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**CHILDREN’S RIGHT TO GOOD NUTRITION**

Human rights should be viewed as dynamic and be interpreted and updated from time to time. This essay reviews the current situation regarding young children’s right to good nutrition and suggests steps for further development. There are many issues that demand attention, including some that result from the changing landscape of children’s nutrition. To illustrate, since the Convention on the Rights of the Child came into force in 1989, infant formula marketing and use have expanded globally. We can expect sharply increasing use and possibly commercialization of human milk through milk banks and wet-nursing. Questionable innovations, such as highly processed and overly sweetened foods designed for children can put their health at risk. Positive innovations such as better nutrition education can fail to reach families that need them most. To organize a comprehensive approach to addressing the issues, this essay calls on the countries of the world to negotiate a new Optional Protocol on Children’s Nutrition, to be linked to the Convention on the Rights of the Child.

**RIGHTS-BASED SOCIAL SYSTEMS**

Rights-based social systems are described in this section first as an abstract form, and the global human rights system is then described as one concrete manifestation of that form. The human right to food in particular is then discussed in the following section.

As I have argued elsewhere, in any well-developed rights system there are three major roles to be fulfilled: the *rights holders*, the *duty bearers*, and the *agents of accountability* (Kent 2005, 63-66). The task of the agents of accountability is to make sure that those who have the duties carry out their obligations to those who have the rights. Thus, to describe a rights system, we need to know:

1. The nature of the *rights holders* and their rights;
2. The nature of the *duty bearers* and their obligations (duties) corresponding to the rights of the rights holders; and
3. The nature of the *agents of accountability*, and the procedures through which they ensure 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.

Rights imply entitlements, which are claims to specific goods or services. Rights are, or are supposed to be, *enforceable* claims. There must be some sort of institutional authority to which rights-holders whose claims are not satisfied can appeal to have the situation corrected. Enforceability means that the duty bearers, those who are to fulfill the entitlements, must be obligated to do so, and they must be held accountable for their performance.

A clear distinction should be made between having a right and having that right realized. If I pay you to paint my garage, I have a right to have it painted. Whether or not that right is in fact realized (fulfilled) is another matter.

Accountability requires institutional arrangements, specific agencies to carry out specific functions. Accountability agencies such as police departments or perhaps departments of health have two distinct phases in their operations. One element is *detection* to determine whether there is deviation from the standard, and if so, in what degree. The second is *correction* through which something is done with the information obtained to restore the behavior of the duty bearers to the range of acceptability.

An accountability agency assesses the performance of the duty bearers against the established standards. It informs the duty bearers of those assessments in order to guide them toward improving their performance. In some cases the accountability agency might also have the power to impose sanctions of different types. However, in many cases they function on the basis of "constructive dialogue"—persuasion rather than coercion. In some cases detecting and reporting on the deviation to the duty bearers may be sufficient to induce them to correct their actions.

While there can be many different mechanisms of accountability, the most fundamental is that available to the rights holders themselves. Individuals who fail to get what they are entitled to should have means available to them for pressing their claims. Rights holders must know their rights, and they must have appropriate institutional arrangements available to them for pursuing the realization of those rights. Parents and other caregivers should know and be enabled to demand fulfillment of their own rights and also the rights of the children under their care. It is through these remedies that claims become enforceable.

Where there are no effective remedies, there are no effective rights. Having rights that are enforceable means recognizing that people should have specific powers to make claims on the world in which they live. Rights holders should be able to act to ensure they get what they are supposed to get.

People sometimes use the word *rights* as shorthand for *human rights*. That is unfortunate because there are many different kinds of rights: property rights, contract rights, consumer rights, etc. A hospital may have a patients’ bill of rights, and prisoners may have their own rights, whether established by the local institution, the local government, or the national government. The international human rights system is one concrete manifestation of the generic form of rights-based social systems. In settings such as clubs, schools, prisons and hospitals, responsibility for implementation would rest not with a government but with the institution's administration.

*Human* rights are described in international human rights agreements. All current agreements are available through the Office of the High Commissioner for Human Rights (OHCHR 2019a). The International Bill of Human Rights is comprised primarily of the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocols associated with them (OHCHR 2019b). All major human rights agreements are available through the OHHCR (OHCHR 2019c).

The term *human rights* is reserved for those rights that are universal and relate to human dignity. Where people have human rights, their governments and other institutions are obligated to do specific things to further human dignity. Human rights are universal, by definition. They are mainly, but not exclusively, about the obligations of national governments to people living under their jurisdictions. While human rights are universal, they do allow some latitude for differing interpretations, depending on local circumstances. Local rights in sub-national jurisdictions apply do not have to involve the national government and are not universal, so they are not *human* rights. They might reflect local interpretations of the global human rights set out in the global treaties.

For most human rights, most of the time, the primary duty bearers are states (countries), represented by their national governments. On signing and ratifying human rights agreements, they accept that duty, and commit to modify their national laws as necessary to conform with their duties under the agreement.

This means the primary accountability is that of national governments to the rights holders under their jurisdiction. The primary institution for hearing complaints about alleged violations of one’s human rights may be national judicial systems, but there might be other sorts of arrangements as well, such as public hearings.

**THE RIGHT TO FOOD**

Historically, national and international responses to food supply problems have been based on compassion and the argument that reducing malnutrition can benefit the society as a whole. These responses have ranged from small local feeding programs to large-scale international actions involving the United Nations Children’s Fund, the World Bank, the World Food Program, the Food and Agriculture Organization of the United Nations, and many nongovernmental organizations. Now, however, there is increasing recognition that access to food is a human right, and thus there is an obligation under international law to ensure that all people get the food they need.

Soon after the conclusion of World War 2, a global effort was undertaken to establish a strong and widely accepted legal basis for all human rights. The project was formally launched with the agreement on the Universal Declaration of Human Rights in 1948. It mentioned the right to food in the context of the broader human right to an adequate standard of living. Article 25, paragraph 1 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.

The concept also appeared in the *International Covenant on Economic, Social and Cultural Rights*, which came into force in 1976. The first article says, “In no case may a people be deprived of its own means of subsistence.” In addition, article 6 says, "Every human being has the inherent right to life.” This clearly implies the right to adequate food and other necessities for sustaining life. The right to an adequate standard of living was elaborated in article 11:

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 to the continuous improvement of living conditions.

The article is explicit about food, clothing and housing, but it also implies the right to fulfilment of other needs that are addressed in other parts of the covenant and other human rights instruments.

The right to food was asserted the *International Covenant on Economic, Social and Cultural Rights*, which means, at least in principle, that it is creates binding obligations on all countries that have signed and ratified the Covenant. However, the meaning of right was not spelled out until May 1999 when the United Nations Committee on Economic, Social and Cultural Rights issued its document on *Substantive issues arising in the implementation of the international covenant on economic, social and cultural rights: General comment 12*, sometimes referred to as General Comment 12 or GC12 (United Nations. Economic and Social Council 1999)*.* It is an authoritative contribution to international jurisprudence.

GC12's paragraph 6 presents the core definition:

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.

GC12 begins by citing the foundation of the legally binding human right to adequate food in article 11 of the International Covenant on Economic, Social and Cultural Rights. It draws a distinction between the reference in the first paragraph of that article to an adequate standard of living, including adequate food, and the second paragraph of that article, which calls for ensuring "the fundamental right to freedom from hunger and malnutrition.” GC12 says that "more immediate and urgent steps may be needed to ensure" the fundamental right to freedom from hunger and malnutrition. Thus, hunger and malnutrition signify more acute, more urgent problems than are indicated by inadequate food in itself. The distinction is addressed again in GC12's paragraph 6:

The *right to adequate food* will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.

Paragraph 14 summarizes the obligations of States as follows:

Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

Paragraph 15 draws out the different kinds or levels of obligations of the State:

* respect - "The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access."
* protect - "The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food."
* fulfil (facilitate) - "The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security."
* fulfil (provide) - "Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters."

Or, more simply,

* *Respect* means do no harm to others.
* *Protect* means prevent harm to others by third parties.
* *Facilitate* means help others to meet their own needs.
* *Provide* means meet others needs when they cannot do that themselves.

*General Comment 12* also discusses issues of implementation at the national level, framework legislation, monitoring, remedies and accountability, international obligations, etc.

GC12 highlights the importance of dignity, a key consideration in all human rights work. Its paragraph 4 says:

The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.

Paragraph 6 says:

The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.

Simply delivering prepackaged meals in the way one might deliver feed pellets to livestock cannot fulfill the right. That sort of approach would be incompatible with human dignity. Delivering such meals might be sensible in a short-term emergency, but it cannot be the means for realizing the human right to adequate food over the long run.

GC12, published in 1999, was a major step in the articulation of the right to food. Another major step was taken in 2005 when the executive governing body of the Food and Agriculture Organization of the United Nations adopted *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, on November 23, 2004 (FAO 2005). The text augments international human rights law relating to the human right to adequate food, showing that there are different ways in which the obligations described in that law might be fulfilled. Human rights law specifies what the parties *must* do, their obligations, while the Voluntary Guidelines talks about what they *could* do to fulfill those obligations.

As mentioned earlier, for most human rights, the primary duty bearers are the states, represented by their national governments When states become parties to international human rights agreements, they are expected to elaborate their understandings of those obligations by spelling them out in their own national law. There is a positive obligation to do this. In the *International Covenant on Civil and Political Rights*, for example, article 2, paragraph 2 says:

Where not already provided for by existing legislative or other measures, each State Party to the prevent 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.

Human rights law and principles are intended to be universal. This can be accomplished only by describing the rights in rather abstract form, leaving room for interpretation at national and sub-national levels. Specificity is achieved through the adoption of national law designed to support implementation of global human rights at the national level. *General Comment 12* speaks about this in terms of the formulation of broad *framework law* on the human right to adequate food:

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 (General Comment 12, para 29).

Thus, a new approach to the food issues has emerged, based on the premise that there is a human right to food (Lambek 2018). It continues to evolve. The FAO website at <http://www.fao.org/right-to-food> tracks the latest developments.

**CONVENTION ON THE RIGHTS OF THE CHILD**

In the Convention on the Rights of the Child, which came into force in 1989, two articles address 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."

Even if the human right to adequate food had not been asserted explicitly in international human rights law, it is strongly implied in provisions such as those asserting the right to life and health, and the requirement in the *Convention on the Rights of the Child* (in article 24, paragraph 2a) that States Parties shall "take appropriate measures to diminish infant and child mortality.”

As described above, the international community has taken major initiatives to develop agreed understandings with regard to the right to food. Global meetings and non-binding international declarations and resolutions have helped to shape the emerging international consensus on norms regarding the human right to adequate food.

While there have been remarkable advances in development of the right to food, difficulties remain. Some problems are shared with many other rights, such as the weakness of the recourse mechanisms available to rights holders, and the simple fact that the entire human rights project has not achieved as much as it supporters have hoped. There is also the question of external obligations. Much of the discussion about human rights focuses on the obligations of national governments to people under their jurisdiction. That leaves open the question of what obligations nations have, or should have, to people elsewhere (Kent, ed. 2008). For example, should there be a legal obligation to provide international humanitarian assistance under some conditions (Kent 2013?

The International Baby Food Action Network and the Geneva Infant Feeding Association issue periodic reports on developments in the global agencies relating to children’s nutrition (IBFAN-GIFA 2018).

**CHILDREN’S NUTRITION ISSUES**

The global right to food campaign that emerged in the 1990s has given little attention to the distinctive nutritional needs and the distinctive vulnerabilities of infants and young children. The Convention on the Rights of the Child had little to say about nutrition. There are many issues that need to be addressed, and some newly emerging. Here are a few examples:

*Rights to Breastfeed and to be Breastfed*

If infants have a right to be breastfed, does that mean their mothers have an obligation to breastfeed? Should governments require reluctant mothers to breastfeed? What does it mean with regard to the parents’ rights and obligations? What does it mean with regard to society’s obligations (Bar-Yam 2003; Kent 1998; 2001; 2004; 2006; 2007; 2015; 2017a)?

*Support for Families*

New mothers have special needs including infant feeding support services, paid leave from work and fair information about feeding methods and other aspects of child care. The human rights treaties say little about these things. The International Labour Organization has supported a global Maternity Protection Convention (Revised) 1952 along with numerous of revisions and recommendations over the years (ILO 2018). The ILO has also undertaken relevant studies and has made strong recommendations (e.g., Addati, Cassirer, and Gilchrist 2014). It would be useful if the ILO’s work was coordinated with the broader development of human rights relating to children’s nutrition.

*The International Code of Marketing of Breast-milk Substitutes*

The Code, adopted by the World Health Assembly in 1981, and the subsequent related resolutions are intended to limit the aggressive marketing of infant formula by the manufacturers (Barennes et al. 2016). It should be updated and placed explicitly into the international human rights framework. In this process, it should be recognized that not only manufacturers and sellers, but also governments, can violate the spirit of the Code (Kent 2017b; 2017c).

*Industry Participation in National and Global Policymaking*

There is growing concern about the interference of the food industry in policymaking in national and global policymaking (Bass 2018; TRT World 2018). This is especially important with regard to infant formula and other baby foods, which can be highly profitable (Khayatzadeh-Mahani, Ruckert, and Labonté; Koehn 2018). The pursuit of private wealth leads to aggressive marketing of foods for children, which can compromise their health (UNICEF 2018; WHA 2016; WHO 2017). There is particular concern about the marketing of foods *to* children (Granheim, Vandevijvere, and Torheim 2018; Hadsley and Reeve 2018).

Childhood obesity was not a major concern when the Convention on the Rights of the Child came into force in 1989, but has become an issue in many countries, at every income level. Also, child obesity has become a major factor in the increase of non-communicable diseases, NCDs, during childhood and continuing on into adulthood. It is largely due to the aggressive marketing of foods, especially highly processed foods. The human rights approach could help to bring coherence to the many different approaches to dealing with child obesity and the related NCDs (Garde, Gokani, and Friant-Perrot 2018).

*Human Milk Issues*

When women provide their milk to be fed to infants of other women, it is commonly referred to as human milk. It is sometimes called donor milk but often there are payments for it. For this reason I refer to the women as milk providers, not donors. The exchange of human milk can be arranged through milk banks or through milk sharing. Sharing is based on direct contact between the woman providing her milk and the caretaker of the infant who is to receive it, with no intermediate banking. The most common form of sharing is wet-nursing, but modern forms of sharing are often arranged in other ways, such as advertising through the Internet.

The awareness of the need to update human rights law to take account of the increasing systematic exchange of human milk is beginning to emerge (Arnold 2006). Some concerns are about risks to the health of the infants and the women who might be affected. Some are economic. There is the possibility of exploitation of the women who provide their milk, whether as donors or for compensation of some kind. There are debates about what types and what levels of compensation would be appropriate.

Modern human milk banking has been devoted primarily to serving the needs of critically ill infants, especially those who are born prematurely or are seriously underweight and are being treated in hospital neonatal intensive care units. Some milk banks are also offering their banked milk to other infants (23ABCNews 2018; LaVenture 2018). I advocate broadening the reach of milk banks so that more infants can benefit from their services (Kent 2018a).

*Research Issues*

Parent’s right to good information about the qualities of their infant feeding alternatives should be spelled out. More research is needed on how different methods of feeding infants compare in terms of their impacts, primarily on the health of the infant, but also on the health of the mother and the economic situation of the family. There is a need to somehow find adequate funding and at the same time ensure that the research is reasonably objective. While there seems to be a great deal of funding for research serving commercial interests, there seems to be comparatively little to support the interests of the children themselves, especially with regard to their health. Often the research supporting commercial interests shows little evidence of interest in health impacts (Tanmay 2018). The infant formula industry is growing rapidly, based large on promoting its use in less developed countries (Baker et al. 2016). The economic benefits are closely tracked by the industry, but no global agency is watching the health impacts. There should be much more systematic monitoring of the introduction of infant formula, and special additives to infant formula, to estimate their health impacts (Kent 2015).

*Rights to Inputs or Results?*

One issue that remains unsettled is the terminology: what exactly is the right to food? How can it be determined if the right is fulfilled? If it is a right to adequate food, what is the meaning of adequate?

The Food and Agriculture Organization of the United Nations publishes regular annual reports on The State of Food Insecurity in the World, but beginning in 2017 it changed the title to The State of Food Security and Nutrition in the World (FAO 2018). This reference to nutrition signals an important shift. The focus has been on the right to *food*, but clearly the underlying objective is to achieve good *nutrition status*, the main outcome of interest. Food is the input to the human body, but the important thing is the result, the body’s nutrition status. Children right to food means they should have enough food to live well. Anything less means the child’s right have been violated.

More attention should be given to the idea that people, especially children, have a right to good nutrition. The distinction here is that between inputs and outputs of a process, between efforts and results. It is like the difference between teaching and learning. The fact that you go through a lot of teaching doesn’t always mean you have done a lot of learning.

There could be a shift toward ensuring rights to particular outcomes. For example, the basis of the right to food could be shifted from specifying what children must be given to eat to instead (or also) establish a right to particular outcomes. To illustrate, children could be given a right to be within the normal weight range for their age and gender, and assured of services to correct the situation if they are outside the normal range. The services could include changes in the food and also in the health services that are provided, based on assessment of individual cases.

On the basis of the fundamental right to life, all children should be viewed as having a right to the food they need to keep alive and well. Anything less means their rights have been violated, and those responsible—including governments—should be held accountable for that.

Ideally, there should be legal limits to the extent to which we allow young children to die of malnutrition (Moitra 2018). It could be arranged, if the will is there (Kent 2018b).

**STRENGTHENING CHILDREN’S RIGHT TO GOOD NUTRITION**

The global community has done a great deal since the early 1990s to develop the concept of the right to food. However, little attention has been given to its meaning for children, despite their distinctive needs and high vulnerability. The major issues relating to children’s nutrition could be brought into sharper focus by calling on the countries of the world to negotiate a new Optional Protocol on Children’s Nutrition, to be linked to the United Nations Convention on the Rights of the Child (Kent 2016). That effort at the global level could guide the formulation of stronger rights systems relating to children’s nutrition at the national level.

The Convention on the Rights of the Child already has two Optional Protocols associated with it, one on the involvement of children in armed conflict, and another on the sale of children, child prostitution, and child pornography. Their forms could be used as a basis for drafting a new Optional Protocol on Children’s Nutrition. Working under the auspices of the United Nations General Assembly, the nations of the world could negotiate a draft. The drafters could draw from the many sources of sound principles relating to children’s nutrition such as the International Code of Marketing of Breast-milk Substitutes, the Global Strategy for Infant and Young Child Feeding, the Innocenti Declaration, and the Baby-Friendly Hospital Initiative. Ideas from many other agencies and documents, now scattered, could be pulled together.

Work toward the drafting of a new Optional Protocol on Children’s Nutrition should be coordinated with the relevant work of the International Labour Organization, mentioned above. It should also be coordinated with the development of nutrition-related-rights in the Convention on the Elimination of all Forms of Discrimination Against Women (Galtry 2015a; 2015b). Perhaps CEDAW should have a linked Optional Protocol on Infant Feeding that examines the roles of both parents in feeding their children. It could also describe the types of support parents should have.

The Optional Protocol on Children’s Nutrition could be limited to broad statements of principles and linked to a detailed General Comment on Children’s Nutrition. It could be modelled on General Comment 12 on The Right to Adequate Food. General Comments provide authoritative interpretations of the law in human rights treaties.

When a draft for the Optional Protocol was ready, the General Assembly would vote on it. If a majority agreed, it would be adopted by the General Assembly. The executive branches of the national governments of the world would then be invited to sign the Protocol, and then have their national legislatures or other appropriate bodies ratify it, in the normal procedure used to formalize a nation’s agreement to international treaties.

Ratification would indicate the nation’s acceptance of the Protocol and its commitment to conform its national laws to the Protocol. Following ratification, its broad principles would be given concrete form through the adoption of appropriate national laws. The ratification would signify the nation’s willingness to be held accountable with regard to the principles stated, and the new national laws would be the means by which each nation’s leaders follow through on their nation’s commitment.

This process would not generate quick solutions to the issues relating to the nutrition, but it would launch much-needed systematic examination of the issues. The process could lead to substantial positive impacts even before the document is finalized. It could lead to widely agreed guidelines and regulations for ensuring that children everywhere are well nourished, based on the clear recognition that all children have the right to be well nourished.

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