



Breastfeeding: A human rights issue?

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ABSTRACT *George Kent tackles the sensitive issue of breastfeeding from both the infant's and mother's point of view. He traces the human rights discourse over nutrition rights of the last decades and concludes that though it is certainly true that children have the right to the best nutrition possible, it is the mother's right to choose that should determine if a child is breastfed. He suggests it is important to provide the right knowledge and supportive environment to enable a woman to choose what is undoubtedly best for her infant and satisfying for herself as a mother.*

KEYWORDS *democracy; infants; motherhood; nutrition; women's rights*

Rights of infants

The idea of 'breastfeeding as a human right' is ambiguous; it can refer to the rights of the infant or of the mother. We may normally think of them as bonded so closely that they are one, with no imaginable conflict between them. Perhaps that is usually the case, but we must acknowledge that sometimes there can be differences between them. Certainly they do not always 'agree' on when to start or when to stop feeding. The infant may be insensitive to the inconvenience or even pain he or she may sometimes cause. The mother may also be unhappy about being drawn away from work, or from her husband, or from other children, or from rest. There sometimes can be real differences in interests between mother and child.

These parties can influence one another's decisions in many different ways, through education, persuasion, money, affection. The least influential of them is the infant. The infant does have some influence, because its birth and its behaviour affect the mother's hormones, and provide a positive stimulus for breastfeeding. Beyond that, the interests of the infant may have an impact if he or she is represented by surrogates, others who have some capacity in the situation and who choose to speak and act on the infant's behalf. Nevertheless, the infant has relatively little power in the relationship. It is particularly because of

this extreme asymmetry in the power relationships that it is important to articulate the rights of the infant.

Nutrition rights

The human rights of infants with regard to their nutrition must be located within the broader context of nutrition rights in modern international human rights law and principles. The foundation lies in the Universal Declaration of Human Rights (1948), which asserts, in Article 25 (1), that 'everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food . . .'

The right was reaffirmed in two major binding international agreements. In the International Covenant on Economic, Social and Cultural Rights (1976), which came into force in 1976, article 11 says that 'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing . . .' and also recognizes 'the fundamental right of everyone to be free from hunger . . .'

In the Convention on the Rights of the Child (1990), which came into force in 1990, two articles address the issue of nutrition. Article 24 says that 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health . . .' (paragraph 1) and shall take appropriate measures 'to combat disease and malnutrition . . . through the provision of adequate nutritious foods, clean drinking water, and health care' (paragraph 2c). Article 24 says that States Parties shall take appropriate measures '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 [and] the advantages of breastfeeding . . .'. Article 27 says in paragraph 3 that States Parties 'shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing'.

Thus, the human right to food and nutrition is well established in international law. Even if the right had not been stated directly, it would be

strongly implied in other provisions such as those asserting the right to life and health, or the Convention on the Rights of the Child's requirement (Article 24, paragraph 2a) that States Parties shall 'take appropriate measures to diminish infant and child mortality'. The human right to food and nutrition has been reaffirmed at the international level in many different settings.

The human right to food and nutrition is affirmed or implied not only in the International Covenant on Economic, Social and Cultural Rights (1976) and the Convention on the Rights of the Child (1990), but also in other binding international human rights agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women (1981).

Several non-binding international declarations and resolutions also help to shape the emerging international consensus on the meaning of the human right to food and nutrition. The major initiatives include the following:

In response to concerns about inappropriate marketing and promotion, the World Health Assembly adopted the International Code of Marketing of Breastmilk Substitutes in 1981 (WHO, 1997). The World Health Assembly approved a series of resolutions in subsequent years to further clarify and strengthen the code. On 1 August 1990 the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding was adopted by participants at a meeting on breastfeeding held at the International Child Development Centre in Florence, Italy. The declaration stated a variety of specific global goals, including the goal that 'all women should be enabled to practice exclusive breastfeeding and all infants should be fed exclusively on breast-milk from birth to four-six months of age'. In 1991 the UNICEF Executive Board passed Resolution 1991/22 saying that the Innocenti Declaration would serve as the 'basis for UNICEF policies and actions in support of infant and young child feeding'. In May 1996 the World Health Assembly passed a Resolution 49.15 on Infant and Young Child Nutrition in which it confirmed its support to the Innocenti Declaration.

The World Summit for Children held in 1990 called for 'Empowerment of all women to breast-feed their children exclusively for four to six months

and to continue breastfeeding, with complementary food, well into the second year'. In 1992 the World Declaration and Plan of Action for Nutrition, agreed upon at the conclusion of the International Conference on Nutrition in Rome, pledged 'to reduce substantially within this decade . . . social and other impediments to optimal breastfeeding'. The Plan of Action asserted, in Article 30, that 'Breastfeeding is the most secure means of assuring the food security of infants and should be promoted and protected through appropriate policies and programmes'. Article 33 stated that 'Governments, in cooperation with all concerned parties, should . . . prevent food-borne and water-borne diseases and other infections in infants and young children by encouraging and enabling women to breast-feed exclusively during the first four to six months of their children's lives'. Article 34 provided a detailed call for action on promoting breastfeeding.

In 1995 the Platform for Action that came out of the Fourth World Conference on Women in Beijing called for promoting public information on the benefits of breastfeeding, implementing the International Code of Marketing of Breastmilk Substitutes, and facilitating breastfeeding by working women. In November 1996 the World Food Summit concluded with agreement on the Rome Declaration on World Food Security and World Food Summit Plan of Action. The first paragraph declared:

We, the Heads of State and Government, or our representatives, gathered at the World Food Summit at the invitation of the Food and Agriculture Organization of the United Nations, reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.

On 12 May 1999 the Twentieth session of the UN Committee on Economic, Social and Cultural Rights released its General Comment 12 on the right to adequate food (Art. 11). This statement by the committee constitutes a definitive contribution to international jurisprudence.

There is increasing recognition at the international level that good nutritional status is an outcome that depends not only on good food but

also on good health services and good care (Engle et al., 1997; Longhurst and Tomkins, 1995). Health services consist of a broad range of measures for the prevention and control of disease, including the maintenance of a healthy environment. Thus, infant feeding is not simply a matter of the physical transmission of nutrients. There should be a strong component of caring in it, through the closeness and contact that can be provided during feeding. Breastfeeding can be regarded as a kind of health service because it immunizes the infant against a broad variety of diseases.

Because of their immediate and direct dependence on their mothers, the nutrition status of infants is determined not only by the quality of the food, health services, and care they receive directly, but also by the food, health service and care received by the mother herself. The infant's nutrition status at birth depends on the quality of the mother's health status and prenatal care, and whether she has had a good diet in general and has been protected from iron deficiency anemia in particular.

Mothers, and fathers as well, should be entitled to particular services not only because of their own rights but also because of their obligations to provide for their children. Mothers should receive good pre-pregnancy and prenatal care, and parents should be well informed about the risks and benefits of all alternative means for feeding their infants because, like everyone else, their infants have a human right to adequate nutrition.

Principles

What does the human right to food and nutrition mean for infants in particular? At a conference of the World Alliance for Breastfeeding Action (WABA) in Thailand in 1996, a number of specialists formulated a statement on infant feeding and human rights. However, long before some participants in that discussion expressed reservations about the statement, and called for a re-examination of the positions that had been taken. The major question was whether the infant should be regarded as having a right to be breastfed. This was seen as problematic, since such a right would limit the mother's freedom of choice. After some

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rethinking, in 1998 WABA released its *Quezon City Declaration on Breastfeeding, Women and Work: Human Rights and Creative Solutions*. UNICEF released a document entitled *How Can Breastfeeding be a Human Right?* (UNICEF, 1998) However, the questions were not fully resolved.

The group agreed to discuss the issues through e-mail, over the Internet. The discussion was launched on 1 May 1999. The group focused on articulating a list of agreed principles relating to human rights and infant nutrition. After long hard discussion, the group formulated the following 'Consensus Statement Regarding the Nutrition Rights of Infants', based on their understanding of international human rights law and principles:

- 1 Infants have a right to be free from hunger, and to enjoy the highest attainable standard of health.
- 2 Infants have a right to adequate food, health services, and care.
- 3 The state and others are obligated to respect, protect, and facilitate the nurturing relationship between mother and child.
- 4 Women have the right to social, economic, health, and other conditions that are favourable for them to breastfeed or to deliver breastmilk to their infants in other ways. This means that women have the right to:
 - good prenatal care;
 - basic information on child health and nutrition and the advantages of breastfeeding, and on principles of good breastfeeding and alternative ways of providing breastmilk;
 - protection from misinformation on infant feeding;
 - family and community support in the practice of breastfeeding;
 - maternity protection legislation that enables women to combine income-generating work with nurturing their infants;
 - baby-friendly health facilities.
- 5 Women and infants have a right to protection from factors that can hinder or constrain breastfeeding, in accordance with:
 - the Convention on the Rights of the Child;
 - the International Code of Marketing of Breastmilk Substitutes and related World Health Assembly resolutions;

- the International Labor Organization's Maternity Protection Convention Number 103 and its subsequent revisions; and
 - the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding.
- 6 States, represented by their governments, have an obligation to:
 - protect, maintain, and promote breastfeeding through public educational activities,
 - facilitate the conditions of breastfeeding, and
 - otherwise assure that infants have safe access to breastmilk.
 - 7 No woman should be prevented from breastfeeding.

This statement, finalized on 19 January 2000, concluded what is now, retrospectively, described as Phase I of the Consultation on Human Rights and Infant Nutrition (CHRIN). A presentation was made on this consultation process at the meeting of the UN Sub-Committee on Nutrition in Washington DC in April 2000.

In these discussions, some individuals initially viewed the exercise as one of polling the participants to identify the most favoured positions. However, this was not a contest to determine which positions were most popular. Rather, it was a task of determining what seemed the most reasonable interpretation of international human rights law as it is now written. Personal preferences had their influence, of course, but the main objective was to make a sensible interpretation of international human rights law and principles as they exist.

Women's rights to breastfeed vs. infants' rights to be breastfed

In these discussions, we decided to leave the more difficult issues for later. Setting the difficult issues aside, in the 'Jerusalem pile', allowed us space to come to agreement at least on the principles described above. The major question that remains, on which consensus has not yet emerged, is: do infants have a right to be breastfed? 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?

At times the mother and the infant may have conflicting interests in relation to feeding. 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, '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 argue that infants have a right to be breastfed. However, this appears to be a minority view.

It is true that decisions must be based on consideration of the best interests of the child, but 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.

Those who press the view that the infant should be viewed as having the right to be breastfed centre their argument on the point that breastfeeding is almost always best for the health of the infant. I do not dispute that. However, I think the difficulties arise out of a misunderstanding of the nature of human rights and the proper role of government. Human rights are not intended to prescribe optimal behaviour, but rather to place outer limits, saying it should not go beyond certain extremes. Thus, people are allowed to smoke and eat unhealthy food, even though it is not best for them.

By definition, human rights are universal; they do not vary from country to country, from place to place. However, national and local legislatures are free to formulate legal requirements appropriate to their particular local circumstances, provided they do not conflict with general human right laws and principles.

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, in my view it is not reasonable to use the law to compel an unwilling mother to breastfeed, or to prevent a willing mother from breastfeeding. 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.

In my view, mothers should remain free to feed their infants as they wish, in consultation with other family members. Outsiders are obligated to 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 assure 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.

Thus, the solution to the dilemma proposed here is that the mother and child together should be understood as having a type of group rights. Breastfeeding is the right of the mother and the infant together. This might be expressed in an additional principle:

8 Infants have the right to be breastfed, in the sense that no one may interfere with women's right to breastfeed them.

This means that the pair taken together have certain rights in relation to outside parties, such as rights to certain kinds of information and services, and the rights to be protected from undue influences from outside interests. It does not say that women are obligated to breastfeed their infants. It does not invite the state to intervene in the relationships between women and their infants.

are based on the concept that women should not be legally obligated to breastfeed, rather they 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.

There is widespread concern that mothers might make unwise choices with regard to feeding their infants. We then have two basic options: either have society override the mother's choice; or find ways to support the mother so that she makes wise

choices. In my view, the first approach is disempowering, while the second is empowering for women. If women are given good information, and have all the obstacles to breastfeeding eliminated, they are likely to make a good choice.

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

Note

- 1 I want to express my gratitude to the participants in the on-line 'Consultation on Human Rights and Infant Nutrition' for their willingness, endurance and good cheer in exchanging ideas. However, they and their organizations are absolved of any responsibility for the views expressed here.

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