

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/9, 32/19 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **hundreds of alarming cases of violence and abuse against women during the performance of medical procedures related to their reproductive health in Croatia.**

According to the information received:

In 2014, a civil society organization launched a campaign calling for an end to discriminatory and inhuman treatments of women who accessed reproductive health care services in Croatia. Due to the lack of official response, the organization launched a new campaign in October 2018, called #PrekinimoŠutnju, or #BreakTheSilence, which brought together over four hundreds women to give testimonies on medical procedures related to their reproductive health which have been practised without anaesthesia. The testimonies collected refer to a pattern of violence, abuses and unethical treatments carried out in Croatian public hospitals over a two-decade period. The violence manifested in invasive surgical treatments carried out without anaesthesia, such as biopsies, surgical miscarriages, surgical removal of placenta and suturing after birth. It also included physical abuse, humiliation and verbal abuse, compulsory medical procedures or procedures carried without full and informed consent, the refusal to give painkilling medication or anaesthesia, and violations of privacy.

Among the testimonies collected, one woman recalled that she was nine weeks pregnant when she had a miscarriage. She spent five hours in the waiting room while awaiting surgical miscarriage and then was subjected to uterine scrape without anaesthesia, for the second time that year. Two months later she found out with a private doctor that her uterus had torn. Another woman reported that she was crying during a biopsy carried out without anaesthesia, but she was asked by the doctor why she did not cry while having sex. Another woman described how after giving birth, she was subjected to stitching without receiving any anaesthesia

or pain killer. Despite her requests to stop or give her a pain killer, the doctor replied ironically that he was “stitching for her husband”. Other women recounted cases of how they had been subjected to invasive treatments without their consent, with their arms and legs tied and some women whose stitches had been applied without anaesthesia, noted that the stitches fell off after leaving the maternity ward of the hospital.

Despite the testimonies collected through the campaign in 2018, it is reported that politicians and heads of health institutions have denied these cases, questioning the credibility of the women’s stories and women’s perception of pain, at times even questioning their intelligence, and adduced that the deficit of anaesthesiologists in Croatian public hospitals was to blame for the cases of lack of anaesthesia.

In October 2018, the organization further requested the Prime Minister to prepare an Action Plan for Women’s Health for 2019-2021 before International Human Rights Day on 10 December 2018. To date, no response to this proposal has been provided. Civil society organizations also expressed concerns about the inspections teams which started visiting public health facilities in Croatia. These inspections are reportedly carried only by physicians and patients’ representatives and other stakeholders are not involved, nor is their opinion taken into account during the inspections.

Without prejudging the accuracy of these allegations, we express our most serious concern that these allegations, if confirmed, would show a persistent trend of violence against women who access reproductive health care in Croatia. We are particularly concerned that these allegations would constitute a violation of the very core of a woman’s fundamental rights to equality, physical and psychological integrity and privacy. Particular concern is expressed at the damages suffered by women after receiving treatments in Croatian public hospitals. Moreover, while we recognize that women during delivery bear pain, we are appalled by the allegations suggesting that women have been subjected to surgical treatments without any anaesthesia against their will, which inflicted on them unbearable and avoidable pain.

Furthermore, the allegations would constitute a breach of the right to the highest available standard of physical and mental health and the right to equality in the enjoyment of economic, social and cultural rights, including the right to health.

Finally, we are particularly alarmed about the fact that women are discriminated against on the basis of their gender when accessing reproductive health care services and that they were subjected to discriminatory and humiliating comments, which show a persistence of negative stereotypes in relation to the roles and responsibilities of women in society.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide details concerning the existing procedures on the administration of anesthesia during surgical miscarriage, biopsies and post-natal care and indicate in which case it is not administered. Please specify how informed consent is obtained before such procedures and any other reproductive health surgical procedures and how women's equality, dignity, autonomy and privacy is ensured.
3. Please provide details on the inspections indicating whether they were organized by the Ministry of Health, and what are the main findings.
4. Please provide information on the existence, if any, of a complaint procedure available to women who received sexual and reproductive health care in public health care facilities. Please specify the nature of the remedies that might be provided to victims of mistreatments.
5. Please indicate what disciplinary measures are applied to health care personnel who are found responsible for the alleged abuse.
6. Please specify whether your Excellency's Government is planning to draft an action plan on women's health.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

While awaiting a reply, we urge that all necessary measures to halt the alleged violations and to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Ivana Radačić

Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to articles 3,7,9 and 17 of the International Covenant on Civil and Political Rights ratified by Croatia on 12 October 1992, which protects the equality of men and women, the physical and psychological integrity and the privacy of all persons. The Human Rights Committee affirmed in its General Comment 35 that the right to security of person enshrined in Article 9 protects individuals against intentional infliction of bodily or mental injury (para.9).

Article 12 of the International Covenant on Economic, Social and Cultural Rights ratified by Croatia on 12 October 1992, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 2 involves States' undertaking of steps for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child (art 12.2). This, according to the Committee on Economic, Social and Cultural Rights, (CESCR) General Comment 14 (GC 14) shall be understood as measures to improve sexual and reproductive health services, including pre- and post-natal care as well as emergency obstetric services (para 14). Women have the right to, inter alia, access appropriate health-care services that will enable them to go safely through pregnancy and childbirth (CESCR, GC14, para.14); therefore, public health infrastructures should provide for safe motherhood (CESCR, GC14, para. 36). In addition to entitlements, the right to health contains freedoms including the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from non-consensual medical treatment. Accordingly, States have the obligation to respect the right to health by refraining from applying coercive medical treatments (CESCR, GC14, para. 8). No medical treatment shall be given to a person without his or her informed consent. Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services. Informed consent in health is an integral part of respecting, protecting and fulfilling the enjoyment of the right to health. (A/64/272, para. 18). Safeguarding an individual's ability to exercise informed consent in health, and protecting individuals against abuses is fundamental to protecting the right to health. (A/64/272, para.19).

Article 12 of the CEDAW, which Croatia ratified on 9 September 1992 calls on States Parties to 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. CEDAW General Recommendation no. 24 emphasizes the duty of a State party to ensure, on a basis of equality of men and women, access to health-care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. CEDAW General Recommendation no. 35 affirms that violations of women's sexual and reproductive health and rights such as abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or

cruel, inhuman or degrading treatment (CEDAW/C/GC/35 at para. 18). In addition, in its Concluding Observations on Croatia, the CEDAW expressed concerns on the lack of oversight procedures and mechanisms for ensuring adequate standards of care and the protection of women's rights during deliveries, as well as their autonomy (CEDAW/C/HRV/C/4-5).

The Special Rapporteur on the right to health observed, in his report on the visit to Croatia in 2015, that there is a strong opposition among policymakers and within society at large towards well-established standards, instruments and mechanisms for the promotion and protection of women's sexual and reproductive health rights. He urged all stakeholders to support policies based on universal human rights principles, including those concerning sexual and reproductive health, and to reject what could be seen as conspiracy theories, which promote patriarchal gender stereotypes and undermine the role of women and girls in society (A/HRC/35/21/Add.2, para. 86).

As stated by the Working Group on the issue of discrimination against women in law and in practice, central among women's and girls' health needs are those relating to their reproductive and sexual health. Discrimination against women in health is sometimes manifested in humiliating treatment that women may face in facilities that are dedicated exclusively to them, such as birthing facilities where, as repeatedly stressed by United Nations human rights mechanisms and WHO, they are too often subjected to degrading and sometimes violent treatment. In some situations, failure to protect women's rights to health and safety may amount to cruel, inhuman or degrading treatment or punishment or torture, or even a violation of their right to life. The Working Group has recommended that laws, policies and practices should mandate respect for women's autonomy in their decision-making, especially regarding pregnancy, birthing and postnatal care (A/HRC/32/44).

In a joint statement on the occasion of the high-level summit to officially launch the 2030 Agenda for Sustainable Development in September 2018, a group of international and regional human rights experts called on States, in implementing the Agenda, to seize the opportunity to recommit to and ensure the full respect, protection and fulfillment of sexual and reproductive health and rights. They stressed that States should also address acts of obstetric and institutional violence suffered by women in health care facilities, including with respect to forced or coerced sterilization procedures, refusal to administer pain relief, disrespect and abuse of women seeking healthcare and reported cases of women being hit whilst giving birth.

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