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# The right to health equity and how this could be applied to improve women's access to health care services

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**Abstract**

According to the Constitution of World Health Organization (1946) "*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition*".[1] To advance health equity there is a need to influence states by material inducement, persuasion and socialization. Health inequities have been slowly recognized by some national courts and human rights tribunals, as violations of human rights. The paper will examine the right of non-discrimination to health care of socially disadvantaged persons, such as women, with an emphasis on the decision by the Committee on the Elimination of Discrimination Against Women (CEDAW) in the Alyne v. Brazil (2003). Particularly, how Alyne's preventable death came to be seen as a legal wrong and stresses the continuing challenges of ensuring that all these types of wrongs are justiciable in national and constitutional courts. Also, it will be examined, how these courts have applied civil and political rights and economic, social and cultural rights to promote health. The paper will explore the importance of health equity in achieving the Sustainable Development Goals (2030), especially Goal 3 on health and Goal 5 on women's and girls' equality. It is essential to analyze how the rights of equality and non-discrimination could be further applied, in order to improve women's access to health care services and to promote their health. The core elements are to understand heath inequity, the clinical issues and how bioethical principles could be applied to remedy disparities in the context of health care.

[1] World Health Organization Constitution, 1946 https://www.who.int/governance/eb/who_constitution_en.pdf (Accessed 07/10/2019).

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***Το δικαίωμα ίσης πρόσβασης στην υγεία και πως αυτό μπορεί να εφαρμοστεί στη βελτίωση της πρόσβασης των γυναικών στις υπηρεσίες υγειονομικής περίθαλψης***

**Περίληψη**

Το δικαίωμα ίσης πρόσβασης στο σύστημα υγειονομικής περίθαλψης είναι μια από τις θεμελιώδεις αρχές στο πλαίσιο της προστασίας των ανθρωπίνων δικαιωμάτων. Προκειμένου να προωθηθεί η ισότητα στην υγεία, υπάρχει ανάγκη να επηρεαστούν τα κράτη με: υλική προτροπή, πειθώ και κοινωνικοποίηση. Οι ανισότητες στον τομέα της υγείας αναγνωρίστηκαν από ορισμένα εθνικά δικαστήρια και από το Ευρωπαϊκό Δικαστήριο Ανθρωπίνων Δικαιωμάτων, ως παραβιάσεις των ανθρωπίνων δικαιωμάτων. Το παρόν άρθρο εξετάζει το δικαίωμα της μη διάκρισης στην υγειονομική περίθαλψη των κοινωνικά «μειονεκτούντων» ατόμων, όπως οι γυναίκες, με έμφαση στην απόφαση της Επιτροπής για την εξάλειψη των διακρίσεων κατά των γυναικών (CEDAW) στην υπόθεση Alyne κατά Βραζιλίας (2003). Ειδικότερα, ο τρόπος με τον οποίο μπορούσε να αποφευχθεί ο θάνατος της Alyne να θεωρηθεί νομικό λάθος και τονίζει τις συνεχιζόμενες προκλήσεις να εξασφαλιστεί ότι αυτά τα είδη αδικημάτων είναι αγώγιμα ενώπιον των εθνικών δικαστηρίων και όχι μόνο. Θα εξεταστεί επίσης πώς έχουν εφαρμοσθεί στα δικαστήρια τα κοινωνικά και πολιτικά δικαιώματα αλλά και τα οικονομικά, κοινωνικά και πολιτιστικά δικαιώματα για την προαγωγή της υγείας. Το παρόν άρθρο εξετάζει ακόμη τη σημασία της ισότητας στην υγεία για την επίτευξη των Στόχων Βιώσιμης Ανάπτυξης (2030), ειδικά του στόχου 3 για την υγεία και του στόχου 5 για την ισότητα των γυναικών και των κοριτσιών. Είναι απαραίτητο να αναλυθεί ο τρόπος με τον οποίο θα μπορούσαν να εφαρμοστούν περαιτέρω τα δικαιώματα της ισότητας και της μη διάκρισης, προκειμένου να βελτιωθεί η πρόσβαση των γυναικών στις υπηρεσίες υγειονομικής περίθαλψης και να προωθηθεί η υγεία τους. Τα βασικά ζητήματα που χρήζουν ανάλυσης είναι οι βιοηθικές προκλήσεις στον ευρύτερο χώρο της υγείας αλλά και η προάσπιση των δικαιωμάτων των ασθενών και πως μπορούν να εξαλειφθούν οι ανισότητες.

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# The right to health equity and how this could be applied to improve women's access to health care services

## Abbreviations

Committee on the Elimination of Discrimination Against Women: CEDAW

Economic and Social Cultural Rights: ESCR

International Covenant of Economic and Social Cultural Rights: ICESCR

World Health Organization: WHO

## Introduction

"Equality is the cornerstone of every democratic society which aspires to social justice and human rights. In virtually all societies and spheres of activity women are subject to inequalities in law and in fact"[2]. The international community has attempted many times to promote the equity in all forms and finally adopted the Convention of the Elimination of all Forms of Discrimination against Women in 18 December 1979, by the United Nations General Assembly.

The World Health Organization has defined health as "a state of complete physical, mental and social well-being"[3]. Although many other definitions have been attempted, but no one has received general acceptance. That means it is currently impossible to evaluate the success of a given healthcare system as healthcare system. It also means that the claim that a specific approach to delivering health care is better or more effective than another approach is because the element which

[2] Human Rights Fact Sheet No 22, "Discrimination against Women: The Convention and the Committee", N. York, 1994, p.1, **https://www.ohchr.org/Documents/Publications/FactSheet22en.pdf** (Accessed 7/10/19).
[3] Constitution of WHO: principles, http://who.int/about/mission/en/, (Accessed 20/11/ 2017).

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would turn such a claim into a meaningful assertion, namely a consistent and usable definition of health, is missing.

## 1. Ethical considerations about health disparities

However, not all differences can be described as inequities. The term inequity includes a moral and ethical dimension. It refers to the differences which are unnecessary and avoidable, but, in addition are also considered unfair and unjust[4]. So, in order to describe a certain situation as inequitable, the cause have to be examined and judged to be unfair in the context of what is going on in the rest of the society.

To make clear the view that health disparities are a moral wrong that should be eliminated, it must first demonstrate that the existence of health disparities is morally problematic. In addition to ethical theories, there are some bioethical principles, such as the principles of:

- respect of persons (autonomy of the capable and protection of the vulnerable)
- beneficence (positive duty to benefit others),
- maleficence (act to avoid harming others)
- and distributive justice (apply to offer further support for the claim that health disparities are a moral wrong.

Health disparities do not benefit the individuals on the losing side of the disparities, nor do they benefit any other individuals, violating the principle of beneficence. Health disparities instead can be said to be a significant harm in the form of poorer health, pain and suffering, violating the principle of non-maleficence.[5] Further, most conceptions of principles of distributive justice involve the notion of equity or equal access. Health disparities violate equity in that many people suffer from significantly lower health outcomes on the basis of their race/ethnicity or class.

[4] **Margaret Whitehead,** *"The concepts and principles of equity and health, Health Promotion International",* 1991, Volume 6, Issue 3, Oxford University Press, pp. 217-228.
[5] **Cynthia, M. Jones**, The moral problem of health disparities, American Journal of Public Health, 2010, Suppl. 1: S47-51, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2837423/ (Accessed 15/09/2019).

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But is there a moral right to health care? Such a right may be established by the application of ethical theories and principles. Additional support can be drawn from statements such as article 25 of the Universal Declaration of Human Rights and from documents such as Healthy People 2000 and Healthy People 2010. The system of injustices, as a result of a repeating old system based on race, ethnicity and class is clearly an ethical issue; thus, States which perpetuate these injustices are likely ethically problematic as well.

However, there is a distinction between the right to equal access to health care and the duty to address health disparities. Even if a moral right to health care can be established, that right would not necessarily entail a duty to address health disparities; a moral right to equal access to health care only entails the duty to ensure that the access to health care is provided to all.

## 2. Equality, Heath Equity and Non-Discrimination

Male physiology has been used historically in medical care in contrast with women who contain reproductive characteristics. Nowadays it is more obvious that women may have equal rights as men and gain more ground to the national communities, recognizing the negative stereotyping of them. For instance, World Report on Women's Health in 1994[6], which issued from the International Federation of Gynecology and Obstetrics, resulted that future improvements in women's health require not only improved science and health care, but also social justice for women. However, it is common well known that many categories of persons facing many problems in attain health care facilities than others. For instance, many groups of women and girls, people of ethnic minorities, people with poor health status or low socio-economic status.

Dr. Rebecca J. Cook noticed that, as the health care systems moves from a biomedical model to a health promotion model, health professionals must meet the challenge to understand of how women's experiences affect health[7]. Promotion and protection of women's health depends upon the interaction of most of human rights.

[6] International Federation of Gynecology and Obstetrics, 2009-2012. https://www.figo.org/sites/default/files/uploads/IJGO/papers/Three%20Year%20Report%202009_2012.pdf (Accessed 11/11/ 2017).

[7] **Rebecca, J., Cook,** "*Gender, Health and Human Rights,"* Health and Human Rights symposium edition on women's health and human rights, 1.4, 1995, pp 350-360.

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Rights relevant to health include those to protect women's employment and grant equal pay for work of equal value; to education; to information; and to political participation and influence.

In order to answer the question how there can be a fruitful dialogue about women's human rights, it is important to first provide an overview of these rights, which are interrelated with women's civil and political rights, such as 1) an adequate standard of living, including food, water, housing 2) the highest attainable standard of mental and physical health through a woman's lifecycle, including reproductive and sexual health and freedom 3) social security 4) training and education. The inequality that exists in women's lives that is deeply embedded in history, tradition and culture, affecting women's enjoyment of the Economic, Social and Cultural rights[8].

**2.1 Law enforcement and States obligations**

The human right to equal access to health care is considered [9] as an economic, social and cultural human right. In many human rights instruments there is a distinction between civil and political rights such as the right to life, the right to a fair trial and the prohibition of torture and inhuman and degrading treatment and economic, social and cultural rights such as the right to education, the right to food.[10] Specifically, the International Covenant on ICESCR in Article 3[11] ensures the right to equity between men and women and all the rights of this Covenant have to applied according to the right of equity, the law and the measures of the states which have adopted.

[8] **Manisuli Seenyonjo,** "*Economic, Social and Cultural Rights in International Law"* Bloomsbury Publishing, 2009, Oxford, pp.90-95.

[9] "What are Economic, Social and Cultural Rights?," Center of Economic, Social and Cultural Right, http://www.cesr.org/what-are-economic-social-and-cultural-rights, (Accessed 15/10/2019)

[10] **Π. Νάσκου-Περράκη,** *Μηχανισμοί Προστασίας Δικαιωμάτων του Ανθρώπου, Διεθνείς Πράξεις, Θεωρία και Πρακτική,* Εκδόσεις Θέμις, 2014, Αθήνα, σελ.194-196.

[11] Article 3 ICESCR, "*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant".*

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In relation to state obligations, Van Hoof (1984) as developed a typology which includes the positive obligations to respect, to protect, to ensure and to promote.[12] Traditionally, economic, social and cultural rights are perceived to entail positive State obligations, whereas civil and political rights impose a negative obligation on States. Negative obligations comprise an abstention of the State so that individuals can freely exercise their human rights and freedoms. Positive obligations require active measures and government programs, which have financial implications for a State. Health is considered as the most important condition of human life and central to our well-being[13]. Furthermore, health has been proclaimed as the object of the human right to the enjoyment of the highest attainable standard of health by the international community with the adoption of the Constitution of the World Health Organization in 1946.[14]

Discrimination against women and children is an important area for countries to address, regarding to the health inequities that women and children may suffer because of discrimination based on their gender and age respectively. The CEDAW Committee stresses the negative effects of discrimination in services that affect women.[15] Specifically, Article 12(1) recognizes that States must "take measures … to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning". Also, the Convention of the Rights of the Child highlights the importance of children protection from discrimination acts[16] Article 2.1 the Convention on the Rights of the Child also highlights the importance of protecting children from discrimination by declaring that "enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health."

[12] **Van Hoof**, *Theory and Practice of the European Convention on Human Rights*, 1985, Volume 34, Issue 2, pp. 409-410.
[13] **Giorgi, M.S,** "*The Human Right to Equal Access to Health Care, Cambridge",* 2012, Intersentia, pp.170-180.
[14] ICESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12), https://www.refworld.org/pdfid/4538838d0.pdf (Accessed 16/09/2019).
[15] World Health Organization, "Advancing the right to health: the vital role of law", 2017, http://apps.who.int/iris/bitstream/10665/252815/1/9789241511384-eng.pdf (Accessed 10/11/2017).
[16] Convention of the Rights of the Child, Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, (Accessed 10/11/ 2017).

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### 3. Preventable deaths and access to quality reproductive health system

A death is considered preventable if, "in the light of understanding of the determinants of health at the time of death, all or most deaths from that cause could be avoided by public health interventions in the broadest sense."[17]

Every day around 830 women from all over the world die from preventable causes related to pregnancy and abortion. Ninety nine percent of these deaths take place in developing countries, such as Brazil, or in Africa and Asia.[18] The international human rights community recently has recently given its attention to maternal mortality, despite that is one of the most common human rights violations the maternal deaths.

According to a survey of World Health Organization, "4.000 maternal deaths in Brazil, representing one third of all maternal deaths in Latin America". Also, many women especially of Africa become victims of discrimination to health access. Indeed, South Africa's maternal mortality ratio (MMR) was between 150 to 625 deaths per 100,000 live births between 1998 and 2007, according to government data.[19] The CEDAW Committee resulted that Brazil violated Article 12 (2) of the CEDAW Convention after 8 years passed without a definitive decision for the case and cited General Recommendation No. 28 (2010), which states "the policies of the State party must be action and result oriented as well as adequate funded". Further, according to the General Recommendation 24 of the CEDAW Committee, maximum available resources must be mobilized to ensure women's; right to safe motherhood and emergency obstetric services. The CEDAW Committee recommendations stressed that the States should ensure affordable access for all women to adequate emergency obstetric care and to effective judicial remedies. It also stressed that the States have to provide adequate professional training for health workers, ensure compliance by private facilities with national and international standards in reproductive healthcare, and reduce preventable maternal deaths.

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[17] *Amendable and Preventable health statistics.* https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Amenable_and_preventable_deaths_statistics&oldid=339506 *(Accessed 07/11/ 2017).*

[18] *World Health Organization, fact sheet No 348, May 2012, available at:* ***https://www.who.int/news-room/fact-sheets/detail/maternal-mortality*** *(Accessed 07/11/ 2017).*

[19] World Health Organization, 2008, https://www.who.int/whr/2008/summary.pdf?ua=1 (Accessed 06/11/2017).

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Health inequities, such as in accessing health care, have slowly been recognized[20] by some national courts and human rights tribunals as violations of human and constitutional rights. Here we focus on the case of Alyne Pimetel against Brazil, a 28 years old Afro-Brazilian woman who died of complications resulting from the pregnancy, while a health center in Rio de Janeiro failed to provide appropriate and fast access to emergency obstetric care. The death of Alyne could have been prevented, if the health care center has correctly diagnosed and treated her appropriately. Through Alyne's preventable death, a message was passed to governments worldwide.[21] Access to quality reproductive healthcare during pregnancy is a fundamental human right, and if governments fail to protect it, they should be held accountable. National governments have the obligation to guarantee that all women regardless of income or socio-economic status have access to timely, non-discriminatory maternal health services. Even if Alyne's story is considered as one between thousand in Brazil and all over the world, with this decision started a new era of further protection and remoteness of gender equality.

**3.1 Social Determinants and Ethical issues to the right of equity to health care**

The social determinants of health may be referred as the conditions in which people are "born, grow, live, work, and age," and which shape their health status.[22] The social determinant's conceptualization of health reflects in the social medicine literature whereby the role of social determinants is viewed as a community attribute and as a factor that influencing individual health status. The significant socio-demographic inequalities that exist between and within countries, call for relevant policies in order to promote the mitigation and reduction of risk exposure in the most affected population groups.[23]

[20] European Union Agency for Fundamental Rights, *Inequalities and multiple discrimination in access to and quality of healthcare*, 2013 https://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf (Accessed 07/10/2019).

[21] *"In the name of Alyne: A historic human rights victory", 2011* https://reproductiverights.org/story/in-the-name-of-alyne-a-historic-human-rights-victory *(Accessed 06/11/ 2017).*

[22] **A.R., Chapman,** "*The Social Determinals of Health: Why We Should Care?"* American Journal of Bioethics 15:3 (2015) pp 46-7.

[23] WHO, Health in the post-2015 development agenda: need for social determinants of health, https://www.who.int/social_determinants/advocacy/UN_Platform_FINAL.pdf?ua=1 (Accessed 12/11/2017).

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The American philosopher Daniel Normans in his book on justice and health[24] argues that we have to address three main questions, to understand what justice requires for health. Firstly, what is the special moral importance for health? Secondly, when are health inequalities adjust? Thirdly, how can we meet health needs fairly when we cannot meet them all? There are no easy explanations and answers to these questions. The only fact is that *health* provides a remarkably broad and deeply engaging treatise of justice and health, which will influence both policy-makers and bioethicists for years to come.

The principles of availability, accessibility, accountability and quality are essential elements related to the right of health. Their role is to serve a diagnostic function and attention to what has to be done as national governments move towards health coverage. Governments can protect and fulfil the right to health by increasing the capacity, the quality of health care and by ensuring that these services remain accessible and affordable to everyone.

### 3.2 Moving forward to achieve health equity

Significant disparities exist among the universe and health care has a primary role to play in achieving health equity. While healthcare organizations do not have the ability to achive this equity alone or they do not have the power to improve all the social determinals, they have the power to address disparities at the point of care and to impact all these determinals that create disparities.[25]
States could promote health equity and eraticate health disparities by:

1. Creating a health care system through necessary health care reform is *primarily* a moral issue, even though it is also political and economic in nature. The principle of justice calls for a sustainable health care system where patients could be treated without discrimination by medical professionals.
2. Providing a health care system that one of the main goals is to obtain the main duties of medicine, which include the physician's duties to promote health, cure disease, and prevent suffering. Also, a health care must include significant

[24] **Daniels Norman**, "*Just Health: Meeting Health Needs Fairly", Cambridge: Cambridge University Press 2008,* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2649477/ (Accessed 15/09/2019).
[25] Achieving Health Equity: A Guide for Health Care Organizations, ***http://www.ihi.org/resources/Pages/IHIWhitePapers/Achieving-Health-Equity.aspx*** (Accessed 12/11/2017).

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emphasis on prevention and wellness promotion as well as innovative and efficient practice mechanisms.

3. The concept of social covenant which reflects community-oriented values regarding with each person, is also relevant to conceptualizing health care and health care reform measures. The social covenant also engages humanitarian concerns for global health.
4. Providing universal coverage in the form of affordable and effective health care for all human beings, regardless of sex, economic or social status.
5. Ensuring the removal of all barriers to women's access to healthcare services, education and information, including in the area of sexual and reproductive health, and, in particular, allocating resources for programs relating to adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS.
6. Prioritizing the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance.
7. Requiring from all the health services to respect the women's human rights, including the rights to autonomy, privacy, confidentiality, informed consent and choice.

**Conclusions**

A society that values autonomy and quality and respects the ethical principles integral to the Universal Declaration of Human Rights as fundamental to its moral framework, will design its healthcare system differently from a society that considers utility and efficiency as primary values and whose ethical perspective is driven by the principle of the greatest good for the greatest number. The greatest challenge for the future remains the complementary development of institutions, interpretations, and strategies at the local level within the broad framework set up by international law. If we wish to use the framework of rights to empower women and eradicate discriminative actions, we must therefore understand the limitations as well as the potential of rights. The interaction between legal, economic, and cultural institutions is a key factor in shaping these differences and a great deal of social science research needs to be done to enrich our understanding of these relationships.