

THE NUTRITION RIGHTS OF REFUGEES



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1. GLOBAL GOVERNANCE

The question raised here is, *What are the obligations of the international community with regard to humanitarian assistance?* While the question applies with regard to all sorts of humanitarian assistance, including responses to disasters, genocide, hunger, poverty, etc., it will be explored here primarily with reference to obligations to refugees.

Ved Nanda points out that “States may be willing to assist but they are unwilling to accept obligations to do so. . . . There are no international conventions which require the admission of refugees . . . international law does not specify any obligation on the part of States toward refugees . . . (Nanda).” Here, Nanda points out the absence of the clear obligations of states with regard to refugees. However, the question I have posed asks not about the obligations of particular states (e.g., the state of first asylum), but of the international community taken as a whole.

At its core, the question of governance is: what is it that governments should or should not do? For example, what is it that national governments should be doing to assure physical security, to protect and promote people’s health, to facilitate commerce, to help the needy, and so on? These sorts of questions arise at every level of government. They apply even at the global level. Although there is no global government, as such, there is *global governance*. Global governance is undertaken by the nations of the world through their international activities, often with the support of international agencies that act in their behalf. Thus we can say that global governance is undertaken by and in behalf of the *international community*, even if that community is not precisely defined.

International human rights law can be understood as a project of articulating universally accepted standard of governance with regard to the protection and promotion of human dignity. To illustrate, the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) “recognize the right of everyone to an adequate standard of living for himself and his family . . . (ICESCR, article 11, para. 1). This means that states, and the governments that represent them, have the obligation to act to assure that everyone has an adequate standard of living. The meaning of this concept, and thus the content of the obligations, is elaborated elsewhere in these texts; in the work of the relevant United Nations treaty bodies such as the UN’s Committee on Economic, Social and Cultural Rights; in international conferences; in the legal literature; and in relevant jurisprudence.

Most international human rights law refers to the obligations of states to people within their jurisdictions. Human rights are international in the sense of being universal—applying to all persons. The obligations, however, are primarily domestic, in the relationships between national governments and their own people. International human rights law does speak about some obligations that are “inter—national” in character, but the obligations are mainly “intra—national”. International obligations arise mainly in cases of failure of states to assure the realization of human rights for the people within their jurisdictions.

The guiding principle of this study is that *the international community is subject to human rights obligations similar to those of states*. Thus, if a particular action by a national government would be viewed as a human rights violation, then a similar action by, say, the World Bank, probably should be viewed as a human rights violation as well. International governmental agencies are creations of nation states and act in their behalf. Thus they are subject to much the same obligations as those states (Kent 1994).

The idea that the international community has specific obligations is no more ambiguous than the concept that the state has specific obligations. The “international community”, like the “the state” is a social construct (Soguk). National governments represent states and act on their behalf. In much the same way, international governmental organizations represent and act on behalf of the collectivity of states, the international community. The various specialized organizations at the global level can be viewed as analogous to the specialized ministries at the national level. They are answerable not to some high level executive but to the collectivity of states.

The issue of the international community’s obligations may be seen with special clarity through examination of its obligations with respect to refugees because, by definition, refugees are not under the protection of their home states. My purpose here is to explore this specifically with reference to the nutrition rights of refugees.

2. ISSUES IN REFUGEE NUTRITION

There is a sophisticated Refugee Nutrition Information System in place, established in 1993, that is managed by the United Nations’ Administrative Committee on Coordination/Sub-Committee on Nutrition (RNIS). It provides an analytical framework and good data on nutrition status that can be used as the basis for nutrition rights work. Overviews of refugee nutrition are provided in the Sub-Committee’s periodic reports on *The World Nutrition Situation*.

While these data clearly show that refugees suffer from serious and sustained nutrition problems, they do not lay out all the dimensions of the problem. In one refugee camp, for example, it was found that unaccompanied minors had very low cash incomes, and therefore were obliged to sell a portion of their rations in order to obtain other needed items. The result was that many of them faced acute hunger (Save).

Consider these observations from a *Los Angeles Times* story entitled, “Relief Camps for Africans, Kosovars Worlds Apart” (Miller):

The outpouring of aid in recent weeks for ethnic Albanians ripped from their homes in Kosovo has stunned humanitarian groups, which continuously fight for dollars for refugees in Africa.

For many of these workers, the response to the Balkan crisis has highlighted the enormous difference between the newly sprouted camps in Europe and existing facilities in Africa.

And this difference, in turn, has raised uncomfortable questions about the reasons for it--a complex mix, according to humanitarian groups, of logistics, culture and race. . .

Consider:

The Office of the U.N. High Commissioner for Refugees is spending about 11 cents a day per refugee in Africa. In the Balkans, the figure is \$1.23, more than 11 times greater.

Some refugee camps in Africa have one doctor for every 100,000 refugees. In Macedonia, camps have as many as one doctor per 700 refugees--a ratio far better than that of many communities in Los Angeles.

Refugees at most camps in Albania, across the border from Kosovo, have readily available clean water. In Eritrea, on the Horn of Africa, families as large as 10 are given about 3½ gallons of water to last three days, according to Mary Anne Fitzgerald, a Nairobi, Kenya-based spokeswoman for Refugees International.

The camps in Africa hold as many as 500,000 people. Up to 6,000 refugees there die each day from cholera and other public health diseases. In Macedonia, the largest camp holds 33,000 people. So far, there have been no deaths from public health emergencies such as an epidemic or starvation.

The immense flow of aid to Europe has alarmed some aid agencies, which worry that the attention focused on the Balkans will cut into the food and supplies going to places such as Eritrea and Somalia.

The *Times* article notes the differences in food supplies:

World Food Program officials say both European and African refugees are getting about 2,100 calories a day of food rations. But for the Kosovo Albanians, those calories come in the form of tins of chicken pate, foil-wrapped cheeses, fresh oranges and milk. In some ready-made meals, there is even coffee and fruit tarts. . . .

That contrasts with Africa, where refugees are far less likely to get ready-made meals and have to make most of their food from scratch--a practice reflecting the simpler lifestyles of the area, say U.N. officials. Instead of meals, the refugees are given basic grains such as sorghum or wheat.

"Here in Africa, we see people who have walked naked, without a thread on their back, who don't have a grain of rice," said Nina Galbe, a Nairobi-based spokeswoman for the International Committee of the Red Cross. "With all due respect to the horrors the people of Kosovo have suffered, they are dressed in

their winter clothes; the babies are kept in their blankets. They are not malnourished."

The major issues, then, are the many instances of inadequacy of nutrition services for refugees, and beyond that, the question of whether these services are provided in ways that are fair and just.

3. EXPLANATIONS/JUSTIFICATIONS FOR UNEVEN SERVICES

Having established that there was an enormous difference between the treatment of refugees in Europe and Africa, the *Times*' writers go on to try to understand it:

The most common explanation for the gap in resources is culture. U.N. officials and aid workers say they must give European refugees used to cappuccino and CNN a higher standard of living to maintain the refugees' sense of dignity and stability.

The writers then acknowledge that it may be a matter of racial discrimination:

Others offer a blunter assessment: They say wealthy donors in the developed world and the aid agencies they support feel more sympathy--and reach deeper into their pockets--for those with similar skin tones and backgrounds.

Andrew Ross, a refugee worker who came from Africa to the Balkans last month, called the camps in Macedonia "far superior" to those in Africa.

"What's the difference?" Ross asked. "There's white people here."

Ross, a CARE worker who came to the Balkans from Sierra Leone, said race plays a big role. It's easier for Europeans and Americans to identify with the Kosovo refugees they see on television than with those in remote parts of Africa, he said.

"I may be cynical, but personally I think people see the television and say, 'It's just a bunch of blacks over there,' " he said.

Some suggest that the differences in treatment are both explained and justified by the differences in the refugees' prior living standards:

The primary explanation for the stark contrasts, according to U.N. and aid groups, is the difference between the backgrounds of the refugees on the two continents.

In Africa, where many refugees eke out an existence in seminomadic tribes, the bare provisions of shelter and health care offered by the refugee camps are a step up in life for many.

But in Europe, where many of the refugees from Kosovo, a southern province of Serbia, the main Yugoslav republic, had two cars, a city apartment and their own business, a night in a canvas tent with cold food is misery.

"You've got to maintain people's dignity," said Bob Allen, a camp manager who has worked in both Africa and Europe for the relief agency CARE.

"The life in Africa is far more simple. To maintain the dignity and lifestyle of Europeans is far more difficult."

This reference to dignity resonates with human rights thinking. It suggests that in assuring the right to an adequate livelihood, "adequate" may have to be understood differently in different circumstances.

Should those who are used to having more get more in emergency situations? Before answering too quickly, we should recall that in many assistance programs in developed countries, emergency assistance is explicitly designed to allow people to maintain the lifestyle to which they had been accustomed.

Also, it might be argued that richer people should get more generous assistance because their countries probably have contributed more to the supply of resources used for assistance. A contrary argument would be that richer people in trouble should get less from the global agencies because they have better prospects for getting help from other sources.

Maybe it does cost less to save poor people. Does this mean we should spend less on them, or does it perhaps means that we should save more of them?

It is not clear what arguments should prevail. Moreover, it is not clear who should decide what arguments prevail. Should the donors dominate the decision-making as to how humanitarian assistance is to be allocated, or should the receivers of assistance be represented as well?

The discrimination among different categories of refugees may arise not from the assistance agencies themselves but from the donors behind them who supply the resources.

All the attention focused on the Balkans has frightened refugee officials and charity groups in Africa, who fear that the continent's already meager resources will be further drained by the Balkan crisis.

For instance, the World Food Program has a fund-raising goal this year of \$98.5 million for the area around Africa's Great Lakes--Rwanda, Burundi, Tanzania, Uganda—where long-simmering, though often ignored, conflicts have created hundreds of thousands of refugees. So far, the food agency has received 22% of that amount.

In Liberia, the situation is even worse. The agency made an appeal for \$71.6 million. It received \$500,000.

That compares with the situation around Kosovo, for which the agency has requested \$97.4 million and received more than 70% of that amount already, with a "large number of commitments" now under negotiation, Davies said.

"Africa is just being eclipsed by this," said Fitzgerald of Refugees International.

Refugees in Eritrea "are just being ignored for the large part because of Kosovo," she said. "Everybody is focused on Kosovo, because it's a serious situation, and because of peer pressure."

How should donated food be distributed? In the abstract we might imagine a large-scale funneling operation in which there is first an allocation to continents, then to host countries, then to camps, and then to individual persons within camps. At each stage there would be a question of what allocation mechanisms and principles are in fact in place, and what mechanisms and principles should be in place. The first-order guideline might be that all individuals should get equal rations. However, it would quickly be seen that other considerations must be taken into account as well. Some people have greater needs than others. Some resourceful individuals are able to provide for themselves, at least in part. Some camps or some individuals may not be accessible. Corrections may have to be made for unauthorized redistribution that occurs within camps. And so on.

Of course, this funneling-down image is not appropriate because there is not one central pool of resources to be allocated. Most donor contributions are tied contributions, in the sense that they are designated for particular situations. Donors might not be willing to contribute as much if they did not get to decide where their contributions would be used.

Donor bias may be an accurate explanation of the skewed distribution of assistance, but it need not be accepted as a justification for those facts.

Even where good clear standards are set regarding appropriate food supplies and nutrition-related services, these standards frequently remain unmet. The reasons can be described succinctly:

The reasons for gaps in supply and shortfalls in rations received are manifold and often context-specific. However, the more important causes can be grouped as follows:

- Restricted access to the affected population for reasons of remote locations, insufficient infrastructure (roads, transport networks, etc.), seasonal closures, and possible insecurity.
- Lack of resources and variable donor commitment.
- Disagreement over accuracy of beneficiary numbers linked with registration.
- Erratic distribution system.

- Erratic monitoring of distribution and complaints (Mears, pp. 16-17).

Donor countries provide much of the food supplied to refugees, either through direct commodity supplies or through the provision of funds to purchase foods on local markets. In addition, there is considerable self-provisioning by resourceful individual refugees. Self-provisioning may be based on gardening, raising small animals, or purchasing food in local markets. Trading outside of refugee camps can increase or decrease the total food supply within them.

4. THE HUMAN RIGHT TO FOOD AND NUTRITION

Ved Nanda points out the absence of clear obligations of states with regard to refugees, but at the same time he observes, "Refugees and displaced persons are technically entitled to the protection of their basic human rights by the international community . . . (Nanda)." Indeed, this is the answer to the core question posed at the outset. The international community is obligated to act to assure the realization of the human rights of refugees in much the same way as states are obligated to act to assure the realization of the human rights of all people living under their jurisdiction.

The nutrition rights of refugees derive from more general nutrition rights (Kent 2000). These rights must be understood, and then they must be interpreted in accordance with the particular circumstances of refugees.

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* (which came into force in 1976), 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 . . . (ICESCR)"

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 (CRC)."

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.

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 plan called for clarification of the meaning of the right to food. As part of that process, in April 1999 the United Nations' Sub-Committee on Nutrition held a major conference on *Adequate Food: A Human Right* (SCN). On May 12, 1999 the United Nations' Committee on Economic, Social and Cultural Rights released its *General Comment 12 on The Right to Adequate Food* (General Comment 12). In paragraph 6 the committee defined 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.

The *General Comment* provides an authoritative analysis of the meaning of the right to food. Further elaboration was provided by the release in June 1999 of *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* (Eide).

Like all other human rights, the human right to food and nutrition should be recognized and realized because it is the right thing to do. However, taking the human rights approach can also provide other sorts of "value added". The Office of the High Commissioner for Refugees has articulated some of the benefits:

HCR fully favours the adoption of a rights-based approach in the refugee protection and assistance context. Its added value lies in the fact that a rights-based approach:

- Ensures that humanitarian action is based on the rights of the beneficiaries and is not simply a gratuitous act of charity
- Calls for treating the refugee as an "active claimant" and not merely a "passive recipient", thereby giving the refugee a voice and power with which to participate to seek to meet their own basic needs
- Underlines the legal obligations of States to meet the basic needs of the most vulnerable individuals (including refugees), and ensures that the work of humanitarian agencies such as UNHCR provides support to

States in fulfilling their responsibilities, rather than being a substitute for State action (or inaction)

- Helps provide a principled, predictable and structured framework within which humanitarian work can be undertaken and this, in turn, will help to define both the objective and content of humanitarian aid more clearly—particularly in the development and implementation of policy and programmes.
- Places humanitarian action within a rights-based framework which serves to define more clearly the respective areas of expertise and the responsibilities of the many different humanitarian actors (e.g., UNHCR and WFP have signed a Memorandum of Understanding which covers co-operation in the provision of food aid to refugees, returnees and, in specific situations, internally-displaced persons.)
- Provides a stronger incentive for donor support for humanitarian efforts as traditional donor States (and their constituencies) often have a well-developed awareness of human rights as a basis for government action and by moving the debate away from charity (where the usual arguments of compassion fatigue and prioritization are invoked) to the language of rights and duties, the imperative for donor support can be made more forcefully (Jessen-Petersen 1999).

Rights-based nutrition programs for refugees may be more efficient and effective than many of the current programs. However, even if that were not so, as a matter of principle it is important that rights of refugees in regard to nutrition and other matters are clarified and honored.

5. THE ADEQUACY QUESTION

Basic standards for nutrition have been worked out in several different contexts. Some focus on food requirements, while others consider food as only one part of a broader set of services. Food-based standards take forms such as recommended daily allowances. In contrast, a broader, service-based set of standards is illustrated by the “nutrition minimum package” for children designed by the program called BASICS—Basic Support for Institutionalized Child Survival (Sanghvi). The Sphere Project has formulated detailed minimum standards for nutrition and food aid in humanitarian assistance (Sphere Project). For refugees in particular, the World Food Programme and the United Nations High Commissioner for Refugees have established *Guidelines for Calculating Food Rations for Refugees* (Guidelines).

Biologically, the basic nutrient requirements are roughly the same for all human beings of about the same size. Thus, it might seem that what constitutes “adequate food” could be addressed as a purely technical question, with answers differentiated only on the basis of data on the individual’s age, gender, and body weight. Standards for refugees might reasonably be adapted from other sectors, such as the military (Military Nutrition). The concern with establishing basic

minimum standards on the basis of technical considerations alone leads naturally to the design of some sort of standardized meal that could be packaged in a factory and distributed in mass quantities. Thus we now have the standard Humanitarian Daily Ration, comparable to the U.S. military's MREs—Meals Ready to Eat

This purely technical perspective is much too narrow. Human rights advocates recognize that the feedlot approach to nutrition violates human dignity. It fails to recognize that food is only one element in the broader context of a right to adequate livelihood, and that in turn is embedded in the entire human rights framework. The human right to food and nutrition must be realized in a way that does not violate the individual's other human rights. *General Comment 12's* paragraph 7 acknowledges that "The precise meaning of 'adequacy' is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions . . ." Paragraph 8 explains that the core content of the right to adequate food implies:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

These elements are then explained further in the subsequent paragraphs. Paragraph 11, for example, explains that "Cultural or consumer acceptability implies the need also to take into account, as far as possible, perceived non-nutrient-based values attached to food and food consumption . . ." Thus, there is no suggestion that all individuals—or all refugees—must be treated identically.

There is a difference between treating people equitably (fairly) and treating them equally (identically). Thus, hardly anyone would argue that everyone should be paid the same regardless of what work they do, but we should all insist that people are treated equitably, with, for example, equal pay for equal work. Making everyone eat the same thing (as in a prison) might be equal treatment, but it would be far more equitable and dignified to recognize that there are differences among people, and give them all some appropriate choices.

There is a serious practical problem that would arise if all refugees were treated identically. If refugees everywhere were to be provided with the same standard of service—somewhere between that provided to the Europeans and that provided to the Africans—there would be enormous management problems. Europeans would be dissatisfied. In Africa, people might rush to be identified as refugees and try to get into refugee camps because that would make them materially better off than they had been. Since people and their circumstances differ, there is no reason to believe that treating everyone identically, regardless of their circumstances, would contribute to maintaining reasonable standards of human dignity. The answer must lie somewhere between the highly skewed system now in place and the mechanistic ideal of treating everyone the same, without consideration of their particular circumstances.

In designing a rights approach to the nutrition of refugees generally, it might be sensible to begin with a focus on the most vulnerable among them. To illustrate, guidance might be drawn from the guidelines for infant feeding in emergencies proposed by the Emergency Nutrition Network (Infant Feeding). Or one could begin with clear rights particularly for those who are severely nourished. The World Health Organization's manual on *Management of Severe Malnutrition* is generally useful, and Chapter 8 provides suggestions specifically for "Management of Malnutrition in Disaster Situations and Refugee Camps" (WHO).

In setting standards of adequacy, it may be useful to focus more on the results obtained than on the specific character of the "inputs". That is, instead of focussing narrowly on nutrition, it might be more useful to focus on objectives relating to the broader concept of adequate livelihood. A basic measure here would be survival. We might say that the core objective of nutrition programs for refugees should be *to minimize morbidity and mortality associated with malnutrition*. The level of nutrition-related services required to achieve this should be viewed as the minimum requirement.

From this perspective, any enhancement of nutrition-related services beyond the level that would reduce morbidity and mortality could be viewed as a luxury. If European refugees would not die if they were not given raspberry tarts, maybe they should not be given tarts. Of course, if they found a way to make or buy tarts with the basic resources provided to them, that would be their choice to make.

The concern here is with the minimum obligations of the international community and its representatives such as the World Food Program, the United Nations High Commissioner for Refugees, and the International Federation of Red Cross and Red Crescent Societies. Other parties might want to provide extra rations for particular refugees because of cultural affinities, shared religions, kinship, or other reasons. They should be free to do so. For example, in the humanitarian assistance it provides, Saudi Arabia should be free to favor other Muslim countries. But that assistance should be provided directly, and not through the WFP, UNHCR, and IFRC. The international governmental agencies should be obligated to provide assistance without discrimination based on the recipients' religious, cultural or other characteristics.

6. A DILEMMA?

Suppose that the cheapest way to provide the basic nutrients that would keep people alive is through mass-produced pellets, optimized in the way a feedlot manager would calculate the most cost-effective mix of feed components. Deviating from this standardized pellet to accommodate special needs would be costly. If the money available for food is limited, we face a dilemma: should we distribute the pellets to as many needy people as possible, thus maximizing the number of lives saved? Or should we accommodate special needs, allowing people to live with at least some measure of human dignity, even if that means that fewer lives are saved?

My answer is to refuse to accept this formulation of the problem. With appropriate enabling conditions, people are producers of food, and not just consumers. People are smarter and more industrious than cattle. People must be respected and treated as capable human beings. Instead of

investing effort into designing the best possible pellet, we should be finding ways to enable people to move progressively toward providing for themselves as they would in a normal, healthy society. Moving toward feedlot types of operations moves us toward the wrong kind of governance, whether in refugee camps or in other social situations. While highly standardized rations might be sensible for a short period in acute crisis situations, creating sustained dependency on feed pellets or pre-packaged rations would disempower people. In all circumstances, people must be treated in ways that empower them.

While there are serious problems of obtaining and allocating scarce resources, some of what is required is not so scarce. Nutrition status depends not only on food supplies but also on health services and on care, especially for children. For small children, who are most vulnerable to malnutrition, the critical issue may not be food supply as such but the supply of appropriate health and care services. For example, conditions supportive of proper breastfeeding can make a very big difference. Refugees themselves can participate in the production, preparation, and distribution of food, and they can participate in the delivery of health and care services. In other words, refugees themselves can to some extent be viewed as assets, as resources for addressing the issues of concern to them.

7. RIGHTS SYSTEMS

Useful guidance for the management of humanitarian assistance is already provided in various forms. For example, the *Fundamental Principles of the International Red Cross and Red Crescent Movement* speaks of the principles of humanity, impartiality, neutrality, independence, voluntary service, unity, and universality. There is a *Code of Conduct for the International Red Cross and Red Crescent Movements and NGOs in Disaster Relief* (Code). As noted earlier, in the section on *Adequacy*, a great deal of work has already been done to specify appropriate nutrition standards in assistance programs. Specifying what foods and nutrition-related services refugees ought to get is useful, but more than that it required to assure the realization of their human right to food and nutrition. These different pieces might be brought together systematically through more explicit use of the rights framework.

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. Human rights rest on the legal principle *ubi jus ibi remedium*—where there is a right there must be a remedy.

On the basis of this understanding, we can say that any rights system has three distinct parties: those who are the rights holders, those who are the duty bearers, and those who are 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 functions of these three parties, and 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.

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

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.

8. SPECIFYING THE OBLIGATIONS

Having rights means having clear entitlements to particular services, and this requires more than establishing aspirational standards. It is also necessary to establish institutional arrangements that will assure that the standards will be met. Where refugees have specific rights, the obligations of others to assure their realization should be specified. Careful distinctions must be made between the obligations of host states and the obligations of the international community. In general, the obligation of host states is to assure that the rights of refugees are recognized as equivalent to the rights of others under their jurisdiction. Since many host states have limited capacity to provide the resources needed for refugees or for their own people, the international community must be viewed as the backup, the provider of last resort.

The nutrition rights approach begins with the concept that refugees, as individuals, have specific rights, and included among these are specific entitlements in relation to nutrition. However,

specifying what the refugees ought to get, framed perhaps as minimum standards, is not enough. If refugees have rights to these services, there must be institutional arrangements in place to assure that these standards are met. Thus, the specific corresponding obligations of the host state and of the international community must be spelled out, and suitable accountability mechanisms must be put in place.

The rights and the corresponding obligations need to be concretized. For example, the position taken might be that "Every refugee has a right to consume at least 1900 calories per day" or "Every refugee under five years of age has a right to be at least 80 percent of his/her standard weight". If the international community accepts this, it is then obligated to do whatever needs to be done to realize that right.

Both the host state and the international community have four levels of obligations with regard to refugee nutrition rights. The following reproduces the characterization of these obligations provided by *General Comment 12*, but adds, in capital letters, a few words to highlight the role of the international community:

respect - "The obligation to *respect* existing access to adequate food requires States parties AND THE INTERNATIONAL COMMUNITY not to take any measures that result in preventing such access."

protect - "The obligation to *protect* requires measures by the State AND THE INTERNATIONAL COMMUNITY 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 AND THE INTERNATIONAL COMMUNITY 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 AND THE INTERNATIONAL COMMUNITY have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters."

It must be emphasized that the words in capital letters are not in *General Comment 12*. They are my addition, and are open to discussion.

9. LIMITING THE OBLIGATIONS

The international governmental agencies that assist refugees such as UNHCR, WFP, and IFRC are constrained because they only pass through resources provided by donors. They are agents of the international community, not the international community itself. The obligations fall ultimately on the nations of the world, not on the agents that administer the resources. In time it may be feasible to create a form of international taxation so that all members of the international

community contribute their fair share. However, so long as taxation is not feasible, the question is whether donors would be willing to make concrete long-term commitments, accepting them as obligations. Are the donor nations of the world willing to commit themselves to, say, assuring that all refugees will have at least some specified quantity and quality of food and some basic package of services?

It is possible for international commitments to be open-ended. In regard to security issues, for example, the UN Security Council frequently authorizes members to “take all necessary measures” to achieve a given objective. With regard to issues of humanitarian assistance, however, the international community tends to be more cautious. Those who are obligated to assure the realization of rights will resist if there is no clear limit to those obligations. For example, if a commitment was made to provide 1900 calories a day to all refugees, and there was no fixed limit to the number of refugees, that would be an open-ended commitment. Entitlements must somehow be capped. Rights to food or nutrition must be stated in terms of concrete rules specifying what categories of people are entitled to what sort of goods and services under what conditions. There must be clarity not only with regard to their entitlements but also with regard to their limits.

Whether or not the donors are able to make firm commitments, the agencies could adopt some nutrition rights principles to guide the allocation of whatever resources are available to them. For example, it could be said that no matter what total amount of food is provided to a particular camp, each individual in the camp is entitled to an equal share of it, or that children must have their needs fulfilled before others.

The objective of a rights-based approach to assistance is not necessarily to demand that more resources should be provided; it is also important to assure that the resources that are available are used effectively for meeting needs. The argument to the donors is that under this approach they would not be spending more; they would be spending better. Nutrition rights can provide a means for introducing effective performance accountability, and thus increase the efficiency and effectiveness of refugee nutrition programs.

10. THE WORK AHEAD

It would be useful to have a clear statement of principles or guidelines regarding the nutrition rights of refugees, the obligations of host states and the international community, and the mechanisms of accountability. This should be worked out with participation from representatives of the refugees themselves, the assistance agencies (both governmental and nongovernmental), the donor agencies, and human rights agencies. To launch the effort, guidance should be drawn not only from international human rights law but also from the several different statements of principle that have been formulated to guide humanitarian assistance activities.

In a very preliminary way, we can suggest some of the basic principles to be considered. For example, there should be a principle of non-discrimination. This does not mean that everyone should be treated identically. Rather, it means that no groups should be singled out to be treated in ways that are harmful to them or that put them at a disadvantage. To the extent feasible,

assistance should be provided through means that are empowering and that respect the dignity of those who receive that assistance. Nutrition-related services, and not just the food, should be provided in culturally appropriate ways.

The helplessness that appears to overwhelm many refugees comes in part from the ways in which they are treated (Soguk). As in any normal society, refugees themselves should have ample and steadily increasing opportunities to participate in providing for their own nutrition and other needs. Means must be found to increasingly involve refugees themselves in making the decisions and taking the actions that affect their situations.

Human rights work means much more than setting standards. There is a need to acknowledge that refugees have specific human rights in relation to food and nutrition. The corresponding obligations must be plainly identified, and there must be a system for holding those who carry the obligations accountable. Most importantly, refugees themselves must know to what services they are entitled, and they and their representatives must have some effective means for holding those responsible to account. Where there are no effective remedies, there are no effective rights.

The nutrition rights of refugees, or indeed all the human rights of refugees, are not special. Refugees are not a distinct species with distinct incapacities. Their circumstances of the moment may be special, but their rights as human beings are not. They are entitled to the same things as everyone else who is human, and this means they have a right to live a life that is as normal as possible. They must be enabled to grasp increasing control over the shape of their own lives. They must be increasingly enabled to provide for themselves. This means that their human rights must be recognized and realized.

The primary obligation for assuring the realization of human rights rests with the state. Where that obligation is not or cannot be carried out, for whatever reason, specific obligations then fall on the international community. Those obligations of the international community with regard to human rights need to be acknowledged, clarified, and carried out.

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