

# DECLARING THE RIGHT TO SAFETY: Advancing Health and Human Rights?

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“**S**afety is a fundamental right.”<sup>1</sup> However laudable this opening principle from the Montreal Declaration: People’s Right to Safety may be, its utility from a human rights perspective is neither evident nor necessarily desirable. To understand why a fundamental right to safety may be troublesome, it is necessary to know what human rights are, from where they derive, and how those responsible for promoting and protecting them can be held accountable.

Human rights are a set of international, agreed-on norms, principles, and standards that are fixed and operationalized through national, regional, and international institutions and processes. Three foundational instruments—the Universal Declaration of Human Rights, together with the two International Covenants—have established the core content of human rights.<sup>2</sup> The right to “safety” does not figure in any of these documents, nor is it in the four other principal human rights treaties.<sup>3</sup> That does not mean the concepts advanced by the right to safety are wholly foreign to human rights. Rather, they give pause to reflect on the motivation for the Montreal Declaration.

Declarations may state aspirations and goals that provide individuals, associations, and governments with recommendations and guidance, but unlike those created by international human rights treaties, they are not binding obligations. If the ultimate aim of the Montreal Declaration is to require states to “control [risks] in order to preserve the health and well-being of individuals and the community,” it

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may be a more effective strategy to link safety to already agreed-on human rights.<sup>4</sup>

Although space does not allow a detailed explanation, a successful example may suffice. For instance, organizing the accepted interpretations of established rights in the context of appalling, unacceptable conditions (here, maternal and neonatal morbidity and mortality) has been the advocacy and scholarship surrounding the “right” to safe motherhood.<sup>5</sup> Plausible locations for the right to safety might be the “right to liberty and security in the person,” or the “right to the highest attainable standard of health,” particularly in light of the recent General Comment on the Right to the Highest Attainable Standard of Health.<sup>6-8</sup> Neither of those rights has explicitly been recognized to include all of the concepts packed into the Montreal Declaration, though the General Comment embraces many of them.<sup>9</sup> The right to health, for example, can well advance the goal of environmental monitoring in Article 7 of the Declaration, with the guarantee, moreover, of a mechanism for monitoring governmental progress in respecting, protecting, and fulfilling its obligations.

Bundling the already-recognized human rights into a definitional package of “safety” may be a most prudent approach to securing safety as a right. At minimum, such an approach could anchor an advocacy strategy that would work toward international recognition for a “right to safety,” should it prove to be more than the sum of its parts. One could argue that it is precisely the reinterpretation of human rights that has mainstreamed those individuals and issues that had been marginal to the orthodox rights discourse.<sup>10</sup>

In other words, the meaning and understanding of human rights—what they comprise and what governments are obliged to do to ensure them—are neither fixed nor static. Indeed, human rights have evolved. The promulgation of the Women’s Convention is just such an acknowledgment of that evolution.<sup>11</sup> Human rights, as a body of laws, norms, and standards, articulate, through institutions and processes, the scope and limitations of governmental action, as one scholar phrased “what governments can do to, cannot do to, and should do for” their populations.<sup>12</sup> There certainly is a temptation to read into “should do for” the aims of many

social and political agendas, as evidenced by the Montreal Declaration. The long preamble to the Declaration squarely embeds it in a progressive social-justice tradition; yet it is not unforeseeable that a government or a group of less progressively minded people could use the Montreal Declaration to subvert those ends.<sup>13</sup> The internationally recognized human rights, and the consequent obligations they place on governments, do not, however, embrace everything that we might think is right and good (and/or that our opponents think is right and good).

To end on a historical note of caution, the concept of safety has not necessarily served the cause of human rights well. Maximilian Robespierre organized the *Comité de Salut Public*—Committee of Public Safety—to promote and protect the aims of the French Revolution, arguably synonymous with those announced in the Declaration of the Rights of Man and the Citizen of 26 August 1789.<sup>14</sup> We know from history that through the action and consent of the Committee of Public Safety, terror reigned and blood flowed in the service of human rights. Preferable to inventing a “right to safety” may be to use the already agreed-on international human rights framework to advance public health and safety.

## References

1. Montreal Declaration: People’s Right to Safety, Article 1, available in its entirety at the end of this section and at [www.iitd.ac.in/tripp/righto/safety/Montreal%20declaration%2015-05-02.htm](http://www.iitd.ac.in/tripp/righto/safety/Montreal%20declaration%2015-05-02.htm).
2. Universal Declaration of Human Rights, adopted by the General Assembly on 10 Dec. 1948, para. 1, UN Doc. GA/RES/217A (III); International Covenant on Civil and Political Rights, adopted by the General Assembly on 16 Dec. 1966, para. 2, International Covenant on Economic, Social and Cultural Rights, adopted on 16 Dec. 1966, para.1, UN Doc. A/RES/220 (XXI).
3. International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly on 21 Dec. 1965, UN Doc. GA/RES/2106 (XX); Convention on the Elimination of All Forms of Discrimination Against Women, adopted 20 Dec. 1979, art. 2, UN Doc. GA/RES/34/180; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 Dec. 1984, UN Doc. GA/RES/39/46; Convention on the Rights of the Child, adopted 20 Nov. 1989, art. 23, para. 1, UN Doc. GA/RES/44/25.
4. See note 1, art. 2.
5. R. J. Cook et al., *Advancing Safe Motherhood: Through Human Rights*

(Geneva: WHO, 2001).

6. See note 2, Civil and Political Rights Covenant, art. 9.

7. International Covenant of Economic, Social and Cultural Rights, adopted 16 Dec. 1966, UN Doc. A/RES/2200(XXI), art.12.

8. Committee on Economic, Social, and Cultural Rights, General Comment 14 (Right to the Highest Attainable Standard of Health), UN Doc. E/C.12/2000/4.

9. See note 8, especially para. 11 ("The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.") See also paras. 15 and 16.

10. See the comment by A. Miller in this issue of *Health and Human Rights* regarding women's rights, and B. I. Hamm, "A Human Rights Approach to Development," *Human Rights Quarterly* 23 (2001) 1005–1031 for a discussion of the right to development.

11. See note 2.

12. S. Gruskin, "Human Rights and Public Health: An Overview," *Canadian HIV/AIDS Law and Policy Newsletter* 4/2-3 (Spring 1999), available at [www.aidslaw.ca/Maincontent/otherdocs/Newsletter/spring99/geneva98-1.htm](http://www.aidslaw.ca/Maincontent/otherdocs/Newsletter/spring99/geneva98-1.htm).

13. Consider those who would prohibit homosexuals from becoming school teachers on the unfounded, but widely held belief, that they pose a risk to the safety and well-being of children ([www.familyresearchinst.org/FRI\\_EduPamphlet2.html](http://www.familyresearchinst.org/FRI_EduPamphlet2.html)). Sexual orientation, as a ground protected from discrimination, is not yet fully recognized in international human rights law.

14. For the original, go to [www.justice.gouv.fr/textfond/ddhc.htm](http://www.justice.gouv.fr/textfond/ddhc.htm); for an official translation, go to [www.justice.gouv.fr/anglais/europe/addhc.htm](http://www.justice.gouv.fr/anglais/europe/addhc.htm).