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Making the Silent Heard and the Invisible Visible: Reproductive Justice for Women in Prison

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Reproductive Justice is three-fold: the right to have – and to not have – children and the right to parent the children we have. — SisterSong

Overview

Justice Now welcomes the invitation of SisterSong to share the experiences of women inside prison in accessing Reproductive Justice. Women in prison are often forgotten when discussing the need for Reproductive Justice. They are forgotten by society; they are forgotten by social justice activists; they are forgotten by reproductive rights activists. They are forgotten because their voices are rarely heard. This is because women in prison are predominantly poor and of color, a population that in the best of circumstances is marginalized and invisible. Prison drastically increases that isolation.

Justice Now, a California-based organization dedicated to ending imprisonment as a purported solution to social ills, works collaboratively with women inside prisons, including women who are imprisoned in men's prisons, to document violations of their human right to Reproductive Justice and to find ways to remedy these abuses.

Through listening to women inside, we have learned how women in prison face numerous violations by the prison system to their right to Reproductive Justice, in particular, their efforts to build their families. While the right to have an abortion is critical and is often unavailable to women inside, most of the women we work with wanted to highlight their right to have a family. In this article, we will focus on abuses related to women's ability to give birth; however, the majority of women in prison are already mothers and they also want to retain custody and support their families when they leave prison, rights which are also embattled. We gathered the information contained in this article through working collaboratively with women inside prison to document abuses inside through direct and written testimony.

Background

Women of color are disproportionately imprisoned in the United States (Baldwin & Jones, 2000; Greenfield & Snell, 1999). There are approximately 170,000 women imprisoned in California. As of December 2005, the racial distribution of women in California prisons was approximately 28% African American, although respectively, they only comprise 6.7% of the population, 26% Latina, 39% white and 5% other (CDCR, 2005). The majority of people in California's women prisons are between 25 and 34 years, the prime childbearing years.

International Human Rights Principles

Similar to SisterSong, Justice Now uses the international human rights framework because it more fully encompasses the rights and responsibilities necessary for full Reproductive Justice. It provides a broader framework to discuss the intersections of discrimination that lead to reproductive oppression, as well as the intersections of rights, such as the rights to health, family, information, and freedom from discrimination that are needed to achieve full Reproductive Justice. A human rights framework both speaks to the need to demand rights, not ask for privileges and the need to connect with other women and struggles worldwide through using a universal, internationally agreed upon framework. It also highlights the government's role and responsibility in committing these abuses, a role that is often obscured.

Limitations on ratification and when the U.S. government fails to ratify human rights treaties (as it has failed to do so on most treaties) prevent individuals in the United States from securing these human rights through legal claims. Nonetheless, as activists we continue to use the human rights framework as our standard which should hold governments accountable.

Because women inside most often speak of their desire to have and maintain a family, we start with the right to family. The right to family is recognized in several treaties, in particular, Article 23 of the International Covenant on Political and Civil Rights (ICCPR) ratified by the United States in 1992. Article 23 states, "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state." General Comment 19, expanding on this right, stated "the right to found a family implies, in principle, the possibility to procreate and live together." In addition, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which the US government has not ratified, protects the right of women to "decide freely the number and spacing of their children and to have the access to the information, education, and means to enable them to exercise these rights" in Article 16(1)(e).

The right to health is also a critical pillar for Reproductive Justice. Sadly, the right to health carries little weight in the United States. We challenge that position as a racist, sexist and classist construction, since it is those who are marginalized by such discrimination who most need their right to health protected. The right to health is enshrined in the Universal Declaration of Human Rights, the International Covenant of Economic, Social and Cultural Rights (ICESCR) and CEDAW. The first is not legally binding but carries authoritative weight in interpreting other rights. The latter two treaties have not been ratified by the United States. This right to healthcare states that all persons are entitled "to the enjoyment of the highest attainable standard of physical and mental health." Article 12, ICESCR. Although it does not include the right to be healthy, the right does encompass the right "to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, nonconsensual medical treatment and experimentation." ICESCR, General Comment 14.

We also found violations to the right to privacy (Article 17, ICCPR), the right to information (Article 19, ICCPR), and the right to be free from torture and cruel, inhumane and degrading treatment that is enshrined in Article 7 of the ICCPR and the Torture Convention, both which have been ratified by the United States.

Destruction of Reproductive Capacity

While imprisoned, abysmal health care has led a significant number of women to face destruction of their ability to conceive or give birth biologically, creating the modern equivalent of forced sterilization of women of color. For example, although women prisoners are at high risk for cervical cancers, annual Pap smears are performed erratically and follow-up is often nonexistent, thus permitting cancers to progress undiagnosed and unaddressed. In addition, we have spoken with several women who report having been coerced into full hysterectomies or the removal of their ovaries, including being asked to

consent without full information. We also had a case of a woman with a cyst having the *wrong* ovary removed, even though removal for a cyst is rarely required.

These practices may violate Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, which states in part:

Article 2: Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such: (d) Imposing measures intended to prevent births within the group, and (e) forcibly transferring children of the group to another group.

One of the most obvious ways in which the California prison system fails to provide Reproductive Justice is through its abusive and negligent provision of Pap smears. Over the past 50 years, the Pap smear test has been an effective and inexpensive tool for the screening and early detection of cervical cancer that, combined with treatment, reduces mortality rates and complications associated with late treatment. Studies have shown that people in women's prisons are more likely to have risk factors for cervical cancer such as human papilloma virus, HIV, diets low in fruit and vegetables, and low socioeconomic status, than the population as a whole. *National Commission on Correctional Health Care, "Women's Health Care in Correctional Settings" (1994, revised 2005)*. But despite this clear need for monitoring, the California prison system does not provide consistent or timely Pap smears and results. Rather, Pap smears are conducted in an unprofessional and inhumane manner, with little information or follow up.

When describing the Pap smears, women told us that they were painful and there was no privacy. One woman said, "You leave the office in pain. You can feel him scraping the side of your cervix." Others told us how the exams felt sexually abusive, "He pulled it in, pulled it out, pushed it out, pushed it in, pulled it out." And, "I felt disgusted and dirty. It took me back to having a sexual experience with a man that I didn't want to have." These negative experiences lead women to refuse later Pap smears — a potentially fatal decision. One woman told us, "I would refuse another Pap by him. I just couldn't do it, couldn't go through that again."

Many women do not need to refuse a Pap smear; they are never allowed to get a Pap smear. Some women went five years without being called for a Pap smear. Other women go through the process of submitting a co-pay of five dollars, and still face difficulty seeing a doctor and receiving a Pap smear. The co-pay itself is an excessive charge for a woman making 7-10 cents per hour, often forcing women to forego basic necessities such as toiletries.

In addition, very little information is provided to the women about the procedure. They are told what to do but not why they need the examination, what is being done during the examination, or what will happen after the examination. The results are not timely, nor are they confidential. Finally, follow-up care is often haphazard leading to devastating results. One woman told us, "I had a couple [of Pap smears] that weren't right. No one said anything until a year later." Another woman said, "I had to lose my reproductive system because I didn't get the care I needed."

Another way in which women's reproductive capacity is damaged is through the overly aggressive use of hysterectomies. Too often hysterectomies (or sterilization) appear to be the first choice solution to medical problems that may have more effective and less drastic cures. We have spoken with many women who have had partial and full hysterectomies (removal of the uterus, cervix, fallopian tubes, and ovaries), which were later deemed unnecessary, including two women who learned after their complete hysterectomies that they did not have the cervical cancer that was the purported reason for the hysterectomy. In another case, a woman received no follow-up care after receiving a hysterectomy for cervical cancer, putting her at risk for recurrence and death.

We also have heard from women who did not sign consent forms or were not fully aware when they signed the forms. In one case, the woman was sedated. Another woman at Central California Women's Facility (CCWF) was suffering from abdominal pain and was sent to a local hospital. While at the hospital, she was given a hysterectomy although there were no orders for the procedure. In addition, while performing the operation, the doctor punctured her bladder and she was unable to hold urine for four months until she had surgery to repair the fistula. Another woman was told that the hospital would schedule a radical hysterectomy although they did not have her medical charts. When she said she might not consent, she was told that she had to. Justice Now got her released from prison in order to have her surgery elsewhere.

The medical abuse and neglect of women's reproductive health are not limited to hysterectomies. One woman received radiation treatment for cervical cancer 9 months after diagnosis that permanently damaged her ovaries, as well as her intestines and digestive tract, and she was left unable to have children. We have seen several cases with women with yeast infections and or prolonged periods of vaginal discharge and bleeding who go several months without any treatment. In these cases, the chances of infertility were dramatically increased through the prison's neglect.

Finally, gender discrimination also limits access to care; a woman at CCWF sought medical treatment for symptoms of pelvic inflammatory disease. The doctor told her that she could not have that disease because she was a lesbian. We also have received reports of women in men's prisons not receiving mammograms and Pap smears when they are medically necessary.

Another way that women in prison's right to Reproductive Justice is obstructed is through the disproportionately long terms of imprisonment that many of them have received, either through mandatory minimums for drug crimes or because of receiving a third strike, which is a California law requiring life sentences for a conviction if she already has two previous serious felony convictions. These sentences leave many women imprisoned through their reproductive years, the years when they could conceive and give birth to children, especially since most of these women will not have access to assisted reproductive technology when they are released from prison.

Violation of Right to Safe Motherhood

Pregnant women in California prisons, many of whom are high risk due to past histories or poverty or malnutrition, face rampant violations of their human rights. Doctor visits for pregnant women are infrequent and erratic. In some cases, prison medical staff has ignored obvious warning signs of complications, such as extensive bleeding and cramping. Special dietary requirements are not met and despite recent changes in the California state law, some, if not many, women are still shackled during labor and after delivery. And post-natal care is virtually nonexistent.

Underlying this abysmal care is a complete lack of respect for the humanity of pregnant women in prison and their real and legitimate desire to build their families. When interviewing women in California about their doctor-patient relationship, all responded that they did not have a relationship with their doctor. One woman was told by her doctor, "If you wanted better care, you shouldn't have gone to prison."

This disregard for women leads doctors to ignore obvious signs of complications. Another woman told us that when she went to the doctor with complaints of bleeding heavily, he told her the problem was pulled ligaments and sent her back to her cell. Her premature daughter died shortly after birth.

Every woman we speak to raises concerns about her prenatal diet. Despite clear medical advice, there is no special diet for pregnant women. They do not receive extra food; the fruits and vegetables are often inedible, they only get an extra 4 oz. carton of milk and occasionally folic acid/iron supplements.

In addition, the California prison system is slow in transporting women in labor to the hospital and disrespectful in the process. One woman was told, “Shut the fuck up, you’re not a baby, stop screaming.” Another woman said that it took them an hour and a half of her screaming before they transported her to the hospital, “they don’t rush, they never rush.” A nurse made another woman check her own amniotic fluid and then sent her to the hospital in her underwear, which her ambulance attendant said was “ridiculous.”

In all cases we researched, women are shackled during labor and after giving birth. Thus, they cannot walk around, although walking has been shown to promote labor and postbirth healing. Women have to request permission from prison staff to use the bathroom.

Post-natal care is also substandard. We spoke to one woman who did not have the staples from her C-section removed until several weeks later. Most of the women we spoke to, including a woman in remission from cancer, never received the customary 6-week post-natal appointment. Women routinely have their hospital-prescribed pain medications taken from them when they return to prison and are often unable to receive more, even through the pharmacy.

Conclusion

Because most of these abuses arise from the fundamental disrespect of women in prison, legal reforms have had little impact. For example, in October 2005, California passed AB478, which requires the California Department of Corrections to establish minimum standards of care for pregnant women and to transport pregnant women in the least restrictive way possible, including a presumption against shackling. Nonetheless, we have seen little, if any, change in the care and treatment that pregnant women receive. In fact, in April 2006 while on a visit to a hospital that houses women prisoners, one of our staff attorneys saw an official notation that a laboring woman was in shackles.

Consequently, to truly remedy these abuses we need to begin to address the root of the problem and end the use of prison and policing to address social ills, a policy that disproportionately affects black and brown people and our communities. The first step is to radically reduce the number of people in prison through simple, cost-saving decarceration strategies. In addition, while working to lower the number of people in prison, as advocates for Reproductive Justice for women of color, we need to ensure that we hear and amplify the voices of women in prison and their desire to build healthy families.