

## **WOMEN'S RIGHTS TO BREASTFEED vs. INFANTS' RIGHTS TO BE BREASTFED** **by George Kent**

What is the relationship between the mother's interest in breastfeeding and the infant's interest in being breastfed? How do the mother's rights relate to the infant's rights?

Infant care and feeding are affected by many different parties, including the infant, the parents, siblings, the extended family, the community, health professionals, employers, infant formula manufacturers and sellers, local government, national government, and others. Each party has its own interests and its own capacities to press for outcomes preferable to itself. At times infants are not nurtured properly because of the pull of others' interests. They are all concerned, more or less, with the infant's health, but they also have other interests such as profits, increased leisure time, and having opportunities to do other things. Where these parties do not all have preferred outcomes that are consistent with one another, there is conflict among them.

At times the mother and the infant may have conflicting interests. The conflict is raised in clear relief when it is argued that the infant has a right not only to be well nourished but, more specifically, that the infant has a right to be breastfed. Such a right could clash with the woman's right to choose how to feed her infant.

Article 3 of the Convention on the Rights of the Child says that "In all actions concerning children . . . the best interests of the child shall be a primary consideration". Combining this with the observation that breastfeeding is better than alternative methods of feeding, some breastfeeding advocates argue that infants have a right to be breastfed. However, this appears to be a minority view.

While it is true that actions must be based on consideration of the best interests of the child, that is not the only consideration. Moreover, it is assumed that normally the parents judge what is in the child's best interests. The state should interfere in the parent-child relationship only in extraordinary situations, when there is extremely compelling evidence that the parents are acting contrary to the best interests of the child.

The infant has great interests at stake, but few resources to be used to press for preferred outcomes. Given the infant's powerlessness, it is sensible to use the law to help assure that the best interests of the infant are served. However, 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 generally 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.

The prevailing view is that women must remain free to feed their infants as they wish, presumably in consultation with other family members, and that outsiders are obligated to refrain from doing anything that might interfere with a freely made, informed decision. It is assumed that they have appropriate and accurate information available to them. 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 assure that parents can make a fully and fairly informed choice on how to feed their infants.

Rather than have the state make decisions for them, citizens in a democracy prefer assurances that nothing impedes them from making good decisions. To the extent possible we should be free to choose, and that includes being free to make what others might regard as unwise decisions.

### **Fundamental Principles**

In my view, the human rights of infants with regard to nutrition may be summarised in a few fundamental principles:

- (1) Infants have the right to be free from hunger, and to enjoy the highest attainable standard of health.
- (2) Infants are entitled to good food, good health services, and good care.
- (3) Mothers have a right to breastfeed.
- (4) Infants have the right to be breastfed if their mothers choose to breastfeed.
- (5) A reluctant mother cannot be legally compelled to breastfeed.
- (6) Human rights law requires respect, protection, and facilitation by outsiders – and particularly by the state – of the nurturing relationship between mother and child.
- (7) Infants are entitled to assurance that their parents are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition and the advantages of breastfeeding.



(8) Infants are entitled to expect that their mothers have good prenatal care.

(9) Infants are entitled to baby-friendly health facilities.

(10) Infants are entitled to assurances that, through appropriate maternity legislation, their mothers have adequate opportunities to nurture them.

### Recommendations

The idea that parents should be able to make informed decisions remains valid in the context of HIV/AIDS. However, its application depends on the decision-makers, primarily mothers, being aware of and having real access to a range of feeding alternatives, and it depends on their having good information about these available alternatives. Where commercial interests are represented, the presentation of options and the information about them are likely to be sharply skewed.

The ten principles regarding the human rights of infants with regard to nutrition apply in the context of HIV/AIDS; they are not to be suspended. This means, for example, that even HIV-positive mothers have a right to breastfeed. If any country were to prohibit HIV-positive mothers from breastfeeding, that would violate their human rights, and also violate their infants' human rights.

Particular attention should be given to Principle 7 which focuses on the obligation to assure that the infants' parents are well informed with regard to their infant feeding choices. This is the major idea underlying the International Code of Marketing of Breastmilk Substitutes. The code does not prohibit marketing or use of formula, but insists that promotion activities for the products must be conducted in ways that are fair rather than being skewed to favour commercial products. Article 24, paragraph 2e of the Convention on the Rights of the Child goes directly to the point. It calls upon States Parties "To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents." This is a legally binding obligation on all States Parties to the convention (all countries except the United States and Somalia), and a strong moral obligation on those that are not. From the debate relating to HIV, it is now increasingly clear that the full array of feeding options should be presented to the parents, and better research is needed about the advantages and disadvantages of each option in particular local circumstances.

In addition, there is a need to enable the mother to learn whether she is HIV-positive through voluntary counseling

and testing so that she can make an informed decision regarding the feeding of her infant in relation to her own condition. This counseling should include factual information on the limitations, validity, and meaning of the test.

These points can be formulated as Fundamental Principles on the human rights of infants with regard to nutrition where there is significant risk of HIV infection through breastfeeding. These principles, to be added to the ten listed earlier, might be stated as follows:

(11) Regardless of the mother's HIV status, infants are entitled to assurance that their parents are informed of the full range of feeding alternatives and their advantages and disadvantages in the local circumstances.

(12) Women in their child-bearing years are entitled to accessible voluntary testing and counseling regarding HIV/AIDS. This counseling must include information about the limitations, validity, and meaning of the test and the benefits and risks of various feeding alternatives in the local circumstances.

(13) Infants are entitled to expect that their governments will help to make quality feeding alternatives available, including expressed and heated breastmilk, or breastmilk from others obtained through wet nurses, milk banks, or other comparable arrangements.

(14) Infants are entitled to expect that their governments will seek to obtain and provide the unbiased information needed by their parents regarding HIV/AIDS and feeding alternatives.

In other words, as a consequence of the infant's human right to nutrition, parents are entitled to good information about a broad range of feeding alternatives.

These are tentative formulations, offered to stimulate discussion. Principles of this sort should be considered in preparing policy at the global level, and also in the drafting of national legislation and national policies relating to HIV/AIDS.

1. Convention on the Rights of the Child.  
<http://www.unhchr.ch/html/menu3/b/k2crc.htm>

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