Realizing international children’s rights through implementation of national law

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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.

It is important to assure that human rights are clearly articulated in national law. 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.¹ There is not much use to arguing that a right exists and has not been realized when what is really needed is new legislation to clearly establish the existence of the right.

When states undertake obligations to honour particular human rights by becoming parties to international human rights agreements, they are expected to elaborate their understandings of those obligations by spelling them out

¹ Consider, as an example, John T. Cook and J. Larry Brown, “Children’s Rights to Adequate Nutritious Foods in the Two Americas,” Food Policy, Vol. 21, No. 1 (March 1996), pp. 11–16. Cook and Brown assert that adequate nutritious food is a basic right, and on that basis assume that it applies 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.
in their own national law. This national law should spell out not only the definitions, but also the means for the implementation of that law. The implementation of that national law then becomes the major instrument through which the human rights are realized.

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. In my view, writing such law means clarifying

a) the individual’s rights,

b) the government’s obligations that correspond to those rights,

c) the government’s response mechanisms including both identification of the agencies responsible for fulfilling the obligations and the procedures through which they are to operate, and

d) the accountability mechanisms that assures that the obligations are honored.

These are the four core components of national human rights law. Implementation of the latter three parts of the law help to assure realization of the rights stated in the first part. This outline can be used by any nation concerned with drafting particular human rights law.

The idea of model law

Many legislatures use the established laws of other nations as suggestive models, adapting them as they see fit. However, international organizations, both governmental and nongovernmental, can promote the realization of human rights by helping national governments draft appropriate national laws. One good method for doing this is to prepare a model law that suggests possibilities that can then be adapted as desired by any interested nation’s legislators. The model law could suggest options based on a survey of current national practices around the world and on analyses made by specialists in the field.

Following the formulation just proposed, this generic model law could be organized into four main section, the first on articulating the rights, the second on the corresponding obligations, the third on the response mechanisms, and the fourth on the accountability mechanisms.

Model laws can be comprehensive and all-encompassing. For example, one could be drafted for a broad range of human rights such as those described in the International Covenant on Economic, Social and Cultural Rights. Or models laws could be designed to address specific areas of special concern. In my paper on “Realizing Infants’ Nutrition Rights” I describe the model law
that has been drafted to help implement the *International Code of Marketing of Breastmilk Substitutes*, and suggest how it might be adapted to fit more systematically into the human rights framework. Here, in the following sections, I will suggest some broad considerations that should go into the drafting of a model law designed to assure realization of nutrition rights.

Any broad model law, such as one on economic, social and cultural rights, could be compartmentalized into focused sections and subsections. One of them could be on nutrition rights. Nutrition rights can be seen as part of a larger array of rights, and nutrition rights in turn could be further subdivided. Other specialists may want to develop model law sections that address particular themes such as refugee nutrition, regulating the marketing of breastmilk substitutes and related products, the promotion of breastfeeding, child feeding in emergency situations, and so on.

Model laws can help legislators shape their own national legislation by systematically drawing on the best experience and analyses around the world. They should be viewed as living documents, to be revised periodically in the light of new experience and insight. Thus, they are never finished. The following sections suggest a beginning and a direction for making systematic use of model laws to help advance the realization of nutrition rights.²

(A) Nutrition rights

Children suffer from several different forms of malnutrition including protein-energy malnutrition (PEM) and specific micronutrient deficiencies, primarily iron, iodine, and vitamin A deficiencies. The focus here is on PEM, which is commonly assessed anthropometrically, that is, in terms of weight compared to the standard for the particular child’s age and gender. It is generally accepted that if a child’s weight is more than two standard deviations below the reference for his or her age, that child should be described as malnourished. By that standard, in developing nations at least 184 million children under five years of age are seriously underweight.³

From the mid-1970s to the end of the 1980s there was a decline in the proportion of children in developing nations who were malnourished, from 42% to 34%, but because of population growth there was an increase in the numbers of malnourished children, from 168 to 184 million. The proportion of children in developing nations who are malnourished has declined, but the


absolute number has gone up. Thus there are now more children on earth suffering from malnutrition than ever before in history.

There have been many different kinds of responses to the problem of children’s malnutrition ranging from small local feeding programs to large-scale international actions involving the Food and Agriculture Organization of the United Nations, the United Nations Children’s Fund, the World Bank, the World Food Program, the World Health Organization, and many nongovernmental organizations. A new approach is now emerging, centered on the recognition that adequate nutrition is a human right.

The right to adequate nutrition (or right to food) concept has a long history. In 1948 the *Universal Declaration of Human Rights* asserted 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 . . . .” Article 11 of the *International Covenant on Economic, Social, and Cultural Rights*, which came into force in 1976, 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 was adopted by the United Nations General Assembly in 1989 and 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 . . . .” and shall take appropriate measures “to combat disease and malnutrition” through the provision of adequate nutritious foods, clean drinking water, and health care. Article 27 says that States Parties “shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.” In this context, “adequate nutritious food” can be understood as meaning adequate for the achievement of the highest attainable standard of health.

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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.

Rights can specify something to which individuals are entitled or something to which groups are entitled. Rights to economic development or to self-determination are usually seen as group rights. I take the view that nutrition rights always should be understood as individual rights. There may be an intermediate target saying, for example, that within five years at least eighty percent of children should be adequately nourished (by some specified measure). But the goal is that all children are well nourished.

The individual holder of the right is far more empowered when he or she has a claim that can be made individually rather than on the basis of some sort of group average or trend. The *Convention on the Rights of the Child* was named in that way precisely to make the point that it refers to the rights of every single child, and not just to group averages. Assuring that most children are well nourished is not good enough.

It is important to distinguish between having good nutrition and having a *right* to good nutrition. Nutrition rights require action by government to protect against the occurrence of malnutrition and to remedy it if it does occur. You can’t tell how much protection people have against, say, fire, by asking people if their houses are on fire at the moment. Similarly, the nutrition status of a population at any given moment does not say anything about whether they have a right to good nutrition. To assess the quality of the protection, one has to look into the institutional arrangements that are in place, ready to act if and when disaster threatens. The fact that most people in any given country are well fed tells us nothing about the situation of marginalized people, and it says nothing about what might happen in the future if wealth declines or government priorities change. In the United States, for example, most people are adequately nourished, and there are major programmes in place to help those who may be malnourished, but there is nothing in national law that establishes a right to good nutrition.

Basic nutrition rights could be formulated quite simply. The focus could be on children who are malnourished or at risk of malnutrition as measured anthropometrically. The degree of malnutrition would be measured by the number of standard deviations by which the child’s body weight is below the
norm for that child’s gender and age. Thus, the law might say the criterion for entitlement to certain enumerated services is that the child must be under six years of age and with body weight at least two standard deviations below standard.5

One good way to concretize rights is to cast them as specific goals.6

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.” Supporting goals specifically related to nutrition were:

(i) Reduction in severe, as well as moderate malnutrition among under-5 children by half of 1990 levels;
(ii) Reduction of the rate of low birth weight (2.5 kg or less) to less than 10 per cent;
(iii) Reduction of iron deficiency anaemia in women by one third of the 1990 levels;
(iv) Virtual elimination of iodine deficiency disorders;
(v) Virtual elimination of vitamin A deficiency and its consequences, including blindness;
(vi) Empowerment of all women to breast-feed their children exclusively for four to six months and to continue breast-feeding, with complementary food, well into the second year;
(vii) Growth promotion and its regular monitoring to be institutionalized in all countries by the end of the 1990s;
(viii) Dissemination of knowledge and supporting services to increase food production to ensure household food security.


6 The idea that rights should be viewed as goals is elaborated in Urban Jonsson, “Nutrition and the Convention on the Rights of the Child,” Food Policy, Vol. 21, No. 1 (March 1996), pp. 41–55 and in his contribution to this journal.
These goals have been endorsed repeatedly, both before and after the World Summit for Children, by many international bodies including the World Health Organization Assembly in 1990, the UNICEF Board Session of 1990, the United Nations Conference on Environment and Development in 1992, and the International Conference on Nutrition in 1992. The International Conference on Nutrition also added two more goals:

To end famine and famine-related deaths; and

To end starvation and nutritional deficiency diseases in communities afflicted by natural and man-made disasters.

The goals have been supported by many nations in their National Programmes of Action prepared in fulfillment of their commitments at the World Summit for Children.

Many nations do not have adequate baseline data for 1990, and in any case have little hope of achieving the goal of reducing severe and moderate malnutrition to half the 1990 level by the year 2000. Nevertheless, the basic form of the language can be retained, with a fresh start and a new commitment. Any nation could reasonably take as its primary nutrition goal the reduction of severe and moderate malnutrition among under-5 children by half over the next ten years.

Imagine that the nation’s commitment to the goal of the reduction of severe and moderate malnutrition among under-5 children by half over the next ten years is so serious that it is willing to assure its citizens that they had a right to its achievement. Imagine that the government was willing to take on the achievement of this goal as a real obligation, one on which it could be called to account for its performance. What would this imply? A substantial planning effort and commitment of resources would have to be made to achieve the specified reduction of malnutrition within the stated time frame. These commitments can be made through appropriate national law.

Of course it may be that the goal just outlined is too demanding, and the government is not willing to make such a firm commitment. Other formulations could be substituted. For example, the government might be willing to make a strong commitment only if it was limited to children under two years of age, or only if it was limited to severe malnutrition, or only if it had twelve years to achieve the goal. The specifics are open to discussion. The point is that, whatever the details of its formulation, one way to interpret nutrition rights is in terms of a firm legal commitment to a specific nutrition goal. Rights can be defined not only in terms of current conditions but also in terms of the direction in which individuals and the society as a whole are heading.

This perspective meshes nicely with the argument that poor countries are not to be excused from realizing nutritional and other economic, social,
and cultural rights on the grounds that they can’t afford it. Instead, there is a positive requirement for *progressive realization* of the goals based on clear plans and the commitment of resources commensurate with the nation’s capacity. In the language of the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*:

The obligation “to achieve progressively the full realization of the rights” requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary, all States parties have the obligation to begin immediately to take steps to fulfill their obligations under the Covenant.7

Thus, if children have a right to good nutrition, nations must have the goal of assuring that all children are well nourished. The goal should be used as the basis for designing a specific goal-directed strategic programme of action. The goal and the strategy should be outlined in the law. One major element of the strategy would be the establishment of specific intermediate targets, typically in terms of particular levels to be reached on specified indicators by definite dates. For example, the government might say that it will reduce the proportion of malnourished children in its population by ten percent within one year, and twenty-five percent within two years. In this approach, the process of realizing rights means pursuing a strategy to reach a goal.

National legislation should be specific about rights and also about the limits of rights. It should be possible to calculate estimates of the likely maximum aggregate cost of realizing the right. This is essential because proposed laws that open the government to potentially unlimited obligations will not be accepted, or if accepted will not be taken seriously.

The task of strategy formulation is discussed further below, in the section on Response Mechanisms.

(B) The obligations

Where some people have rights, others must have corresponding obligations. For internationally recognized human rights, the primary obligations fall on the states that are parties to the international conventions. The governments

representing those states are obliged to act in accordance with the agreements they have made.

Well-crafted human rights law specifies not only the rights but also the corresponding obligations. States have four different kinds of obligations with respect to nutrition and other sorts of economic, social and cultural rights:

States must, at the primary level, respect the resources owned by the individual, his or her freedom to find a job of preference and the freedom to take the necessary actions and use the necessary resources – alone or in association with others – to satisfy his or her own needs.

At a secondary level, state obligations mean to protect the freedom of action and the use of resources against other, more assertive or aggressive subjects.

At the tertiary level, the state has the obligations to facilitate opportunities by which the rights listed can be enjoyed.

At the fourth and final level, the state has the obligation to fulfill the rights. The obligation to fulfill could thus consist of the direct provisions of basic needs, such as food or resources that can be used for food.

These obligations would be interpreted somewhat differently in different situations (e.g., refugees, children, rich countries, poor countries). My paper on “Realizing Infants’ Nutrition Rights” draws out the implications relating to infant feeding.

Governments can do many different things that will enhance the likelihood that their people will be adequately nourished. They can make the economy function smoothly, provide for health and sanitation services, undertake land reform programs, subsidize staple foods, create social security programmes, impose legal obligations on parents, and many other things. They can do various things to promote good nutrition. Such steps are likely to result in adequate nutrition for the majority of the population. However, in my view, there is no firm right unless the government serves as backup, accepting the obligation to meet the need in cases of failure of other more indirect means of meeting it. There is no hard right to adequate nutrition unless the government guarantees to fulfill the need if other means fail. It may not be possible to provide a right to adequate nutrition for all, but it should be feasible at least to some extent for those who are most vulnerable: small children who are clearly malnourished. A government that recognizes the obligation to fulfill nutrition

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rights is also likely to do what it can to respect, protect, and facilitate nutrition rights. The motivation to respect, protect, and facilitate derives directly from the obligation to fulfill.

Nutrition rights can be specified either in terms of specific outcomes (e.g., nutrition status, measured anthropometrically), or in terms of specific processes or services (e.g., every child is assured an intake of at least so many calories per day). Where feasible, it is generally preferable to frame rights in terms of desired outcomes, and then call for appropriate services needed to achieve that outcome. Those services need not be spelled out in detail in the law. The law could say that the government is obligated to provide nutritional services, in accordance with the best professional advice of nutritionists, until the child no longer meets the criteria. Details regarding the exact nature of the services would not have to be spelled out in the main body of the law, but statutes and regulations could be formulated to provide guidance.

The government may find that the most cost-effective means for preventing children from becoming underweight is through establishing a good immunization programme, maintaining effective sewage systems, and educating mothers about family budgeting and food handling. Governments could achieve the required results in different ways, depending on local circumstances.

Very poor nations might limit their commitment to providing service only to malnourished children under five years of age, while others might guarantee to provide services for all malnourished children up to the age of twelve. These details would have to be worked out. The important thing is to establish the principle that vulnerable children are entitled to adequate nutrition as a matter of right.

(C) Response mechanisms

If individuals have particular human rights, then the state has specific corresponding obligations. There should be clearly identified agencies of the state that are called upon to carry out these obligations. The state’s obligations to assure that rights are fulfilled may be carried out in part through its own direct actions and in part by calling upon others – such as corporations, health workers, and hospitals – to carry out certain functions. These agents may have legal obligations imposed on them through national legislation. For example, corporations under a nation’s jurisdiction may be obligated by specific laws that have been adopted. The state may in effect contract out some obligations, but the primary responsibility rests with the state itself.
In describing the response mechanism for particular human rights, it is important to go beyond naming the responsible agencies to also say how they are to operate.

In order to do its job properly, the response mechanism must have a monitoring apparatus to determine when and where government is obligated to act. If the response mechanism doesn’t see a problem it is not going to fix it. Basically, the function of the monitor is to assess the distance and direction from the current position to the goal, and direct the response mechanism toward the goal. The monitoring apparatus can be understood as the means through which the government steers its response mechanism; it corresponds to the eyes of the driver.

Monitoring for steering should be distinguished from monitoring for compliance, described in the followed section. The driver monitors for steering, while the police officer, watching the driver, monitors for compliance. In monitoring for steering, the important thing to know is not where you are in some absolute sense, but where you are – distance and direction – in relation to the goal. In monitoring for compliance, the important thing to know is whether the rules (the laws) are being followed.

The ambiguity in the international instruments regarding the exact nature of nutrition rights is to some extent deliberate because it is left to the national governments, representing the states that are parties to the agreements, to concretize them in ways appropriate to their particular local circumstances. One way to concretize rights is to look at the objectives of currently ongoing nutrition programmes, and adapt their objectives into the nutrition rights framework. The major difference would be that instead of just delivering the usual services, under a nutrition rights framework it would be understood that those who met particular criteria are legally entitled to specific services, and could go somewhere to complain if they did not receive what was due them.

The possibilities can be illustrated by reference to the Tamil Nadu Integrated Nutrition Project (TINP) first launched in India in 1980. TINP could be strengthened through the incorporation of nutrition rights principles. The core modification would be the transformation of some of the services into entitlements. Restating TINP’s criteria for supplementary feeding, for example, might result in a policy saying that within the coverage region:

- Every child 0 to 12 months old who fails to gain at least 300 grams per month for two months is entitled to supplementary feeding, and the child’s parents are entitled to associated educational programmes.

- Every child 12 to 36 months of age who fails to gain at least 300 grams per month for four months is entitled to supplementary feeding, and the child’s parents are entitled to associated educational programmes.
Once begun, feeding is to continue once a day for a minimum of three months.

If a child gains 500 grams or more within three months, supplementary feeding is to cease. If not, the child is to be referred to the health subcenter, and feeding continued until adequate weight gain is recorded.

Of course further specifications would have to be made on the quality and character of the basic ration in feeding, and where and how it is to be obtained. “Adequate weight gain” would have to be defined. It could be described in numerical terms, or be left to the judgment of a health professional, or some combination of criteria might be used. The point here is not to propose a specific service protocol, but to show the form of the language that could be used to frame a protocol of entitlements stating the conditions under which specific services will be provided. People need to know what commitments have been made to them.

With appropriate modifications, current nutrition programmes could remain much the same as in the past, except that clients would be informed that under the specified conditions they had a legal right to claim particular services. If they were turned away, they would know where they could go to complain, and they would have reason to expect that the situation would then be corrected. These rights should be stated in the law and implemented through mechanisms described in the law.

Responses could be designed in the form of nutrition-related programmes already found throughout the world. However, many nutrition programmes operate on the implicit assumption that services are to be provided endlessly into the future, with the supply of solutions in a kind of steady-state equilibrium with the supply of problems. (Even worse, some nutrition programs function autistically, offering the same response regardless of changes in the magnitude or character of the problem.) Instead, it may be wiser to design a goal-oriented programme, as suggested earlier, in the section on Nutrition Rights. The objective would not be to stabilize the problem but to make it disappear.

A decisively goal-directed programme would be based on a clear strategy, that is, the projection of an orderly series of actions that would move systematically toward achievement of the goal. There should be clarity about who is to carry out the actions and what will motivate them to carry the actions out. Over time, there needs to be planning, action, reinforcement of effective action, corrections for off-target action, and frequent re-planning and course correction.

Programmes of action for achieving the goal would be needed at community, district, province, and national levels, with systematic multi-layering. There would be separate programmes and targets for each sub-sector.
In a goal-directed campaign, the monitoring of nutrition status would be carried out not only to measure conditions at particular moments in time but also to assess the effectiveness of the campaign in bringing about changes in that status. Suppose, for example, that the goal was defined in terms of reducing the proportion of children under three years of age whose weights were excessively low. Then, for the purposes of the campaign, any nutrition-related program would be viewed as useful only to the extent that it contributed to reduction of that figure. Resources would be shifted toward those programmes that were demonstrably more effective. Of course there could be other nutrition-related programmes outside the campaign, serving other purposes.

In this goals-as-rights approach, honouring nutrition rights means making a serious commitment to very specific nutrition goals and then honoring the commitment by devoting the resources and taking the actions that are required to fulfill that commitment. As indicated in the following section, accountability is based on monitoring to see if good progress is being made toward achievement of the goal. If the programme is not “on track” there should be some legal mechanism for calling the government to account and pressing it to take the action that is required.

National campaigns for ending malnutrition would have to be planned very carefully. Participants in the initial planning meeting should include officials from the relevant ministries and government agencies, representatives from non-governmental organizations concerned with law, human rights, children, and nutrition, and representatives of key governmental and non-governmental international organizations. All will have roles to play in the effort. The purpose of the campaign would be to put an end to malnutrition among the nation’s children through the establishment and effective implementation of clear laws regarding children’s nutrition rights. The law should mandate the planning process as well as the commitment of resources needed to assure the plan’s fulfillment.

The planning process could follow the Assessment-Analysis-Action approach proposed by Urban Jonsson. The actors “assess the situation, analyse the causes of the problem and design and implement resource-relevant actions, followed by a re-assessment (monitoring) better analysis and more effective actions”.9 To design a national programme for the realization of children’s nutrition rights, the work would begin with a review of the existing situation with regard to children’s nutrition rights, followed by goal-setting, and then the formulation of a strategy for meeting the goals.

Goal-setting should be informed by the nutrition goals set out in nation’s Plan of Action for Children and other relevant national and international documents. Alternative formulations should be considered, and then one or more selected as appropriate and feasible to be elevated to the status of a right in the law.

The implications of adopting a particular nutrition goal as a right should then be worked out in terms of the strategy, the programme of action that would lead to its achievement. What management structure would work to line up the many different kinds of resources that must be brought to bear? What monitoring and steering mechanisms would keep the effort on track? What mechanisms of accountability should be devised? The legislature should not be presented only with a vague goal, but should be asked to make a firm commitment to the complete package, the goal together with the programme of action needed to achieve the goal.

A radical approach to strategy formulation could be based on semi-privatization of the effort. If the central government decides it really wants to end malnutrition among children it could have that effort managed by a semi-private organization. The operators of this “Nutrition Rights Corporation” would have a performance-based contract such that they would be fully compensated only if they were successful. The government could specify the goals and set out detailed groundrules, and then put out a formal request for proposals for providing the service, in effect putting the task out to bid. This method could be tested and refined in two or three provinces or districts with strong support from the central government. In time, a full multi-layered system could be established, with separate management corporations for each province, all functioning under the guidance of the central headquarters office. While the goal-setting and operational guidelines would be established centrally, much of the planning and execution could be decentralized and highly participatory. The bidders would have room for creativity regarding these issues. For example, the strategy could be one of empowerment, based on facilitation of local efforts to systematically assess, analyze, and act on the malnutrition problem.

Thinking in this way suggests the sort of business-like thinking that is needed. Close attention must be given to the “bottom line” of achieving reductions in malnutrition, much as any business venture must give close attention to the bottom line of profitability. Clear and strong incentives need to be established to assure that the goal is pursued efficiently and effectively.

Many nations have excellent nutrition programmes “on the ground” and devote substantial resources to the alleviation of malnutrition. However, the purposes of these programmes vary a great deal. As any military commander knows, assets on the ground become more effective if they are coordinated
and goal-directed, all pointing in the same direction. Any nation’s resources for alleviating malnutrition could be used more efficiently and effectively if they were organized in a goal-directed programme based on clear nutrition rights.

As suggested earlier, in designing the response mechanism, it is generally wise to begin with existing nutrition programmes, and find ways to adapt them so that they effectively assure the realization of nutrition rights. This is generally more feasible, both economically and politically, then designing entirely new agencies.

(D) Accountability mechanisms

Like other organizations, governments sometimes fail to accomplish what they say they will accomplish. Sometimes the intention is not really there. Sometimes, even with the best of intentions, things go wrong. While some failures can be forgiven or ignored, human rights carry specific legal obligations, things government must do. There should be systems of accountability to assure that these obligations are in fact honoured.

An accountability (or compliance) mechanism watches the response mechanism to make sure it does its job properly. It is located outside the response mechanism and has its own separate monitoring procedures, monitoring for compliance rather than for steering. In a well-designed system of rights there will be specialized government agencies (such as performance auditors or inspectors general) to assure the accountability of response agencies. In the United States, for example, there is a compliance monitoring procedure designed to assure that the states provide disabled children the educational services to which they are entitled under the law. If a government wants to assure that it will always be attentive to the concerns of children, it could hire an independent Children’s Ombudsman to handle complaints against the government.10

The implementation of human rights is ultimately the responsibility of the national government, but it is also the concern of the community at local, national, and international levels. Interested groups both within and outside government can watch the performance of service delivery agencies and call them to account as necessary, even if there is no explicit provision in the law for their playing that role. International governmental organizations such as the United Nations human rights treaty bodies also oversee the implementation of human rights.

Many different kinds of measures can be used to provide accountability.\footnote{Bernard Rosen, \textit{Holding Government Bureaucracies Accountable}, Second Edition (New York: Praeger, 1989); Paul C. Light, \textit{Monitoring Government: Inspectors General and the Search for Accountability} (Washington, D.C.: Brookings, 1993).} In some cases the use or threat of use of the judicial system to punish violations can be a potent means for keeping implementing agencies on track. In other cases it may be more appropriate to use “constructive dialogue”, the primary tool of the United Nations human rights treaty bodies. Other more political means, such as public information campaigns through the media, may be used.

In general, if the response system threatens to go off the tracks, the accountability mechanism sounds an alarm and takes action to correct it. Accountability means there are independent observers of the response mechanism that have some capacity to take or call for corrective action if the system is not operating well. There should be explicit standards against which the accountability agency evaluates the performance of the implementing agency. In human rights work, those standards are the human rights that are spelled out in the law.

One form of accountability mechanism, essential in any human rights system, is giving aggrieved parties themselves or their representatives a procedure for complaining and getting some remedy. Human rights in the law rests on the principle \textit{ubi jus \textit{ibi remedium}} – where there is a right there must be a remedy. Article 8 of the \textit{Universal Declaration of Human Rights} asserts that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Human rights should be articulated in the law together with a description of the means of legal recourse that are available if even a single individual’s rights are violated. Those who feel their rights have not been honoured should have means for pressing their claims. This legal recourse is essential for assuring the government’s compliance with the law. A strong human rights system is based on (1) clear entitlements, and (2) effective means of legal recourse for those who believe they have not received that to which they are entitled.

Social service programmes usually reach only some of the needy some of the time. Governments may boast about the number of individuals served, but they tend to be silent about the number of people who are needy but are not served. Accountability means paying attention to that shortfall. The obligation is not simply to provide some service, but to end the problem of malnourished children. Any government that really wants to do this should be willing to make itself accountable for meeting that challenge.
Assurance that services will be provided results not simply from the creation of service programmes (e.g., school lunches, nutrition education programmes) but from institutionalized mechanisms to establish accountability. There are many ways in which the nutrition rights response system could go wrong. For example, income transfers to the family may be diverted to uses other than meeting the needs of the child. Government-funded school lunch programmes that feed all public school students may feed many who don’t need assistance, and thus may be unnecessarily costly. People who are technically entitled to a particular benefit may not know about it or may have difficulty accessing it. A child who is fed at a centralized feeding programme may for just that reason get less to eat at home. An effective system would notice these problems, and make constant course corrections to navigate the system toward the goal of ending children’s malnutrition. The design of the system for assuring children’s right to adequate nutrition would have to be refined over time until it could be shown that it really works.

In a negative approach to accountability, a government agency assigned the duty of ending malnutrition could be sued or fined in some way for each malnourished child that is discovered, thus increasing its incentive to end malnutrition. In a more positive approach, the government could give designated nongovernmental organizations an award or “bounty” of a small sum of money for each needy child they find and present for services. This sort of positive approach would engage nongovernmental organizations in a partnership with government in support of their larger common purpose.

Conclusion

Many different kinds of legislation may be adopted in relation to food and nutrition issues, for feeding programmes, fortification, food quality control, trade practices, and so on. However, in most such legislation the consumer has no specific rights. 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 becomes a form of human rights legislation only when consumers have specific, explicitly described entitlements under the law.

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

The nutrition rights approach does not replace existing programmes for alleviating malnutrition, but rather it builds on and uses them. A nutrition rights approach can make the usual kinds of programmes more efficient and effective by making them more decisively goal-directed. Under such an approach, government no longer feeds people just to feed them. Many nations already have substantial nutrition programmes 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.

Nutrition rights have been used here to illustrate how human rights of every kind should be spelled out in well-crafted national law. The law should specify the rights and also the corresponding obligations. 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.
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