



Clinical nutrition and the human right-based approach

Nutrición clínica y el enfoque basado en derechos humanos

Nutrição clínica e a abordagem baseada nos direitos humanos

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Summary

Introduction: Nutritional care was recognized as a human right in the Cartagena Declaration of May 3, 2019. This article defines this right and discusses the implications of the human right-based approach in clinical nutrition and the fight against disease-related malnutrition.

Methodology: An analysis was carried out with the human rights-based approach. This approach is a fundamental strategy to determine the roles and obligations of different stakeholders (governments and policy makers, health institutions, patients, health professionals and caregivers).

Results: It is possible to define nutritional care as an emerging human right. Its normative mandate is found in principle 13 of the Cartagena Declaration. Like other human rights, it is based on the principle of respect for human dignity and its content and scope are limited to the field of clinical nutrition. Although this mandate has no binding force, it does imply an important moral commitment to ensure that the patient benefits from the nutritional care process.

Conclusion: The recognition of nutritional care as a human right is the result of the effort of international scientific societies in the field of clinical nutrition that seek to fight for a minimum guarantee so that people anywhere in the world can access nutritional care. In the future, the objective is that from a legal and political point of view, states also have certain obligations, whose effective implementation can be legitimately claimed by people.

Keywords: Human Rights, Nutritional Care, Malnutrition

Resumen

Introducción: el cuidado nutricional fue reconocido como un derecho humano en la Declaración de Cartagena del 3 de mayo de 2019. En este artículo se define este derecho y se analizan las implicaciones del enfoque basado en los derechos humanos en la nutrición clínica y la lucha contra la malnutrición asociada a la enfermedad.

Metodología: se realizó un análisis con el enfoque basado en los derechos humanos (*Human rights-based approach*). Este enfoque es una estrategia fundamental para determinar el papel y las obligaciones de las diferentes partes interesadas (gobiernos y responsables políticos, instituciones de salud, pacientes, profesionales de la salud y cuidadores).

Resultados: el cuidado nutricional es un derecho humano emergente, cuyo mandato normativo se encuentra en el principio 13 de la Declaración de Cartagena. Al igual que otros derechos humanos, se fundamenta en el principio del respeto a la dignidad humana, su contenido y alcance se limitan al campo de la nutrición clínica. Aunque este mandato no tiene fuerza vinculante, sí implica un compromiso moral importante para asegurar que el paciente se beneficie del proceso de cuidado nutricional.

Conclusión: el reconocimiento del cuidado nutricional como derecho humano es el resultado del esfuerzo de las sociedades científicas internacionales en el campo de la nutrición clínica que pretenden luchar por un mínimo de garantía para que las personas en cualquier parte del mundo puedan acceder al cuidado nutricional. A futuro, el objetivo es que desde el punto de vista legal y político, los estados también tengan ciertas obligaciones, cuya implementación efectiva puede ser legítimamente reclamada por las personas.

Palabras clave: derechos humanos, cuidado nutricional, malnutrición

Resumo

Introdução: cuidado nutricional foi reconhecido como um direito humano na Declaração de Cartagena de 3 de maio de 2019. Este artigo define esse direito e discute as implicações da abordagem baseada nos direitos humanos, na nutrição clínica e na luta contra a desnutrição associada à doença.

Metodologia: foi realizada uma análise, com a abordagem baseada nos direitos humanos. Essa abordagem é uma estratégia fundamental para determinar o papel e as obrigações das diferentes partes interessadas (governos, responsáveis políticos, instituições de saúde, pacientes, profissionais de saúde e cuidadores).

Resultados: O cuidado nutricional é um direito humano emergente, cujo mandato normativo é encontrado no princípio 13 da Declaração de Cartagena. Como outros direitos humanos, é baseado no princípio do respeito à dignidade humana, o seu conteúdo e alcance são limitados ao campo da nutrição clínica. Embora este mandato não tenha força vinculativa, implica um compromisso importante para garantir que o paciente beneficie do processo do cuidado nutricional.

Conclusão: o reconhecimento do cuidado nutricional, como um direito humano é o resultado do esforço das sociedades científicas internacionais no campo da nutrição clínica, que tem como objetivo lutar por uma garantia mínima para que as pessoas em qualquer lugar do mundo possam aceder ao cuidado nutricional. No futuro, o objetivo é que, do ponto de vista jurídico e político, os estados também tenham certas obrigações, cuja implementação efetiva possa ser legítimamente reivindicada pelas pessoas.

Palavras-chave: direitos humanos, cuidado nutricional, malnutrição.

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INTRODUCTION

There is an inextricable link between health and human rights. According to Jonathan Mann, health is a human rights issue and, inversely, human rights are a health issue⁽¹⁾. Over the past 70 years, human rights have developed under international law, as bases for public health, offering a universal framework for promoting justice in public health, elaborating the freedoms and rights that are necessary to attain dignity for everyone.

Human rights are philosophical, legal and political concepts claiming that every human being possesses inalienable and universal rights, which are independent of the current legal framework and of other factors such as ethnic origin or nationality⁽¹⁾. Human rights are a variety of personal prerogatives of an individual that democratic societies, generally, enshrine in the law, either through their political constitutions or as a consequence of adhering to international conventions, thereby guaranteeing that all figures, including the State, respect their primacy. The centrality of human rights in health issues is found in well-known public health policies, programs, and practices. In fact, growing evidence shows that norms that enshrine respect, protection and fulfillment of human rights can be translated into better public health⁽²⁾.

The relationship between human rights and nutrition is also bidirectional. On the one hand, the human rights-based approach contributes to the field of nutrition. It has done so for several decades, from the field of public nutrition, through the human rights instruments and institutions which form the basis for formulation and implementation of nutrition policies and programs. This means that, from the public health perspective, those interested in nutrition enforce the states' obligation to promote the human right to adequate food and therefore not to be hungry. They also recognize that other human rights (civil, political, economic, social and cultural) must be implemented to allow the right to food to be a reality, founded on a sustainable basis. In other words, efforts have focused on using human rights laws and institutions to unite the efforts aimed at improving human nutrition, as a "moral imperative and as a precondition for sustainable social, economic, and human development."⁽³⁾ On the other hand, the way in which nutrition can impact human rights and thus have positive, sustainable effects for human beings and society has recently been put into question. In other words, public nutrition can contribute to the sustainable development agenda through human rights.

However, nutrition in the clinical context has not yet explored the path of the human rights-based approach sufficiently. Until now, it has limited itself to promote and claim the right to food in the clinical context^(4,5). The Declaration of Cancun, signed in 2008 by FELANPE was based on the right to food and nutrition in hospitals⁽⁶⁾. Another example, the Resolution ResAP (2003)³ on Food and Nutritional Care in Hospitals, adopted by the Committee of Ministers of the Council of Europe, was based on the right to food, as stated in the introduction: "access to a safe and healthy variety of food is a fundamental human right."⁽⁷⁾

By invoking the right to food and nutrition in hospitals, the right to be protected against hunger and the right to adequate food would be promoted. However, we consider that the problem of disease-related malnutrition goes further and cannot be considered only within the scope of this right, nor its normative content applied in the clinical context; consequently, a proposal is made to recognize a new human right: the right to nutritional care⁽⁸⁾. Therefore, the International Declaration on the Right to Nutritional Care and the fight against Malnutrition, Cartagena Declaration, is innovative when it recognizes that nutritional care must be considered an emerging human right. This declaration emerges from the need to take a new look at the Declaration of Cancun. Its starting point is the need to move forward on key issues such as the promotion of clinical nutrition research and education, patient empowerment, recognition of the health value in nutritional care and the promotion of an optimal nutritional care to impact on the prevalence of disease-related malnutrition and its impact on the disease burden. To make progress in this matter, public policies and legislation on clinical nutrition are needed, and the promotion of the right to nutritional care is a way to achieve this.

In these circumstances, it is necessary to define nutritional care as a human right. In other words, we want to answer the following question: How can the human rights-based approach contribute to the development of clinical nutrition and the fight against disease-related malnutrition? In this article, the right to nutritional care is defined under this approach and the implications for clinical nutrition are analyzed.

METHODS

The human rights-based approach

The human rights-based approach has been developed by the United Nations as the conceptual framework

that places the respect, protection and guarantee of human rights as the foundation, the objective and the tools to make a sustainable human development feasible⁽⁹⁾. The human rights approach is a popular conceptual framework and it carries considerable rhetorical and legal power. Furthermore, this approach can help mobilize the strength of public opinion to achieve change. However, frequently, both the meaning of human right claims and the way in which they are justified might cause confusion. The lack of a definition of human rights fosters the promotion of this approach for whatever cause is deemed useful, with the resulting indiscriminate proliferation of claims and subsequent depreciation. Therefore, defining nutritional care as a human right is necessary.

The right to nutritional care has been considered an emerging human right by the international scientific societies in the clinical nutrition field since May, 2019. The ultimate goal is that this human right, beyond civil society, is recognized by national and international institutions such as the United Nations Human Rights Council. It is an ambitious goal, and the first step towards achieving it is to have clarity and precision on the definition and contents of this right. The human rights-based approach can serve this purpose. Our hypothesis is that this approach makes it possible to define the right to nutritional care not as an extension of the right to health or to food but as a human right in itself. This article answers the following questions: How is the right to nutritional care classified? What are the basis, content and scope of this right?

RESULTS AND DISCUSSION

Nutritional care is an emerging human right

Emerging human rights are legitimate social claims aimed at the formulation of new or renewed human rights⁽¹⁰⁾. Emerging human rights have a starting point in 2004 in the Universal Declaration of Emerging Human Rights⁽¹¹⁾. This Declaration “pretends to fill the existing gaps and contribute to designing a new horizon of rights that serves as a guide for social movements, for the agendas of political leaders, in order to foster a new relationship between global civil society and power.”⁽¹⁰⁾

Emerging human rights are, on the one hand, those rights that arise in the face of the rapid and constant evolution of globalized societies and, on the other hand, a set of rights that emerge after having remained “submerged” in oblivion or the indifference of states and the international system as a whole. As part of the emerging human

rights there are some innovative ones, such as the right to a basic income, or new interpretations of classic rights, like for example the right to access medications, considered an extension of the classic right to health.

In the case of clinical nutrition, the application of the human rights-based approach allows us to define nutritional care, not as an extension of the right to health or the right to food, but as a new human right⁽⁸⁾. It is a claim by civil society (in this case, scientific societies in the field of clinical nutrition) aspiring that all patients have access to an optimal and timely nutritional care, and that disease-related malnutrition and hunger, in the clinical context, be a visible issue. Therefore, and according to this approach, it is necessary to define the basis, content and scope, the way it has been done for other emerging human rights⁽¹²⁾ (Table 1).

Human dignity: the foundation of the right to nutritional care

Human dignity is the fundamental value of human rights. The notion of human dignity from its philosophical dimension means, according to Immanuel Kant, the fact that the person should never be treated as a means, but rather as an end in itself. People do not have a price, they have dignity⁽¹³⁾. Dignity refers to a quality that would be linked to the very essence of each human being, which would explain why this quality has to be equal for everyone and not admit levels or degrees. In this sense, it means that all human beings deserve unconditional respect, regardless of their age, physical or mental health, gender identity or sexual orientation, religion, social status or ethnical origin. However, it is necessary to recognize that dignity can be an ambiguous concept: pro-euthanasia and anti-euthanasia movements exist in the name of respect for human dignity. This ambiguity can lead to important philosophical and legal debates mainly about their operative value in decision making and in the legal field. This is why it is necessary to define what it means to feed the person in conditions of dignity as proposed by the Cartagena Declaration.

The respect for human dignity, understood as a person's right to be treated ethically, to be valued and respected for who they are, is attained by feeding the sick person, when their individual autonomy, religious beliefs and sociocultural environment are taken into consideration. This implies recognizing the intrinsic value of each human being, as well as the respect for the integrity, the diversity of moral, social and cultural values during the stages of the nutritional care process.

Table 1. Characteristics of the human right to nutritional care

| Emerging Human Right |
|---|
| Foundation – Human dignity |
| Duty-bearers – The Cartagena Declaration morally commits scientific societies in the field of clinical nutrition to promote the right to nutritional care |
| Rights-holders – Patients at risk or in a state of malnutrition |
| Content and scope – Nutritional care is related to the duty of identifying the risk, diagnosing the nutritional state and feeding sick patients by natural or artificial means in order to prevent or treat disease-related malnutrition and contribute to health and improving outcomes. The content of this human right must be conceived in close relationship with the right to health and the right to food. |

The absence of an optimal nutritional care can threaten human dignity. But prolonging nutritional therapy beyond what's medically necessary, might also be considered as a lack of respect for human dignity since the person's physical integrity would be being harmed. Hence, it must be considered that nutritional therapy is a medical treatment, the patient has the right and the autonomy to refuse it, and the caregivers have the obligation to accept this decision and not perform futile actions.

Content and scope of the right to nutritional care

The content and scope of human rights refer to the interests that the rights defend (for example, health and knowledge) and the duties generated by these underlying interests. Nutritional care as a human right implies the duty of guaranteeing all people, especially those at risk or in a state of malnutrition, access to nutritional care and, in particular, to optimal and timely nutritional therapy with the purpose, among other things, of reducing the high rates of disease-related malnutrition and associated morbidity and mortality⁽⁸⁾. The right to nutritional care is considered to be exercised when every man, woman or child, after a timely diagnosis, receives adequate nutrition (therapeutic diet, oral, enteral or parenteral nutritional therapy) taking into account their dimensions (biological, symbolic, affective and cultural) and does not suffer from hunger. Essential elements include safety, timeliness, efficiency, efficacy, effectiveness of nutritional care and the respect for bioethical principles. This is considered

the minimum that must be guaranteed, regardless of the level of health care.

Nutritional care is part of overall patient care, and it encompasses a process that begins with the identification of the nutritional risk and whose objective is to prevent and treat disease-related malnutrition by providing a wide range of products, from food to nutritional therapy. The latter is considered as a medical intervention that requires a therapeutic indication with a treatment objective and that requires the patient's informed consent. Promoting the right to nutritional care does not mean being in favor of administering compulsorily nutritional therapy to all sick people during every stage of their disease, including the terminal phase.

Therefore, nutritional care has to do with the duty of feeding sick patients by natural or artificial means in order to prevent or treat disease-related malnutrition and contribute to health and improving outcomes. The content of this human right must be conceived in close relationship with other human rights. It is considered possible to frame this duty within the scope of two well-recognized rights: the right to food and the right to health.

The human rights approach makes it possible to identify duty-bearers. In the case of nutritional care, the duty-bearers are States and other interested parties, and also healthcare service managers, the scientific society and the caregivers. The issue at stake is the capacity for health care systems to provide optimal nutritional care.

Human rights indicators

Human rights indicators provide "specific information on the state or condition of an object, event, acti-

vity or outcome that can be related to human rights norms and standards, and that can be used to assess and monitor the promotion and implementation of human rights.”⁽¹⁴⁾ They are used to assess and monitor the promotion and protection of human rights. The importance of these indicators rests on their usefulness for making more concrete situation analyses, identifying and defining issues and difficulties that need to be addressed. Additionally, they serve to review strategies and set objectives and goals, follow progress and assess outcome impact⁽¹⁴⁾. The use of indicators contributes to improve the effective implementation of human rights.

Indicators can be quantitative or qualitative. Quantitative indicators include statistic type indicators, while the latter encompass any information articulated descriptively or in a “categorical” manner. Indicators can also be structural, process or outcome indicators.

After a thorough analysis, indicators of the right to nutritional care have been proposed. The starting point was the description of attributes or characteristics that detail the normative standards of the right to nutritional care proposed by the Cartagena Declaration. The specification of the attributes of the right to nutritional care helps make the content of that right concrete and makes explicit the link between the defined indicators of this right on the one hand and the normative standards regarding that right on the other⁽¹⁴⁾.

In general, the attributes are defined according to the normative framework of the right in question. In

our case, the only normative (not legally binding) is the Cartagena Declaration, which is complemented by the normative related to the right to health and the right to food, defined in the preamble of this Declaration (Table 2).

The identified attributes of the right to nutritional care were:

- Nutritional care is a process
- Optimal and timely nutritional therapy for at risk or malnourished patients
- Education of the patient in clinical nutrition
- Education of caregivers in clinical nutrition
- Clinical nutrition research

Table 3 shows the structural, process and outcome indicators. These were defined on the basis of the Declaration’s Mandate.

CONCLUSION AND PERSPECTIVE

Recognizing that all patients have the right to nutritional care is an important advance in clinical nutrition. The human rights-based approach allows the identification of the main priorities and objectives in order to fight against malnutrition and implement an optimal nutritional care for everyone. Among these priorities and objectives, it is possible to identify the need to improve medical research and education, highlight economic aspects, create an institutional culture that

Table 2. Normative on the right to health and the right to food in the Declaration of Cartagena

| |
|--|
| <p>Preamble</p> <ul style="list-style-type: none"> – Article 25 of the Universal Declaration of Human Rights from December 10, 1948 which establishes that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food [...]” – Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which stipulates that the States Parties to the Covenant “recognize the right of everyone to an adequate standard of living for himself and his family, including [adequate] food” and affirms the existence of the “fundamental right of everyone to be free from hunger.” – Article 12 of the International Covenant on Economic, Social and Cultural Rights, particularly General Comment No. 14 on the right to the highest attainable standard of health recognizing 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.” |
| <p>Principle 13</p> <p>The Declaration of Cartagena’s Mandate</p> <ul style="list-style-type: none"> – FELANPE calls on societies and international organizations to unite in the fight against malnutrition and the respect of the right to nutritional care. The principles set out in this document will serve as a basis for common action. – 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. |

Table 3. Right to nutritional care indicators

| | Attributes | | | | |
|-----------------------------|---|--|--|---|---|
| | Nutritional care process | Optimal and timely nutritional therapy | Education of the patient in clinical nutrition | Education of caregivers in clinical nutrition | Clinical nutrition research |
| Structural indicator | Legislation on nutritional care | | | | |
| | Public policies to improve nutritional care and fight against disease-related malnutrition | | | | |
| Process indicator | Proportion of hospitals that implement the three stages of nutritional care: Screening, nourish, watch. | Proportion of hospitals with interdisciplinary nutritional therapy groups. | Development of empowerment and therapeutic education to patients with nutritional therapy in the hospital and at home. | Improved nutritional curriculum in medical faculties and others. Creation of postgraduate programs. | Creation of groups or lines of research in clinical nutrition and metabolism. |
| Outcome indicators | Prevalence of nutritional risk and disease-related malnutrition | | | | |
| | Prevalence of nutritional risk upon hospital admission. | Proportion of patients at nutritional risk who received nutritional therapy. | Proportion of patients with knowledge of nutritional care. | Teaching hours of nutrition at the undergraduate level of medicine and other health professions. Creation of postgraduate programs. | Number of original publications on clinical nutrition. |

values nutritional care and promote patient empowerment as necessary actions to improve nutrition.

Nutritional care must be considered an emerging human right. By being recognized only in the Cartagena Declaration, and even though it has no legally binding force, it does harbor a very important moral strength that implies the ethical responsibility to promote nutritional care.

This right is the result of the efforts of international scientific societies in the field of clinical nutrition that seek to achieve a minimum guarantee that people, anywhere in the world, can access nutritional care. In the future, the objective is that, from a legal and political point of view, States also have certain obligations, the effective implementation of which can be legitimately claimed by people. Therefore, States and other duty-bearers would be bound to “respect, protect, and fulfill” the right to benefit from the entire nutritional care process. This means that the patient has the right to benefit from nutritional screening and for his nutritional state to be diagnosed, to receive regular hospital diet, therapeutic diet (food modification and supplements) and nutritio-

nal therapy (enteral and parenteral nutrition) administered by a team of experts, and the State has the duty to guarantee it.

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