

# THE HUMAN RIGHTS APPROACH TO REDUCING MALNUTRITION

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**Keywords:** Malnutrition, Nutrition Rights in International Law, National Framework Legislation, World Food Summit.

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## Summary

Malnutrition leads to death, illness, and significantly reduced quality of life for hundreds of millions. People have a right to not be malnourished, as a matter of law. The right is articulated in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and several other international instruments. Since people have the human right to food and nutrition, others have obligations to assure that the right is realized. Nations that are parties to these agreements have made a commitment to assure the realization of the human right to food and nutrition.

National governments, not international organizations, are the primary agents for the realization of human rights. It is important to assure that human rights are clearly articulated in national law. Following ratification of international human rights instruments, concretization of human rights in national law reinforces, and is a major sign of, commitment to those rights. National legislation provides highly authoritative articulation of the commitments accepted by the nation-state. It is a means of codifying and legitimizing institutionalized governmental action. Thus, national law can become a major tool through which the realization of human rights is advanced.

The motivating idea underlying the nutrition rights vision is that establishing clear entitlements in the law, and assuring the implementation of that law, can help to reduce malnutrition of different kinds. The establishment and effective implementation of such law will not in itself be the solution to the malnutrition problem. Rather, it should be viewed as another tool for addressing the challenge, one that must be used together with other more conventional means such as feeding,

health, education, and sanitation programs.

## 1. Introduction



Each year, about 12 million children die before their fifth birthdays, about half of them from causes associated with malnutrition. This is a silent holocaust, repeated year after year. Malnutrition leads to death, illness, and significantly reduced quality of life for hundreds of millions of children, adolescents, and adults. People should not have to suffer from malnutrition. More than that, people have a *right* to not be malnourished, as a matter of law. Since people have the human right to food and nutrition, nation-states and the governments that represent them have obligations to assure that the right is realized.

## 2. The Human Rights Context



For much of human history, individuals had no recognized rights. It was accepted that the power of emperors and kings was absolute, at least with respect to secular issues. In time it was argued that, in recognition of the interests of the monarch's subjects, the powers of the sovereign ought to be limited. The claims of these countervailing interests were articulated in the Magna Carta of 1215, arguably the first major rights document. Like many later rights documents, the Magna Carta was not fully implemented. Nevertheless, the document broke new ground by declaring that despotism was illegitimate, and rights of citizens were to be recognized and respected. These were radical ideas.

The modern nation-state system had its beginnings in the Treaty of Westphalia of 1648. Its core principles were that states were sovereign in that they had no ruling bodies above them, and no state was permitted to interfere in the internal affairs of any other. Within states, however, people lived at the mercy of their rulers, their sovereigns. The Magna Carta represented constraint on the sovereign from within the sovereign's jurisdiction. Sovereigns were not constrained from without. International law did not apply to individuals but only to states. There was no international protection for the rights of individuals at all.

In 1776 the Declaration of Independence, marking the revolution of the American colonies against the tyranny of King George III, launched another major rights movement. It was consolidated in the Bill of Rights, added in 1791 to the United States Constitution of 1787. These first ten amendments spelled out the basic rights of citizens of the new United States. The French Revolution led to the Declaration of the Rights of Man and of the Citizen, approved by the new French National Assembly on August 4, 1789.

These efforts advanced the cause of rights within particular nations, but were not bases for international agreement or action. Thus they were not about human rights as that term is now understood. By definition, *human rights* refers to those rights that are universal, enjoyed by all persons by virtue of their being human. On this basis, rights recognized only in one country cannot be viewed as human rights.

Human rights, understood as claims for universal recognition of rights, arguably began with the anti-slavery movement in the nineteenth century. The modern era of human rights began with the signing of the Charter of the United Nations in 1945. In the charter, nations pledged to take action

to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." The key event launching the post Second World War human rights movement, however, was the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights on December 10, 1948.

After that declaration was made, the number of international human rights agreements proliferated rapidly, and many new organizations, both governmental and nongovernmental, arose to make sure these rights were realized. Human rights became a major factor in global discourse.

The declaration was given binding effect in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The two covenants were adopted by the United Nations General Assembly in 1966, and both received enough ratifications to come into force in 1976.

Since the adoption of the Universal Declaration of Human Rights, human rights advocates have focused most of their energy on civil and political rights. Now, as the second half-century of postwar human rights advocacy begins, economic, social, and cultural rights are gaining increasing attention. With the conclusion of the Cold War it has become increasingly clear that economic, social, and cultural issues shape the well-being of much of humankind.

The global human rights system is distinctive in that it deals only with rights that are universal, enjoyed by all simply by virtue of their being human. However, there are many different kinds of rights systems.

A rights *system* can be understood as a kind of cybernetic self-regulating arrangement designed to assure that rights are realized. In any cybernetic system, a goal is decided upon, and means are established for reaching that goal. In addition, there are specific means for making corrections in case there are deviations from the path toward the goal. This is the self-regulating aspect of the system. Rights systems function in this way. Any government may have policies saying, for example, that there is to be freedom of speech, and social security, and many other good things. They may even be promised in the nation's constitution. But we know that there are many cases in which governments go "off course" and fail to deliver on their promises. In nations where there is an effective rights system, however, there are specific mechanisms for calling the government to account, that is, for making course corrections. The most fundamental of these mechanisms of accountability is for rights holders themselves to have effective remedies through which they can complain and have the government's behavior corrected. Where there are no effective remedies, there are no effective rights.

On the basis of this understanding, we can say that in any rights system there are three distinct roles to be fulfilled: the *rights holders*, the *duty bearers*, and the *agents of accountability*. The task of the agents of accountability is to make sure that those who have the duty carry out their obligations to those who have the rights.

To describe a rights system, we need to know the identities and also the functions of those who carry out these roles. We would also want to know the mechanisms or structures through which these functions are to be carried out. Thus, we would want to know:

- the nature of the *rights holders* and their rights;
- the nature of the *duty bearers* and their obligations corresponding to the rights of the rights

holders; and

- the nature of the *agents of accountability*, and the procedures through which they assure that the duty bearers meet their obligations to the rights holders. The accountability mechanisms include, in particular, the remedies available to the rights holders themselves.

Some parties may carry out several roles. As indicated in this reference to the remedies available to rights holders, the rights holders also should serve as agents of accountability. Those who are rights holders generally also have duties, and conversely, those who have duties also have rights. Nevertheless, while those who carry out the roles may overlap in different ways, it is useful to draw out the distinctions between these three different types of roles.

This three-part framework can be used by any national government or other sort of administrative unit concerned with drafting law or policy designed to assure the realization of rights. This framework can also be used for adapting specific programs, such as national welfare programs or nutrition programs, to conform to the human rights approach. The program's policies may be reformulated so that its clients have clear entitlements to its services, and so that the program makes explicit commitments to honor those entitlements. That commitment can be concretized by establishing a complaint procedure through which those who feel they have not obtained their entitlements can get a fair hearing and, if necessary, have the situation corrected.

### 3. Malnutrition



The World Health Organization defines nutrition as "a process whereby living organisms utilize food for maintenance of life, growth and normal function of organs and tissues and the production of energy." Malnutrition results when this process goes wrong, whether because of problems on the intake side or because of problems in processing the intake. There are various types of malnutrition including protein-energy malnutrition and specific micronutrient deficiencies.

The United Nations Administrative Committee on Coordination has a Sub-Committee on Nutrition (ACC/SCN) that is responsible for coordinating nutrition-related activities among the UN agencies. An independent Commission on the Nutrition Challenges of the 21st Century appointed by the SCN submitted its report to the SCN, entitled *Ending Malnutrition by 2020: An Agenda for Change in the Millennium*. It identified the eight major nutritional challenges as follows:

1. *Low birth weights. Each year some 30 million infants in developing countries are born with low birth weight, representing about 24% of all newborns in these countries. Population-wide interventions aimed at preventing fetal growth retardation are urgently needed.*
1. *Childhood undernutrition underestimated. There are still more than 150 million underweight preschool children worldwide, and more than 200 million are stunted. This underweight and stunting is the tip of the iceberg. Suboptimal growth may affect many more. Stunting is linked to mental impairment. At current rates of improvement about 1 billion children will be growing up by 2020 with impaired mental development.*
1. *Undernourished adults. High proportions of Asian and African mothers are undernourished: this is exacerbated by seasonal food shortages, especially in Africa. About 243 million adults in developing countries are severely undernourished, judged by a body mass index of less than 17 kg m<sup>-2</sup>. This type of adult undernutrition may impair work capacity and lower resistance to infection.*

1. *Pandemic anemia. Anemia during infancy, made worse by maternal undernutrition, causes poor brain development. Anemia is also very prevalent in school children and adolescents. Maternal anemia is pandemic, over 80% in some countries, and is associated with very high rates of maternal death.*
1. *Extensive persisting vitamin A deficiency. Severe vitamin A deficiency is on the decline in all regions. However, subclinical vitamin A deficiency still affects between 140 and 250 million preschool children in developing countries, and is associated with high rates of morbidity and mortality. These numbers do not take into account vitamin A deficiency in older children and adults and thus seriously underestimate the total magnitude.*
1. *Adult chronic diseases accentuated by early undernutrition. Evidence from both developing and industrialized countries links maternal and early childhood undernutrition to increased susceptibility in adult life to noncommunicable diseases such as adult-onset diabetes, heart disease, and hypertension. These diet-related noncommunicable diseases—including cancers—are already major public health challenges for developing countries.*
1. *Obesity rates escalating. Overweight and obesity are rapidly growing in all regions, affecting children and adults alike. These problems are now so common in some developing countries that they are beginning to replace more traditional public health concerns such as undernutrition and infectious disease. Obesity is a risk factor for a number of noncommunicable diseases, adult-onset diabetes in particular.*
1. *Sustaining iodization programs. Efforts are needed to sustain the remarkable progress made during the 1990s towards universal salt iodization and elimination of iodine deficiency disorders. Monitoring systems, quality control, and sound legislation are key priorities, as is improving outreach to isolated communities.*

*The large numbers of infants born at very low weights often reflect the poor nutritional status of their mothers, and thus constitute a form of intergenerational transmission of the consequences of malnutrition.*

*When measured in terms of weight for age, protein-energy malnutrition affects almost 150 million children under five years of age, about 26.7% of the world's children in this age group. More than two-thirds of the world's malnourished children live in Asia.*

*When measured in terms of height for age, children's protein-energy malnutrition is even more widespread, affecting an estimated 38% of all preschool children in developing countries. While the incidence has been declining in most regions, in Africa the incidence of stunting (inadequate height for a given age) of children has been increasing.*

*The body mass index (BMI) is a standardized measure for assessing the degree to which adults are underweight or overweight. It is based on the formula,  $BMI = \text{kg}/\text{m}^2$ . That is, the body mass index is equal to the individual's weight in kilograms, divided by the square of the individual's height, measured in meters. While there is widespread undernutrition in the world, there is also widespread and rapidly increasing obesity, in children as well as in adults. Some describe it as an epidemic of obesity.*

*Iron deficiency is the world's most widespread nutritional disorder. In industrialized countries, it is the main cause of anemia. However, in developing countries, anemia is associated not only with iron deficiency but also with deficiencies in other nutrients, such as folic acid, vitamins A and B<sub>12</sub>, and with malaria, parasites, and chronic infections.*

*Vitamin A deficiency remains the single greatest preventable cause of childhood blindness. An estimated 250 000 to 500 000 children become blind every year because of vitamin A deficiency. This micronutrient deficiency increases vulnerability to a broad spectrum of diseases.*

*Iodine deficiency disorders result in goiter, stillbirth and miscarriages, and severe mental impairment. Programs to prevent iodine deficiency disorders, based primarily on universal salt iodization, have proven effective in several regions of the world.*

#### 4. Causes of Malnutrition



*It is useful to distinguish between the immediate, underlying, and basic causes of malnutrition. Figure 1, from the United Nations Children's Fund (UNICEF), illustrates their interrelationships.*

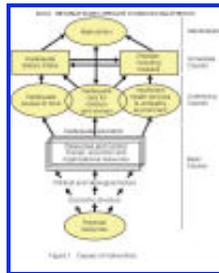


Figure 1: Causes of malnutrition (source: UNICEF)

#### 4.1 Immediate Causes

*Malnutrition is caused by inadequate or improper dietary intake and disease. The two are closely linked because bad diets can increase vulnerability to disease, and many diseases result in loss of appetite and reduced absorption. Even with appropriate food intake, malnutrition can result from disease, particularly diarrhea or parasitic diseases. There may be enough good food coming in, but it may in effect run right out, or it might be diverted to the nutrition of parasites. Infection often leads to malnutrition. Disease often increases the body's food requirements. When children die at an early age, usually it is not malnutrition alone but the combination of malnutrition and disease that leads to death. The immediate causes can be understood as the clinical causes of malnutrition.*

#### 4.2 Underlying Causes

*The underlying causes of malnutrition are inadequate access to food, inadequate care of children and women, and inadequate access to basic health services, sometimes combined with an unhealthy environment. Inadequate food supply in the household can be a major factor in causing malnutrition. Often, however, the types of food and the methods of feeding are also important. For example, the supply of food in the household may be adequate but its distribution within the family may be skewed against small children and in favor of the male head-of-household. Of course this is not a significant problem where household food supplies are abundant. Some bulky carbohydrates such as rice or maize have low nutrient density, which means that one must consume large volumes of the food. Small children cannot take in large quantities at one sitting. Thus, children who depend on such foods must be fed frequently during the day or they will not get enough.*

*Nutritional status is not determined simply by food supply. Rather, nutrition is an outcome of three groups of factors: household food security, good health services (including a healthy environment), and care. People should be well fed, healthy, and well cared for. Food, health, and care are the three pillars of good nutrition. These are the underlying or household level factors that determine nutrition status.*

### **4.3 Basic Causes**

*The basic causes of malnutrition can be divided into three broad categories. First, there may be problems relating to human resources, having to do with inadequate knowledge, inadequate skills, or inadequate time. Second, there may be problems relating to economic resources, referring to inadequate assets in terms of money income, land, or other assets. Third, there may be inadequate organizational resources, such as inadequate schools, health care programs, or water supply systems. The basic causes can be understood as relating to societal causes of malnutrition.*

*Explanations of malnutrition commonly focus on the clinical and household levels, but an understanding is needed at the societal level as well. The endless marginalization of the poor certainly is one of the basic causes of malnutrition in the world.*

*The strong linkage between poverty and malnutrition has been examined very thoroughly. Malnutrition is an important consequence of poverty, and it is also a significant cause of poverty. The two are so closely associated that malnutrition is often regarded as a useful indicator of poverty. Both malnutrition and poverty must be addressed to assure an adequate standard of living.*

*There is especially useful insight in Amartya Sen and Jean Drèze's argument that hunger is due primarily to a failure of entitlements rather than, say, to inadequate agricultural productivity or excessive population growth. Briefly:*

*What we can eat depends on what food we are able to acquire.... The set of alternative bundles of commodities over which a person can establish such command will be referred to as this person's "entitlement." If a group of people fail to establish their entitlement over an adequate amount of food, they have to go hungry.*

*Asbjørn Eide explains the importance of this way of thinking:*

*An entitlement approach to the study of access to food and hunger is required to avoid—in Sen's words—"the simplicity of focusing on the ratio of food to population [that] has persistently played an obscuring role over centuries, and continues to plague policy discussions today much as it has deranged anti-famine policies in the past." This requires, however, a shift in thinking from what exists to who can command what.*

*Food analysts distinguish between the availability of food, which refers to the overall quantities and types of foods in any particular place, and the accessibility of food, which refers to the ability of individuals to obtain that food. Even when food is available, many people may not have enough money to make a legitimate claim on it. Many famines have occurred in places where overall food supplies have been more than adequate.*

*It is important to know not only what resources exist, but also who has what sorts of control over resources. This in turn leads to questions regarding the way in which the local community and the*

*society as a whole are governed. More democratic societies are likely to be associated with more equitable distribution of resources, and thus with less malnutrition.*

*It follows that the remedy to the hunger problem lies in strengthening entitlements. Some analysts implicitly assume that this can be done only through increasing the household's capacity to produce or purchase food. In the context of food and nutrition rights, however, it is recognized that under some conditions people also should have a claim on the resources (not only food but also care and health services, and other factors essential to an adequate standard of living) of their societies based on their needs.*

## **5. Food and Nutrition Rights in International Law**



*The articulation of food and nutrition rights in modern international human rights law begins with the Universal Declaration of Human Rights of 1948. The declaration asserts in article 25(1) that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food."*

*The right was reaffirmed in two major binding international agreements. In the International Covenant on Economic, Social and Cultural Rights, article 11 says 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, clothing, and housing" and also recognizes "the fundamental right of everyone to be free from hunger."*

*In the Convention on the Rights of the Child (which came into force in 1990), two articles address the issue of nutrition. Article 24 says that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health... (paragraph 1)" and shall take appropriate measures "to combat disease and malnutrition...through the provision of adequate nutritious foods, clean drinking water, and health care (paragraph 2c)." Article 24 also says that States Parties shall take appropriate measures "To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition [and] the advantages of breastfeeding." Article 27 says in paragraph 3 that States Parties "shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing."*

*Thus, the human right to food and nutrition is well established in international law. Even if the right had not been stated directly, it would be strongly implied in other provisions such as those asserting the right to life and health. The Convention on the Rights of the Child, for example, requires (in article 24, paragraph 2a) that States Parties shall "take appropriate measures to diminish infant and child mortality." The human right to food and nutrition has been reaffirmed at the international level in many different settings.*

*The foundations for the international human right to food and nutrition lie in the binding international human rights instruments in which they are explicitly mentioned, primarily the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Other binding international human rights agreements, such as the Convention on the Elimination of All Forms of Discrimination Against Women, contribute to the articulation of relevant rights.*

*The human right to food and nutrition has a long history, and it is well established in international law. In addition, as shown in the following section, numerous conferences and nonbinding international declarations and resolutions have helped to shape the emerging international consensus on norms regarding the human right to food and nutrition.*

*It should be emphasized that in human rights law the call is not simply for adequate food but more broadly for an adequate standard of living. Article 25, paragraph 1 of the Universal Declaration of Human Rights says:*

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

*Thus, food is just one of several elements contributing to an adequate standard of living.*

*Article 11 of the International Covenant on Economic, Social and Cultural Rights is explicit about food, clothing, and housing, but it also implies adequate health, education, and other requirements that are addressed in other parts of the covenant and other human rights instruments.*

*Individuals and organizations working to end hunger and malnutrition sometimes use the slogan "food first." The concept expresses their feelings that the food issue should be given high priority. However, it should be recognized that food and nutrition constitute just one of the dimensions of adequate livelihood, and it would be inappropriate to argue that nutrition is more important than, say, housing or education. All aspects of livelihood are interrelated, and should be kept in balance.*

*Just as the human right to food and nutrition must be seen in the context of the right to adequate livelihood, that cluster of rights, in turn, must be viewed in the broader context of all human rights. Livelihoods may be adequate in terms of specific measures of income, health care, housing, etc., but this must not be achieved through means that violate other human rights.*

*The resources available necessarily limit achievements in regard to the standard of living, but nevertheless, there is the requirement of continuous improvement. This point is elaborated in two important collective efforts to interpret economic, social, and cultural rights. The Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights were formulated by a conference of experts held in Limburg, the Netherlands, in 1986. This statement came to be known simply as the Limburg Principles. The issues were revisited in 1997, at a conference at Maastricht University in the Netherlands. The result was a new statement, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, which further clarified the nature and scope of these rights.*

## **6. International Standards**

*Alongside the developments in international law, numerous conferences and nonbinding international declarations and resolutions have helped to shape the emerging international consensus on norms regarding the human right to food and nutrition.*

*On March 14, 1963, a Special Assembly on Man's Right to Freedom from Hunger met in Rome and*

*"issued an historic Manifesto calling on the governments and people of the world to unite in the struggle against man's common enemy-hunger." The manifesto described the character and scope of hunger in the world, and asserted that "freedom from hunger is man's first fundamental right." A variety of action programs such as increasing agricultural productivity and improving trade relations were suggested and moral concerns were expressed, but the idea that "freedom from hunger is man's first fundamental right" was not elaborated.*

*In 1974 the World Food Conference issued a Universal Declaration on the Eradication of Hunger and Malnutrition. It asserted that "Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties." That declaration was endorsed by the United Nations General Assembly in Resolution 3348 (XXIX) of December 17, 1974.*

*In response to concerns about inappropriate marketing and promotion, the International Code of Marketing of Breastmilk Substitutes was adopted by the World Health Assembly (WHA) in 1981. The WHA has approved a series of resolutions in subsequent years to further clarify and strengthen the code.*

*In November 1984 the World Food Assembly, composed primarily of representatives of nongovernmental organizations, met in Rome. Its purpose was to call attention to the fact that the promise made at the 1974 World Food Congress that "within a decade no child will go to bed hungry" had not been fulfilled. Its final statement asserted that "the hungry millions are being denied the most basic human right—the right to food."*

*On August 1, 1990, the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding was adopted by participants at a meeting on "Breastfeeding in the 1990s" held at the International Child Development Centre in Florence, Italy. The declaration stated a variety of specific global goals, including the goal that "all women should be enabled to practice exclusive breastfeeding and all infants should be fed exclusively on breast-milk from birth to 4–6 months of age." In 1991 the UNICEF Executive Board passed a resolution (1991/22) saying that the Innocenti Declaration would serve as the "basis for UNICEF policies and actions in support of infant and young child feeding." In May 1996 the World Health Assembly passed a resolution on Infant and Young Child Nutrition (WHA 49.15) in which it confirmed its support for the Innocenti Declaration.*

*At the World Summit for Children held at the United Nations in New York in September 1990, most heads of state signed the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children. Among the major goals specified in the plan was: "Between 1990 and the year 2000, reduction of severe and moderate malnutrition among under-5 children by half." A number of specific supporting goals were enumerated as well.*

*These goals have been endorsed repeatedly, both before and after the World Summit for Children, by many international bodies including the World Health Assembly in 1990, the UNICEF Board Session of 1990, and the United Nations Conference on Environment and Development in 1992.*

*An International Conference on Nutrition, organized by the Food and Agriculture Organization of the United Nations (UN FAO) and the World Health Organization, was held in Rome in December 1992. The rights idea was frequently endorsed. In his address opening the conference, His Holiness Pope John Paul II said:*

*It is up to you to reaffirm in a new way each individual's fundamental and inalienable right to nutrition. The Universal Declaration of Human Rights had already asserted the right to sufficient food. What we must now do is ensure that this right is applied and that everyone has access to food, food security, a healthy diet and nutrition education.*

*In the conference's concluding World Declaration on Nutrition, the nations of the world agreed that "access to nutritionally adequate and safe food is a right of each individual." The conference also endorsed the nutrition goals set out at the 1990 World Summit for Children, and added two more specific goals.*

*In July 1996, as part of the preparatory work for the World Food Summit, a meeting on "The Fundamental Human Right to Food" was called by the president of Venezuela and held in Caracas. The Caracas statement called for the development of a Code of Conduct that would clarify the content of the right to food and provide guidance regarding its realization. This statement helped to highlight the importance of food and nutrition rights at the World Food Summit.*

*In November 1996 the World Food Summit concluded with agreement on the Rome Declaration on World Food Security and World Food Summit Plan of Action. The first paragraph declared: "We, the Heads of State and Government, or our representatives, gathered at the World Food Summit at the invitation of the Food and Agriculture Organization of the United Nations, reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger." The summit called for further specification of the meaning of the right to food, through a process described in the following section.*

*Several nations have articulated nutrition-related rights in some form in their laws. Cuba's constitution assures that "no child be left without schooling, food and clothing." The Italian, Spanish, and Greek constitutions assure a right to health. In many countries there is language referring to other sorts of assurances, such as the right to social security (as in the Netherlands and Spain) that can be interpreted as implying nutrition rights. In most cases, however, the assurances have not yet been concretized, and they have not been enforced through the courts or through other kinds of administrative measures. The meaning of the right to food at the national level still needs to be elaborated through national policy and national legislation.*

*On reviewing the hunger data, Philip Alston and Katarina Tomaševski observed that "these statistics make hunger by far the most flagrant and widespread of all serious human rights abuses." Alston added that "the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any other right." The right to adequate nutrition is a vision that remains to be realized.*

## **7. Objective 7.4 of the World Food Summit**



*In the late 1990s, nutrition rights work at the global level centered on a mandate from the World Food Summit held in Rome in 1996. In its concluding Plan of Action, Objective 7.4 called upon*

*... the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights.*

*Several different initiatives were taken to respond to this call:*

- *On February 19, 1997, the UN FAO submitted a statement on the right to food to the Commission on Human Rights.*
- *On April 3, 1997, the Commission on Human Rights adopted a resolution (1997/8) endorsing the World Food Summit's request for clarification of the meaning of the right to food.*
- *On December 1, 1997, the Committee on Economic, Social and Cultural Rights held a Day of Discussion on the Right to Food at United Nations headquarters in Geneva.*
- *On December 2, 1997, the First Expert Consultation on the Right to Adequate Food as a Human Right was organized by the Office of the High Commissioner for Human Rights and held in Geneva.*
- *On January 15, 1998, the High Commissioner for Human Rights issued a report on the current state of clarification of the right to food.*
- *On April 17, 1998, the Commission on Human Rights adopted a resolution (1998/23) endorsing the First Expert Consultation's proposal to continue the discussion in 1998.*
- *On June 29, 1998, the Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities released a Report Updating the Study on the Right to Food ( Mr. Asbjørn Eide), describing progress on the study that would be released a year later, on June 28, 1999.*
- *On November 18–19, 1998 a Second Expert Consultation on the Right to Adequate Food as a Human Right was held in Rome. It was organized by the Office of the High Commissioner for Human Rights and co-hosted by the UN FAO.*
- *In April 1999 the United Nations Administrative Committee on Coordination/Sub-Committee on Nutrition (ACC/SCN) focused its annual meeting on the human right to food and nutrition. It was held in Geneva under the auspices of the High Commissioner for Human Rights.*
- *On April 26, 1999, the Commission on Human Rights passed Resolution 1999/24 on The Right to Food.*
- *On May 12, 1999, the UN Committee on Economic, Social and Cultural Rights released its General Comment 12 on The Right to Adequate Food (Art. 11).*
- *On June 28, 1999, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights released The Right to Adequate Food and to be Free from Hunger: Updated Study on the Right to Food, Submitted by Mr. Asbjørn Eide in Accordance with Sub-Commission Decision 1998/106.*
- *On August 25, 1999, the Sub-Committee adopted Resolution 1999/12 on The Right to Adequate Food and to be Free from Hunger, endorsing the recommendations of Eide's updated study.*

*In paragraph 6 of General Comment 12, the UN Committee on Economic, Social and Cultural Rights described the right as follows:*

*The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its*

*procurement.*

## **8. National Framework Legislation**



*National governments, not international organizations, are the primary agents for the realization of human rights. The international human rights instruments are concerned primarily with the responsibilities of states to their own people, not to people elsewhere. The United Nations and other global agencies may be called to action when national governments fail to assure the realization of human rights, but those situations are exceptional. The international community has an important role to play in setting out widely accepted guidelines, but once general principles are set out in international human rights agreements, the primary locus of human rights work is within nations. The front line of responsibility for the realization of human rights is in national governments.*

*A major issue with regard to international treaties is the question of whether, for States Parties, they prevail over national law, and thus may be invoked directly in national courts. In a monist legal system, treaties are self-executing. This means that upon ratification a treaty is regarded as part of the national law, and it may be invoked in the national courts. In contrast, in a dualist system, national law and international law are viewed as two separate legal systems. In dualist systems, legislative action must be taken to incorporate the principles of the treaty into national law. Only national law, and not international law, may be invoked in national courts.*

*Whether in monist or in dualist systems, it is important to assure that human rights are clearly articulated in national law. Following ratification of international human rights instruments, concretization of human rights in national law reinforces, and is a major sign of, commitment to those rights.*

*To simply assert the existence of a right within a nation when it is not actually established in that nation's law may make it appear that no legislative action is needed. To illustrate, in one study the authors observe that adequate nutritious food is a basic human right, and on that basis view it as applying everywhere, including the United States. As a consequence, they do not address the fact that the United States has ratified neither the International Covenant on Economic, Social and Cultural Rights nor the Convention on the Rights of the Child, and has consistently refused to recognize subsistence rights in its courts. One should determine whether people have particular rights in their nation's legal system before trying to assess the degree to which those rights are realized. There is not much use in arguing that a right exists and has not been realized when what is really needed is new legislation to firmly establish the legal right within the nation.*

*When states undertake obligations to honor particular human rights by becoming parties to international human rights agreements, they are expected to elaborate their understanding of those obligations by spelling them out in their own national law. Indeed, there is a positive obligation to do this. In the International Covenant on Civil and Political Rights, article 2, paragraph 1 says that the States Parties must take steps to realize the rights in the covenant, "including particularly the adoption of legislative measures." Paragraph 2 says:*

*Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other*

*measures as may be necessary to give effect to the rights recognized in the present Covenant.*

*In the International Covenant on Economic, Social and Cultural Rights, article 2, paragraph 1 says that States Parties will undertake to take steps to achieve the rights recognized in the covenant "by all appropriate means, including particularly the adoption of legislative measures."*

*Article 4 of the Convention on the Rights of the Child begins by saying:*

*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.*

*While international bodies, intergovernmental or nongovernmental, may help to elaborate the meaning of the human rights in international agreements, a very important interpretation is that made by the government that is to carry out the corresponding obligations. Except in very extreme situations, interpretations cannot be imposed on them. The international human rights system is not based on having some sort of superior international authority tell countries what they must do. It is based on the principle of consent: generally, nations are bound by those rules to which they agree to be bound.*

*In principle, internationally recognized rights can be realized within nations even if those rights are not articulated in national law. However, they are much more likely to be realized when there is well-crafted law regarding these rights at the national level.*

*National legislation provides highly authoritative articulation of the commitments accepted by the nation-state. It is a means of codifying and legitimizing institutionalized governmental action. Thus, lawmaking can become a major tool for advancing the realization of human rights.*

*In her keynote address on "The Human Right to Food and Nutrition" at the SCN meeting in Geneva in April 1999, High Commissioner for Human Rights Mary Robinson said "Incorporating the right to food into a national framework legislation would be essential in establishing the ground work for a real accountability of the 'duty bearer'—the State—towards the 'claim holders'." In paragraph 29, General Comment 12 says:*

*States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.*

*The preparation of a framework law is an opportunity to formulate national strategy for dealing with malnutrition.*

*The concept was further elaborated by Gerald Moore and Margrét Vidar of the legal office of the FAO in their paper on FAO and the Right to Adequate Food. Section 4.5 explains:*

*Framework legislation would include spelling out the basic principles, identifying the relevant*

*public and private agencies and setting up processes for progressively achieving the full realization of the right to food, as well as containing mechanisms that enable accountability. The exact content of such legislation would reflect the particularities of the situation in each country, and should be tailor made to suit its legal and administrative system.*

*Thus, framework legislation would be an important means for clarifying the three core elements of rights systems that were described earlier:*

- *the nature of the rights holders and their rights;*
- *the nature of the duty bearers and their obligations corresponding to the rights of the rights holders; and*
- *the nature of the agents of accountability, and the procedures through which they assure that the duty bearers meet their obligations to the rights holders. The accountability mechanisms include, in particular, the remedies available to the rights holders themselves.*

*As the name suggests, the framework legislation may set out only broad outlines of the mechanisms and the strategy for assuring the realization of the human right to adequate food and nutrition. Once that foundation is established, it would be possible to take more concrete action within the framework. This should include improvements in previous legislation and the launching of appropriate new legislative initiatives.*

*Many different kinds of legislation already exist in relation to food and nutrition issues, for income supplementation, feeding programs, fortification, food quality control, trade practices, and so on. However, in most such legislation the consumer has no specific entitlements. For example, where salt iodization is mandated by law, usually the salt industry is answerable only to the government. Consumers have no powers under the law, so neither the industry nor the government is answerable directly to consumers themselves. In the perspective adopted here, food and nutrition legislation can become a form of human rights legislation only when consumers have specific explicitly described entitlements under the law.*

*Human rights of every kind should be concretized locally through well-crafted national law. The law should specify individuals' entitlements and also the corresponding governmental commitments. It should specify the response mechanisms and the accountability mechanisms through which those obligations will be fulfilled. Effective implementation of comprehensive law of this sort can be a potent means for assuring that human rights are realized.*

*In its early stages international human rights law simply set out standards and norms. However, as that law evolves we see that it goes beyond clarifying standards and norms to also describe mechanisms and procedures for assuring that rights are realized. It is now widely accepted that well-crafted law spells out the means for its own implementation, with clear specification of agencies and their procedures. Of course the fine detail must be left to lower-level statutes and regulations, but the basic mandates for the implementation mechanisms can be set out in the law.*

*In contemplating possibilities for national action, the adoption of formal law may not always be politically feasible in the short run. Nevertheless, proposals can be formulated in the form of principles, or guidelines, or perhaps a code of conduct. These formulations could be viewed as possible precursors to future law, and could be used in the intervening period as lobbying tools.*

*Care must be taken not to view lawmaking as an end in itself. Legislation is only one of many*

*possible means of action by government, and there are many possibilities for action by civil society. In addition to making new laws, national governments can use their executive and judicial powers in many different ways. Governments can help achieve human rights objectives by making adjustments in fiscal policy, export policy, welfare programs, agriculture support programs, etc.*

*The motivating idea underlying the nutrition rights vision is that establishing clear entitlements in the law, and assuring the implementation of that law, can help to reduce malnutrition of different kinds. The establishment and effective implementation of such law will not in itself be the solution to the malnutrition problem. Rather, it should be viewed as one among many tools for addressing the challenge, one that must be used together with other more conventional means such as income supplementation, feeding, health, education, and sanitation programs.*

*The nutrition rights approach does not replace existing programs for alleviating malnutrition, but rather it builds on and uses them. A nutrition rights approach can make the usual kinds of programs more efficient and effective by making them more decisively goal-directed. Under such an approach, government no longer delivers services just to deliver services. Many nations already have substantial nutrition programs in place, but they are not organized in a unified, goal-directed effort. A nutrition rights framework can provide a basis for aligning these assets so that they act together systematically to achieve the goal of eliminating malnutrition.*

*The preparation of appropriate national framework legislation requires not only the preparation of appropriate legal language, but also an advocacy process to assure that it is acceptable to legislators and those behind them. The promotion of carefully crafted legislation designed to assure the realization of the human right to food and nutrition can be an effective means for enhancing the power of the poor, and thus for reducing their malnutrition.*

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### **To cite this chapter**

**George Kent**, THE HUMAN RIGHTS APPROACH TO REDUCING MALNUTRITION, in *Population and Development: Challenges and Opportunities (OFW)*, from *Encyclopedia of Life Support Systems (EOLSS)*, Developed under the Auspices of the UNESCO, Eolss Publishers, Oxford, UK, [<http://www.eolss.net>] [Retrieved December 7, 2005]