girls subjected to them.

One practice that has started to receive considerable attention is *chhaupadi*, practiced in the far-western regions of Nepal.<sup>155</sup> It bars women from sleeping in the house, so that they have to sleep in a separate hut or shed during menstruation and subjects them to other restrictions. The Nepali Supreme Court issued an order to eliminate the tradition. The Court declared that the practice is discriminatory and violates women’s rights.<sup>156</sup> It ordered the government to create awareness on

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<sup>149</sup> See CEDAW Joint CEDAW-CRC General Recommendation / Comment on Harmful Practices, [www.ohchr.org/EN/HRBodies/CEDAW/Pages/JointCEDAWandCRCGRRecommendation.aspx](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/JointCEDAWandCRCGRRecommendation.aspx).

<sup>150</sup> CEDAW & Comm. on the Rights of the Child, Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices, ¶ 14, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, (Nov. 4, 2014) available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18) [hereinafter CESCR, General Comment No. 31].

<sup>151</sup> *Id.*, ¶ 15.

<sup>152</sup> *Id.*, ¶ 55.

<sup>153</sup> Tamale, *supra* note 147, at 157.

<sup>154</sup> Holtmaat & Naber, *supra* note 147, at 4.

<sup>155</sup> See e.g., Bijoyeta Das, *Nepal’s Menstrual Exiles: In Parts of Rural Nepal, Women are Forced to Isolate Themselves in Huts or Caves During their Menstruation Period*. AL JAZEERA (Feb. 10, 2014), [www.aljazeera.com/indepth/features/2014/02/nepal-menstrual-exiles-201423131149488509.html](http://www.aljazeera.com/indepth/features/2014/02/nepal-menstrual-exiles-201423131149488509.html).

<sup>156</sup> Dil Bahadur Bishwakarma v. Gov’t of Nepal, *Supreme Court of Nepal*, Writ Petition 3303 of 2004, Judgment 2 May 2006; see also U.N. Comm. on Econ. Soc. and Cultural Rights, Third Periodic Report Submitted by States Parties under Articles 16 and 17 of the Covenant, Nepal, ¶ 56, U.N. Doc. E/C.12/NPL/3 (2012) [hereinafter CESCR, Nepal State Report].



## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 33

the practice, to take measures to eliminate the tradition from society and to enact laws to eradicate the practice.<sup>157</sup> The Court further ordered the government to conduct a study on the impact of the practice. It also stressed the essential role of other actors such as NGOs in awareness-raising and education.<sup>158</sup>

However, changing long-standing customs and traditions, deeply entrenched in society, requires more than a prohibition through a court order or the enactment of a law. While progress is being made, *chhaupadi* is still practiced in remote areas. Eliminating it can only be achieved through long-term sustained efforts involving both societal actors that subject women and girls to the practice as well as empowering women and girls themselves. The fact that local women in the far-western region of Nepal have taken action to start demolishing sheds meant for *chhaupadi* is an encouraging sign in this respect.<sup>159</sup>

#### H. Involving Men and Boys

In order to combat stigmatizing attitudes widely present in societies across the world, men and boys must be targeted with better and more accurate information on menstruation and the requirements for managing it. As long as a patriarchal understanding of gender roles assigns men the role of “head of household” deciding on priorities, including financing priorities, their understanding is crucial in order to support women and girls’ requests for money to buy sanitary pads.<sup>160</sup> Promoting this understanding should be combined with efforts seeking to achieve decision-making on the basis of equality that challenges such gender roles.

More broadly it is essential to involve men, to raise their awareness, and to change their attitudes in order to accord greater priority to menstrual hygiene and its requirements, in particular as long as the majority of headmasters, decision-makers, and WASH professionals are men. In schools, sex education—including on menstrual hygiene—must include boys as well as girls in order to start addressing the social taboos associated with menstruation. It might however still be preferable to teach and discuss with boys and girls separately to allow for open discussions.<sup>161</sup>

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<sup>157</sup> Raju Prasad Chagai, *Judicial Response to Reproductive Rights: Experience of Public Interest Litigation in Nepal*, 1 J. HEALTH STUD. 40 (2008), [jhs.co.in/articles-/showArticle.aspx?aid=33](http://jhs.co.in/articles-/showArticle.aspx?aid=33); Kabita Pandey, *Judicial Education on the Convention on Elimination of Discrimination against Women in Nepal* in WOMEN’S HUMAN RIGHTS, CEDAW IN INTERNATIONAL, REGIONAL AND NATIONAL LAW 425 (Anne Hellum, Henriette Sinding Aasen eds., 2013).

<sup>158</sup> CESCR, Nepal State Report, *supra* note 156.

<sup>159</sup> Barun Paneru, *Local Women Join Forces Against Chhaupadi Practice*, REPUBLICA NEWSPAPER (May 5, 2013), [www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=54180](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=54180); Das, *supra* note 155.

<sup>160</sup> Mahon & Fernandes, *supra* note 27, at 110.

<sup>161</sup> PIPER-PILLITTERI, *supra* note 23, at 15; *see also* Kissling, *supra* note 16, at 492.

While such initiatives take place in a patriarchal society taking account of the roles men play and their decision-making power, they must be complemented with broader long-term programs on achieving women's empowerment and gender equality, challenging precisely these stereotypes and patriarchal assumptions.

*I. Embedding Menstrual Hygiene in Policies and Programs*

To give greater priority and attention to hygiene promotion including menstrual hygiene, there is an urgent need to embed considerations arising from women's and girls' menstruation needs at the policy level. As outlined above, policies and strategies by national governments hardly touch on the issue, pointing to the need to integrate menstrual hygiene in WASH programs<sup>162</sup> as well as policies dealing with education and health, for instance.

Where hygiene promotion campaigns are launched—often focused on improving hand-washing behavior—they should be complemented by campaigns targeted at improving menstrual hygiene and removing the taboos around menstruation. Moreover, menstrual hygiene can and should be linked to themes such as health, education, and women and girls' empowerment.

In the field of WASH in schools, there is an increasing awareness for making provision for adequate menstrual hygiene.<sup>163</sup> At the national level, in the attempt to develop a large-scale program on improved menstrual hygiene, the Government of India has developed Operational Guidelines for the Promotion of Menstrual Hygiene among Adolescent Girls (10-19 Years) in Rural Areas.<sup>164</sup> More recently, in December 2013, the Government of India announced a change in the guidelines for the Nirmal Bharat Abhiyan—previously the Total Sanitation Campaign—to include menstrual hygiene.<sup>165</sup> In Ethiopia, UNICEF supports the inclusion of menstrual hygiene in the revision of the National Sanitation and Hygiene Strategy as well as the school WASH program.<sup>166</sup>

At the international level, the integration of menstrual hygiene management in the discussion on the post-2015 sustainable development agenda in the field of WASH is an encouraging sign and could provide a major boost for the issue.

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<sup>162</sup> SOMMER ET AL., WASH IN SCHOOLS, *supra* note 17, at 17; *see also supra* Part I.B.

<sup>163</sup> *See* WORLD HEALTH ORGANIZATION, WATER, SANITATION AND HYGIENE STANDARDS FOR SCHOOLS IN LOW-COST SETTINGS iii 5 (John Adams, Jamie Bartram, Yves Chartier & Jackie Sims eds., 2009), [www.who.int/water\\_sanitation\\_health/publications/wash\\_standards\\_school.pdf](http://www.who.int/water_sanitation_health/publications/wash_standards_school.pdf); *see also*, 2nd Annual Virtual Menstrual Hygiene Management (MHM) in WASH in Schools (WinS) Conference (2013), *available at* [www.unicef.org/wash/schools/files/2013-MHMvConf.pdf](http://www.unicef.org/wash/schools/files/2013-MHMvConf.pdf).

<sup>164</sup> NATIONAL RURAL HEALTH MISSION INDIA, OPERATIONAL GUIDELINES: PROMOTION OF MENSTRUAL HYGIENE AMONG ADOLESCENT GIRLS (10-19 YEARS) IN RURAL AREAS, [www.jkhealth.org/notifications/oprguide\\_2may2012.pdf](http://www.jkhealth.org/notifications/oprguide_2may2012.pdf) (last visited Oct. 1, 2014).

<sup>165</sup> Government of India, Ministry of Drinking Water and Sanitation, NBA Division, *Modification in NBA Guidelines Including Activities Related to MHM as a Permissible Activity*, Doc. No. W.11013/16/2013-NBA (2013), [www.mdws.gov.in/documentreports/term/62](http://www.mdws.gov.in/documentreports/term/62).

<sup>166</sup> SOMMER ET AL., WASH IN SCHOOLS, *supra* note 17, at 25.

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 35

Specific targets and indicators have been suggested to capture progress on menstrual hygiene.<sup>167</sup> This inclusion should be promoted at the political level as a way to further gender equality alongside with improvements in WASH. Moreover, the discourse around placing sexual and reproductive rights in the post-2015 agenda is gaining strength.<sup>168</sup> In regard to sex education, the Policy Recommendations for the ICPD Beyond 2014 on ‘Sexual and Reproductive Health and Rights for All’ adopted by the High-Level Task Force for the International Conference on Population and Development re-affirm the importance of “ensuring universal access to comprehensive sex education for all young people.”<sup>169</sup>

Another encouraging sign is the inclusion of menstrual hygiene in the regional sanitation conference process in South Asia. The Delhi Declaration, adopted at the Third South Asian Conference on Sanitation (SACOSAN) held in Delhi, India, in November 2008 includes the following commitment: “The special sanitation needs of women (e.g. menstrual hygiene) will be integrated in planning, implementation, monitoring and measurement of program outcomes”.<sup>170</sup> Three years later, at the fourth SACOSAN conference in Colombo, Sri Lanka, governments adopted the Colombo Declaration. It refers to the significance of menstrual hygiene both in the context of adequate facilities in schools as well as in the context of specific indicators and monitoring mechanisms for high priority measures.<sup>171</sup> The Kathmandu Declaration adopted at the fifth SACOSAN conference in Nepal in 2013 reiterates these commitments.<sup>172</sup>

Such inclusion in international and regional political processes makes menstrual hygiene a “normal” component of the WASH discourse, and helps to galvanize more support to give menstruation and associated needs greater priority.

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<sup>167</sup> Proposal for consolidated drinking water, sanitation and hygiene targets, indicators and definition: JOINT MONITORING PROGRAM ET AL., POST-2015 WASH TARGETS AND INDICATORS 2 *et seq.*, (May 2013), [www.wssinfo.org/fileadmin/user\\_upload/resources/Fact\\_Sheets\\_4\\_eng.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/Fact_Sheets_4_eng.pdf); For further discussion, see also Archana Patkar, *Menstrual Hygiene Management*, [www.wssinfo.org/fileadmin/user\\_upload/resources/MENSTRUAL-HYGIENE-MANAGEMENT-Paper-for-END-group-1.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/MENSTRUAL-HYGIENE-MANAGEMENT-Paper-for-END-group-1.pdf).

<sup>168</sup> See, e.g., SEXUAL RIGHTS INITIATIVE, ICPD BEYOND 2014: INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, HUMAN RIGHTS AND SEXUALITY IN THE CONTEXT OF DEVELOPMENT 12 (June 26, 2013), [http://humanrights.icpdbeyond2014.org.php533.dfw12.websitetestlink.com/uploads/browser/files/sexuality\\_and\\_human\\_rights\\_in\\_the\\_context\\_of\\_development\\_final.pdf](http://humanrights.icpdbeyond2014.org.php533.dfw12.websitetestlink.com/uploads/browser/files/sexuality_and_human_rights_in_the_context_of_development_final.pdf) (Menstruation and the implications of the lack of adequate menstrual hygiene are, at least, taken up in this context.).

<sup>169</sup> HIGH-LEVEL TASK FORCE FOR ICPD, POLICY RECOMMENDATIONS FOR THE ICPD BEYOND 2014: SEXUAL AND REPRODUCTIVE HEALTH & RIGHTS FOR ALL 10 (2013), [www.icpdtaskforce.org/pdf/Beyond-2014/policy-recommendations-for-the-ICPD-beyond-2014.pdf](http://www.icpdtaskforce.org/pdf/Beyond-2014/policy-recommendations-for-the-ICPD-beyond-2014.pdf).

<sup>170</sup> Third South Asian Conference on Sanitation (SACOSAN-III), *Sanitation for Dignity and Health: The Delhi Declaration*, ¶ 4(i), (Nov. 16-21, 2008), [www.wateraid.org/~media/Publications/delhi-declaration.pdf](http://www.wateraid.org/~media/Publications/delhi-declaration.pdf).

<sup>171</sup> Fourth South Asian Conference on Sanitation (SACOSAN-IV), *Sanitation Enhances Quality of Life: The Colombo Declaration* ¶ (iv) & (x) (Apr. 4-7, 2011), [www.wsscc.org/sites/default/files/publications/sacosaniv\\_colombo\\_declaration\\_2011.pdf](http://www.wsscc.org/sites/default/files/publications/sacosaniv_colombo_declaration_2011.pdf).

<sup>172</sup> Fifth South Asian Conference on Sanitation (SACOSAN-V), *The Kathmandu Declaration* (Oct. 22-24, 2013), [www.sacosanv.gov.np/file/file\\_down/AYis9zKathmandu%20Declaration%2024%20Oct%20FINAL.pdf](http://www.sacosanv.gov.np/file/file_down/AYis9zKathmandu%20Declaration%2024%20Oct%20FINAL.pdf).

The country papers prepared by SACOSAN countries in preparation for the Nepal conference to report on the implementation of commitments provide an indication to what extent these international processes have spurred action. Several governments report on developing advocacy programs that include menstrual hygiene<sup>173</sup> and ensuring gender-sensitive toilets<sup>174</sup> with explicit consideration of menstrual hygiene.<sup>175</sup> Even if still in the early stages, these developments are a promising sign of greater prominence for menstruation at the level of policy and programming.

#### V. CONCLUSION

Shame, secrecy, embarrassment, fear, humiliation, silence, taboo, stigma—these are just some of the terms often used to describe feelings and perceptions around menstruation. To some extent, this perception of menstruation is a paradox, given that motherhood is glorified. However, menstruation is not perceived as ‘feminine’, it does not conform to the stereotypical role and behavior of women. Such stereotypes require women to be beautiful and beautified, deodorized and fresh, not bloody and smelly. Hence, women and girls are expected to hide menstruation and go to great length to conceal it.

The taboo and silence around menstruation makes menstruation a non-issue. Despite making up half of the population, women’s requirements are overlooked and neglected, sometimes even deliberately ignored. In policy-making, programming and designing, the default body being targeted is that of an able-bodied, white, heterosexual male.<sup>176</sup> Women are the Other, perceived as inferior and of lesser value. This low priority and lack of attention at all levels—from international policy-making to the private sphere—has devastating impacts on women’s and girls’ lives, well-being, and dignity.

Women and girls feel embarrassed and ashamed about a natural process. They lose days of school and work with far-reaching implications for their

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<sup>173</sup> Fifth South Asian Conference on Sanitation (SACOSAN-V), *Sri Lanka Country Paper*, 17 (2013), [www.sacosanv.gov.np/file/file\\_down/i5aMkpContry%20Paper%20Sri%20Lanka.pdf](http://www.sacosanv.gov.np/file/file_down/i5aMkpContry%20Paper%20Sri%20Lanka.pdf).

<sup>174</sup> Fifth South Asian Conference on Sanitation (SACOSAN-V), *Bangladesh Country Paper Appendix A* (2013), [http://www.sacosanv.gov.np/file/file\\_down/djHn2Bangladesh%20Country%20Paper%20%28SACOSAN-V%29.pdf](http://www.sacosanv.gov.np/file/file_down/djHn2Bangladesh%20Country%20Paper%20%28SACOSAN-V%29.pdf); Fifth South Asian Conference on Sanitation (SACOSAN-V), *Bhutan Country Paper on Sanitation 15* (2013), [www.sacosanv.gov.np/file/file\\_down/5DQFpoCountry%20Paper%20Bhutan%20SAVOSAN%20V%202013.pdf](http://www.sacosanv.gov.np/file/file_down/5DQFpoCountry%20Paper%20Bhutan%20SAVOSAN%20V%202013.pdf).

<sup>175</sup> Fifth South Asian Conference on Sanitation (SACOSAN-V), *Nepal Country Paper 15* (2013), [www.sacosanv.gov.np/file/file\\_down/XgwVt3Sanitation%20%20Country%20Paper%20of%20Nepal.pdf](http://www.sacosanv.gov.np/file/file_down/XgwVt3Sanitation%20%20Country%20Paper%20of%20Nepal.pdf) (Admittedly, hand washing retains much greater prominence in the field of hygiene, in particular in the context of monitoring. None of the countries report to have developed a specific indicator for menstrual hygiene.).

<sup>176</sup> See SANDRA FREDMAN, *DISCRIMINATION LAW 9* (Peter Birks ed., 2002); Isha Ray, U.N. Women, Challenges and Achievements in Millennium Development Goals for Water & Sanitation for Women and Girls, at 8, EGM/MDG/EP.11 (Oct. 2013), [www.unwomen.org/~media/Headquarters/Attachments/Sections/CSW/58/EP11-IshaRay%20pdf.pdf](http://www.unwomen.org/~media/Headquarters/Attachments/Sections/CSW/58/EP11-IshaRay%20pdf.pdf).

## 2014] TAKING THE BLOODY LINEN OUT OF THE CLOSET 37

education and livelihoods. They are subjected to cultural prescriptions that may amount to harmful practices.

The contribution of the human rights framework lies in drawing attention to the plight of women and girls who are not able to manage their menstruation adequately by highlighting States' and other actors' obligations and responsibilities with respect to menstrual hygiene. The framework of human rights and substantive equality requires guaranteeing women the exercise and enjoyment of human rights on the basis of equality. Any practice that prevents gender equality or that allows for stigma, prejudice, and discrimination against women and girls must be eliminated and replaced with a practice that promotes human rights. In the case of poor menstrual hygiene, or cultural, social, or religious practices that limit menstruating women and girls' capacity to work, to get an education, or to engage in society must be eradicated.

This requires taking account of biological differences—i.e. the fact that women and girls menstruate—and adopting appropriate solutions for ensuring good menstrual hygiene practice. Yet, these biological differences are but one factor. Even more importantly, the human rights framework requires tackling the socially constructed perceptions, taboos, and stigma around menstruation. In this regard, human rights reach into the private sphere: each and every one of us can contribute to addressing the stigma through our attitude towards menstruation, through our language and communication, and our actions.

States have an obligation to create the enabling environment for women and girls to manage menstruation adequately. They must change structural environments, for instance in schools, that disadvantage women. They must accord greater priority to menstruation at the level of policies and programming. Rather than using the male default body in planning and designing measures in the area of WASH, education, and other policy-fields, that body is equally a female one—one that menstruates roughly 3000 days over the course of her life. Acknowledging menstruation as what it is—a fact of life—and integrating this view at all levels will contribute to enabling women and girls to manage their menstruation adequately, without shame and embarrassment—with dignity.