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Original Article

Is nutritional care a human right?

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SUMMARY

Background & aims: The high prevalence of disease-related malnutrition is a major public health issue worldwide despite the fact that the efficacy of nutritional care has been extensively documented. Therefore, it is needed to move forward on stronger public health policies. The aim of our article is to analyze the link between nutritional care and human rights. We wonder whether it is possible to consider nutritional care as a human right.
Methods: We examine the relationship between nutritional care and human rights by using the human rights-based approach. It allows us to determine the grounding of the nutritional care as a human right, the duty-bearers and its content or scope.
Results: The difficulties in the conception and realization of the right to food in the clinical context and the possibility to define a specific scope for nutritional care within the care-giving context shows that the right to nutritional care can be considered as a human right by itself and closely related to the right to food and the right to health. The human right to nutritional care implies that the patient has the right to beneficiate from the right to be screened for malnutrition and receive a malnutrition diagnosis, to receive regular hospital diet, therapeutic diet and medical nutrition therapy administrated by a team of experts, and the government has the duty to guarantee it.
Conclusion: The right to nutritional care can be considered as a human right by itself. Violating the right to nutritional care may often impair the enjoyment of other human rights, such as the rights to health or food and vice versa. The main impact of this recognition is attended to be at the national and international

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policies level. Knowing that the relation between human rights and nutritional care is a new issue, more research is warranted to ascertain its precise nature.

1. Introduction

Malnutrition is a global concern. It is the single largest contributor to disease in the world [1]. According to the Food and Agriculture Organization of the United Nations (FAO) evidence has been pointing a rise in the world chronic food deprivation (i.e. undernourishment) since 2014. The absolute number of affected people in the world is now estimated to have increased from around 804 million in 2016 to nearly 821 million in 2017 [2]. The latest FAO estimates show a prevalence of undernourishment around 10.9% percent in 2017. The situation is not homogeneous worldwide, and it is worsening in South America and most regions of Africa [2].

The multiple coexisting forms of malnutrition (micronutrient deficiency, undernutrition, overweight and obesity) are due mainly to poor access to food and particularly healthy food. The climate variability, violence and conflict affect food security and nutrition [3]. Moreover, poor education and sanitation are among other determinants of malnutrition. Since the seventies, the human rights-based approach has provided a guiding normative framework for the design of social protection programs [4]. The human right to food and the human right to health has been framing those programs.

Malnutrition may also be caused by compromised intake or assimilation of nutrients, by disease-associated inflammatory or other mechanisms [5]. The disease-related malnutrition consists of a combination of reduced food intake or assimilation, varying degrees of acute or chronic inflammation and metabolic alterations leading to altered body composition and diminished biological function [5]. The role of inflammation is central in this kind of malnutrition. High rates of disease-related malnutrition have persisted in all health care settings over the past 2 decades despite marked advances in medical science over this same period [6]. There is an increasing recognition that academic, practical, social and economic barriers in clinical nutrition must be addressed [6,7]. However, this recognition is not often translated into action by governments and other duty-bearers. The clinicians frequently ignore the beneficial effects that nutrition intervention could bring to the patient and to the health care system. As a consequence, optimal nutrition care is often ignored in clinical practice resulting in increased morbidity, mortality and cost. Moreover, nutrition interventions are often not covered by insurance companies nor clinical nutrition practices are reimbursed.

Faced with this situation, it would be expected to have more policies, declarations, and resolutions to fight against disease-related malnutrition at national and international level. Surprisingly, the immobilism is widespread. The best evidence is the lack of mentioning of nutritional care and the disease-related malnutrition on behalf of the United Nations Sustainable Development Goals (SDG). In fact, disease-related malnutrition has been disregarded by the 169 targets and 17 global goals, especially by goal 2 “Zero Hunger” and goal 3 “Good Health and Well-being” [8]. Specifically, we wonder how the target 2.2 “By 2030, end all forms of malnutrition” will be accomplished if disease-related malnutrition is ignored.

Given the fact that the impact of disease-related malnutrition is well-known, that the efficacy of nutritional care has been proven, that it is needed to move forward on stronger public policies, one may wonder whether it is rightful to raise nutritional care to the level of a human right. Thus, the aim of our article is to analyze the link between nutritional care and human rights. Our hypothesis is that it is possible to consider nutritional care as an emergent human right and closely related to the right to food and health. We think that this analysis could contribute to give a legal, moral and political content to the concept of nutritional care. Moreover, it will be the corner stone of the rationale of political and legal instruments in the field of clinical nutrition. In this paper, we will attempt to characterize

nutritional care as a human right and to define its political and social implications by applying the human rights-based approach.

2. Methods

According to the United Nations, human rights-based approach (HRBAs) is a "conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress" [9]. Applied to health care context, this approach focuses on the underlying social determinants of health and on emphasis of the principles of accountability, meaningful participation, transparency, equality and non-discrimination [10]. The interest of applying this approach to our analysis is that HRBA has significant implications to the manner in which priorities and objectives are identified and programs' outcomes are formulated. Moreover, this approach reinforces situation analysis at three levels: 1. causality analysis: drawing attention to root causes, in our case the origin of disease-related malnutrition; 2. role or obligation analysis: helping to define who owes what obligations to whom, especially with regard to the identified root causes; and 3. identifying the interventions needed to build rights-holders 'capacities and improve duty-bearers' performance. Thus, according to the United Nations a HRBA seeks to deepen understanding of the relationships between rights-holders and duty-bearers contributing to bridge the gaps between them.

2.1. Health and human rights

There is an inextricable link between health and human rights [11]. According to Jonathan Mann, health is a human rights issue and conversely human rights are a health issue [12]. In the last 70 years, they have been developed under international law as a basis for public health, offering a universal framework to promote justice in public health, elaborating the necessary freedoms and rights to achieve dignity for all [13]. Human rights are philosophical, juridical and political concepts which posit that every human being possesses inalienable, universal rights, regardless of the statutory legal framework in force and independent of other factors such as ethnicity or nationality [14]. Human rights are the assortment of an individual's personal prerogatives which democratic societies generally enshrine into law either through their political constitutions or as a consequence of adhering to international conventions, and thereby ensuring their primacy is respected by all actors, including the State. The centrality of human rights in other health issues is found in recognized public health policies, programs, and practices. In fact, increasing evidence demonstrates that norms enshrining the respect, protection, and fulfillment of human rights can translate into improved public health [12,14]. However, the existence, validity, and exact nature of human rights have been a perennial topic of debate, particularly in regard to contentious rights or in contested environments. The nutritional care as a human right and the right to food can turn into such a disputed right in the context of clinical practice.

2.2. The nutritional care as a human right

The human right approach is popular and carries considerable rhetorical power. This approach can help mobilize the force of public opinion in bringing about a change [14]. However, both the meaning of human rights claims and the way in which they are grounded often remain unclear. This lack of universally agreed definition encourages promoting human rights approach for any causes that is thought to be worthwhile, with the consequent unruly proliferation of human rights' claims and the depreciation of human rights [15]. It is thus necessary to have clearness and precision about what human rights are and which role they can play, as it is crucial for preserving their normative power and enabling them to be effective policy guides. For this reason, nutritional care as a human right must be well defined. According to Gewith [16] and the previous work of Vayena et al. [15] in the emergent field of big data, a human right can be defined in accordance to its grounding, the duty-bearers and the content or scope.

Fist, the universally endorsed candidate for the grounding value of human rights is human dignity [17]. The link between human dignity and nutrition has been previously described. The absence of an optimal nutritional care can constitute an offence against human dignity [18,19]. The respect of human dignity, understood as the right of a person to be treated ethically and to be valued and respected for their own sake [20], is achieved through nutritional therapy when individual autonomy, religious beliefs, and socio-cultural environment are considered when feeding the ill person. The second aspect concerns the duty-bearers imposed by human rights. This means that human rights are not only a matter of the States but of different stakeholders who are capable of fulfilling them. In the case of nutritional care, beyond the policy-makers and other political stakeholders, scientist, and health care givers are also concerned. The issue at stake is the capacity of health care systems to provide an optimal nutritional care.

Finally, the content or scope of human rights refers to the interests that ground them (e.g. health, autonomy and knowledge) and to the duties generated by these underlying interests. In our case, nutritional care is part of the global care of the patient, and encompasses a process beginning with the identification of nutritional risk and which aims to prevent and treat disease-related malnutrition by providing a wide range of products from food to nutritional therapy. The last one is considered as a medical intervention which requires a medical indication, and aims to achieve a treatment goal which needs the informed consent of the patient.

Thus, nutrition care is concerned with the duty to feed the ill patients by natural or artificial means in order to prevent disease-related malnutrition and contribute to health and improve outcomes. The content of an alleged nutritional care human right must be conceived in a close relationship to other human rights. We consider that it is possible to frame this duty in the scope of two well recognized rights: the right to food and he right to health.

In consequence, what does it mean to say that nutritional care is a human right? From the legal and political point of view, this implies that states and duty-bearers are bound to certain obligations, whose effective implementation can legitimately be claimed by people. Therefore, states and other duty-bearers are bound “to respect, to protect and to fulfill” the right to beneficiate of the whole process of nutritional care. This means that the patient has the right to beneficiate from the right to be screened and diagnosed for malnutrition, to receive regular hospital diet, therapeutic diet (i.e. food modification and supplements) and medical nutrition therapy (i.e. enteral and parenteral nutrition) administrated by a team of experts, and the government has the duty to guarantee it. Now, the question that arises is how nutritional care must be related to the recognized human rights. Table 1.

2.3. The right to food in the clinical context

The right to adequate food was first recognized as a fundamental human right in the Universal Declaration of Human Rights of 1948, deeming it as a constituent part of an overarching Right to Adequate Living Standards (Article 25): “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including (access to) food …” [16] This right became legally binding (which every signatory is obliged to uphold), when the International Covenant on Economic, Social and Cultural Rights (CESCR) came into effect in 1976. Since then, numerous

Table 1
The definition of nutritional care as a human right.

The grounding
• Human dignity
• Ethical principles (i.e. beneficence, justice)
The duty-bearers
• The policymakers, institutional managers and clinical nutrition caregivers
The content
• The human right to beneficiate of the whole process of nutritional care. This means that the patient has the right to beneficiate from the right to be screened for malnutrition and receive a malnutrition diagnosis, to receive regular hospital diet, therapeutic diet (i.e. food modification and supplements) and medical nutrition therapy (i.e. enteral and parenteral nutrition) administrated by a team of experts, and the government has the duty to guarantee it.

international agreements have reasserted the right to food, namely the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989). To date, 160 states have ratified the ICESCR and, thus, are legally bound to enact its provisions. Article 11 of the ICESCR establishes 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" and asserts the existence of every person's right to be free from "hunger and malnutrition" [21].

Hence, this right encompasses two distinct ancillary rights: the first is the right to "adequate food" while the second is "the fundamental right to freedom from hunger and malnutrition".

Thus, it is possible to define hunger and socio-economic forms of malnutrition within the scope of this human right. At the political level, it is thought that the beneficiary of the right to adequate food is an active participant to whom the state is obliged to provide an environment which permits the individuals to "feed themselves", but failing this, to be provided with assistance without compromising their dignity. By contrast, in the clinical context, the right to adequate food should not be conceive in the same way. In fact, the act of feeding someone must be done by an expert care giver. This means that the patient has the right to receive nutritional therapy in an optimal and timely manner, that is to say, as the right to "be fed" and to be treated. Simply stated, in the clinical context, an emergent human right must be promoted as the as the right to "receive nutritional care. This means that right to nutritional care is linked to the right to health.

2.4. The right to health and nutritional care

Health is a fundamental human right indispensable for the exercise of other human rights in particular the right to food, and in our case the right to nutritional care. The right to the enjoyment of the highest attainable standard of physical and mental health was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." The human right to health is protected innumerous international agreements, namely the Universal Declaration of Human Rights of 1948 (Article 25), the CESCR (Article 12), of the Convention on the Rights of the Child (Article 24), the Convention on the Elimination of All Forms of Racial Discrimination (Article 5), the Convention on the Elimination of All Forms of Discrimination Against Women (Articles 12 and 14), the American Declaration on Rights and Duties of Man (Article 11), and of the Convention on the Rights of Persons with Disabilities (Article 25).

The right to health is closely related to and dependent upon the realization of other human rights. The CESCR general comment number 14 (Article 14) emphasizes that "The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition …" [22]. Therefore, nutritional care is at the intersection of the right to food and the right to health, creating opportunities for the implementation of rights-based legislations, policies, and programs for the realization of nutritional care.

2.5. Perspectives for clinical nutrition

Recognizing that everyone has the right to nutritional care is a major advance in clinical nutrition. HRBA approach should help to identify major priorities and objectives in order to fight against malnutrition and to implement an optimal nutritional care for all. Among these priorities and objectives, it is possible to identify the need to improve research and medical education, to highlight the economic aspects, to create an institutional culture that values nutritional care, and to promote patient empowerment, as necessary actions to improve nutritional care.

Facing to these priorities, this approach allows identifying specific duties for the duty-bearers (the policymakers, institutional managers and caregivers) and the rights-holders (the patients). The aim should be to create specific interventions that focus on improvement of the rights-holders' capacities and duty-bearers' performance, contributing to bridge the gaps between them. Moreover, to recognize

nutritional care as human right implies an ethical commitment: to feed the ill person in conditions of dignity ensuring justice and equality. Finally, the realization of the right to nutritional care must be a goal of State's policies and programs regardless of their economic, social, cultural, religious or political background.

Different initiatives have been launched in the last decades in Europe and in the USA. The European Nutrition for Health Alliance (ENHA), since 2007, has been working with the European Parliament to include nutritional risk screening and good nutritional care in EU programs. The ENHA designed the Optimal Nutritional Care for All campaign which was launched in 2013/2014. Its aim was to establish and strengthen national multi-stakeholder platforms to implement nutritional screening and improve nutritional care. In the USA, the American Society of Parenteral and Enteral Nutrition (ASPEN) has called to action in order to promote a health care reform. ASPEN aimed to put malnutrition into the public policy agenda and wanted to ensure that health care coverage was accessible and affordable to all patients. Some of the objectives were: Working on patient access to nutrition care through changing reimbursement; Advocating for fair reimbursement to ensure that beneficiaries of government funded health programs receive the highest quality nutrition support care; Sponsoring the concept of a fair marketplace that does not jeopardize the provision of safe and quality nutrition support; and Supporting reimbursement for nutrition clinician services to improve patient care.

Recently, the Colombian Clinical Nutrition Association hand to hand with FELANPE have signed the International Declaration on the Right to Nutritional Care and the Fight Against Malnutrition in Cartagena, Colombia, on May 3, 2019. (available on: https://www.nutriclinicacolombia.org/propuesta-declaracion-de-cartagena-2019/). [23]. The Cartagena Declaration provides a coherent framework of principles that can serve as a guide to the FELANPE societies in the development of action plans. It also serves as an instrument for governments to promote the formulation of policies and legislation in the field of clinical nutrition. The general framework of principles proposed by the Declaration can contribute to raising awareness of the magnitude of this problem and to forging cooperation networks among the countries of the region. To translate the principles into actions and thus, implement the fight against malnutrition, we propose, for the next two years, a program that should be based on the development of a methodological toolbox kit. Some of the tools are: guidelines and practical tools to implement the nutritional care process, recommendations for the patient empowerment in clinical nutrition, consensus on nutritional core curriculum for medical schools, an ethics and transparency policy model to manage relations with the industry, strategies and directives for public health policies in clinical nutrition, framework for performance and compliance indicators of the right to nutritional care.

The FELANPE urges the States and the Human Rights Council of the United Nations to recognize this Declaration and therefore the Right to Nutritional Care as a human right as it guarantees all people, especially the malnourished ill, access to nutritional care and, in particular, optimal and timely nutritional therapy in order to reduce the high rates of hospital malnutrition and the associated morbidity and mortality among other things. Principle #13, Cartagena Declaration [23]. We consider that, this way, we can contribute to achieve one of the United Nations Sustainable Development Goals which seeks by 2030 to “put an end to all forms of malnutrition".

3. Conclusion

We believe that it is legitimate to consider nutritional care as a human right. The difficulties in the conception and realization of the right to food in the clinical context and the possibility to define a specific scope for nutritional care within the care-giving context show that the right to nutritional care can be considered as a human right by itself, and closely related to the right to food and the right to health. Violating the right to nutritional care may often impair the enjoyment of other human rights such as the rights to health or food and vice versa. Recognizing that the relation between human rights and nutritional care is a new issue, more research is warranted to ascertain its precise nature.

Conflict of interest

The authors declare no conflict of interest.

Statement of authorship

DC had the original idea for this study. DC, SE and CHB contributed to the preparation of the manuscript. All authors read and approved the final manuscript.

Founding sources

None.

Appendix A. Supplementary data

Supplementary data to this article can be found online at https://doi.org/10.1016/j.yclnex.2019.05.002.

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