

## Letters to the Editor

### **Response to “Breastfeeding and Human Rights” (J Hum Lact. 2003;19:357-361)**

Naomi Bromberg Bar-Yam’s article on breastfeeding and human rights in the November 2003 issue of *JHL* was excellent. I would like to offer a few observations, some rather technical.

(1) On page 357, at the end of the first paragraph, Bar-Yam said that UN conventions do not have the force of law in any country. That is only sometimes correct. In a monist legal system, treaties are in principle also the law of the land. In contrast, in dualist systems, treaties are not directly applicable; national law and international law are viewed as 2 separate legal systems. National legislative action must be taken to incorporate the principles of the treaty into national law.

A good example of a monist legal system is the one in Mexico. Referring to the International Covenant on Civil and Political Rights, article 133 of the Mexican constitution says,

International treaties concluded by the President of the Republic, with the approval of the Senate, shall together with the Constitution itself and the laws of the Federal Congress, constitute the supreme law of the entire nation; consequently, the covenant forms part of national legislation and may be the basis and foundation for any legal action.

Norway, which otherwise has a dualist system, has since 1994 had a provision in its constitution committing the nation to the realization of internationally recognized human rights. To implement that provision, in 1999, the Norwegian parliament passed a law by which the European Convention for the Protection of Human Rights and Fundamental Freedoms and its associated protocols, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, were made part of national law. The law also provides that in case of conflict be-

tween national law and the international agreements, the international agreements shall prevail.

(2) Bar-Yam fails to make a clear distinction between the year in which an international agreement was adopted by the UN General Assembly or some other body and the date on which it was ratified by enough States Parties to come into force. For example, on page 357, the second paragraph says that the International Covenant on Economic, Social and Cultural Rights was adopted in 1967. Actually, the UN General Assembly adopted it in 1966. It received enough ratifications to come into force in 1976. That same paragraph says that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1981. This statement is made again on page 358. Actually, the UN General Assembly adopted CEDAW in 1979. It received enough ratifications to come into force in 1981.

(3) On page 357, the Convention on the Rights of the Child (CRC) was misnamed.

(4) On page 357, the title of the marketing code should be The International Code of Marketing of Breastmilk Substitutes. It should be mentioned that it was adopted in 1981 by the World Health Assembly of the World Health Organization, not by the UN General Assembly. This marketing code is listed in the table on page 360 as if it were a human rights convention, but it is not framed in that way and it did not go through the UN human rights system. It is not included among the human rights conventions at the Website of the UN High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)).

The code does not say that governments and the international community have a responsibility to protect individuals from corporate violations of human rights (p. 360). The code was not explicit about human rights.

(5) In the table on page 360, the Universal Declaration of Human Rights is listed as if it were a human rights convention. It was a declaration, not a convention. Unlike a convention, it was never open to signature or ratification. (Also, p. 360 describes the Innocenti Declaration as a convention, but it was not a formal international agreement signed and ratified by national governments.)

(6) Page 357 says, "There is no universal agreement about who is entitled to human rights and what exactly those rights are." Regarding the first part of this sentence, the common understanding is that, in general, all people have all human rights. There are exceptions for people who have lost some rights through proper legal processes, such as prisoners. Also, some rights belong only to certain categories of people, such as women, children, refugees, and migrant workers. I think there is pretty close to universal agreement about who is entitled to human rights. As for the content of the rights, the international human rights treaties are quite clear about the content. Many of the rights are explained further in General Comments prepared by the UN treaty bodies that oversee implementation of some of these treaties. Of course, there is always more work to be done to further clarify the meaning of rights. However, I would say there is pretty close to universal agreement on the meaning of many human rights, at least at the level of principle.

(7) On page 359, Bar-Yam quotes passages from the CRC and then suggests they imply that the best interests of the child must be paramount. I think that is a misreading. In the first paragraph that is quoted, the CRC says, "The best interest of the child shall be a primary consideration." It does not say "*the* primary consideration." The next paragraph says that the best interests of the child will be the parents' basic concern. My understanding is that the CRC says that the child's interest must be a major consideration, but it does not say which should prevail if there is a conflict between the child's interests and the parents' interests. Some might wish that the CRC affirmed that the child's interests should prevail, but I don't think that is what it actually says.

The CRC gives parents lots of latitude and anticipates state interference in child rearing only in extreme situations, especially situations of abuse. Short of that, parents have considerable freedom as to how they feed and otherwise raise their children. Thus, as Bar-Yam says, mothers are not mandated to breastfeed, but governments are mandated to educate mothers, to support their use of education, and to assume that they will act in the best interest of their children. Governments have the responsibility to inform so that parents can make informed choices for their children.

There is no difficulty with the idea that mothers have the right to breastfeed. The vexing question, raised in

the title of Bar-Yam's article, is whether infants have the right to be breastfed. What is Bar-Yam's answer?

I think we cannot conclude that infants have a right to be breastfed. That would conflict with the mother's right to make an informed choice.

While it is surely appropriate to use the law to protect the infant from outsiders with conflicting interests, it is not reasonable to use the law to compel an unwilling mother to breastfeed. Thus, for the purposes of framing appropriate law, the woman and infant can be viewed as normally having a shared interest in the infant's well-being. From the human rights perspective, the major concern is with protecting the woman-infant unit from outside interference.

Mothers should remain free to feed their infants as they wish, in consultation with other family members. In normal circumstances, outsiders should refrain from doing anything that might interfere with a mother's freely made, informed decision. Mothers should have appropriate and accurate information available to them so that they can make informed decisions. This is the approach taken in the International Code of Marketing of Breastmilk Substitutes. The code is not designed to prevent the marketing or use of formula, but to ensure that parents can make a fully and fairly informed choice on how to feed their infants. The main task is not to prescribe to women what they should do, but to remove all the obstacles to feeding their infants in accordance with their own well-informed choices.

I would propose that the mother and child together should be understood as having a type of group rights. Breastfeeding is the right of the mother and infant together, in the sense that no one may interfere with the mother's right to breastfeed her infant.

This does not give priority to the woman or to the child but instead tries to forge a sensible balance between their interests and their rights. Women should not be legally obligated to breastfeed, but rather women should be supported in making their own informed choices as to how to feed their infants. Women should be enabled to make their choices with good information and with the elimination of obstacles to carrying out their choices.

I hope the journal will help to carry this discussion forward.

George Kent, PhD  
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### Author's Response

Dear Professor Kent:

Thank you for your thorough and thought-provoking response to my article on breastfeeding and human rights in the November 2003 issue of *JHL*. Your several technical points about the types of documents, ratification, and implications for national law and policy are appreciated. My intention was to discuss the documents per se, and in the interests of space and sticking to my point, I did not include these details. Thank you for filling those gaps.

You commented that "The code does not say governments and the international community have a responsibility to protect individuals from corporate violations of human rights. The code was not explicit about human rights" (p. 360). You are correct that the code itself does not address human rights explicitly. That comment was my own interpretation of the code in the context of breastfeeding and human rights.

Your comment on my statement that there is no universal agreement on who is entitled to human rights and what exactly those rights are is well taken. As I began studying this topic, I was quite amazed at how clearly these documents have articulated what universal human rights are in the context of so many different cultural and legal systems. We also agree that these human rights are not applied universally, even by the countries that have in principle agreed to them.

As for your statement, "there is no difficulty with the idea that mothers have the right to breastfeed. The vexing question, raised in the title of Bar-Yam's article, is whether infants have the right to be breastfed. What is Bar-Yam's answer?" I have argued that enforcing a child's right to be breastfed independent of a mother's right to breastfeed raises myriad legal and ethical issues about responsibility and authority of parents for their children and governments for families and children, and that the responsibility to make infant-feeding choices lies with the mother and father; the government is obliged to do what governments do best: provide support through appropriate institutions, facilities, and services (p. 359). The CRC lays out clearly the roles of parents and government in raising, caring for, and protecting children. As you pointed out, the CRC gives parents a great deal of latitude in child-rearing practices and anticipates direct government intervention only in the most extreme cases. It is the role of government to support parents in their tasks of child rearing with poli-

cies, education, and other support. The CRC aims to ensure that governments provide information and removes obstacles so that parents can make informed choices and implement them effectively. As you have also pointed out, even the code does not aim to prevent the marketing of breast milk substitutes, but rather it aims to ensure that parents can make fully informed choices about how to feed their infants and children.

I hope this discussion will be continued in this and other venues.

Naomi Bromberg Bar-Yam, PhD  
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### Response to "Breastfeeding, Asthma, and Atopic Disease: An Epidemiological Review of the Literature" by Oddy and Peat

We wish to respond to the article "Breastfeeding, Asthma, and Atopic Disease: An Epidemiological Review of the Literature" by Oddy and Peat.<sup>1</sup> This article assesses the evidence of whether breastfeeding protects against asthma and atopic disease. The authors excluded 3 studies from consideration, including our study published in the *Lancet* last year,<sup>2</sup> which Oddy and Peat regard as invalid because of "a number of limitations." In their review, they make at least 12 erroneous statements about our study, a surprising number given their document is intended to be an educational review to be used in training of lactation consultants.

Oddy and Peat state that the Dunedin sample was a hospital-based cohort and therefore subject to selection bias. This suggests that the study members were selected for being hospitalized for a disease or condition, but birth is hardly a disease. The sample is a population-based cohort, as virtually all births in Dunedin in 1972-1973 occurred in the one public maternity hospital. The sample is representative of the population in the region of New Zealand from which it was drawn, in terms of socioeconomic status and proportion of non-Europeans.

The authors state that our study "cannot be easily generalized to present times because health and lifestyle practices have changed." The outcome of interest is development of asthma and atopy throughout childhood to adulthood; therefore, the follow-up period must be prolonged to provide such data. Outcomes at 4 or 6 years of age do not necessarily predict long-term outcomes. One of the criteria not listed among the 12 postulated by Kramer for a valid study of breastfeeding<sup>3</sup> is a