

FOOD ALLERGY: A HUMAN RIGHTS ISSUE?

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INTRODUCTION: WHAT ARE HUMAN RIGHTS?

'Human rights are entitlements people can claim relating to their basic needs because they are human.'¹ The original conception of human rights was to protect individuals from abuse by the state, and so they were referred to as 'first-generation' rights. These rights included civil and political rights, such as freedom of speech, freedom to vote and choose political associations, and freedom of movement. Socio-economic rights were referred to as 'second-generation' rights. However, nowadays all types of rights are seen as equally important and so these classifications have fallen away. Human rights are considered to be universal, even though cultural differences exist in society.¹

A *positive* right refers to a right 'to receive a particular good or service from others', whereas a *negative* right is 'a right to be free from some action by others'.² A positive right implies that someone has an obligation to do something for the person receiving the right, whereas a negative right means that a person has to desist from doing something.

The responsibility to ensure that human rights are upheld, rests with the state. According to London,¹ the onus rests on the state to meet its obligations in the following ways:

- It must *respect* the rights of its citizens;
- It must *protect* people's rights;
- It must *fulfil* rights by taking action.
- It must *promote* people's rights and enable their access to rights.

CAN THERE BE A RIGHT TO HEALTH?

The World Health Organisation (WHO) defines health as follows: 'Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.'³ In order to realise the right to health of its citizens, the state has to ensure that public healthcare facilities are available and functioning properly and that other services are available and accessible, obviously within its available resources. The right to health does not equate to the right to be healthy, as this is determined by other factors, such as genetics.¹

The South African Constitution (1996) defines certain health-related rights, such as the right to have access to healthcare services, including reproductive rights, and the right to have access to emergency healthcare. It also outlines the provision of the social determinants of health, such as adequate housing, sufficient food and water, and social security. Children have the right to basic nutrition,

shelter, basic healthcare services and social services.⁴

The Patients' Rights Charter lists the rights of patients accessing healthcare in South Africa. The Charter states that these rights entail certain responsibilities, such as respecting the rights of others.⁵

CAN RIGHTS BE ABSOLUTE?

Beauchamp and Childress argue that some rights, such as the right to choose one's religion, may be seen as absolute, but, generally speaking, rights have *prima facie* claims only.² This means that the right should be fulfilled unless there is another right that weighs more heavily at that specific time. In other words, rights can never be so powerful that they cannot be superseded by other rights or another's rights. A distinction is made between *violating* and *infringing* a person's right: 'Violation refers to an unjustified action *against* a right, whereas infringement refers to a justified action *overriding* a right.'²

Individuals' rights may be limited in the public interest during pandemics or outbreaks of highly infectious diseases. Beauchamp and Childress cite the example of a severe outbreak of disease where the state may override an individual's right to refuse vaccination to prevent the spread of that disease. However, they also make the point that careful consideration must be given to the individual's rights, which must not summarily be overridden in the community's interests.² Examples of limitations of individuals' rights in the public interest include the Severe Acute Respiratory Syndrome (SARS) outbreak in 2002–2003 that started in southern China and spread to other countries in Asia and then to Canada and North America, and the more recent outbreak of Ebola in West Africa. In South Africa, patients with extensive drug-resistant (XDR) tuberculosis were confined to a hospital against their wishes by a court order, after the two judges hearing the case ruled that it could be justified in the public interest.⁶ Section 26 of the Bill of Rights permits the limitation of individual rights, provided the limitations are 'reasonable and justifiable in an open and democratic society'.^{6,7}

THE FOOD-ALLERGIC INDIVIDUAL'S RIGHTS: AIR TRAVELLERS

Can a person at risk of severe food allergy demand that his or her rights override those of other, non-allergic, people, in order to reduce exposure to the offending allergen? Scenarios that come to mind are exposure to the airborne peanut allergen on aeroplanes, and exposure to peanuts,

dairy and egg in a school environment.

To what rights are airline passengers with severe food allergies entitled? In other words, if a passenger has a severe peanut allergy, can the airline be compelled to refrain from serving peanuts to other passengers? According to the Allergy Law Project (ALP) in the United States, there are no federal regulations that force airlines to make special arrangements for peanut-allergic patients.⁸ The law in the United States that makes provision for people with disabilities, the Americans with Disabilities Act (ADA), does not apply to airline passengers, nor do the provisions under section 504 of the Rehabilitation Act of 1973, although both do apply to airports. Airlines therefore determine their own policies regarding nut-allergic passengers. The Federal Aviation Administration (FAA) has a circular providing advice to passengers and airlines as to how to prevent and manage severe allergic reactions, of which peanuts pose the greatest risk.

The ALP cites the case of Alisa Gleason, who flew on a United Airlines flight from Florida to Chicago in 2011. As Ms Gleason suffers from life-threatening peanut allergy, she asked airline employees to request that other passengers on the flight refrain from eating peanuts, which they agreed to do. However, the air crew refused to make the announcement, and Ms Gleason suffered an anaphylactic reaction as a result of another passenger eating peanuts a few rows behind her. There was a poor response to her medication and the aeroplane had to make an emergency landing in Missouri. Ms Gleason required intensive care for two days and subsequently sued United Airlines for negligence, emotional distress and breach of contract, but was unsuccessful under legislation protecting airlines from being sued in the United States.⁸

South African Airways has a section on medical clearance and treatment on its website. Regarding patients with peanut and other nut allergies, the following is stated: 'If you have any allergies, please bring it to the attention of our reservations department. In the event that you suffer from a severe allergy, you are required to bring your own emergency medication, e.g. Epipen.'⁹

British Airways has extensive guidance for travellers with severe allergies and will not serve nut-containing snacks on an aircraft if it has been informed that a passenger has a severe peanut allergy.¹⁰

Should the food-allergic air traveller be able to claim the right to travel in an allergen-free aircraft? The risk of allergic reactions on airlines is not known, but a 2008 survey of food-allergic air travellers reported that nine per cent of 471 people had experienced allergic reactions during a flight, the majority of which were due to peanuts.¹¹ Most of these reactions were not severe and were self-managed with antihistamines, but six passengers required emergency

department treatment after landing. This suggests that it would be difficult to demand a complete ban on peanuts during flights, and that severe food-allergic individuals should carry an adrenaline auto-injector together with a doctor's letter and a written anaphylaxis plan.

THE FOOD-ALLERGIC CHILD'S RIGHTS IN CHILDCARE, PRESCHOOL AND SCHOOL

Severe food allergy affects children predominantly. The prevalence of allergic reactions to different foods varies according to the child's age. Children younger than four years may have allergic reactions to dairy and eggs in addition to peanuts and tree nuts, and these food allergens are particularly difficult to avoid.¹² It has been estimated that more than 60 per cent of first-onset allergic reactions in children occur at school, making potentially life-threatening allergic reactions at school a significant public health risk.¹² Behrmann cited a 2001 survey of elementary schools in the United States in which more than half of the schools reported having ten or more learners who were known to have allergic problems.¹³ There are no data regarding the incidence of severe food allergic reactions in South Africa, although the prevalence of food allergy appears to be on the increase¹⁴ and one would therefore expect the same to apply to severe allergic food reactions.

What are the rights of allergic children in a preschool or school environment? The 'Act to Protect Anaphylactic Pupils' or 'Sabrina's Law' in Canada (eventually signed into law in 2006 after a fatal anaphylactic reaction at a school in 2003) and similar legislation in other countries address the availability of adrenaline auto-injectors at school and mandate the training of teachers or other school personnel in the management of allergic emergencies.^{15,16}

In Canada in 2014, the mother of a six-year-old girl who is severely allergic to dairy and eggs accused the school where she enrolled her daughter of violating her child's human rights because they were not prepared to create a dairy- and egg-free environment for her. The daughter had previously had nine acute anaphylactic reactions after exposure to eggs and dairy.¹⁷ The school subsequently instituted measures to ban eggs and dairy from the child's classroom, and created an allergy management plan for the school. The following question was posed to the public via an online forum: 'Should allergy protection in schools be a human right?'¹⁸ Of a total of 1 714 votes, 72.9% voted No, 20.48% voted Yes and 7.23% were uncertain.

What is the situation regarding learners with severe food allergy in South Africa? In a recently published online commentary, two attorneys with the Equal Education Law Centre cite the cases of Tariq and Jesmine, who both suffer from severe food allergies.¹⁹ Tariq, a Grade R learner, suffers from a potentially life-threatening peanut allergy. Tariq's mother requested that his school implement measures to minimise the risk of Tariq being exposed to

peanuts and to keep injectable adrenaline at the school for use in the event of an anaphylactic reaction, but the school refused both requests. Jesmine also has a potentially life-threatening peanut allergy, and her school took steps to accommodate her. However, a fellow-learner discovered that Jesmine is peanut-allergic, and began teasing her and bullying her, even throwing peanuts at her. Instead of being understanding, this learner's parents were hostile when approached by Jesmine's parents, and demanded that her parents remove Jesmine from the school.¹⁹

The learner suffering from severe food allergy has the right to be educated in a safe learning environment, but this must be balanced against the rights of non-food-allergic children.¹³ The food-allergic child also has the right to learn in a setting free from bullying, discrimination and harassment.¹³ Experts advise that care should be exercised to prevent the isolation of the food-allergic child from other children.

Food allergy policies in schools need to deal with two issues:

- the management of an emergency situation (anaphylaxis), and
- the prevention of exposure to and/or accidental ingestion of a food allergen.^{12,13}

Regarding the prevention of exposure to food allergens, the solution does not lie in completely banning food allergens such as peanuts, eggs and dairy from schools or childcare facilities. Although this may well reduce allergen exposure, it infringes other (non-food-allergic) children's rights, and may result in stigmatisation of the food-allergic child. Prevention of exposure to food allergens may be achieved by strict policies that forbid any sharing of food or food containers between children, and the creation of

'allergen-free' areas in canteens or classes.^{12,13}

CONCLUSION

Severe food allergies are potentially life-threatening and food allergy sufferers have the right to a safe environment, whether this be at school or in other environments such as aeroplanes. They also have the right to emergency treatment, and this implies that schools and airlines should provide access to injectable adrenaline.

How does one balance the food allergy sufferer's right to a safe environment with the rights of others who do not suffer from food allergies, and who may be inconvenienced or put to excessive expense by not being able to eat certain foods in an environment that has been proclaimed allergy-free? This situation frequently creates conflict between families, and we wish to avoid confrontational and adversarial relationships between these groups. We need to create awareness about severe food allergies. We also need to establish guidelines for childcare and school environments, and advocate for South African legislative framework that deals with these problems.

The Allergy Society of South Africa should engage with the Equal Education Law Centre and patient advocacy groups to promote discussion about developing national policies to deal with the prevention and management of severe allergic disorders, particularly in schools. This would also be an ideal project for the newly formed Allergy Foundation of South Africa (AFSA) to take forward as an important advocacy task.

DECLARATION OF CONFLICT OF INTEREST

The author declares no conflict of interest with respect to the contents of this article.

This article has been reviewed.

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