

## Women's reproductive rights in the penitentiary system: tensions and challenges in the transformation of reality

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**Abstract** *This article seeks to identify and discuss violations and challenges to the fulfillment of women's reproductive rights in situations of deprivation of liberty, with an emphasis on sexual and reproductive health. Regulatory parameters were considered as analytical frameworks that support these rights identified by the literature, and the discourses and practices linked to their effectiveness in the everyday life of prisons, collected in interviews with pregnant women and children in prisons, and the professionals whose practices interfere with the exercise of these rights. It was discovered that violations of these rights find support in speech that delegitimizes the motherhood of these women. We consider the use of rights as strategic in the struggle for the transformation of this situation.*

**Key words** *Reproductive rights, Women, Pregnant women, Mothers, Prison*

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## Introduction

The increase in the rate of incarceration of women in Brazil has called attention to diverse problems tied to gender inequality and to the need to reduce the different forms of violence that multiply in prisons and lead to serious health deprivations for this population. It is in this context that it becomes relevant to discuss the realization of the reproductive rights of women deprived of their liberty, especially in terms of reproductive and sexual health, which will be the object of this study.

According to data from the National Penitentiary Department, the prison population in Brazil more than doubled between the years 2000 and 2014, and during this same period, the increase in the number of incarcerated women was still greater, tripling to arrive at 37,380 prisoners in the country's prison system<sup>1</sup>. This situation is becoming even more worrying when one notes that this increase was not accompanied by an expansion and improvement in penal infrastructure. In 2014, around 30% of female prisoners were still awaiting sentencing, and the overcrowding of the female penitentiary system created a short fall of 9,565 places, indicating the precariousness of judicial assistance and the conditions of internment in which women find themselves.

The structural inadequacy of prisons as well as the specific needs of women, going from inadequate bathrooms and a lack of absorbent pads and intimate garments, to regulations which do not take into account their specific needs, aggravate gender inequalities and make the repercussions of incarceration on the lives of these women and their families worse. Many of them are responsible for raising their children and for the maintenance of the house, and their imprisonment impoverishes still further their family, imposing the need for familial reorganization, interrupting their life with their children who, in many cases, are exposed to situations of neglect. All of this leads to the precariousness or even total absence of family assistance for imprisoned woman, who remain, in this way, dependent on the prison administration or other prisoners.

In this context, pregnancy and birth during incarceration constitute important differentials, bringing to bear limitations and additional restrictions on women, especially regarding their reproductive rights. Consequent on the contradictions resultant from the sentencing of a deprivation of liberty, their rights are frequently violated, occasioning discrimination and hierarchies

of reproduction<sup>2</sup> between "women who have the right to reproduce" and others, who should or can be deprived of this right.

The conception of reproductive rights exclusively as reproductive freedom, based on individual choices which take place in the private sphere, was amply criticized by feminists in the process of constructing and consolidating these rights. This was because they considered that reproductive choices take place within contexts of gender, class, and cultural inequality, beyond ignoring that it is precisely in the private sphere where the greatest violations of women rights to decide about the use of their bodies, takes place. These debates showed that, in terms of the social groups deprived of their rights, it is not possible to speak about private liberties or individual choices disconnected from the contexts in which they are realized<sup>3</sup>. In this sense, it pointed toward the responsibility of the society and of the State for the promotion of conditions and resources that contribute to an amplification of the possibilities of choice for women and the realization of their reproductive rights. This conceives their rights as democratic values connected to citizenship and to the public policy sphere<sup>4</sup>, which in an inextricable manner should guarantee individual and social human rights.

The protection of women's reproductive rights in situations of incarceration, underlines the importance of deepening the debate about social inequality and gender violence in regimes of incarceration and in public policy formulated for this population. With the aim of contributing to this discussion, we seek, in this article, to identify and discuss the main violations and challenges to the provision of reproductive rights, especially in terms of assistance for reproductive health for these women. With this end in mind, the normative parameters which sustain these rights and the discourses and practices related to their fulfillment in the prison context were considered as reference points for analysis, gathered by way of interviews together with women in this situation, as well as the professionals involved in custody and assistance.

## Methodological considerations

For the determination of the normative parameters, a study of the main national and international legislations that defend reproductive rights of women in situations of deprivation of liberty was undertaken. To map their execution in the day-

to-day, this work bases itself on the analysis of material collected in a descriptive psycho-social study in the ambit of the “Mother-infant health in Prisons” project<sup>5</sup>. In this study, pregnant women and women whose children found themselves together with them in prison, were interviewed (n = 22), as well as professionals who work in the sphere of penal roles (n = 19), and whose practices interfere in the experience of pregnancy and in the exercise of maternity in this context. The identification of these professionals was carried out using current legislation and through a bibliographical revision, with the managers of the prison units selected for the study, security personnel, and health workers responsible for assistance to the mothers and their children in prison, beyond social and psychological assistants, being interviewed.

The criteria for the selection of the prison units were that they house pregnant women and women with children, and are located in the metropolitan regions of the capitals. The choice of the four states studied was made with a base in the number of children living in prisons, as well as the diversity of situations related to conditions of internment, and the duration of stay of the children. For the selection of women to be interviewed, the following were considered as criteria: the diversity of situations, involving the transfer of children and situations of risk for pregnancy, and problems with the baby’s health. For the identification of the cases, information was sought jointly from the professionals and coordination of the prison unit. The number of mothers interviewed was defined as sufficient for the satisfaction of the defined criteria, which can overlap.

With the aim of giving voice to the different perspectives or emphases of the participants regarding the topics in discussion, focus groups with pregnant women, and women with children in prison (n = 5) were realized, as well as with health professionals responsible for assistance (n-3). The interview scripts and the focus groups with the mothers and pregnant women were developed according to the following thematic sections: 1) perceptions of maternity in prison; 2) perception and care during pregnancy and birth; 3) health care and assistance of the child; 4) the perception of the environment, norms, and social interactions; and 5) the experience of separation and transfer of children to families and/or institutions. The same topics were dealt with, with the staff, but from their point of view. For the development of this article, the aspects that

involve the safeguarding of reproductive rights gathered in the interviews and focus groups were analyzed.

### **Ethical Aspects**

The individual interviews and focus groups were preceded by clarification regarding the intention of the study and the motivations according to which the participants were chosen to participate. Especially in relation to the women deprived of their liberty, they were informed that neither the administration of the prison unit nor any other authority, and not even other people imprisoned with them, would be informed as to their decision to participate or not, with the intention of avoiding any type of reprisal. The Free and Informed Consent Form was read and explained by the researcher.

The individual interviews and the focus groups were carried out in the prison units, in rooms designated by the unit’s management, under conditions of privacy and without the presence of staff. With the aim of avoiding identification of the interviewees, the interviews were identified by category of the interviewees and the number referent to the order of the interviews. With the same objective, in this article, the states where the study was realized were not identified, given that the majority of them have only one female prison unit with the conditions specified. The information registered throughout the study remains under the care and responsibility of the researchers and its archive should be destroyed after five years, according to the Resolution N 466, 12/12/2012, of the National Health/MS Council.

The “Mother-Infant Health in Prisons” research was approved by the Research Ethics committee of the Sérgio Arouca National School for Public Health, with the prevision of the use for academic ends of the information obtained.

## **Results and discussion**

### **The normative parameters for reproductive rights**

Seeking to promote equality between the sexes and non-discrimination of women, international conventions and treaties elaborated with the strong participation of social movements pressured national states to recognize the human rights of women, amongst which are their reproductive

rights. It was in the international conference regarding Population and Development, which took place in Cairo in 1994, in which these rights started being considered as human rights<sup>6</sup>, that:

*[...] they anchor themselves in the recognition of the basic right of every couple and of every individual to freely and responsibly choose about the number, timing, and opportunity for having children and of having the information and the means to do it in this manner, and the right to enjoy the most advanced standard of sexual and reproductive health. Their right to make decisions about reproduction free from discrimination, coercion, or violence is also included, as it is expressed in the documents regarding human rights<sup>7</sup>.*

In Brazil, the recognition of these rights finds itself clearly articulated in the Brazilian Federal Constitution which, in its art. 226, §7, argues as to the right to family planning, and in the Federal Law n° 9.263 of 1996, which guarantees equal rights for the constitution, limitation, or increase of children, for women, men, or couples. This law, within a horizon of universal and complete health care, attributed to management bodies of the SUS throughout all of its levels, the responsibility for family planning assistance and for educational and preventative initiatives, recognizing the duty of the State in improving conditions and providing informative, educational and scientific resources which facilitate the free exercise of this right.

In this way, we note that in Brazil, reproductive rights also sustain themselves in national legislation which guarantees individuals, free and responsible exercise of reproduction and determines the duty of the State in the promotion of the conditions and resources for this exercise, in conjunction with social, educational, and health rights.

Concerning reproductive rights of women in prisons, it is found that, in the sphere of the protection of human rights, The Bangkok Rules (ONU) stand out, which, recognizing the specific problems of imprisoned women and the need to provide means for their solution, establish rules which include: assistance, prevention, and health education for imprisoned women's health, especially care for pregnant women, women with children, and breastfeeding women, beyond the regulation of the continuation and transferal of children in the prison. In terms of sentencing, it argues that "punishments which do not withdraw liberty will be preferable for pregnant women and those with dependent children" (Rule 64) and that, in cases of preventative prison, options for

alternative measures to prison should be developed. In this way, the relevance attributed in the international legislation, for imprisoned women's reproductive rights and the preoccupation with their safeguarding, in conjunction with the defense of interests of their children, is evident.

The Brazilian Federal Constitution, in its art. 5º, defends equality for all parents before the law, without distinction of any nature; ensuring in the subarticle L of the previously referred article, conditions so that the inmates can stay with their children during the period of breastfeeding.

The Penal Execution Law, Law 7.210/1984, which seeks to regulate the fulfillment of sentencing in Brazil, recognizes the right of the imprisoned woman to breastfeed her children and take care of them, at the very least, until 6 months of age (art.83, §2º). In its art. 89, it further adds that the women's penitentiary will contain a section for pregnant women and women in labor, as well as a crèche to care for children older than 6 (six) months of age, the abandoned, and minors of 7 (seven) years of age, whose caregiver is incarcerated. The LEP also ensures the benefit of an open regime in particular residence for a pregnant prisoner, with a minor/child or one with a physical or mental deficiency (art. 117).

In their resolution n° 3, 15/07/2009, the National Council for Criminal and Penitentiary Policy (CNPCCP) attempted to regulate the stay, permanence, and subsequent transferal of the children of incarcerated women to the family or institution so as to guarantee the rights of cohabitation with the mother, and the best interests of the child.

In 2011, the Code for Penal Process began to ensure the possibility of the substitution of preventative prison with a residential stay when the mother was "indispensable to the special care of a person younger than 6 (six) years of age or with a deficiency"; as well as for "a pregnant woman, beginning from the 3<sup>rd</sup> trimester of pregnancy or their being at high risk" (art. 318).

Recently, the National Policy for Care of Women in Situations of Deprivation of Liberty and Leavers from the Prison System - Interministerial Ordinance of the Ministry of Justice for the Sec. For Women's Policy n° 210, from 16/01/2014, includes amongst its aims (Art. 4º, subrt. II, item b) the incentive for the state organs of prison administration to promote access to health in agreement with the national policy of Universal Care for the Health of People Deprived of Liberty in the Prison System, for Complete Attention to Women's Health, and for Child's Health Care,

observing the principals and directives of the Universal Health Care System.

Concerning the exercise of sexuality, an integral dimension of reproductive rights, the Resolution nº 04, 29/06/2011, of the CNPCP, considers intimate visits of incarcerated men and women with their partners, independent of sexual orientation, as a constitutionally assured right, advising state penitentiary administrations that they provide them.

In this manner, we note that reproductive rights of incarcerated persons are supported by legislation and involve an ample range of practices and policies<sup>8</sup>. However, their exercise in a highly hierarchical system and with tendencies to erected barriers for social relations with the outside world, is complex and involves more than formal legislation for its fulfillment. The importance of identifying the discourses and practices of the different actors involved in the realization of these rights is resultant from this, with the objective of discussing the limitations imposed on their exercise in the prison context.

### **The realization of rights to sexual and reproductive health of women in the day-to-day life of the prison**

#### **Regarding the possibilities for affective-sexual and reproductive choices**

The right of the woman or of the couple to make decisions regarding reproduction, free from discrimination, coercion, or violence constitutes one of the central aspects of the discussion around reproductive rights in the prison context. In prisons, the exercise of the right to maintain affective sexual relationships with their partner by way of intimate visits is affected as much by social norms and moral values relative to gender and reproduction, as by prison regulation.

To the abandonment of the incarcerated woman by her partner, resultant from the inequalities of gender present in society, one adds the innumerable other factors which make access to this right difficult, such as: searching the partner when entering the unit, the precarious conditions of the spaces destined for intimate encounters, the limitation of frequency and duration of the encounters, the requirement of proving a conjugal connection prior to imprisonment, the requirement of medical tests for the couple and the difficulties imposed, or even the prohibition, for the intimate visit between inmates (even though we know that, in many cases, their companions are also imprisoned).

In interviews with managers, security personnel, and health professionals, a preoccupation with the possibility that women would become pregnant during the visits was observed, which leads to the adoption of different measures to avoid this occurrence, from the distribution of condoms to the partners at the moment of entry into the prison unit, to the imposition on the women of the use of anti conception injections under the control of the health service, to humiliating remarks to the women or couples during the time of the intimate visit.

In this context, the exercise of the right to intimate encounters with a partner is still more problematic when dealing with pregnant women or women with their children in the prison. The reprobation, in these cases, is used to “remind” the couple of the consequences of their actions, at the same time in which it condemns the exercise of sexuality disassociated from reproduction and connected only with achieving pleasure. As a woman in prison with her son, said:

*We are made to feel uncomfortable when we return from the intimate visit. Every fifteen days we have to return from there with our partner. It is uncomfortable. Everybody keeps staring. The staff, they look with an expression... practically [saying]: - ‘you have a son and you’re already there to make another’ (FOCUS GROUP/MOTHERS).*

Such discourses and practices are connected to the image of the incarcerated woman, one which devalues her maternity and her “desire to be a mother”, allied to a naturalization of responsibility of the woman for the care of the children. In the few cases in which the women who made use of the intimate visits and became pregnant by their partner, the decision for pregnancy is attributed to the woman. Their motives for becoming pregnant are devalued as “a form of them maintaining a connection with the outside world”, as a way of getting a legal benefit, or an improvement in conditions of incarceration owing to pregnancy, but “not [as] a desire to be mothers”. In these discourses, the desire to have children is seen as something transcendent or of the order of nature, ignoring, as Corrêa<sup>9</sup> observes, the impossibility of disassociating the social and the material in the creation of the desire for children.

In the cases in which sexual interaction occurs without a stable tie (in the prisons where the access to common visits to the galleries makes the control by the administration difficult), “youth”, “irresponsibility”, and “relationships without commitment”, are reasons presented for the cen-



sure of the pregnancy of women during incarceration. In all cases, the perception that “the majority of the time, the man leaves, leaving the woman with the child that she, incarcerated, will give to her mother to raise” sustains the depreciation of the maternity of these women and the adoption of measures seeking to impede or make pregnancy difficult. In this way, the devalorization of the maternity of women who find themselves in prison, sustains, at the same time, the delegitimation of their reproductive rights and an authoritarian penitentiary practice where there is no space for the voice of women, nor an effort that favors the self-care and reflection regarding reproduction in the personal, social, and affective-sexual life project of these women, as defended by Diniz<sup>10</sup>.

According to the professionals interviewed, information about family planning as well as the offer of contraceptive methods, occurred during individual consultations with the pregnant women, and women with children in prison. There were reports of work directed toward the group of incarcerated women jointly with health institutions outside the prison, based on information, orientation, and access to contraceptive methods to increase choice for the women. Despite being well accepted by them however, these initiatives were not maintained. The motives alleged for discontinuing were problems with security and infrastructure, involving a lack of local, and of penitentiary agents for escorting and security, revealing the lack of interest by the penitentiary administration in the continuity of this important measure for the fulfillment of reproductive rights.

In this context, it is necessary to reflect on the instrumentalization of the preventative health discourse, as much as regards “irresponsible” pregnancy as in terms of the prevention of sexually transmissible illnesses, so as to not institute restrictive regulations and practices regarding the establishment of affective and sexual ties, discounting women as subjects capable of deciding about their sexuality and their reproductive life. One seeks to avoid structuring health measures where there is no space to hear the voice of the woman, so as to have initiatives that would favor making free decisions without discomfort, as much in terms of being able to become pregnant as to not.

Considering these limitations it is not unsurprising that the majority of women who have children during incarceration would be women who were imprisoned while already pregnant: According to Leal<sup>11</sup>, almost 90% of them were

already pregnant when there were imprisoned, though 8.3% were not previously aware of this. Maternity had not been planned in 63.1% of cases and had been desired by 36.9% of the women.

### **From unplanned pregnancies to pregnancy insecurities behind bars**

Amongst the women interviewed, pregnancy during incarceration lead to different feelings. On one hand, the joy of no longer being alone and for many, a consolation for loneliness and the suffering of separation from the other children from whom they were separated as a result of imprisonment. On the other hand, anguish and preoccupation, since they know that their condition of being pregnant won't protect them in the case of conflict with security guards, with other women, or in riots. In this hostile and violent environment, to preoccupy oneself with one's physical integrity is equally to protect one's children.

*It is, at the moment that you imagine that someone is bad, you see one worse [...], so, that is to say, this upsets many people. Equally when there is a riot! You with the child... you make use of anything... have another prisoner who doesn't like you, who wants to hurt you or your child... so this worries many people (FOCUS GROUP/MOTHERS)*

Removed from their other children and from their socio-affective points of reference, many without visits<sup>11</sup> during the pregnancy, and with many restrictions as to the possibility of their deciding about care for their child and for themselves, many pass through experiences of intense vulnerability during pregnancy, birth, and postpartum.

*This is my fourth pregnancy... Therefore here inside it is complicated for us, for the pregnant woman.... Because here we are not close to our families, close to our children, who end up not understanding any of this. The sad thing is this, but due to the pregnancy I am happy [...] I always wanted my children, I was always very happy in the pregnancy, very happy. I wasn't, you know, in the state that I'm in now, right? I'd never felt being emotional like this. Very sad, nervous, shaken, sometimes a little depressed as well, a little uncomfortable, right? (FOCUS GROUPS/MOTHERS)*

A large part of the pregnant women, and those with children in prison, are still awaiting sentencing. They do not know if they will be absolved or condemned or how long the punishment will be. When you refer to this situation, the women interviewed spoke of expectations of not being condemned, of obtaining some sort of

benefit or that the punishment would be short and they could get out together with their children. They were also afraid however, that this would not eventuate and that they would have to give their child to someone to take care of. The uncertainty of the penal situation, with the consequent uncertainty regarding pregnancy, birth, and life with the baby, is an avoidable source of insecurity and moral and psychological suffering using consistent health, social, and judicial assistance.

The fact of being incarcerated while pregnant generates diverse forms of guilt. "I felt myself a monster, because I was imprisoned and didn't know that I was pregnant. Then I came here and I brought my child together with me in my stomach." (MF). In some cases, the perception of one's own abandonment and uncertainty regarding the future meant that they thought about sending their children for adoption - "I thought of giving away my girls [twins]. I was depressed. I was desperate. What could I do with these children? Where will I go with my children when I get out?" (MF) - but, for others, it led to the inverse: fear that their children would be taken from them, "I was afraid that they would steal my children" (MF). The greater part of the women had not started pre-natal accompaniment when they were imprisoned or were only undertaking care in an irregular fashion. For the women interviewed, the difficulty of access was connected to factors related to extreme poverty, drug abuse, involvement in illegal practices, with the fragilization of affective ties and of social belonging, with the precariousness of working conditions, psychological suffering, or even owing to the fact that frequently it was an undesired pregnancy, evidencing individual, social, and programmatic vulnerabilities<sup>12</sup>.

In prison, issues related to the context brought new difficulties in terms of access. Deprived of liberty and of the possibility to take the initiative, and of seeking information which favored self care, and participation in decisions involving pregnancy and birth, the pregnant women depended on the health personnel and penitentiary agents to take their pregnancy to term and give birth to their baby securely. According to one pregnant woman interviewed, speaking about what she felt when she was imprisoned:

*How will I have my child? What will I do? [...] I was terrified. I thought that there would be no doctor. Ah...How can I say? A doctor, to do these tests... I was worried! Then, arriving at the prison... the nurses spoke with me, the doctor spoke*

*with me... and said that I would have all the.... the care, right? Everything organized. Then I felt calmer. (MG)*

However, professionals were not always available for attendance outside of scheduled hours, and, in some states, even the scheduled attendance was not always fulfilled, since this depends on the authorization of the security personnel who limit hours, number of appointments, and analyze demand from the perspective of criteria foreign to health care.

In cases in which the pre-natal care occurs outside the prison, to facilitate access, frequently the pregnant woman is transferred to prison units closest to a health service. These transfers impede the maintenance of family visits and brake ties recently formed with cell mates, aggravating the sensation of vulnerability. Many reports about going to the health service outside the prison revealed situations of intense physical and psychological suffering via transport in the police van, handcuffed, and through humiliation on arrival at the health care unit, where they feel themselves to be discriminated against by the health care personnel and by other users, who distance themselves and show fear and recrimination.

Uncertainties regarding the birth are aggravated by the fear of not being taken to the maternity ward in time. In the evaluation of the women interviewed, the prison staff and transport personnel generally seek to slow as much as possible the transfer to the maternity ward, and reports of situations in which women had the child in prison aggravated their apprehensions, since the risks to which they are exposed are evident.

*When the time comes to give birth, a mother knows when it is time to have the child, then the staff come .... no! Wait a little longer, let's wait a little bit longer, is there bleeding? Wait till there is bleeding... (FOCUS GROUP/MOTHERS)*

However, this negation of the needs and agency of the woman regarding decisions that involve their body, are not driven exclusively by the security personnel. Reports were also heard about health care professionals that revealed a neglect for the needs of these women, who, subjected to security procedures and medical orders, are deprived of agency over their own body, health, as well as the well being of their children.

*When I was six months and a little bit more pregnant my sack broke and I passed three days with liquid, liquid, liquid coming out... Then I went to the nursing station, on the Monday, the doctor spoke like this: since when are you like this?*

*The staff said – ‘are you in pain?’, and I said – ‘No, no I’m not in pain its just that I’m worried that there is a lot of liquid coming out’. Then the doctor looked at me and said: ‘if you waited since Friday, you can wait until tomorrow because the gynecologist will be here then’. (MF/focus group)*

### **Dehumanized birth: Institutional violence and the violation of the dignity of the woman**

The tension and insecurity regarding birth intensifies owing to the certainty of being alone at the time of birth, given that there is no permission for the family or companion to be present, despite the Law 8.080, from 19<sup>th</sup> of September, 1990, that provides that health care services of the SUS permit the presence of a companion together with the woman giving birth, throughout the duration of labor and the period immediately after birth.

During their stay in hospital, alone with their children, under the watch of the penitentiary agents, the women interviewed related experiences of great vulnerability.

*It was my first child. The [penitentiary] agent was by my side, sleeping. I tried to calm myself because I saw that there was no hope, there was nobody to help me. (MF)*

On reflecting about the inequalities of treatment by the health personnel in the hospital, the women interviewed reported experiences of violence which they at times understood to be treatment equal to that of other women, and at other times as punishment for their identity as “criminals”. And, though many reported of experiences of humiliation during their stay in hospital, for the majority, it was the presence of an escort, which most exposed their condition as an inmate; the obstacles to the presence of family; and the imposition of the use of handcuffs (Leal found that 35.7% of women referred to the use of handcuffs in some moment of the internment for birth) which were pronounced references in the perception of inequality of treatment amongst them and the other women during their stay in hospital.

The use of ties and handcuffs, justified by the security personnel, owing to dealing with women in custody, is not legally allowed, referring to the Binding Precedent N° 11 of the STF, of the CNPCP, which prohibits the use of handcuffs, during and following the birth. It is even less defensible from the point of view of the provision of humanized health care. The use of handcuffs, in these situations ignores the physical condition,

and the psychological and emotional fragility, which, beyond the physical pain and discomfort<sup>13</sup>, mark, in a general way, this moment in the life of women and which makes them little disposed to escape or violence. The existence of states where the use of handcuffs was not referred to or where their use depended on the decision of the security team on duty, clearly showed that, more than being a security procedure, it was a routine that sustains interactions with a base in power, and in the reiteration of stigmatized identities.

This situation should be the object of reflection for health professionals and for formulators of health policy directed at this population, since it violates the dignity of these women and their rights to equal treatment and humanized care. Further still, it points toward the importance of guaranteeing secure transport, the presence of a companion, and other actions for the humanization of care, without prejudice and discrimination, recognizing the specific needs of each case, including psychosocial support. It shows, especially the iniquity that results from the domination by the idea of public security, seen as antagonistic to the preservation of the dignity of the infractor, over the dignity and the health needs of incarcerated women.

### **The extension of punishment to the children: obstacles to the assistance for infantile health**

Beyond all of this violence, frequently naturalized by health professionals, penitentiary staff, and even the incarcerated women themselves, children’s health care constitutes one of the largest sources of dissatisfaction of mothers and of tensions with the penitentiary administration.

As, generally speaking, there is no daily pediatric assistance in the prison nor during the night, children’s health emergencies necessitate visiting health services outside the prison. Owing to this situation, security personnel try to “evaluate” the “real necessity” for attendance, which is not accepted by the mothers. Fearful that the wait for access to health care could lead to the aggravation of the situation of the child’s health, they pressure the staff, which creates the possibility of conflict and, in many cases, disciplinary measures against them.

In some cases, when they manage to take their child to health services outside the prison, the mother goes escorted and handcuffed, even if this results in a risk of falling for the baby and humiliation for the mother. In other cases, the children are taken by penitentiary agents, while



the mothers await their return at the prison. In cases in which there is necessity for hospitalization of the children they cannot remain at the hospital. They are taken once or twice a day to breastfeed, while the baby is breastfeeding. From the point of view of the mothers, the duration of the stay in the hospital is generally insufficient and leads to difficulties for them. They feel that their preoccupation with the health of their child and their right to care for and protect them, is not legitimated. Many report irony on the part of the escort regarding their interest in the health of their child. In other cases, mothers do not manage to be taken at any time and remain without news about their child or depend on security personnel, social services, or health professionals to know about their child's state of health. This situation shows that not all hospitals demand the presence of the mother or the family to accompany the child, whereby they remain wholly in the care either of the escort or the hospital nurse. One notes that the lack of the requirement for accompaniment is in conflict with the legislation<sup>14</sup> and that maternal authorization for the child's staying in the hospital given in these conditions, without the presence of a guardian, does not signify agreement but a lack of alternative.

The interdiction or restriction on the accompaniment of the hospitalized child constitutes one more serious violation that is practiced against the mother and child in the health care sphere. It implies a violation of the rights of the child to familial protection and, at the same time, constitutes a moral violation, since it impedes the mother from breastfeeding, caring for, and being informed about and offering information to the health care team in a moment of great anxiety for her. The same happens, in some cases when mothers and children with systemic ambulatory needs from specialists who, even receiving the indicated medication and instructions regarding the care of their children by way of intermediaries, do not feel themselves to be secure owing to their not being able to talk directly with the doctor.

### Final considerations

It was observed that women's health care, especially during pregnancy and birth, and of the children who find themselves together with them in confinement, present a challenge for public

policy dedicated to the principals of accessibility, universality, quality, and humanization of health care, as the Federal Constitution and the laws that determine health care and the reproductive rights of women, require.

The countless violations and restrictions on the exercise of these rights has been occasioned by disciplinary, security, and health practices which, being carried out behind the walls of prisons and hospitals, have subjected women and their children to risks and to physical, psychological, and moral suffering.

These practices which violate their human rights, seek to justify themselves through discourses which reduce incarcerated woman to the condition of a transgressor, involved in socially censured practices, dependent on drugs and with an "irresponsible" life style, delegitimizing their maternity and their reproductive rights. Reconstructing these discourses signifies the recognition of incarcerated women as subjects of their lives, capable of making choices and decisions, even if without forgetting that, for this, they need conditions and resources that would expand their range of possibilities.

In this manner, even knowing that the mere existence of legislation does not presuppose its fulfillment, the recourse to the judicial language of rights remains strategic in the struggle for the transformation of the life situation of incarcerated women, to the extent that it implies the obligation of the State in the fulfillment of public policy, for its realization. It is in this sense that the conduct of the women's social movements and human rights movements, amongst others, which have put the defense of the reproductive rights of incarcerated women on the international and national agenda, becomes fundamental. It is they who, pressuring the prison administration so that, in conjunction with the justice system, they find solutions that would provide for these women, condition the exercise of their reproductive rights with dignity.

Adequate prison, environmental, and health conditions, the provision of social, judicial, and dignified health assistance, opportune and adequate to the singularities of this demographic, and the search for alternatives to the harsh deprivation of liberty, and by way of alternative measures to preventative prison are expected responses required in the national and international normative context, notably as expressed in the Bangkok recommendations.

## Collaborations

V Diuana conducted interviews, did the analysis of the collected material, worked in the design and wrote the article. Ventura M, L Simas, B Larouzé, M Correa contributed to the article design, discussion of results and review.

## References

1. Brasil. Ministério da Justiça (MJ). Departamento Penitenciário Nacional. Sistema Integrado de Informações Penitenciárias – InfoPen. Referência: 06/2014. [acessado 2015 ago 5]. Disponível em: <http://www.justica.gov.br/seus-direitos/politica-penal/transparencia-institucional/estatisticas-prisional/relatorios-estatisticos-analiticos-do-sistema-prisional>
2. Mattar LD, Diniz CSG. Hierarquias reprodutivas: maternidade e desigualdades no exercício de direitos humanos pelas mulheres. *Interface (Botucatu)* 2012; 16(40):107-119.
3. Corrêa S, Petchesky R. Direitos sexuais e reprodutivos: Uma perspectiva feminista. *Physis* 1996; 6(1/2):147-177.
4. Ávila MB. Direitos sexuais e reprodutivos: desafios para as políticas de saúde. *Cad Saude Publica* 2003; 19(Sup.2):S465-S469.
5. Leal MC, Sanchez A, coordenadores. *Saúde materno-infantil nas prisões*. Rio de Janeiro: Fiocruz; 2014.
6. Ventura M. *Direitos Reprodutivos no Brasil*. 3ª ed. Brasília: UNFPA; 2009.
7. Organização das Nações Unidas (ONU). *Fundo de Populações. Conferência Internacional sobre População e Desenvolvimento. Plataforma de Cairo. 1994*. [acessado 31 maio 2016]. Disponível em: <http://www.unfpa.org.br/Arquivos/relatorio-cairo.pdf>
8. Ventura M, Simas L, Larouze B. Maternidade atrás das grades: em busca da cidadania e da saúde. Um estudo sobre a legislação brasileira. *Cad Saude Publica* 2015; 31(3):607-619.
9. Corrêa MCDV. Ética e reprodução assistida: a medicalização do desejo de filhos. *Bioética* 2001; 9(2):71-82.
10. Diniz S. *Maternidade voluntária, prazerosa e socialmente amparada. Breve história de uma luta*. [acessado 2015 ago 5]. Disponível em: [http://www.mulheres.org.br/documentos/maternidade\\_voluntaria.pdf](http://www.mulheres.org.br/documentos/maternidade_voluntaria.pdf)
11. Leal MC, Ayres B, Pereira APE, Sánchez A, Larouzé B. *Gestação e parto atrás de grades no Brasil*. No prelo, 2015.
12. Guilhem D, Azevedo AF. Bioética e gênero: moralidades e vulnerabilidade feminina no contexto da Aids. *Revista Bioética* 2008; 16(2):229-240.
13. Sarmiento R, Setúbal MSV. Abordagem psicológica em obstetrícia: aspectos emocionais na gravidez, parto e puerpério. *Rev. Ciênc. Méd.* 2003; 12(3):261-268.
14. Brasil. Lei 8.069, de 13 de julho de 1990. Dispõe sobre o Estatuto da Criança e do Adolescente e dá outras providências. *Diário Oficial da União* 1990; 16 jul.

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Article submitted 14/10/2015

Approved 17/12/2015

Final version submitted 19/12/2015