

HUMAN RIGHTS AND INFANT NUTRITION

by George Kent

Infant Feeding Issues

The feeding of infants generally goes smoothly, particularly with the advice of appropriately trained health workers. Many problems are solved with improved feeding techniques. However, there are times when the difficulties are so serious and so extensive that they must be viewed as problems of society. The most widespread and sustained of these issues to catch the public consciousness has been the improper marketing of breastmilk substitutes. There also have been problems in finding ways to accommodate mothers doing income-generating work so that they can feed their infants. In some countries there have been controversies over whether breastfeeding in public is permissible. In several countries, there have been court cases on the question of whether a mother diagnosed as HIV-positive should be permitted to breastfeed her infant. All of these are political issues, issues that can raise serious concerns about human rights.

The parties to infant feeding are, most obviously, the mother and the child. But there are others with some interest and some influence in the situation. There is the father, and siblings. There is the extended family. There are friends. There is the local community. There are also doctors and nurses, and other health professionals. Employers are affected. The local government may be concerned in some way, and possibly the national government, and even some international organisations. And there are also a variety of commercial interests.

Each of these parties has some interest in the infant feeding relationship. All of them may feel or claim that they have a common interest in the health and well being of the infant, but they have other interests as well. The mother is, and should be, concerned with her own health and comfort. Siblings may be jealous because of the attention paid to the newcomer. Some fathers may feel jealous as well. Both father and mother may be concerned about the mother's being drawn away from work in the field or the factory, or from the work of caring for other family members. Older female relatives may try to influence the feeding process. Employers may be concerned with the ways in which breastfeeding takes the mother away from work,

whether for minutes, hours, days, or months. They may be concerned that publicly visible breastfeeding will distract other workers.

Healthcare workers may be concerned with the well being of the infant and the mother, but they also have other concerns. They may have only limited time and other resources for preparing and for assisting and enabling the new mother for breastfeeding. Their incomes may be affected by the new mother's choice as to whether to breastfeed or not. Commercial interests may want to sell products, either to support breastfeeding (such as breast pumps or special clothing) or for alternatives to breastfeeding (such as formula, sterilisation equipment). Government officials may be swayed in different directions, depending on which of these parties has the greatest influence on them.

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 infant may not appear to be influential, but its birth and its behavior affect the mother's hormones, and provide a positive stimulus for breastfeeding. The hormones of pregnancy also cause proliferation of the ducts and alveoli of the mother's breasts, in preparation for production of colostrum and mature milk. As a result of the delivery of the placenta after the birth of the infant, the drop in progesterone causes production of breastmilk within three to six days of the birth. Thus, lactation is the natural and direct result of pregnancy and delivery. 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 in the infant's behalf.

Nevertheless, the infant has little direct 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.

The Human Right to Adequate Food

The human rights of infants with regard to their nutrition must be located within the broader context of the human right to adequate food in modern international human rights law and principles. The foundation lies in the Universal Declaration of Human Rights (UDHR 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, 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 . . . (ICESCR 1976).”

In the Convention on the Rights of the Child, which came into force in 1990, two articles address the issue of nutrition (CRC 1990). 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 healthcare (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 adequate food 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 (in article 24, paragraph 2a) that

States Parties shall “take appropriate measures to diminish infant and child mortality”. The human right to adequate food is reaffirmed or implied in other binding international human rights agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1981).

Several non-binding international declarations and resolutions help to shape the emerging international consensus on the meaning of the human right to adequate food as it applies to infants:

- 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 WHA approved a series of resolutions in subsequent years to further clarify and strengthen the Code.
- 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.”
- On August 1, 1990 the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding was adopted by participants at a meeting on Breastfeeding in the 1990s held at the Innocenti 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 breastmilk from birth to 4-6 months of age. Thereafter children should continue to be breastfed, while receiving appropriate and adequate complementary foods, for up to two years of age or beyond (Innocenti 1990)”. In 1991 the UNICEF Executive Board passed a 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 on Infant and Young Child Nutrition (WHA49.15) in which it confirmed its support for the Innocenti Declaration.
- 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, “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.

On May 12, 1999 the UN's Committee on Economic, Social and Cultural Rights released its General Comment 12 (Twentieth session, 1999): The Right to Adequate Food (Art. 11) (General Comment 12, 1999). This statement by the committee constitutes an authoritative 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 1997; Longhurst 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 protects the infant against a broad variety of diseases and encourages optimal caring.

Because of their immediate and direct dependence on their mothers, the nutritional 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 nutritional 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. That statement said, in part:

A major principle in international law is that the best interest of the child must govern all matters relating to children. All children have the right, as have their mothers, to enjoy the highest attainable standard of health, through access to appropriate health services and to adequate food . . .

In view of the fact that breastfeeding is almost without exception in the best interest of children and mothers, WABA interprets these provisions of international law as implying that children have a right to mother's milk as the only fully adequate form of child nutrition for the first half year of life, and an important supplement to the diet for the first two years of life. And that mothers and children have a right to enjoy conditions that facilitate breastfeeding.

States that are parties to the ICESCR, CRC and related international human rights agreements have an obligation to respect, protect, facilitate and fulfill these rights relating to child nutrition. They are obligated to remove obstacles to breastfeeding and to appropriate complementary feeding, and they are obligated to create supportive social and economic environments for both parents and children that will assure good nutrition.

This shall not be understood to imply that the mother has a duty to breastfeed. It is the conditions that exceptionally lead to a choice

not to breastfeed that must be altered. Thus there is an obligation on the States Parties to these international human rights agreements to alter those conditions that lead a mother to choose not to breastfeed. . . .

Following further discussion, in 1998, WABA took the following position on breastfeeding and human rights in its Quezón City Declaration (WABA 1998):

Breastfeeding is a right of mothers and is a fundamental component in assuring a child's right to food, health and care. Governments and civil society should pursue full implementation of these as human rights. The protection, respect and fulfillment of these rights requires universal recognition of the importance of maternity as a social function supported by public funds. "Maternity protection is a precondition of genuine equality of opportunity and treatment for men and women." (International Labour Organization [ILO], *Maternity Protection at Work*, pg. 51, 1997).

All babies and mothers have the right to an environment that protects, promotes and supports breastfeeding. This includes informing all members of society of the benefits of breastfeeding, protecting parents and health workers from commercial pressures and misinformation through the implementation of the International Code of Marketing of Breastmilk Substitutes and subsequent WHA resolutions, implementing the Baby-Friendly Hospital Initiative, and protecting the breastfeeding rights of women at work. Measures should also be taken to recognize the shared responsibility of women, men and society in child-rearing.

While there was broad consensus on this view, some individuals expressed reservations about the statement, and called for a reexamination 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.

The 1996 statement was reaffirmed at the October 1999 WABA Steering Committee meeting held in Penang, Malaysia.

A number of interested individuals agreed to discuss the issues through email, over the Internet. The discussion was launched on May 1, 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. Personal preferences had their influence, of course, but the main objective was to make sensible interpretations of currently established 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 favorable for them to breastfeed or to deliver breastmilk to their infants in other ways. This means that women have the right to:
 - a. Good prenatal care.
 - b. Basic information on child health and nutrition and the advantages of breastfeeding, and on principles of good breastfeeding and alternative ways of providing breastmilk.
 - c. Protection from misinformation on infant feeding.
 - d. Family and community support in the practice of breastfeeding.
 - e. Maternity protection legislation that enables women to combine income-generating work with nurturing their infants.
 - f. Baby-friendly health facilities.
5. Women and infants have a right to protection from factors that can hinder or constrain breastfeeding, in accordance with:
 - a. The Convention on the Rights of the Child,
 - b. The International Code of Marketing of Breastmilk Substitutes and related World Health Assembly resolutions,
 - c. The International Labor Organization's Maternity Protection Convention Number 103 and its subsequent revisions, and

- d. The Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding.
- 6. States, represented by their governments, have an obligation to:
 - a. Protect, maintain, and promote breastfeeding through public educational activities,
 - b. Facilitate the conditions of breastfeeding, and
 - c. Otherwise assure that infants have safe access to breastmilk.
- 7. No woman should be prevented from breastfeeding.

This statement, finalised on January 19, 2000, concluded what is 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’s Sub-Committee on Nutrition in Washington, D.C. in April 2000.

Contentious Issues

There are major issues on which consensus has not yet been reached, such as the question of whether and how these principles should apply when mothers are diagnosed as HIV-positive. However, rather than addressing application of the principles in specific settings, here we will review some of the major difficulties with the general principles.

Women’s Rights to Breastfeed vs. Infants’ Rights to be Breastfed

A fundamental question remains unresolved: *do infants have a right to be breastfed?* On July 23, 2000, in an early phase of the Consultation on Human Rights and Infant Nutrition, Pamela Morrison argued that children should be viewed as having an unconditional right to be breastfed:

Since lactation is the biological continuum of pregnancy and birth, the breasts producing milk which is perfectly suited to the needs of the human infant, since the lactogenesis occurs, regardless of what the mother “chooses” to do, and in fact even if the baby is not viable, and since the physiological requirement of the baby is to receive such breastmilk (all commercially manufactured substitutes and the milks of other mammals failing to duplicate the nutritional/immunological components of human milk, thus in effect mal-nourishing the infant who receives such breastmilk substitutes) – how can a mother's right to exercise “freedom of choice”

about how she feeds her infant (which presumably means the freedom *not* to breastfeed) be seen as equal to or, in fact, take precedence over the baby's right to his mother's milk? It seems to me that the mother's right to make choices (a social convenience) should be placed lower down on the hierarchy of needs than the baby's right to the food that nature provides (a biological necessity, without which he will either die or become ill).

Morrison’s view is that the mother should not be viewed as having a choice in the matter, but is obligated to breastfeed.

This view warrants close examination. 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.

In human rights law and principles, 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 center their argument on the point that breastfeeding is almost always best for the health of the infant. While that may be true, it does not necessarily follow that breastfeeding

must be mandated under human rights law. The task of human rights, and governance generally, is not to prescribe optimal behavior. Rather, their function is to establish outer limits, saying that people's behavior 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 rights law 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, the position proposed here is that 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 many countries, the dominant view is that 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 suggested 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 could be expressed as the following principle:

- Infants have the right to be breastfed, in the sense that no one may interfere with their mothers' right to breastfeed them.

If this were to be accepted, it could replace principle 7, listed earlier: "No woman should be prevented from breastfeeding."

This proposed formulation means that the mother-infant 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 mothers and their infants.

My personal view is that the principles proposed here (with the revised number 7) do not give priority to the mother or to the child, but instead try to forge a sensible balance between their interests. The principles are based on the concept that mothers should not be legally obligated to breastfeed, but rather they should be supported in making their own informed choices as to how to feed their infants.

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 good choices. Women should be enabled to make their choices with good information, and with the elimination of obstacles to carrying out their choices.

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 or sub-optimal decisions.

Coercion

The debate about whether infants should be viewed as having the right to be breastfed is closely related to the question of when the state may reasonably force a mother either to breastfeed or not breastfeed. The issue comes up, for example, when there is fear that the infant might suffer from contaminants or infectious agents in the breastmilk. The fears that arise in relation to these situations are comparable to the fears from concern that illness or death might result from the use of breastmilk substitutes.

The view advanced here is that under normal conditions the state should not interfere in the nurturing relationship between mother and child. The mother, in consultation with other family members, gets to decide how the child is to be fed. The mother has a range of choices, and is not to be limited to what some governmental agencies decide is the optimal diet.

This formulation applies in normal situations. However, it is recognized and accepted that the state may sometimes be justified in intervening in that relationship in extreme situations. These are situations in which there is clear evidence that the diet (or other treatment) intended by the mother is highly likely to lead to extremely bad health outcomes for the infant. If a mother wanted to treat her infant's stomachache with a harmful dose of cyanide, we would want the state to block her. In all such cases where it is claimed that the situation is so extreme as to warrant state intervention, that would have to be based on clear and strong evidence of the danger.

There is clear and strong evidence that in some circumstances the use of breastmilk substitutes leads to substantially higher infant mortality rates. In those situations, we could accept a national government's prohibiting the use of breastmilk substitutes, or limiting their use to cases in which a physician prescribes substitutes. However, in places where the health outcomes of infants fed with breastmilk substitutes are only slightly inferior to those of breastfed infants, we would not want to have the government force the choice. Where the differences in health outcomes are somewhere in between these extremes, the appropriate action on the part of government may be to support educational campaigns and to assure that mothers do not make their decisions on the basis of misleading information. The argument here is that it is only in extremis that the judgments of governments should override those of mothers, and then only when there is

solid scientific evidence to support the government's judgment.

On this basis, I would propose as a principle:

- Mothers have the right to use breastmilk substitutes when national governments determine that they can be used safely.

The idea here is that national governments would have the authority to determine whether, in their particular national circumstances, it would be possible for women to use breastmilk substitutes safely.

Governments would be obligated to do what they could to assure that safety. This would include informing women about the risks involved. Thus I would add the principle that:

- Mothers have the right to good information about the benefits and risks involved in using different feeding methods.

Safety

What is the meaning of "safely"? Two aspects of the question need to be considered. First, what should be the appropriate standards of safety? Second, who decides?

Regarding appropriate standards of safety, there would be a need to assess the actual risks of breastmilk substitutes in different circumstances. If adequate data could be obtained, the risks associated with using breastmilk substitutes could be compared with the risks of doing other kinds of things. Some ideologues might feel that infants should not be exposed to any sort of risk under any conditions, but most people understand that all sorts of activities entail some amount of risk. One doesn't want to keep infants in bed under guard all day long. The task is to find reasonable ways to balance different sorts of risk and different sorts of interests. In developed countries, the risk to the infant of using formula may not be much different from, say, taking the infant around in a car, in an infant seat, or exposing the infant to second-hand smoke. If one of these is to be banned, serious consideration should be given to banning the other as well.

We can generally define normal risks as those in the moderate range, where some people are likely to judge one way and others are likely to judge another way. These different perceptions of risk result in different preferences. In these cases, decisions should be left to people's own judgments.

Extreme risks, in contrast, can be demonstrated on the basis of clear scientific evidence, and thus there is little public dispute over them. For example, it has been shown that in some developing countries the mortality rates for infants who are fed with breastmilk substitutes are far higher than they are for breastfed infants (WHO 2000). I would have no quarrel with national legislatures in such countries requiring that breastmilk substitutes may be obtained only with a prescription from a physician. However, where a government wishes to force women either to breastfeed or not breastfeed, there is a heavy burden of proof. Coercion should not be accepted except where there is strong scientific evidence to support its use.

Adequacy

Adequacy is an important concept in any discussion of nutrition rights. The UN Committee on Economic, Social and Cultural Rights' General Comment 12, on the right to food, discusses the adequacy issue as it applies to food, but does not define it explicitly (General Comment 12 1999). However, paragraph 9 is especially relevant.

Dietary needs implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.

On this basis, “adequate food” could be understood as meaning a food supply that contains a mix of nutrients sufficient for “normal” physical and mental growth, development and maintenance, and physical activity. The word “normal” is not in paragraph 9. However, if we take this sensible course, we would still be left with the question of whether “normal” in this context means bare life or optimum health or something in between. In my view, the answer should be guided by the concepts on safety suggested in the preceding section. Governments should protect us from extreme risks, but not try to prescribe optimum diets.

As indicated earlier, the legal foundation for the human right to adequate food lies in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Both speak of the right to an “adequate” standard of living. Also, article 12 of the covenant speaks of “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. What do these terms – “adequate” and “highest attainable standard” – mean?

The UN's Committee on Economic, Social and Cultural Rights has prepared a General Comment on the right to health (General Comment 14 2000). Its paragraph 9 explains:

The notion of “the highest attainable standard of health” in article 12.1 takes into account both the individual's biological and socio-economic preconditions and a State's available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”

This implies that in current human rights law the right to “the highest attainable standard of health” depends in part on the level of resources available to the state. The “safety net” with regard to health services should be higher in richer countries. Governments of countries with more abundant resources should commit themselves to higher standards with regard to their people's health.

In contrast, “adequacy” in relation to the right to an adequate livelihood appears to mean that people should be assured of at least some minimum quality of life everywhere, even in very poor countries. All people everywhere should get what they need in order to live in dignity. I take this to mean that “safety nets” must not be allowed to go below a certain level, no matter

how poor the country may be. “Adequacy” does not depend on the level of state resources.

The Role of Human Rights

Human rights law is generally based on consensus. It is not an instrument for resolving deep differences among people with regard to their moral outlooks. Consider the example of capital punishment. Because many people feel that it is morally wrong for any state to execute people for their crimes, a Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was adopted by the United Nations General Assembly on December 15, 1989. However, as of July 2002, only 47 countries have ratified it. The instrument is binding on those countries that have ratified it, but it must be acknowledged that the protocol has failed the test of consensus. Thus, we cannot say that capital punishment is a violation of universal human rights under international human rights law.

A great deal of work remains to be done to clarify the ways in which human rights law and principles should apply in relation to the feeding of infants. The meaning and implications of terms such as “the best interests of the child”, “safety”, “adequacy”, and “the highest attainable standard of health” need to be worked out.

The core of the debate lies in differences in views on the merits of breastmilk substitutes. Some people view infant formula as a sensible modern convenience while others view it as being close to poison. Others are arrayed somewhere in between. In localities where there is strong evidence and a clear consensus that the use of formula would be seriously dangerous, it would be sensible to adopt rules limiting its use. However, the position proposed here is that until there is broad consensus on this point, the best universal rule would be to rely on informed choice, with mothers having a clearly recognized right to good information on the risks of using different feeding methods in their particular local circumstances.

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