

BREASTFEEDING AND HUMAN RIGHTS

UNDERSTANDING THE LINKS
USING THE LEVERAGE

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Objectives


- Understanding what is a human right and the basics of international human rights law
- Defining the right to health and the right to food and how breastfeeding can be considered a human right
- Explaining the Human Rights treaty bodies reporting mechanism



Section I

HEALTH

IN THE HUMAN RIGHTS FRAMEWORK



Defining Human Rights

- **Aims:**
To protect the **inherent dignity of each and every human being**
To reach to a state of **freedom, justice and peace** in the world
- **Classification:**
Civil and political rights
Economic, social and cultural rights
- **Characteristics:**
Fundamental Universal Inalienable
Indivisible Interdependent Interrelated



At the International Level

- Covenants, Conventions, Treaties, Charters, Protocols

→ binding for States who have ratified them

- ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR) -1966
- ❖ Convention on the Elimination of Discrimination Against Women (CEDAW) -1979
- ❖ Convention on the Rights of the Child (CRC) – 1989
- ❖ ILO Convention C183 on Maternity Protection – 2000

- Declarations, Principles, Guidelines, Recommendations

→ declaratory, non binding

- ❖ Universal Declaration of Human Rights (UDHR) – 1948
- ❖ ILO Recommendation R191 on Maternity Protection – 2000

- General Comments, Special Rapporteurs' reports, Technical Guidances, Statements

→ authoritative interpretation and guidance

States need to ratify these instruments and then to implement them i.e. to adapt national legislation to meet their standards.



Different Actors and Roles

- Rights holders:

those who are entitled to the enjoyment of human rights, those who can claim them

Who? All people
by virtue of being human

- Duty bearers:

those legally obliged to ensure the realization of human rights

Who? States



What are States' obligations?

- **Respect:**

States must refrain from violating human rights (they cannot take them away or lessen their enjoyment)

- **Protect:**

States must protect individuals or groups against human rights abuses from others

- **Fulfill:**

States must take positive actions/measures to ensure realization of human rights (policies, programmes, plans)



Non-State Actors and their role

- **Non-State Actors:** private sector, academics, civil society organisations have also a role to play in the realization of human rights, which is to **comply with international standards and national legislation**

→ They must in any case **refrain** from any human rights abuses and take all necessary measures to achieve this objective!

→ On the contrary, private companies often claim to “respect” and “promote” human rights and social standards while abusing human rights on the ground – this is an **exercise of public relations to improve their image!**



The Right to Health

- What does it mean, concretely?

The right to the enjoyment of a range of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health

→ It includes:

- **Health care**
- **Underlying determinants of health:**
 1. Adequate and nutritious food
 2. Housing
 3. Safe and clean water
 4. Sanitation
 5. Safe working conditions
 6. Healthy environment



Right to Health: sources

- **Treaties:**
 - Article 12 ICESCR
 - Article 12 CEDAW
 - Article 24 CRC
 - Articles 3 and 4 ILO C183
- **General Comments and Recommendations:**
 - CESCR General Comments 14 and 19
 - CRC General Comment 15
 - CEDAW General Recommendation 24
- **Reports of the UN Special Rapporteur on the Right to Health**



The Right to Adequate Food

- What does it mean, concretely?

The right to have physical and economic access at all times to adequate food or means for its procurement

- The essential standards:

- **Adequacy** food should be nutritious, safe and culturally acceptable
- **Accessibility** of both productive resources and income
- **Availability** in terms of quantity and quality
- **Sustainability** preservation of resources for next generations

Food should meet these standards



Right to Adequate Food: sources

- **Treaties:**

- Article 11 ICESCR
- Articles 12.2 and 14.2(h) CEDAW
- Article 24.2(c) CRC
- Articles 3 and 4 ILO C183

- **General Comments and Recommendations:**

- CESCR General Comment 12
- CRC General Comment 15
- CEDAW General Recommendation 24

- **Reports of the UN Special Rapporteurs on the Right to Food and on the Right to Health**




Section 2

**BREASTFEEDING AND
THE CODE***

IN THE HUMAN RIGHTS FRAMEWORK

* International Code of Marketing of Breastmilk Substitutes, 1981
and relevant subsequent WHA Resolutions



Breastfeeding in HR law sources (I)

- **Convention on the Rights of the Child, article 24.2**
- **CRC General Comments 15 and 16**
- **ICESCR International Covenant on Economic, Social and Cultural Rights, articles 11 and 12**
- **CESCR General Comments 12, 19 and 24**
- **Convention on the Elimination of all forms of Discrimination Against Women, article 12**
- **CEDAW General Recommendation 34**



Breastfeeding in HR law sources (2)

- **ILO C183 on Maternity Protection**
- **ILO R191 on Maternity Protection**
- **Technical Guidance on mortality of children under 5 years of age (2014)**
- **UN Special Rapporteur on the Right to Food, final report 2014 and interim reports 2014 and 2016**



Breastfeeding in HR law sources (3)

- **UN Special Rapporteur on the Right to Health, report 2015**
- **Joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women and the CRC Committee (2016)**

« Breastfeeding is a matter of human rights for the mothers and the babies »



So who are the rights holders?

- ❖ **Babies/young children:** right to life/survival/development, health, adequate food/nutrition, decent standard of living, social security, non-discrimination, healthy environment
- ❖ **Mothers/women:** right to health, education/information, decent working conditions, social security/maternity leave, non-discrimination, healthy environment
- ❖ **Families/caregivers:** right to decent standard of living (incl. adequate food, medical care and necessary social services), education/information, social security, non-discrimination, healthy environment
- ❖ **Society/communities:** right to education/information, non-discrimination, healthy environment



..and who are the duty bearers?

States: As primary duty bearers, they should ensure that mothers have a supportive, enabling environment for BF

→ they should implement the **3-pillar framework** mentioned in the Global Strategy for IYCF:

1. **Promote:** comprehensive IEC materials & campaigns on appropriate IYCF practices incl. BF to inform the general public & especially mothers
2. **Protect:** International Code, maternity protection (ILO C183), Codex Alimentarius
3. **Support:** Breastfeeding counselling, guidance, training of health professionals (BFHI), community-based support



Non State Actors: their duties?

- ❖ **Baby food companies** have the duty to:
 - Comply with the International Code and subsequent Resolutions ***in all contexts***
 - Comply with Codex Alimentarius standards (food safety, labels, food quality)
- ❖ **Private hospitals** have the duty to:
 - Comply with the International Code ***in all contexts***
 - Train adequately their staff to apply the Ten Steps to Successful Breastfeeding and **achieve the “baby-friendly” status**



Essential Standards and breastfeeding I

Promotion, protection and support of breastfeeding form integral parts of the child's right to health...

Therefore, all facilities, goods, services and conditions related to BF promotion, protection and support should respect the essential standards of the right to health:

- ❖ **Accessibility:** accessible to everyone
- ❖ **Availability:** in sufficient quantity
- ❖ **Acceptability:** respectful of human dignity
- ❖ **Quality:** best available care



Essential Standards and breastfeeding 2

On the other hand, breastfeeding meets all the essential standards of the right to adequate food and nutrition...

Indeed, breastfeeding is:

- ✓ *100% Adequate*
- ✓ *Always Accessible and Available*
- ✓ *Fully Sustainable*



Section 3

HUMAN RIGHTS REPORTING MECHANISMS

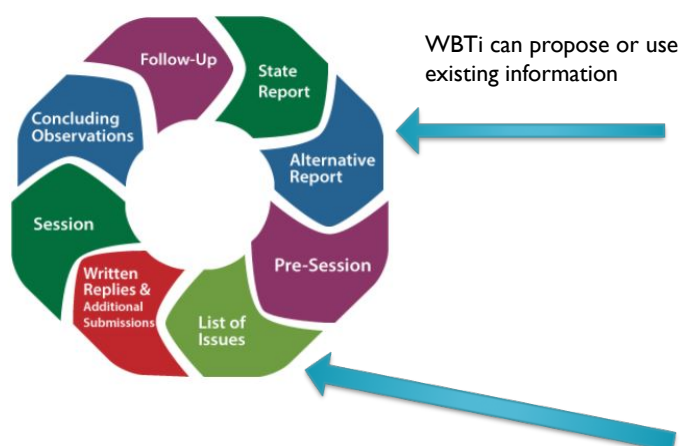


HR treaty bodies

- The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties.
- Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty.

<https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

Human Rights treaty bodies reporting cycle (e.g. CRC)



How to prepare an alternative report to the CRC?

IBFAN alternative report template builds on the sections of the WBTi assessment

If there is a WBTi report:

- Use the WBTi information to fill in sections of the CRC template
- If necessary, update with more recent information

If there is no WBTi report:

- Use national demographic health surveys, national policies and programmes, national data on BFHI and national legislation on the Code and maternity protection
- CRC report can then be used as a basis for a WBTi assessment



CRC Concluding Observations

Released after each Session, they urge State parties to take action to fill the identified gaps

Possible follow-up actions at national level:

1. Raise awareness on the Concluding Observations
2. Make CRC recommendations known
3. Activate key people
4. Support government's implementation
5. Monitor government's implementation
6. Code not binding, CRC Treaty **is binding**



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Some links

- <https://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>
- <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>