

CHALLENGES TO WOMEN'S HEALTHCARE RIGHTS: INTERNATIONAL AND NATIONAL DIMENSIONS

¹Anastasia Belousova, ²Alexander Belousov, ³Olga Kuznetsova, ⁴Marianna Ilyashevich,
⁵Ekaterina Koupchina

Abstract- *The paper aims to consider the current state of affairs and future prospects in terms of women's health care protection. To reach the above goal the research provides historical analysis of legislation framework development regarding the women's health protection, study women's health concept within current international legislation, maps global challengers regarding the women health care. The research rested on qualitative principles of analysis and used general scientific methods: analysis, logical method, generalization, as well as a special and a comparative legal method. The research materials included international white papers with regard to women's health. The article provides analysis of states commitments to ensure women's rights to health care as well as examine the practice of individual states in the particular field. The study involves statistics on women's reproductive health regarding the protection of maternal health, maternal mortality and the provision of qualified medical care.*

Keywords- *women's right to health, reproductive health, reproductive rights, and maternal health.*

JEL Classification: *I 380, K 380, J 120, J 130, J 160.*

I INTRODUCTION

Article 1 of The United Nations Charter calls on states to "Implement international cooperation in solving international problems of economic, social and humanitarian nature and in encouraging and developing respect for man and for fundamental freedoms for everyone without distinction as to race, sex, language or religion" (Charter of the United Nations... 1945). It's no secret that women have special interests that are due to the function of procreation, which is why women's rights to health care have been a particular focus of the whole world.

¹ Department of International law, Law Institute, Peoples' Friendship University of Russia

² Department of State and Municipal Management, Faculty of Humanities and Social Sciences, Peoples' Friendship University of Russia

³ Department of Criminal Law, Criminal Proceedings and Criminology, Law Institute, Peoples' Friendship University of Russia

⁴ Department of International law, Law Institute, Peoples' Friendship University of Russia

⁵ Department of Civil Law, Law Institute, Peoples' Friendship University of Russia

Unfortunately, there are really serious problems of implementing the right to women's health care and some of them are difficult to solve. Some regions of Africa is an issue of major concern in this context. For example, about 300 thousand women die each year during pregnancy or childbirth, and in the countries of the region south of the Sahara, the average life expectancy is 56 years, which is almost 25 years less than in the countries with emerging economies. Moreover, a woman living in the south-Saharan Africa region is 100 times more at risk of dying during labor or pregnancy than a woman living in the developed countries.

The above landscape confirms the *relevance of the theme under study*.

The research goal is considering the current state of affairs and future prospects in terms of women's health care protection.

The above goal required *a number of topics were considered*:

- historical analysis of legislation framework development regarding the women's health protection
- investigation of women's health concept within current international legislation
- analysis of global challengers regarding the women health care

The above goals shaped the research methodology.

II MATERIALS AND METHODS

The study stood on qualitative methodology and based on general scientific methods: analysis, logical method, generalization, as well as a special and a comparative legal method.

The research focused on major international white papers with regard to women's health: The United Nations Charter, UNO Agenda on Sustainable Developments Goals until 2030, General Comments of the Committee on Economic, Social and Cultural Rights (CESCR, the Committee) and the UNO Sustainable Development Goals, the International Covenant on Economic, Social and Cultural Rights, etc.

The analysis of the major universal instruments on the human right to health care made it possible to assess the extent of States' concerns about women's possibility to enjoy unimpeded and without any discrimination all inalienable human rights, including the right to health care.

The analysis of General Comments of the Committee on Economic, Social and Cultural Rights (CESCR, the Committee) and the UNO Sustainable Development Goals were implemented to identify the main issues of concern to the Committee and disclose the Committee's position on the implementation of ICESCR Covenant commitments on human health, including women's health.

Statistical studies and generalization of data with regard to the current situation of states in terms of MDG indicators were carried out to feature a complete picture of implementing or non-implementing the indicators established by the states to secure women's rights to health care.

The comparative study was conducted to identify states in which the problem of ensuring women's rights to health care is most acute and requires the investment of additional resources.

The analysis of the major universal instruments on the human right to health care made it possible to assess the extent of States' concerns about women's possibility to enjoy unimpeded and without any discrimination all inalienable human rights, including the right to health care.

III RESULTS AND DISCUSSION

3.1. Research framework: legislation development regarding the women's health protection

It was not until 1917 that the Constitution of Mexico laid down for the first time the following rights: "women's rights to obstetric examination", "the right to secure medicine", "the right to nanny's help" and "care for babies" which confirms that the state came to realize the importance of protecting women's health. Within the same period, namely, in 1929, the Declaration on the Rights of the Child was adopted, which undoubtedly strengthened the international human rights framework for certain categories of individuals, especially women and children. The greatest contribution to the protection of the right to women's health care was made by a number of landmark agreements, including the following:

- the International Convention on Racial Discrimination, 1965;
- the Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- the Beijing Platform for Action, 1995, that noted a direct link between the material well-being and women's health;
- the International Covenant on Economic, Social and Cultural Rights, 1966 (hereinafter ICESCR);
- the Declaration on the Elimination of Violence against Women, 1993
- the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1947, etc.

States, realizing the need to take effective and urgent measures to improve the lives of everyone throughout the world and achieve sustainable development adopted a document entitled "Transformation of Our World: an Agenda for Sustainable Development for the period up to 2030", consisting of 17 global goals and 169 tasks within a framework of sustainable development. The document has replaced the Millennium Development Goals (MDGs), to continue cooperation of states within a framework of sustainable development (United Nations Sustainable...n/d). The third of the above goals states the need to ensure a healthy lifestyle and promote well-being for all at any age points out the undeniable importance of ensuring women's right to health care

3.2. Women's health concept within current international legislation

The international legislation views the women's health within the global sustainable development goals (until 2030, goal 3) dedicated to ensuring a healthy lifestyle and promoting well-being for all at any age points out the undeniable importance of ensuring women's right to health care. This goal also includes tasks dedicated directly to women's health. These include: reducing the global maternal mortality rate to less than 70 per 100,000 live births by 2030 and ensuring universal access to sexual and reproductive health services by 2030, including family planning, information and education, and reproductive health issues in national policies and programs. Under the international legislation in force, States are expected to cooperate in all health-related fields and undertake

measures to take all the necessary measures in all countries, especially the countries with emerging economies, least developed and small island countries:

- health financing and recruitment,
- development, training and retention of medical personnel
- preventive care, risk reduction and regulation of the national and global health risks, including women's health (United Nations Human Rights... 2014).

It is not that only biological factors may affect the formation of women's reproductive health. Moreover, women's health is affected by socio-economic conditions. For example, the low social status of women and girls often leads to a poor condition of their sexual and reproductive health, and many women are subjected to domestic violence during pregnancy which causes miscarriages, premature birth, babies born prematurely with low birth weight. In this event, the state undertakes to ensure normal functioning of medical services, including pregnancy related consultations, as well as reproductive health care providing, if necessary, all the listed medical services on a non-refundable basis. The state also undertakes to prohibit and counteract the criminalization of sexual and reproductive services since such practices adversely affect the ability of relevant persons to access the necessary health services. Thus, the Special Rapporteur of the Human Rights Council (HRC) made a special comment in his 2011 report with regard to the criminal aspects. He said that "The penal legislation in which the artificial termination of pregnancy is pursued or limited (abortion) is an example of what barriers may arise to women's enjoyment of their right to health care". The Special Rapporteur further underlined that "this practice should be abolished, as such laws are detrimental to both the dignity of women and their independence, thus limiting their decision-making with respect to their own sexual and reproductive health ". (United Nations Sustainable...n/d).

The Special Rapporteur also recalled the responsibility of States to reduce death rate of women during childbirth. The right to achieve the highest possible level of health gives women the right to receive medical services and treatment due to the start of pregnancy and in the postpartum period, as well as the rights to receive other services and information regarding sexual and reproductive health. These rights include the necessary proactive and preventive measures with respect to maternity death, including the services of a qualified obstetrician, urgent midwifery services, educational programs and information about sexual and reproductive health, and safe abortions where they do not run counter to applicable legislation. (United Nations. Economic...2004).

The analysis allowed the researchers to identify the major global challenges to women's health. These include maternity mortality and lack of women's reproductive care.

3.3. Global challengers regarding the women health care

3.3.1. Maternity mortality as global challenge

The full implementation of women's right to health care largely depends on the availability of a full range of reproductive rights and the opportunities to use them. It is worth mentioning that 1 out of 8 of the Millennium

Development Goals (MDG) by 2015 was devoted to improving the protection of maternal health (According to the document plans have been made to decrease maternal mortality ratio by three fourth and provide comprehensive access to assistance to be rendered in the sphere of reproductive health care within a period of 1990 to 2015 (Bureau...2016; Gostin et al. 2011). A report on progress towards the Millennium Development Goals is devoted to the results of the work done. It emphasized that in the field of maternity protection considerable progress has been made: the maternal mortality ratio worldwide decreased by 45% (the main decline has been observed since 2000), in South Asia the maternal mortality rate decreased by 64%, and in sub-Saharan Africa by 49%. In 2014, more than 71% of births throughout the world were performed by qualified medical personnel which reflects an increase from 59% in 1990 (United Nations 2013). In North Africa, the proportion of pregnant women who received at least four antenatal care consultations increased from 50% to 89% within a period of 1990 to 2014. The use of contraceptive methods among women aged 15 to 49, including married or living with a regular partner, has increased globally from 55% in 1990 to 64% in 2015. Undoubtedly, such results are significant, but the goal is not fulfilled by 100% (Figure 1).

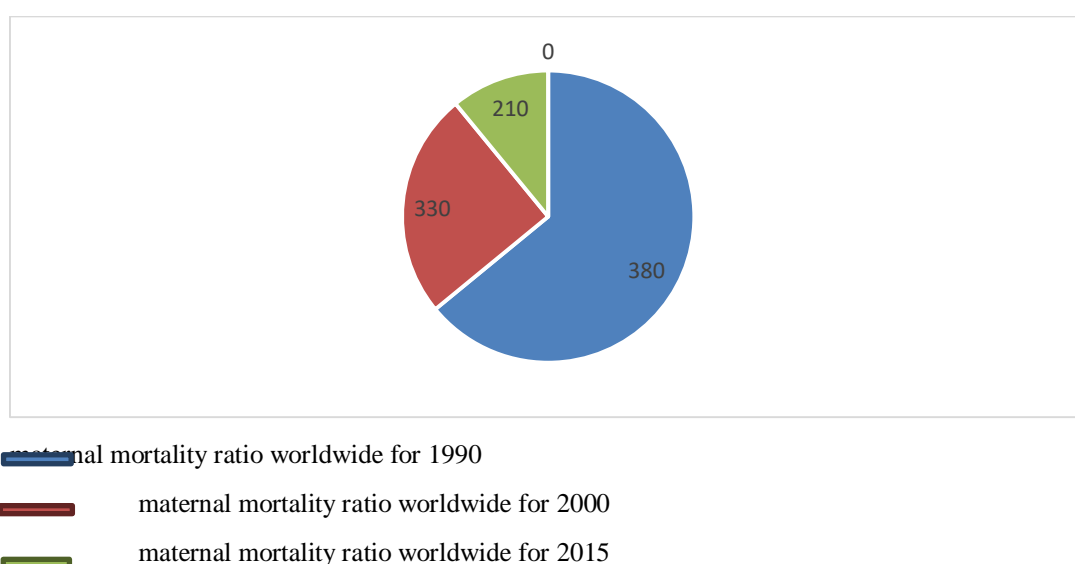


Figure 1 - The maternal mortality ratio (the number of maternal deaths per 100,000 live births) worldwide

On March 15, 2016, the 60th session of the Commission on the Status of Women was held within the framework of which the first High-Level Group meeting took place to discuss economic empowerment of women. UN Secretary-General Ban Ki-moon, in his speech within a framework of the session, called on everyone to contribute to the prevention of maternal and child mortality, strengthen their health and well-being. The executive director of the UN-Women structure, Fumzil Mlambo-Nguka, recalled that a woman's health is her own right. Thus, it should be admitted that ensuring the right to women's health care is an issue of considerable interest to the world community at this stage.

Undoubtedly, to effectively ensure the implementation of women's right to health care it is necessary to develop not only cooperation of states at the universal and regional level but also at the national level. This can be

implemented through the development of national health strategies and programs, as well as the conscientious implementation of commitments to ensure the right to health care (including women's health) undertaken by States parties under international legislation in force.

3.3.2. Lack of women's reproductive care as global challenge

Art. 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) laid background provisions regarding women's healthcare. It points out that the States Parties to the Covenant acknowledge the right of everyone to the highest standard of physical and mental health, and that States should take particular measures. The measures themselves are listed in clause 2, article 12 of the ICESCR, and are explained in the General Comments drafted by the Committee on Economic Social and Cultural Rights. Women's right to health care is laid down by the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR) No. 14, as well as in General Comments No. 22 on reproductive and sexual health.

Discrimination against women is a problem the elimination of which requires states to take drastic measures at the national level, for example: the development and implementation of a comprehensive national strategy to safeguard women's health throughout their life (United Nations 2000). Such a strategy should include measures to prevent and treat women's diseases, and policies aimed at providing access to a full range of affordable and high-quality medical services. One of the state's main strategies should be the reduction of health risks for women, in particular the reduction of maternal mortality and the protection of women from domestic violence. Based on the objectives of the LRC in order to achieve by 2030 a target of less than 70 maternal deaths per 100,000 live births per year it is necessary that the annual mortality reduction rate is at least 7.5 per cent.

It is worth mentioning that most of these cases can be prevented, primarily through the provision of skilled health care to women during childbirth and pregnancy management. The situation in the countries with emerging economies is an issue of major concern, for example, in sub-Saharan Africa, where help is rendered for only 53% of live births.

The most vulnerable to discrimination in terms of ensuring the right to health care are poor women, who because of their situation often face violence, coercion and discrimination which certainly threatens their reproductive health. The consequence of such situations will inevitably result in an unwanted pregnancy. To prevent such cases of unwanted pregnancy, full and universal access to sexual and reproductive health services is required. Turning to statistics, it is important to point out that the percentage of women of childbearing age (from 15 to 49 years) married or cohabit whose needs for family planning were met by modern methods increased by 3% over 7 years (from 2000 to 2017) that is shown in figure 2.

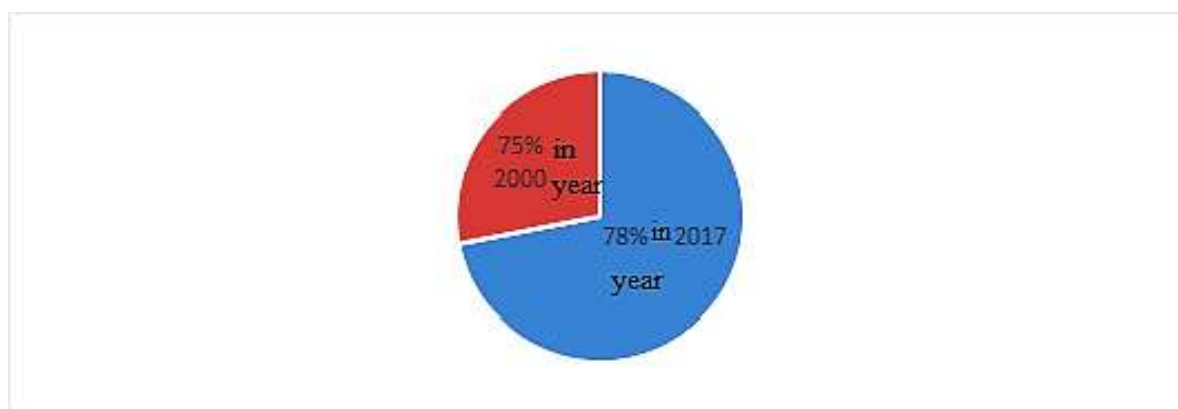
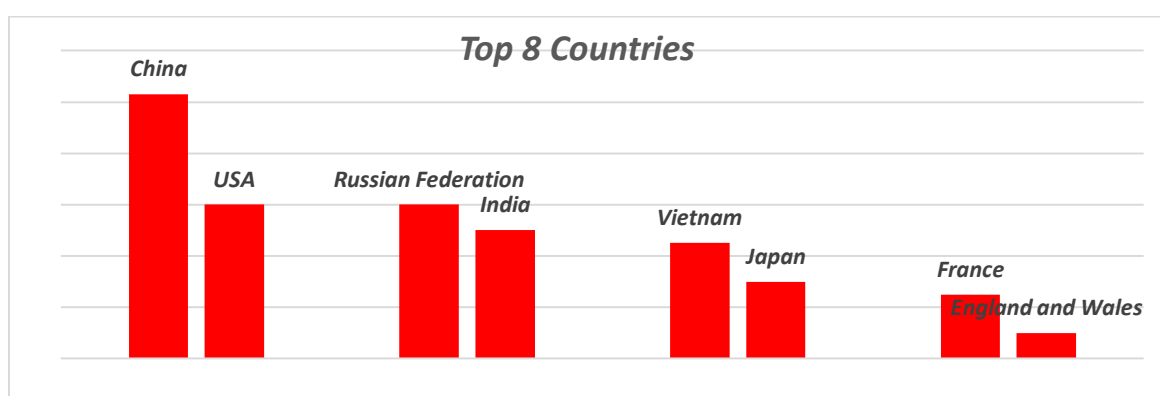


Figure 2: % of women whose needs for family planning were met by modern methods

To interrupt an unwanted pregnancy, women all over the world resort to abortion. In some countries, the statistics of abortion are simply appalling, as shown in figure 3.



Abortions Annually: 1.China-9,173,100; 2.United States-1,213,000; 3.Russian Federation-1,208,700; 4.India-641,800; 5.Vietnam-332,200; 6.Japan-242,300; 7.France-198,200; 8. England and Wales-189,800.

Figure 3 - Abortion Statistics

It is worth mentioning that abortion is legal not in all states. Some states have laws that criminalize or restrict the commission of abortion. In view of this state of affairs, women are forced to use the services of clandestine clinics, where abortions are performed in most cases by handicrafts and personnel who do not have the necessary qualifications, which results in the start of negative consequences ranging from reproductive problems to death. The Committee, in its General Comment No. 22, points out that States should abolish or review laws and policies that nullify or limit the ability of individuals and groups to exercise their right to sexual and reproductive health (United Nations 2016).

3.3.3. Other challenges mentioned in legislation

An equally serious problem in the opinion of CESCR is the use of harmful traditional practices for girls, including early marriages, female genital mutilation, etc., which adversely affect their health. The Committee

encourages States to take preventive, explanatory and corrective measures to protect not only girls but also all persons from the application of such practices.

Special attention should be given to women with mental illnesses, as they are particularly vulnerable to the use of forced sterilization and sexual abuse of a person. They often become targets of violations of the rights to physical integrity of the person and violations of their rights in the field of reproductive health.

The above statistics confirm s that the achievement of the tasks included in the SDG № 3, which directly concerns women's right to health care rests on the states' shared responsibilities that in turn should take all necessary measures to improve the situation globally to implement the Development Goals millennium in 2030 (United Nations 2018).

IV CONCLUSIONS

The research findings lead to the conclusion that over the past 15 years, states have been able to achieve significant improvements in indicators of maternal mortality, the limitation of the spread of HIV / AIDS, discrimination in the field of reproductive health and so on. However, in a globalized world, States, in addition to old unsolved problems, face new challenges and threats that they will have to fight in the years to come, which requires effective cooperation of states in all areas including ensuring women's right to health. Sustainable Development Goal 3 does not cover such problems with regard to women's health as non-contagious diseases, disability, various injuries and so on. Moreover, we can see the improvements in indicators on the issues covered by the above-mentioned Goal 3 yet, the indicators on those issues appear, unfortunately, to be deteriorating. In the context of ensuring women's right to health care, every aspect is important, because only through a comprehensive approach can it be possible to achieve a sustainable improvement in the health condition not only for women but also for all people in the world. States should be fully aware of and pursue their policies in such a way that the implementation of women's right to health care would not cause problems arising from the adoption of regressive legislation or inaction that results in in the promotion of discrimination against women.

REFERENCES

1. *Charter of the United Nations and Statute of the International Court of Justice*. San Francisco. 1945. Available online: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>
2. *United Nations SustainableDevelopment Knowledge Platform*. n/d. Available online: <https://sustainabledevelopment.un.org/> (accessed on 5 May 2018).
3. United Nations Human Rights Office of the High Commissioner. 2014. *The Core International Human Rights Treaties*. New York and Geneva: United Nations Publication. ISBN-13: 978-92-1-154202-8. Available online: https://www.ohchr.org/Documents/Publications/CoreInternationalHumanRightsTreaties_en.pdf
4. United Nations. Economic and Social Council.Commission on Human Rights. Sixtieth session. 2004. *Item 10 of the provisional agenda. Economic, social and cultural rights. The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. Report of the Special Rapporteur, Paul Hunt*.

- UN Doc. E/CN.4/2004/49. Available online:
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/113/90/PDF/G0411390.pdf?OpenElement>
5. Bureau of the United Nations Statistical Commission (UNSC). 2016. *Technical report on the process of the development of an indicator framework for the goals and targets of the post-2015 development agenda*. Available online:
<https://sustainabledevelopment.un.org/content/documents/6754Technical%20report%20of%20the%20UNSC%20Bureau%20%28final%29.pdf>
 6. Gostin, Lawrence O., Eric A. Friedman, Gorik Ooms, Thomas Gebauer, Narendra Gupta, Devi Sridhar, Wang Chenguang, John-Arne Røttingen, and David Sanders. 2011. *The Joint Action and Learning Initiative: Towards a Global Agreement on National and Global Responsibilities for Health*. DOI: <https://doi.org/10.1371/journal.pmed.1001031>
 7. United Nations. 2013. *Millennium Development Goals Report*. New York, <http://www.un.org/millenni-umgoals/pdf/report-2013/mdg-report-2013-english.pdf>
 8. United Nations. Human Rights Office of the High Commissioner. 2000. *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*. Available online: <http://www.refworld.org/pdfid/4538838d0.pdf>
 9. United Nations. Economic and Social Council. Committee on Economic, Social and Cultural Rights. 2016. *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* Available online: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzxjHySkUoHMavD%2Fpyfcp3Ylzg>.
 10. United Nations. 2018. *Sustainable development goals, 17 goals to transform our world. Goal 3: Ensure healthy lives and promote well-being for all at all ages*. Available online: <https://www.un.org/sustainabledevelopment/health/>