Mistreatment and violence against women during reproductive health care with a focus on childbirth:

The case of Ukraine

Submission to the United Nations Special Rapporteur on violence against women
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1. Mistreatment and violence against women during reproductive health care

Violence against women and mistreatment of women in childbirth are widespread in Ukraine. The 2015 Survey of over 3 500 women about their experience in medical facilities during pregnancy and childbirth[1], the 2015 Facebook flashmob on obstetric violence[2], the 2018 Lviv Survey[3] and the 2019 surveys of women in five regions run by "Pryrodni Prava Ukraina" demonstrate that the problem of obstetric violence is pressing, yet tabooed in Ukraine. Women report a variety of mistreatment and obstetric violence kinds in the Ukrainian context.

1.1 Kinds of mistreatment cases

Personal integrity violation

The most widespread and overarching mistreatment experienced by women in Ukrainian health care system during pregnancy and childbirth is violation of the right to personal integrity, also known as the right to informed consent or informed decision. Although the right to informed consent is provided by the Ukrainian legislation, its implementation is often obstructed by the fact that medical personnel mostly treats informed consent as a mere bureaucratic formality and in fact believes that patients are ill-equipped to make medical decisions about their bodies. Women often experience psychological pressure and intimidation when they try to exercise their right to informed consent: either by refusing from certain medical tests or interventions or by enquiring further information about their health condition or alternative treatments. In many cases women are not informed of the upcoming medical intervention such as amniotomy, episiotomy, medications' use or even sterilization. A detailed discussion of this kind of mistreatment is placed in section 2 of this report.

Restricted access to information

This problem is expressed in several ways in Ukraine: information can be presented in a one-sided manner, lack significant details or be a blatant misinformation. Sometimes information is not provided at all. Most often women reported being misinformed of

[1] "Survey for mothers that gave birth in Ukraine since 2009"
[2] Facebook-based flashmob #ГодіМовчати (analogue of the global campaign #BreakTheSilence), November-December 2015
[3] Survey of 1011 women that gave birth in maternity hospitals of the Lviv region in 2018

the effects of the medications that they were given. One-sided or partial informing usually happens with respect to medical interventions offered to a woman. Withholding information or limiting information happens with respect to the health condition of a woman herself or of her born or unborn baby, as well as regarding medical interventions that can be administered without letting a woman know (e.g. amniotomy, episiotomy).

Women also have restricted access to their own medical information during pregnancy and birth. Records of woman's medical tests during pregnancy and record of her birth remain in archives of a birthing facility after birth. This created additional obstacles for women's rights restoration in case they wish to file a complaint about their rights violation or harm. Moreover, medical records are not always true: sometimes records of birth are written in a way to protect doctors from potential problems rather than to document the situation objectively. The use of forbidden interventions and medications never gets documented in official records.

Poor quality of health services

Ukraine remains among the leaders with respect to maternal mortality in Europe. In 2015 maternal mortality was at the level of 24 deaths per 100 000 births. For comparison, this indicator is 3 per 100 000 in Poland[4]. One of the reasons for this problem is poor access to quality health services. This problem is experienced most by women that birth outside of the area of their official territorial registration, women of low socio-economic status and women that chose to give birth outside of the medical facility, as according to the Ukrainian legislation they cannot have medical personnel assisting them in a homebirth.

Women at large also suffer from poor quality of medical services. Although officially Ukraine has adopted up to date international protocols, de facto outdated practices are more spread. Overly medicated, risky or even prohibited interventions, that contradict evidence-based midwifery, for example, pressure on the uterus (Kristeller maneuver), insistence on birthing lying on a back, guided pushing or preventive episiotomy are still spread. According to the 2015 Survey almost half (49%) of 3526 respondents were not able to birth in a position of their choice and avoid lying on their back during the pushing stage. Prohibited Kristeller maneuver was administered in 28% of births according to the same source. Ob/gyns have anonymously shared that labour is sometime induced by sweeping membranes or placing a Misoprostol pill in a

[4] WHO, UNICEF, UNFPA and The World Bank, Trends in Maternal Mortality: 1990 to 2015, WHO, Geneva, 2015
https://data.unicef.org/wp-content/uploads/2015/12/MMR_executive_summary_final_mid-res_243.pdf

woman's cervix during examination without informing women about these interventions. Such practices harm women's short-term and long-term health and turn childbirth into a traumatizing event.

Another concern is the fact that the Ukrainian health care system does not yet share the WHO perspective on health as a state of comprehensive well-being. Thus mental component of health and emotional experiences of care consumers are not integrated into the provision of medical services. Outdated criteria of medical services quality - namely, survival - is rather used. Health care system also lacks support for women that have experienced perinatal loss or suffer from postpartum depression or PTSD. Thus women after loss are additionally traumatized by indifferent or negative attitude from medical personnel. Grieving women are sometimes placed in shared hospital rooms with other women and their healthy newborns. Women in perinatal loss also rarely get psychological support from the healthcare system as there is a lack of psychologists within the stuff. Finally, these women are not given full information about welfare benefits that they are entitled to.

Lack of privacy

Women face the following problems with respect to privacy during a hospital-based childbirth: it is impossible to control the quantity of the medical personnel present at birth, women have to birth in the presence of strangers and sometime interns without their consent, disrespectful behaviour of medical personnel (loud talking, irrelevant chats, entering the room without warning etc). Some maternity hospitals have transparent doors of postpartum rooms. Although this clearly jeopardized women's privacy, hospitals argue that this arrangement is in place for women's safety.

Forced retention in maternity hospitals

Women also face restrictions in their freedom to leave the birthing facility at different stages - from pregnancy to postpartum. If a woman is hospitalized during pregnancy for the purposes of bed rest, but receives no medical treatment, she may not be able to go home before the date defined at the moment of hospitalization. Similarly, women on 39-41 week of gestation may be hospitalized for the purpose of waiting for labor and may have problems with the idea of returning home and waiting for labour there. As for postpartum hospitalization, according to the medical protocol, women are expected to stay at the maternity hospital for 3 days after a natural delivery and for 5 days after a C-section. Leaving home earlier than that is also problematic and subjects a woman to psychological pressure and intimidation.

Disrespectful/abusive treatment

Disrespectful attitude to pregnant and birthing women is widespread and is one of the main manifestations of obstetric violence in Ukraine. This problem was addressed by the online flash mob #Годімовчати (#BreakTheSilence) carried on in November 2016, During this campaign women shared their experiences of suffering from systematic disrespect. According to the 2015 Survey 11% of the 3526 respondents mentioned brutality and disrespect of medical personnel in birth. One quarter of respondents (23%) experienced psychological pressure during childbirth.

Restrictions on birth partners

According to the law women may have two partners to support them during birth. Yet, maternity hospitals often allow admission of only one person to accompany a woman. Respectively, an already birthing woman is forced to make an uncomfortable choice between her two partners. In most cases a woman cannot have the support of chosen close people, if she has to be transferred to intensive care unit after a C-section. In such cases women are usually also deprived of their right to be with their newborn as provider's argue that she is not able to take care of the baby. In some cases maternity hospitals forbid women having partners in birth motivating such a decision by flu quarantine that can last for months. Visiting women during their postpartum stay at a maternity hospital may also be problematic.

Discriminatory treatment

The following groups of women suffer from additional discrimination in birthing facilities:

1. Women over 35 years experience greater medicalization and psychological pressure;
2. Women with chronic health conditions (diabetes, disability, HIV-status, etc);
3. Women with low income experience greater disrespect, lower quality of service, their needs during birth are ignored more often, are more restricted in the number of people that can accompany them in birth;
4. Internally-displaced persons;
5. Surrogate mothers - overmedicalization and forced C-sections;
6. Lesbian women - experience greater disrespect, their needs in birth are ignored more often;
7. Roma women - experience greater disrespect, lower quality of service, their needs in birth are ignored more often;

Torture

IOn some occasions practices that are not grounded on evidence-based care and not present in medical guidelines are performed to cause significant suffering to a woman during birth or postpartum period. They are done to either force a woman to take a certain decision or to punish "disobedient" women, who have asked for individualized approach in labour. As such these practices qualify as torture. Those practices include: manual dilation of a cervix; hours-long CTG without a possibility for a woman to change her body position performing episiotomy without warning a woman, extremely painful and traumatic milk expression massage, perineal suturing without pain relief, unnecessary painful examination after birth or separation from a baby or partner.

In case of homebirth, women can be subject to painful cervical examination when they contact an obstetrician-gynecologist to receive a medical certificate for the newborn registration. Women testify painful and disgracing vaginal examination performed by several doctors simultaneously, as means of punishing them for having birthed at home.

Financial mistreatment

According to the law health care services related to pregnancy and birth are free of charge in Ukraine. In practice, however, most women pay for those services in one form or another:

- "Gratefullness payments" are often expected by medical personnel after birth for their performance of required medical services (medical assistance in birth, administering an epidural, breastfeeding support etc).
- Part of pregnancy-related medical tests cannot be done free of charge as public prenatal clinics have no laboratories, or their laboratories have limitations on the kinds of tests that they do. As a result women need to pay for tests in private laboratories.
- "Charitable" contributions are demanded both in prenatal clinics and in maternity hospitals. Unless they are paid, medical facilities refuse providing their services.
- A demand to buy and bring own medications and supplies needed for birth is also widespread. Maternity hospitals usually have lists of such medications and supplies that they give to women when they register for upcoming birth with them. Purchasing those items requires significant financial investment.
- Leaving a maternity hospital is also sometimes difficult without an additional payment for a special "check-out ceremony" that includes the services of a

hospital-associated photografer. Women who dare to abstain from such service often suffer from disrespectful attitude and psychological pressure from the medical personnel.

Home birth option not provided

Problems described in preceding sections are among the reasons for some women to prefer home birth. However, state policy is discriminatory towards those women. It is legal to give birth outside of a childbirth facility, but it is not legal to provide medical help to those who birth at home. As a result some women birth midwife or with a midwife that works illegally and thus the quality of her work if not subject to official monitoring or control. According to Survey 2015 only 36% of home births were assisted by a midwife or a doctor, 12% were assisted by a person with no medical education, 46% were assisted by a woman's partner, and 6% of responding women birthed a child without anyone's assistance.

Besides, no state funding is available to cover the costs of homebirth. As a result, homebirthing women, having already paid taxes towards the state healthcare system, also need to cover the cost of a home midwife, while facility-birthing women have a right to receive their basic medical care costs covered by the governmental system. In practice, however, this gap is less significant as facility-birthing women are also paying a lot as was described earlier.

The medial system representatives have a strongly negative attitude to planned out-of-hospital birth. Women tell stories about unequal, discriminatory, or punitive treatment, humiliation, threats to withhold medical care in case of a transfer to a hospital.

In case of any complications during homebirth, a woman faces an utterly negative reaction of medical personnel at the health care institution, where she seeks assistance. Such situation infringes on the right of women to choose the place of her delivery, and one of the fundamental rights of a person – the right of women and children to receive emergency medical aid.

In order to receive a birth certificate after a homebirth, a woman needs to an enormous amount of documents and undergo humiliating medical examinations up to DNA testing instead of restoring after birth and establishing healthy mother-child relations.

1.2 Ukraine's response to obstetric violence

In Ukraine, of obstetric violence is not seen at the moment. Neither doctors, nor government recognize the existence of the problem. Doctors predominantly believe that persons without medical education can not evaluate their health status or decide on the necessity for medical intervention; hence the voice of a women is is neglected doctors act as they regard appropriate. Relations between a doctor and a woman operate as power relations: a doctor can allow or not allow something, and if a woman disagrees with a doctor this is seen as disobedience.The issue of obstetric violence is addressed only by several obstetrician-gynecologists in their media publications and social networks posts. There are also two civil society organisations and one civil society initiative, which work with the issue of obstetric violence. As the problem lacks recognition, there are no state policies aimed at preventing obstetric violence or protecting the rights of women with respect to to perinatal care. In case of women's rights violation they can appeal to restore justice following a standard procedure described in section 3.

2. Informed consent

Ukrainian legislation presupposes the right to informed consent and refusal in line with international standards. Doctors are obliged to obtain women's informed consent before any kind of medical interventions during diagnostics or treatment in pregnancy and childbirth.

This right has been proclaimed 13 years ago,yet until now the majority of doctors have not changed their practices to accommodate this new standard. At the moment this right is rather a formality, it has not yet become a meaningful instrument to promote women's interests.

The practical realization of the right to informed consent and refusal is also jeopardized by a contradictory ruling with respect to women's possibility to have a partner in birth. Partners can be potential witnesses of informed decision violations, yet at the moment it is not always possible to take a partner into birth facility. Although according to the law a woman can be accompanied by 2 supporters, the law also allows space for the chief doctor to have a final say on who can attend, when and in what quantity.

The possibility of woman's informed refusal is not always realized by the doctors. It is common, that talking about informed consent doctors expect necessarily an agreement, not any decision a woman can make. This leads to psychological pressure and discriminative treatment of women, who choose informed refusal. In case of refusal to follow medical recommendations women can face aggression and disrespect from health care providers. In some cases they experience punitive behaviour of the health professionals in the form of intentional refusal to provide certain services (for example, perineum suturing without pain relief, restriction of woman's contact with her baby after birth, etc).

The 2015 Survey of over 3 500 women has shown that 76% of women have been informed at the antenatal clinic on the matter of tests and monitoring procedures, while another 20% said that they were not. Moreover, 59% of women said that they had enough time and information in order to make an informed decision, while 41% responded that they did not have enough time and/or information for doing that.

Induction is usually offered as the only option after the 40th week of gestation. The widespread argument is that "Your baby is suffering. Se can die any moment". Medical personnel does not warns a woman of the risks of this intervention, of the increased probability of C-section and complicated birth. As a result an absolute majority of women consent for induction without doubting or giving it a second thought, as doctors only speak of expected benefits from the procedure.

The 2018 Survey of 1011 women about birthing in maternity hospitals of 1011 of Lviv region has shown that only 37.8% of women have been fully informed on the matter of any medical interventions and examinations whereas other 62.2% have not been appropriately informed. 42.7% of women said that they had enough time to make an informed decision, while 51.2 % respondents did not have enough time, and 6.1% have signed an informed consent form after giving birth.

The 2015 Survey respondents shared very similar impressions and cases of informed consent violations. The most common themes were that doctors provided almost no information, answered no questions, or did so in a very formalistic way and/or humiliating or even threatening manner. Many women also report that along with some formalistic informing antenatal specialists used strong psychological pressure to force women into certain decisions. While many women reported this being the case, one woman has shared a specific story telling that *"they were shown a horrible video after which she needed to seek a psychotherapists help".*

The papers are offered to women for signature in inconvenient moment, for example, during contractions or pushing, when it is difficult for her to both think and write. In some cases respective papers can be given to a woman after an already performed intervention.

Often the consent to medical intervention is not asked for at all, which is particularly true for certain intervention, such as amniotomy and episiotomy. There are also cases of performing a medical intervention despite woman's refusal, although there was no critical condition for woman's or baby's health.

2015 Survey respondents reported that amniotomy was administered in 47% of cases, and in 18% of cases it was done without obtaining a woman's consent. Amniotomy is often done without prior informing about this procedure; often in the course of a usual vaginal exam. Doctors never speak of potential side effects of this procedure and, if asked, focus on the fact that it makes birth faster.

Mothers' reports in the 2015 Survey demonstrate that episiotomy is done routinely, in 30% of cases. And 2018 Lviv region Survey has shown that in 25.6% of cases episiotomy has been done without informed consent, 14.9% of which has been done even without prior informing women about this procedure.

Apart from performing amniotomy and episiotomy without informed consent, medications are often administered without consent or even notifying women of the fact - 19.1% in 2018 Lviv region survey.

In the 2018 Lviv region survey the issue of informed consent for oxytocin shot during third stage of labour was specifically explored: 46,1% of women gave consent for the procedure, 4,7% - rejected it and their choice was respected, 1,7% - rejected it, but their choice was violated, and 46,7% did not remember giving a consent.

Cases of secret sterilization also are anonymously reported.Specifically, some women had their tubes tied during a C-section without woman asking for it or being informed of it.The reasons for this violation are not fully understood; it is possible that it is done on a woman's sexual partner request.

3. Accountability mechanisms

There are three accountability mechanisms that can be used for redress by victims of mistreatment or violence within a medical setting.

Firstly, written complaints can be submitted to authorities and responsible persons at four levels[5]:

1. Facility medical director;
2. City or regional health care department;
3. Local government (can be filed through a phone hotline);
4. National government (can be filled through a phone hotline);

Secondly, it is possible to apply to undergo an expertize by a medical expert committee of regional health departments, Kyiv and Sevastopol city health departments, as well as the Ministry of Health of Ukraine. These medical expert committees control the medical care quality and consider cases of professional misconduct or service failure which caused damage to life or health. These committees provide an expert report with proposals regarding the case, and defining the responsible persons within the Ministry of Health of Ukraine, city/regional health department or at the facility levels and the deadlines of proposals implementation. Complaints are considered or medical expert boards are conducted during 15-45 days depending on the level of case's complexity. Complaints are always free of charge.

The third mechanism is legal redress. Any financial compensation[6] for pecuniary and non-pecuniary damages can be received only through legal action. All payments under the court decision should be made by a healthcare facility.

However, the experience of women who tried using these mechanisms demonstrates their ineffectiveness. Hospitals take overseeing doctors' respect to informed consent as a formality. Head doctors care for the papers to be signed, not the women's needs to be met. This is especially true when complicated interventions are planned – in those cases signatures are collected meticulously, which nevertheless does not mean that information is given in a similarly careful manner. Thus maternity hospitals' leadership is

[5] The right to file a complaint is ensured by the European Charter of Patients' Rights (Article 13), the Constitution of Ukraine (Article 40), the Primary Legislation on Health Care of Ukraine (Article 6).
[6] The right to compensation is ensured by the European Charter of Rights of Patients (Article 14), the Constitution of Ukraine (Article 3, part 1), the Primary Legislation on Health Care of Ukraine (Article 6), the Civil Code of Ukraine (Article 22 (Part 1), 23, 906, 1166 (part 1, 2), 1167 (part 1), 1168, 1195-1203, 1209), the Consumer Right Protection Law (Article 4 (paragraph 5 part 1), 16).

a doubtful source of support in restoring justice in the case of informed consent violation. Intra-doctoral and intra-hospital loyalty is extremely high in Ukraine, and women's chances to uphold their rights by approaching a head doctor with a complaint about his subordinate are close to zero.

Legislation contains no direct sanction against the doctor that violated the right for informed consent. According to article 43 of the Law of Ukraine "Fundamentals of Health Care Legislation of Ukraine" doctors have to comply with the patient's right for informed consent as a part of their professional responsibilities. Failing to perform one's professional responsibilities may result in disciplinary sanction such as a warning or firing according to Article 147 of the Labour Code of Ukraine. Yet, we are unaware of cases when a doctor would be punished for violating the right to informed consent.

Legal redress mechanism is not frequently used by women and families as it is complicated, requires resources and the court system is perceived as corrupt. There are also significant difficulties in conducting expert evaluations, especially due to a high level of medical solidarity, and bureaucratized litigation, which may last for years. Other difficulties include a limited list of medical actions that are considered a crime, insignificant penalties and complexity of investigation. Moreover, cases brought up to the court are not always successful. If the trial court comes to a decision in support of a patient, a doctor may send the case to the appeal court that can revise the trial court's decision and send the case for further investigation. Such time delays may lead to doctor's avoiding punishment based on the termination of the liability period. We are neither aware of court cases that would sentence a doctor, nor of cases when a woman that suffered from obstetric violence would get financial compensation.Therefore many women do not even try to seek justice through courts.

Ombudsperson

Ombudsperson's mandate according to the law # 776/97-BP "On the parliament's of Ukraine commissioner on human rights" are quite generic and aim to protect human rights realization and ensuring non-discrimination in accordance to the Ukrainian constitution and international standards.

One of the functions that ombudsperson is mandated for is control over equal rights of women and men realization (Article 13.13). Given that only women are giving birth (with the exception of singular cases globally) it is hard to speak of gender equality when it comes to childbirth. Yet, the fact that the ombudsperson is charged with gender equality issues also means that women's interests and experiences, including

those pertaining to perinatal care and human rights in it, should be a part of the ombudsperson potential agenda.

Health care related appeals to the Ombudsperson office are processed by two departments: Department for social rights monitoring and Department for children's and families rights. The ombudsperson's secretariat contains a Department of eliminating torture and other cruel and inhumane kinds of treatment or punishment. Given that certain behaviours of childbirth medical personnel can be qualified as torture, this department may be relevant for some perinatal rights cases.

A woman whose rights have been violated or who became a victim of mistreatment can file a complaint to an ombudsperson in writing or through an electronic system on the office's website.

However, the Ombudsperson's classifier of appeals does not contain cases on human rights in pregnancy and childbirth violations. No obstetric violence appeals were received by the Ombudsperson's office in 2019.

4. Health systems' policies that guide health responses to VAW

Currently, here are no such policies in the health care system of Ukraine.

Recommendations

1. Create legal provision for midwifery model of perinatal care, including the option of out-of-hospital birth

2. Add obstetric violence cases to the classifier of Ombudspersons appeals

3. Develop state policies on preventing and combating obstetric violence in medical facilities, as well as on support to obstetric violence victims

4. Develop health care system policies that guide responses to violence against women according the WHO recommendation