

Universal Periodic Review for Ukraine

Submission by the WHO CO Ukraine

I. Human Rights Framework

As a member of the international community, Ukraine has committed to respect, protect and fulfill the basic human rights enshrined in the Universal Declaration of Human Rights (1948). The Declaration provides for 'health' as a fundamental human right.¹ This right is elaborated in the International Covenant on Economic, Social and Cultural Rights (1966) ratified by Ukraine.² As a signatory of the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, Ukraine has committed to promote women's and children's rights, including in the area of health.

Ukraine has committed to the time-bound pledges entailed in the Millennium Declaration i.e. to poverty reduction, human development and human rights. While each of the MDGs is independent, all MDGs influence health and vice versa. Three MDGs are directly linked to health: MDG 4 aims at reducing child mortality; MDG 5 at improving maternal health; MDG 6 is concerned with combating HIV and other major diseases. Having signed the UNGASS Declaration of Commitment on HIV/AIDS (2001) and the Political Declaration on HIV/AIDS (2006), Ukraine has agreed to work with other member states towards achieving universal access to prevention, treatment, care and support by 2010. Ukraine is also signatory of the Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia (2004), which define actions for governments in the WHO European Region.

The Government of Ukraine (GoU) has enacted a number of laws and regulations relating to health. The Constitution of Ukraine 1996, Title II sets out the Human and Citizens' Rights, Freedoms and Duties. Art. 49 provides that everyone should have the right to health protection, medical care and medical insurance and medical care must be rendered free of charge. Other laws and regulations include the Legislation on Health Care (1992); Law on Protection of Children (2001); Law on fighting Tuberculosis (2001); Law on Ensuring Equal Rights and Opportunities of Women and Men (2005), National AIDS Law (2010). Ukraine also endorses that its people have a 'right to health' as laid down in a number of World Health Assembly Resolutions. WHO is working closely with the GoU, technically supporting the integration of human-rights based approach into health policies and practices. **Yet major concerns persist in the realization of equal access to health in certain areas, some of which are touched upon in the remainder of the report.**

II. Promotion and Protection of Human Rights on the Ground

1. Equal Access to Health Services

a. Out-of-pocket payments

Ukrainian citizens and persons permanently residing in Ukraine have the constitutional right to unlimited health care free of charge (Constitution of Ukraine, Art 49). In 2002 the Parliament

¹ WHO website: <http://www.un.org/en/documents/udhr/#atop>

² WHO website: <http://www.who.int/mediacentre/factsheets/fs323/en/index.html>

ratified the programme Health of the Nation 2001-2011, which aimed to improve quality and efficiency of health care, ensuring social equity and the right of citizens to health protection. While significant efforts have been taken to implement these provisions and plans, Ukraine has not been able to mobilize resources in such a way as to guarantee equal access to core health services.

People pay for a considerable volume of services and pharmaceuticals themselves. In 2009, out-of-pocket payments accounted for 37.4% of the total health expenditure. High health care costs are particularly detrimental for poorer segments of the population, who end up postponing or not seeking medical treatment. Low-income patients are also more likely to be denied quality treatment due to inability to pay. All of this results in significant inequalities in access to adequate care. In 2009, 20.5% of households could not access necessary medical care.³

b. Shortage of Drug Supplies

Persistent shortage of supply of certain drugs impedes access to prevention and treatment. Inefficient drug management poses challenges notably for access to HIV and TB prevention and treatment (more below), but also for immunization against vaccine preventable diseases. The current National Immunization Programme includes a number of mandatory vaccines e.g. TB, measles, rubella, polio, diphtheria. Nevertheless, vaccination coverage has dropped significantly in recent years, leading to severe disease outbreaks. Fear of adverse effects of immunization and impaired trust in public health services and persistent shortfalls of routine immunization in the country are perceived as main causal factors. According to the MoH, the immunization coverage dropped 10–15% in 2009, but the WHO estimates that the coverage may have decreased by up to 30–40%.⁴

c. Access to HIV and TB Services

The national response to HIV and TB improved considerably in recent years, taking a strong focus on ensuring incorporation of human rights in policies, programmes and practices. Ukraine has demonstrated willingness to cooperate with international Human Rights Mechanism by regular submission of follow-up reports to the UNGASS Declaration and the Dublin Declaration. The 5th country progress report has been finalized for submission 2012.

The legal environment for scaling up HIV and TB response has been strengthened. In 2010, a revised National AIDS Law (NAL) was endorsed along with the National AIDS Programme 2009-2013 (NAP) as the strategy to achieve universal access. The National Tuberculosis Programme (NTP) was approved 2007, when DOTS was adopted as the national strategy to control TB. The TB Law (2001) was revised 2012, among other to reflect the *Patients Charter for Tuberculosis Care*, which outlines internationally recognized rights and responsibilities of people with TB. The new law was approved by the Parliament 2012.⁵ **Despite improvements in legislative framework on HIV and TB, however, serious discrepancies prevail with regard to implementation of provisions.**

³ WHO (2010): Health Systems in Transition, pp. 37-39, 42-46.

⁴ WHO Websites: <http://www.euro.who.int/en/where-we-work/member-states/ukraine/areas-of-work/immunization-strengthening> and http://apps.who.int/immunization_monitoring/en/globalsummary/countryprofileresult.cfm?C=ukr

⁵ Since the new law is not yet signed by the president i.e. in power, this report will make references to the “old TB law”.

Free access to ART and treatment of opportunistic infections is guaranteed by the NAL. While remarkable progress in scaling-up ART Programmes has been made, ART coverage in the country remains low; an estimated 13% in 2010.⁶ Access to HIV services for IDUs is particularly limited; in 2011 IDUs made up only 8.3 % of those receiving ART.⁷ NAL (Art 4) lays out Provisions for HIV prevention among IDUs through harm reduction programmes (HRP), including Opioid Substitution Therapy (OST). While HRPs are implemented in all regions, these provide only a minimal package of prevention and care services. The number of IDUs accessing OST has increased; the challenge is to integrate narcological and HIV services. According to estimates only 32% of IDUs were reached by HIV programmes in 2009.⁸

As with access to medical care in general, high health care costs, health system inefficiencies and medical supply shortages constitute the greatest challenges in ensuring access to HIV prevention, treatment and care. Despite progress in scaling-up HIV testing and counseling services, research findings indicate that a significant number of PLWHA are enrolling late into care as result of insufficient testing and counseling and therefore do not receive optimal clinical benefits from ART. Accessibility of services in terms of their location, opening times and tedious procedures also hinders, particularly socially vulnerable, from accessing them.⁹

The negative impact of pervasive stigma and discrimination on accessing services is recognized: The NAL (Art. 14) guarantees equal legal protection and prohibition of discrimination against all PLWHA on the grounds of perceived or actual HIV status. Despite efforts to raise awareness among health care providers and the public, stigmatization and discrimination continue to limit access to health services for these populations. Patients are found to be frequently met with hostile attitudes from service providers¹⁰ and fear of stigmatization stops people from seeking care.¹¹ Frequent reports of police harassment and risk of arrest when visiting harm reduction sites also cause concern. While NAL (Art 13) guarantees protection against disclosure of HIV status to third parties, drug treatment clinics are required to officially register drug users and to share this information with law enforcement agencies. This inevitably keeps drug users from seeking healthcare or drug treatment services. A recent MoH order to criminalize possession of small amounts of drugs is feared to further increase police harassment and therefore IDUs avoiding HIV prevention services to return used syringes containing residual drops of illegal drugs.

Despite efforts to improve TB Control in Ukraine, access to adequate TB services remain a great concern. The TB burden in Ukraine is one of the highest in the WHO European Region, with Multidrug-resistant TB (MDR-TB), extensively drug-resistant TB (XDR-TB) and TB/HIV co infection on the rise.¹²

⁶ WHO/UNAIDS/UNICEF (2011): Global HIV/AIDS Response: Epidemic update and health sector progress towards Universal Access. Progress report 2011. p. 193.

⁷ Ukraine Harmonized AIDS Response Progress Report. Reporting Period 2010-2011

⁸ National Report on Monitoring Progress Towards the UNGASS Declaration of Commitment on HIV/AIDS. Reporting period (2010): January 2008–December 2009. p. 10ff

⁹ Neduzhko, Kiryazova, Perehinets (2011): Linkage to care of PLWH in Odessa Oblast: personal and health system's barriers

¹⁰ WHO/All-Ukrainian Network of PLWH (2009): The report of the Mission to Assess availability of and access to STI services for most at risk and vulnerable populations in Ukraine.

¹¹ Neduzhko, Kiryazova, Perehinets (2011): Linkage to care of PLWH in Odessa Oblast: personal and health system's barriers

¹² WHO (2011): Global TB Control, report 2011

While the TB Law (Art 15.) guarantees free services and medication, persistent deficiencies in the drug supply mechanism results in limited availability of medication and inadequate treatment regimens. Many, particularly socially vulnerable groups who are at highest risk of infection, cannot afford prescribed drugs or use smaller amounts than prescribed, causing unnecessary spread of drug resistant TB and TB mortality.¹³

Provisions and standards for TB infection control, which are in line with those of WHO, are laid down in the NTP, but the knowledge of these among health care providers is low. Studies consistently find that patients are not separated according to degree of infection, ventilation is inadequate increasing the risk of airborne transmission and medical staff is not sufficiently protected e.g. with respiratory protection. The risk of health personnel being infected is found to be 3-4 times higher than in the general population. Such environments are also particularly dangerous for immunocompromised, such as HIV patients.¹⁴

The compulsory isolation of infectious TB patients in Ukraine provided in the new TB Law (Art 11.), is of grave concern. Consequently TB patients may be involuntary hospitalized for prolonged periods. Aside from the obvious ethical and human rights issues surrounding compulsory treatment, combined with the poor infection control measures such practice contributes to rather than protects against TB and MDR-TB. Involuntary isolation and detention are introduced not as measure of last resort but to overcome the inability of the system to provide patient centered treatment and community based care. WHO recommends that the government instead prioritizes that every patient has access to high quality TB diagnosis and treatment for TB and drug-resistant forms of TB; compulsory detention should be viewed as a last resort only, particularly in the case of drug resistant TB.¹⁵

d. Prisoners

Prisoners are disproportionately exposed to the risk of infectious diseases at the same time as their own capacity to manage these risks is severely constrained. While a prison sentence is supposed to be a punishment, exposing offenders to fatal diseases contravenes internationally agreed human rights. The high number of non-convicted prisoners exposed to risks of infectious diseases during unduly long periods in pre-detention centers should also be noted.

While the number of vulnerable populations reached by HRPs has constantly risen, access to health care for prisoners in Ukraine remains a significant challenge. According to MOH statistics 2010, 929 of prisoners in Ukraine were found to have TB (about 10 times the number among the general population).¹⁶ According to WHO data 2010, 5591 detainees were HIV positive. The HIV situation among prisoners is exacerbated by high rates of TB, often MDR-TB. 723 of those found HIV positive had TB/HIV; 390 were receiving ART.¹⁷

A WHO assessment of TB Control (2010) observed dramatic conditions in penal institution; lack of drugs and treatment, overcrowding and absence of infection control measures for detainees as

¹³ WHO (2011): Pre-Assessment Mission on Practical Approach to Lung Health. p. 25 and 29.

¹⁴ WHO (2010): Review of the National Tuberculosis Programme in Ukraine 10-22 October 2011. p. vii; WHO Pre-Assessment Mission on Practical Approach to Lung Health (2011), p. 25 and 29.

¹⁵ WHO (2001): Good Practice in Legislation and Regulation Control: an Indicator of Political Will. p. 12.; WHO website: http://www.who.int/tb/features_archive/involuntary_treatment/en/index.html.

¹⁶ MOH, State Statistic (2011): Tuberculosis in Ukraine. Analytical and statistical document for 2000-2010. p. 32

¹⁷ WHO (2010): Review of the National Tuberculosis Programme in Ukraine 10-22 October 2011. p. 19

well as staff. MDR-TB was treated with a selection of second line drugs estimated to cover 25% of the actual need. Due to shortages of laboratory consumables, only 20% of TB patients were tested for HIV and 80% received ART.¹⁸

The rapid development of the HIV and TB epidemics represents a major threat not only to the prison population, but to the society in general. In the case of TB, the State Department is obliged to inform local MoH if releasing an infected person. Transportation of the patient and referral to continued treatment must also be provided. In reality, released prisoners are left to their own. An estimated 30% do not continue treatment.¹⁹

e. Mother and Child Health

Mother and Child health has received much attention in Ukraine and significant progress has been made on the issue. “Reproductive Health of the Nation for 2006-2015 years” # 1849 is one of the main regulatory documents aimed at improving reproductive health of men and women and to contribute to achieving MDG 4 and 5.

According to official records, mother and child mortality have halved since the independence, indicating increased availability of and access for women to health care services. However, WHO considers the maternal mortality rate to be underestimated, undercounting being due to the punitive nature of the control system, which encourages health workers to disguise poor health outcomes.²⁰

While contraception and abortion services are legal in Ukraine, access to such services remains limited. Information about contraception and abortion is not equally available; access to contraception services, contraceptive means and abortions is limited, especially for vulnerable groups (HIV-positive, IDUs, CSWs, imprisoned women, victims of sexual assault); quality of abortion services and abortions is low. The rights to confidentiality, equity, dignity and privacy are often violated by health care personnel due to limited understanding of medical ethics and basic principles of reproductive rights, as well as scarce counseling skills.²¹

One of the challenges in health care provision to children remain the absence of free-of-charge drugs at outpatient level and the drug shortage at hospital level (as per Cabinet of Ministries Resolution №1303, 17.08.98, drugs has to be provided free-of-charge for children under 3 years), which decreases children’s access to timely and adequate medical care and treatment. The declining number of children who receive immunization is equally of great concern.

Ukraine has had significant success in increasing access to PMTCT services. Percentage of HIV-infected pregnant women who received ART to reduce the risk of mother-to-child transmission was 95.5% in 2011. The percentage of children covered by ART was 94.2%.²²

f. Palliative Care

¹⁸ Ibid., p. 21.

¹⁹ Ibid.

²⁰ WHO (2010): Health Systems in Transition, Ukraine. p.11.

²¹ Ukrainian Center for Social Reforms and the State Statistical Committee of Ukraine (2008): Demographic and Health Survey Ukraine 2007; MOH/WHO (2008), Abortions and Contraception in Ukraine: Strategic Assessment of Policy, Programmes and Research.

²² Ukraine Harmonized AIDS Response Progress Report. Reporting Period 2010-2011

WHO welcomes the government's efforts in improving access to palliative care including creating a significant number of palliative care beds in public hospices and hospitals as well as an Institute of Palliative Care and Hospice Medicine in the Ministry of Health. Nevertheless access is still limited due to health policies, drug availability, unnecessary onerous drug regulations and inadequate training of health care staff. Consequently most patients with life-limiting illnesses in Ukraine die at home, without pain treatment and little support to patient's families.²³

2. Conclusions

Ukraine has adopted a comprehensive framework of human rights instruments and standards for promotion and protection of fundamental rights of humans, including the right to health. National laws, policies and programmes related to health, many of which reflect international human rights instruments have been developed and endorsed. Whereas this framework has undoubtedly contributed to the positive strides Ukraine has made towards ensuring right to health, severe contraventions are still observed.

Limited and unequal access to high-quality medical care and pharmaceuticals remains a problem, which impedes prevention, treatment and care of several non-communicable and communicable diseases. Both rich and poor are subject to high out-of-pocket payments required for services and drugs and the availability of inexpensive, quality drugs is erratic. However, the socially vulnerable, who are usually also the most-at-risk groups, are most deprived of their rights to health care.

The core challenge for Ukrainian health care therefore remains the ineffective protection of the population from high-health care costs and structural inefficiency of the health system. The currently ongoing health reform should address these issues and be responsive to the needs of the population. New financing mechanism to readjust quality of care and gaps in resources should be introduced, urgent public health problems such as immunization against vaccine-preventable diseases, HIV and TB should be included, pharmaceutical management should be strengthened at all levels to ensure consistent access to safe drugs. To be effective, interventions must be tailored to each socially vulnerable and at risk group, addressing not only the underlying conditions for their unequal right to health but also the social determinants responsible for persisting health inequalities.

²³ Human Rights Watch (2011): Uncontrolled pain. Ukraine's Obligation to Ensure Evidence-Based Palliative care.