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Children's right to adequate nutrition

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Introduction

There is a long history of concern with the right to food, or more broadly, the right to adequate nutrition, in international law. The Universal Declaration of Human Rights of 1948 provides 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 recognizes "the fundamental right of everyone to be free from hunger." Article 24 of the Convention on the Rights of the Child 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.

However, historically the idea of the right to adequate nutrition has not been taken seriously. There have been many nutrition programs within countries and internationally, but they have been provided as a matter of charity, not entitlement. There has not been any legal recourse for those who fail to receive service. The right has not been effectively implemented.

The idea of the right to nutrition, in some form, should be more acceptable if it focuses on children. Very poor countries might limit their commitment only to severely malnourished children under five years of age, while others might assure that services would be provided for both moderately and severely malnourished children up to the age of sixteen. The important point is to establish the principle that vulnerable children are entitled to adequate nutrition as a matter of right. Implementing children's right to adequate nutrition does not necessarily mean creating new programs; it means *assuring* that they get the nutrition services to which they are entitled.

Increasing food production, nutrition education, feeding programs and all the other conventional approaches have important roles to play in ending hunger in the world, but so far they have not been adequate. Perhaps it would be useful to work more directly with the social/legal/political tools of entitlements, rights, responsibility, and accountability to get the job done.

There are different types of malnutrition including protein-energy malnutrition and specific micronutrient deficiencies such as those due to inadequate Vitamin A, iodine, iron, or other particular nutrients. Malnutrition may result not only from improper diet but also from ill health and inadequate or improper

care. The most widespread form of malnutrition among children is protein-energy malnutrition. Apart from its most serious clinical manifestations (kwashiorkor and nutritional marasmus), protein-energy malnutrition can be gauged by measuring the heights and weights of children and comparing them with the heights and weights of well nourished children. With these data, indicators can be derived for *wasting* (low weight-for-height), *stunting* (low height-for-age), and *underweight* (low weight-for-age). It is widely 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. As the data in Table 1 and Figure 1 indicate, in recent decades the proportion of children in developing countries who are malnourished has declined, but the absolute number has gone up.[1] At least 184 million children are underweight. More than half of these children are in South Asia. There are now more children on earth suffering from malnutrition than ever before in history.

Malnutrition is a major factor in the massive morbidity and mortality of children throughout the world. Throughout the 1980s and early 1990s more than 12 million children died before their fifth birthdays *each year*, many from a combination of malnutrition and disease.

I do not want to open an extended examination of the causes of hunger here, but it should be noted that one compelling line of analysis, spearheaded by Amartya Sen and Jean Dréze, argues that hunger is due primarily to a failure of entitlements rather than, say, to inadequate agricultural productivity or population growth.[2] If that is so, the remedy lies in strengthening

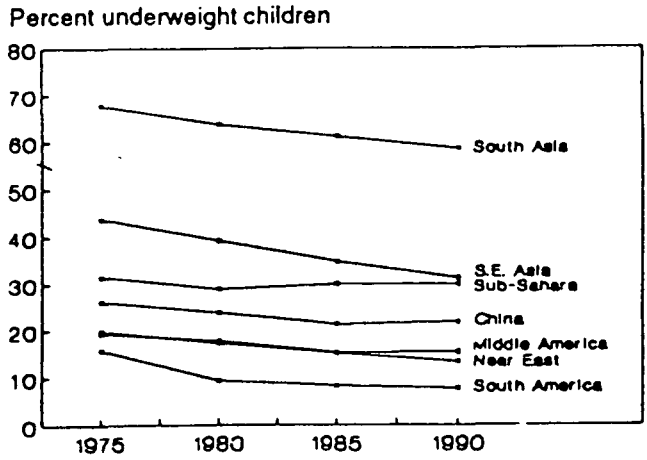


Figure 1. Trends in prevalence of under-weight children, 1975–1990.
(*Source*: Administrative Commitee on Coordination/Subcommittee on Nutrition, United Nations. *Second Report on the World Nutrition Situation*. Geneva: ACC/SCN, 1992, p. 10.)

[1] Administrative Committee on Coordination/Subcommittee on Nutrition, United Nations (1992) *Second Report on the World Nutrition Situation*, Geneva: ACC/SCN, p. 10.

[2] Amartya Sen (1981) *Poverty and Famines: An Essay on Entitlements*, New York: Oxford;

Table 1. Regional prevalence and numbers of underweight preschool children[1] in developing countries, 1975–1990

Region	Percent underweight (percent)				Numbers underweight (in millions)			
	1975	1980	1985	1990	1975	1980	1985	1990
Sub-Saharan Africa	31.4	28.9	29.9	29.9	18.5	19.9	24.1	28.2
Near East/North Africa	19.8	17.2	15.1	13.4	5.2	5.0	5.0	4.8
South Asia	67.7	63.7	61.1	58.5	90.6	89.9	100.1	101.2
South East Asia	43.6	39.1	34.7	31.3	24.3	22.8	21.7	19.9
China	26.1	23.8	21.3	21.8	20.8	20.5	21.1	23.6
Middle America/Caribbean	19.3	17.7	15.2	15.4	3.4	3.1	2.8	3.0
South America	15.7	9.3	8.2	7.7	4.8	3.1	2.9	2.8
Global Total	41.6	37.8	36.1	34.3	168	164	178	184
Total 0–4 child population in developing countries					402	434	493	536

[1] Includes all children 0 through 60 months.

entitlements. One way to do this is through the law. Children should have a fully implemented legal right to adequate nutrition. (Sen and his colleagues have provided an overview of ways in which social service programs can be structured, but did not develop the argument that the needy should have rights to some services under some conditions).[3]

To say this another way, many problems of children derive from their powerlessness. Promoting recognition of their rights enhances their relative power in society.

History

When he was Director-General of the Food and Agriculture Organization of the United Nations (FAO), Addeke Boerma said that "if human beings have a right to life at all, they have a right to food".[4] More recently, Richard Jolly, Deputy Executive Director of UNICEF, said "Freedom from hunger is a basic human right. It is unacceptable that 150 million children under five should be suffering from serious malnutrition in a world that has the capacity to prevent it".[5] Certainly widespread malnutrition and the massive mortality of children associated with it is unacceptable. But what about the idea that freedom from hunger is a basic human right? Is it true? Can it be implemented?

The right to adequate nutrition (or right to food) concept has a long history.[6]

In 1948 the Universal Declaration of Human Rights asserted in Article 25(1)

Jean Dréze and Amartya Sen (1989) *Hunger and Public Action*, Oxford: Clarendon Press; Jean Dréze and Amartya Sen, eds. (1990) *The Political Economy of Hunger*, Vols. I-III, New York: Oxford.

[3] Sen and his colleagues provide an overview of ways in which social service programs can be structured in Ehtisham Ahmad, Jean Dréze, John Hills, and Amartya Sen, eds. (1991) *Social Security in Developing Countries*, Oxford: Clarendon Press. However, they do not develop the argument that the needy should have *rights* to some services under some conditions.

[4] Addeke H. Boerma (1976) *A Right to Food*, Rome: Food and Agriculture Organization of the United Nations, p. 153. Despite the title of this collection of Boerma's speeches, the idea of a right to food is not elaborated. A critical analysis of FAO's role in relation to the right to food may be found in Julianne Cartwright Taylor (1984) FAO and the Right to Food, in: Asbjørn Eide, Wenche Barth Eide, Susantha Goonatilake, Joan Gussow, and Omawale (eds.) *Food as Human Right*, Tokyo: United Nations University, pp. 187–212.

[5] Richard Jolly (1990) Foreword, in: Beverley A. Carlson and Tessa M. Wardlaw (eds.) *Global, Regional and Country Assessment of Child Malnutrition*, New York: UNICEF, p. 9.

[6] The history of international recognition of a right to food is only sketched here. For more thorough accounts see Asbjørn Eide *et al.*, *Food as Human Right*; Philip Alston and Katarina Tomaševski, eds. (1984) *The Right to Food*, Dordrecht, Netherlands: Martinus Nijhoff; Katarina Tomaševski, ed. (1986) *The Right to Food: Guide Through Applicable International Law*, Dordrecht Netherlands: Martinus Nijhoff; *Right to Adequate Food as a Human Right*, New York: United Nations, 1989; and Asbjørn Eide, Arne Oshaug, and Wenche Barth Eide, Food Security and the Right to Food in International Law and Development, *Transnational Law & Contemporary Problems*, Vol. 1, No. 2 (Fall 1991), pp. 415–467. Also see the articles from the symposium on International Law and World Hunger in the *Iowa Law Review*, Vol. 70 (1985) and another similar symposium in the *Harvard Law Journal*, Vol. 30 (Spring 1987).

that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food. . . ."

On March 14, 1963 a Special Assembly on Man's Right to Freedom from Hunger met in Rome and "issued an historic Manifesto calling on the governments and people of the world to unite in the struggle against man's common enemy – hunger." The manifesto described the character and scope of hunger in the world, and asserted that "freedom from hunger is man's first fundamental right".[7] A variety of action programs such as increasing agricultural productivity and improving trade relations were suggested and moral concerns were expressed, but the idea that "freedom from hunger is man's first fundamental right" was not elaborated.

The International Covenant on Economic, Social, and Cultural Rights was adopted by the United Nations General Assembly in 1966 and 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 recognize "the fundamental right of everyone to be free from hunger . . ."

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

In September 1976 both the United States Senate and House passed right to food resolutions. It was the sense of the Congress that every person throughout the world has a right to a nutritionally adequate diet, and the United States should increase its development assistance until it reached one percent of the U.S. gross national product.[8]

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

In 1991 the House Select Committee on Hunger chaired by Congressman Tony Hall, through House Resolution (H.R. 2258) advocating the Freedom from Want Act, urged the United States to propose a United Nations Convention on the Right to Food.[9]

[7] S. Y. Krishnaswamy, ed. (1963) *Man's Right to Freedom From Hunger: A Report of a Special Assembly held at the Headquarters of the Food and Agriculture Organization of the United Nations, Rome, Italy, 14 March 1963*, Rome: FAO.

[8] U.S. Congress. House (1976) *The Right to Food Resolution.* Hearings Before the Subcommittee on International Resources, House of Representatives, 94th Congress, 2nd Session, Washington, D.C.: United States Government Printing Office.

[9] U.S. Congress. House (1991) *Decades of Disasters: The United Nations Response.* Hearing

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 . . ." 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."

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

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

In the conference's concluding *World Declaration on Nutrition* the nations of the world agreed that "access to nutritionally adequate and safe food is a right of each individual." Yet there was nothing in the accompanying *Plan of Action for Nutrition* to elaborate that right, nothing providing for clear entitlements with effective accountability.

The idea of the right to food appears in many different contexts in international law. Most are not binding. In some cases, as in the International Covenant on Economic, Social, and Cultural Rights, the obligations are technically binding on the States Parties. However, because the obligations lack specificity and because there are no effective mechanisms for implementation and accountability, they are not binding in practice. With regard to food or other issues, "the main problem in regard to social and economic rights has been to define the obligations corresponding to the rights. . . . The obligations remain vague until the present. In the absence of effective international supervision, they have not been made clearer through case law".[10]

Several nations have articulated nutrition rights in some form in their laws. Cuba's constitution assures that "no child be left without schooling, food and clothing." The Italian, Spanish, and Greek constitutions assure a right to health. In many countries there is language referring to other sorts of assurances, such as the right to social security (as in the Netherlands and Spain) that can be interpreted as implying nutrition rights. In most cases, however, the assurances are vague and have not been enforced through the courts.

Before the Select Committee on Hunger, July 30, 1991, Washington, D.C.: U.S. Government Printing Office. On pp. 122–158 this hearing report reproduces a useful overview by the International Law Association's International Committee on the Right to Food.

[10] *Right to Adequate Food as a Human Right*, p. 21.

There is practically no elaboration in detailed statutes of distinct nutrition rights, and no legal enforcement.

Although there have been many expressions of concern, and many laudable anti-hunger programs at local, national, and global levels, the idea of the *right* has not yet been implemented. As Ved Nanda put it, "no framework presently exists for the realization of the right to food, nationally or internationally".[11]

On reviewing the hunger data, Philip Alston and Katarina Tomaševski observe that "these statistics make hunger by far the most flagrant and widespread of all serious human rights abuses." Alston adds that "the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any other right".[12] The idea that people should have a right to adequate nutrition is an old one, one whose vision has not been fulfilled.

Why children?

Many groups vulnerable to malnutrition should be protected – mothers, the elderly, the handicapped, unborn children, refugees, people in armed conflict situations, and so on. I suggest that *the idea of the right to nutrition, in some form, will be far more acceptable if it focuses on children.* There are several reasons for this.

First, no one can doubt the powerlessness of small children. Not even the most callous politician could tell a three-year old that if she wants to eat she should go out and work.

Second, it can be argued that saving a child's life is more valuable than saving an older person's life simply because there are more life-years saved. Similarly, the benefits from an improvement in the quality of life accrue over many more life years for a child than they would for an older person.

Third, there are well-developed means for assessing the nutrition status of children on an inexpensive and objective basis, using anthropometric techniques. There is a strong consensus among nutrition professionals on the interpretation of these data. Techniques for measuring malnutrition in other groups are not as well developed.

Fourth, anthropometric data collected around the world shows unambiguously that children's malnutrition is a massive problem.

Fifth, graphic news coverage of the suffering in places like Ethiopia and Somalia and constant calls for donations keep the issue in the public's consciousness.

Sixth, political work for children can be based on creating alliances among

[11] U.S. Congress. House, *Decades of Disasters*, pp. 22, 71.
[12] Alston and Tomaševski, *The Right to Food*, pp. 7, 9.

the many organizations concerned with children and the many organizations concerned with nutrition. Hungry children already have a well established constituency.

Seventh, the Convention on the Rights of the Child and the World Summit for Children of September 1990 have created new appreciation of the rights of children.

Eighth, both the World Summit for Children and the Declaration and Plan of Action on Nutrition agreed upon in Rome in December 1992 call upon participating states to prepare National Plans of Action, on children in one case and on nutrition in the other case. The obligation to prepare these two plans gives states new opportunities for examining the nutrition needs of children.

All these reasons together lead to the judgment that obtaining recognition of effective nutrition rights may be more politically feasible for children than for others. We can begin with children, and later go on to address the needs of other vulnerable groups as well.

Nested rings of responsibility

Before setting out the ways in which children's right to nutrition can be meaningfully established in the law, it will be useful to have a systematic framework for understanding our responsibilities to children.

Our principal obligation toward children is to promote their development, understood as empowerment or increasing self reliance. The task is to help increase children's capacity to define, analyze, and act on their own problems.

Who is responsible for children? The question is not whose fault is it that children suffer so much (who caused the problems?) but who should take action to remedy the problems? Many different social agencies may have some role in looking after children, but what should be the interrelationships among them? What should be the role of churches, fraternal societies, local and national governments and other agencies in dealing with the hunger problem?

Most children have two vigorous advocates from the moment they are born, and even before they are born. Their parents devote enormous resources to serving their interests. These are not sacrifices. The best parents do not support their children out of a sense of obligation or as investments. They support their children as extensions of themselves, as part of their wholeness.

In many cases, however, that bond is broken or is never created. Fathers disappear. Many mothers disappear as well. In some cities hundreds of children are abandoned each month in the hospitals in which they are born. Bands of children live in the streets by their wits, preyed upon by others. Often children end up alone as a result of warfare or other political crises. Many children are abandoned because they are physically or mentally handicapped. Often parents become so disabled by drugs or alcohol that they cannot care for their children.

Often children who cannot be cared for by their biological parents are looked

after by others. In many cultures children belong not only to their biological parents but to the community as a whole. The responsibility and the joy of raising children are widely shared.

In many places, especially in "developed" countries, that option is no longer available because of the collapse of the idea of community. Many of us live in nice neighborhoods in well-ordered societies, but the sense of community – of love and responsibility and commitment to one another – has vanished. In such cases the remaining hope of the abandoned child is the government, the modern substitute for community. We look to government to provide human services that the local community no longer provides.

As children mature the first priority is to help them become responsible for themselves. So long as they are not mature, however, children ought to get their nurturance from their parents. Failing that, they ought to get it from their local communities. Failing that, they ought to get it from the local governments. Failing that, it should come from their national governments. Failing that, they ought to get it from the international community. The responsibility hierarchy looks like this:

child
family
community
local government
state government
national government
international nongovernmental organizations
international governmental organizations

We can picture this as a set of nested circles, with the child in the center of the nest, surrounded, supported, and nurtured by family, community, government, and ultimately, the international community and international governmental organizations.

This is straightforward. The idea that needs to be added is that in cases of failure, agents more distant from the child should not simply substitute for those closer to the child. Instead, those who are more distant should try to *work through and strengthen* those who are closer to help them become more capable of fulfilling their responsibilities toward children. To the extent possible, local communities should not take children away from inadequate parents but should help parents in their parenting role. State governments should not replace local governments, but should support local governments in their work with children. The international community should help national governments in their work with children. The same reasoning should apply to care for the physically disabled and the mentally ill.

The international community is the last resort, the outer ring of responsibility in looking after the welfare of children. The very outermost ring includes international governmental organizations (IGOs) such as UNICEF, the Food and Agriculture Organization of the United Nations, the World Health

Organization, and the United Nations Committee on Human Rights. Just inside that ring are the international nongovernmental organizations (INGOs). In the pattern of concentric rings of responsibility, the international bodies' task is not to deliver services to children directly but, to the extent possible, to empower agencies in the inner rings.

The principle

Some free market advocates feel that governments should take no direct responsibility for dealing with hunger. They see government involvement with hunger as an unwarranted intrusion, distorting the play of market forces and creating economic inefficiency. As Jean-Phillippe Platteau observes:

> In Europe, it was precisely with the advent of capitalism that the old values and institutions (like the Poor Laws in England) guaranteeing food security for everybody came under the strong attacks of the heralders of the new "laissez faire" order. Interestingly, incentive considerations were the main arguments which the latter put forward: only poverty can incite (force) the lower classes to work and, according to [Townsend's Dissertation on the Poor Laws of 1786] hunger is actually the most effective pressure, because it is "peaceful, silent and continuous."[13]

We see similar reasoning in recent reforms in China designed to "smash the iron rice bowl".[14] Fortunately, however, many modern economists recognize that economic efficiency is not the same as social efficiency, and there are good reasons to intervene in the marketplace. In particular, there are good reasons to assert and defend human rights.

Many agree that, regardless of the type of economy, it is the duty of governments to assure that all their citizens can at least subsist:

> In this concept of subsistence rights and duties, the emphasis lies, not on "feeding" or "maintaining" people but on creating a social and economic environment which fosters development and hence need not depend upon charity. To take seriously the notion of subsistence rights and to value them as universally applicable "minimal reasonable demands" on the rest of society means that the satisfaction of basic human needs must be a primary and explicit focus of development.[15]

[13] Jean-Philippe Platteau, Traditional Systems of Social Security and Hunger Insurance: Past Achievements and Modern Challenges, in: Ahmad *et al.*, *Social Security in Developing Countries*, pp. 161–162.

[14] Ehtisham Ahmad and Athar Hussain, Social Security in China: A Historical Perspective, in: Ahmad *et al.*, *Social Security in Developing Countries*, pp. 247–304.

[15] Cheryl Christensen (1978) *The Right to Food: How to Guarantee*, New York: World Order Models Project, Working Paper Number Six, Institute for World Order, p. 33.

Or, more simply, "A government's basic job is to provide a system in which people can meet their own and their children's basic needs".[16] The point is reaffirmed in Principle 25 of the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (E.CN.4/1987/17, Annex) which says that "States Parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all".[17]

It is the duty of governments to structure their societies in a way that prevents malnutrition. Under ideal governance there would be no need to even raise the question of a right to nutrition. The idea of nutrition rights comes up only because communities and governments are imperfect.

If government ought to be providing certain kinds of services, then we must face the vexing question: does the private sector's offering these services get the government off the hook, allowing government to evade responsibilities it really should fulfill? Should churches close their soup kitchens?

The solution lies in making some distinctions, recognizing that there are some social services best left to the private sector while others ought to be provided by government. It is reasonable to call upon the local community to help out neighbors in temporary distress, from floods, temporary unemployment, or accidents, for example. We should gladly carry over some soup and blankets, directly or through our churches and clubs to respond quickly to such transitory problems. But *chronic* hunger and homelessness is a responsibility of government. Chronic problems reflect systemic failures, and thus are a fundamental responsibility of government.

Perhaps capable adults should not be fed by the state, but few would argue that small children in crisis should be ignored. Certainly the responsibility for feeding children falls in the first instance on the child's family, but the community and the government bear some responsibility as well. As a matter of principle, childhood malnutrition is one of those issues for which there should be a recognized obligation of government to provide some sort of services.

The services provided to assure adequate nutrition would take several different forms, with direct feeding programs only a small part of the package. There should be a variety of health and care services as well. (This is why we speak of a right to adequate nutrition, and not simply a right to food.) The question of what those services should be may be debated, but there needs to be acknowledgment of the principle, enshrined in law. The family and the community have responsibility too, but there should be a clear obligation on government to do what needs to be done if the family's and community's response is inadequate.

This obligation then helps to assure that government is motivated to support

[16] Lloyd Timberlake and Laura Thomas (1990) *When the Bough Breaks . . . Our Children, Our Environment*, London: Earthscan Publications, p. 248.

[17] The *Limburg Principles* were reprinted in the special Symposium issue on *The Implementation of the International Covenant on Economic, Social and Cultural Rights* of the *Human Rights Quarterly*, Vol. 9 (1987).

the community in fulfilling its responsibility. Community groups working on the local malnutrition problem should be able to rely on their local and state governments for help, whether for money, endorsements, contacts, transportation, or moral support and encouragement. It is the responsibility of government to help such community groups. Moreover, the government should be grateful for the opportunity to help the community use its resources to deal with local malnutrition, for otherwise the burden would fall on the government itself.

Rights and the law in general can be powerful instruments, establishing *entitlements to* as well as *protections from*. And the law can be used not only in punitive ways, but also in positive ways to support and reinforce those who do the right thing. We shouldn't fall into the trap of thinking of the implementation of law as necessarily involving punitive sanctions. The law can be used to mandate positive life-affirming actions as well. Malnutrition among children should be viewed as illegal, a condition that is not allowed, but this does not mean that anyone should be punished. The presence of a malnourished child should trigger a series of legally mandated actions by families, communities, and governments that are designed to remedy the condition. Just as local police can depend on backup from higher jurisdictional levels when needed, local agencies trying to deal with malnutrition should be backed up to the extent necessary to assure that the problem is solved.

National legislatures should be persuaded to affirm the principle that children have a right to adequate nutrition. However, that is the beginning, not the end, of the action that is needed. Programs fitting local circumstances need to be designed to implement the idea. Indeed, in many cases legislators will be reluctant to affirm the principle unless they first get a clear picture of its implications for action.

There have been many efforts to gain recognition of a right to nutrition within individual countries and internationally. Unfortunately, this has often been equated with the general effort to alleviate malnutrition, and advocates of the right to nutrition have simply recommended ways of improving the production and distribution of food. Concerned people have created many different kinds of food supply programs ranging from programs designed to deliver food directly into the mouths of children, as in the Indian *anganwadis*, to the massive international transfer of surplus food through the World Food Programme.

It is important to distinguish between the achievement of adequate nutrition and achievement of a *right* to adequate nutrition. Nutrition rights are based on the quality of protection one has against the occurrence of malnutrition. You can't tell how much protection people have against, say, fire, by asking people if their houses are on fire at the moment. 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 marginal-

ized people, and it says nothing about what might happen in the future if wealth declines or government priorities change.

Past efforts to ameliorate malnutrition have all been valuable, but they have been matters of charity and chance, and not the implementation of real rights. True implementation of a right to something means not just providing some amount of that thing to some people; it means *assuring* that every individual who is entitled to it gets his or her full share of it.

Soft *vs.* hard rights

A clear distinction should be drawn between the broad notion of children's interests involving many different things such as shelter and a nurturing environment, and the more limited subset of those things that are – or should be – formally recognized as rights in law. There are many good things for which there is no acknowledged right. Some things we may feel ought to be recognized as rights have not been codified in written law. Some of what we may agree are rights in principle or a matter of "natural law" are not yet rights in the written "black letter" law.

The focus here is on formal rights as explicitly stated in the law. One can pursue interests in alleviating malnutrition in many different ways, but to use the language of rights about these interests means that one is going to use the law. Promoting the rights of malnourished children requires that we talk about the creation of new law or the implementation of existing law relating to their rights.

Soft rights are not spelled out in the law, or if they are there is no strong and effective mechanism to assure their implementation. The Convention on the Rights of the Child in itself establishes only soft rights. They can be transformed into hard rights if national and local governments create suitably strong national and local laws along with effective agencies to implement the rights in the convention.

Hard or *strong* rights are clearly articulated in the law and are accompanied by effective implementation and accountability mechanisms. Hard rights have a history of case law through which the meaning of the right is tested and refined. There is clear recourse in law for individuals whose rights are not fulfilled and clear public accountability.

Rights are important because without clear rights, those who are more powerful, more highly educated, or better connected have an advantage in obtaining services. Clearly established rights empower the weak, leveling the playing field a bit so that the weak are not so disadvantaged.

Governments can do many different things that will enhance the likehood that their people will be adequately nourished. They can take steps to assure that the economy functions smoothly, provide for health and sanitation services, undertake land reform programs, subsidize staple foods, create social security programs, impose legal obligations on parents, and many other things. Such

steps are likely to result in adequate nutrition for the great majority of the population. However, the position taken here is that there is no hard right unless the government serves as backup, accepting the obligation to fulfill the need in cases of failure of other more indirect means of fulfilling it. *There is no hard right to adequate nutrition unless the government guarantees to meet the need if other means fail.*

It would be neither possible nor wise to provide a hard right in this sense for all claimants, but the argument here is that it should be feasible at least to some extent for those who are most vulnerable: small children who are clearly malnourished.

We cannot tell a small child that we are sorry, but your family and perhaps your local government have failed you, and there is nothing we can do about it. We cannot tell a small child that there is a war that simply must be fought on the other side of the world, so you will not have enough food. Children's nutrition should not be understood as a matter of priorities because when it is, children lose. Adequate nutrition for children should be recognized as an assured, unqualified right. The demand should be not merely for increased funding but for recognition that *children have a right to adequate nutrition.* The principle must be recognized; then we can discuss details of how it is to be fulfilled in different circumstances.

Establishing hard rights is not always politically practicable, but the vision should be kept before us as an ideal, helping to set our course in the long term campaign to strengthen children's rights.

We should aspire to hard international human rights law in the future regularly elaborated through case law. For now, however, the soft international human rights law that we have is best understood as a guide to the formulation of national-level human rights law. It is there, at the national level, that we expect to see it hardened first. Nations will be willing to look after their own most vulnerable children before they are willing to look after the world's most vulnerable children.

Accountability

When a child is not adequately nourished it is not only the child's family but the society as a whole that have failed that child. There should be mechanisms for calling governments to account and correcting that failure. If the law says that children are entitled to some particular service as a matter of right, that law also should establish an accountability mechanism to assure that the service is provided adequately and effectively.

An *implementation* mechanism for achieving a goal has both monitoring and response components. The monitoring component assesses the distance and direction from the goal, and the response component acts to move toward the goal. An automobile driver, for example, monitors through her eyes, and responds by pressing the pedals and turning the steering wheel. Where the goal is to improve children's nutrition, the monitoring element could use indica-

tors such as food intake or anthropometric measures to assess the location and extent of malnutrition in the society. The response element would involve feeding, health, and care programs targeted to where the monitoring component showed it was needed.

There are many ways in which such a system could go wrong. The monitoring component may measure the wrong things, or it may not be very sensitive. Or the responses may not work well. For example, income transfers to the family may be diverted to uses other than meeting the needs of the child. Government-funded school lunch programs 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 program 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. The design of a 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.

Social service programs 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 end childhood malnutrition 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 programs (e.g., school lunches, nutrition education programs) but from institutionalized mechanisms to establish accountability. An *accountability* (or *compliance*) mechanism watches the implementation mechanism to make sure it does its job well. It is located outside the implementation mechanism, and may have its own separate monitoring procedures. Governments have their legislative auditors and Inspectors General to make sure government agencies stay on track. In the United States, 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 pay for an independent Children's Ombudsman to handle complaints against the government.[18]

Many different kinds of measures can be used to provide accountability.[19]

[18] Malfrid Grude Flekkøy (1991) *A Voice for Children: Speaking Out as Their Ombudsman*, London: UNICEF/Jessica Kingsley Publishers. Also see Flekkøy's (1991) *Models for Monitoring the Protection of Children's Rights: Meeting Report, Florence, 27 November 1990–1 December 1990*, Florence, Italy: International Child Development Centre.

[19] Bernard Rosen (1989) *Holding Government Bureaucracies Accountable*, Second Edition, New York: Praeger.

In a well-designed system of rights there will be specialized government agencies (such as Inspectors General) to assure the accountability of implementing agencies. If they are absent or ineffective, nongovernmental agencies can hold the implementing agencies to account. The use, or threat of use, of the judicial system can be a potent means for keeping implementing agencies on track, but other more political means (such as public information campaigns through the media) may be used as well. In Hawaii, the nongovernmental Children's Rights Coalition has launched a suit against the state government for its failure to provide mandated educational services for learning disabled children. The legal action is being accompanied by a public information program that will help people to understand their children's rights. If there were a right-to-adequate-nutrition on the books, such a coalition also could bring action against the government for failing to prevent malnutrition.

In general, if the system threatens to go off the tracks, the compliance or accountability mechanism sounds an alarm and takes action to correct the implementation mechanism. Accountability means there are independent observers of the implementation mechanism that have some capacity to take or call for corrective action if the system is not operating well. Ideally there should be explicit standards against which the accountability agency evaluates the performance of the implementing agency. The accountability agency is in effect a permanent auditor.

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 severely malnourished child that is discovered, thus increasing its incentive to end childhood malnutrition. In a more positive approach, designated nongovernmental organizations could be given an award or "bounty" of a small sum of money for each malnourished 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 large common purpose.

One particular form of accountability mechanism 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 *ubi jus ibi remedium* – where there is a right there must be a remedy. Article 8 of the 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." Children's nutrition 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. If you or your child don't get what you feel you are entitled to under the law, there should be straightforward, simple, accessible, inexpensive, fair, and safe means for pressing your claims. This legal recourse is essential for assuring the government's compliance with the law.

The implementation of the right to adequate nutrition is ultimately the responsibility of government at different levels, but it is also the responsibility 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. If the law says that every child has a right to adequate nutrition, any one who is concerned could help to see that the right is honored.

The meaning of hard rights and accountability can be understood by recalling the nature of contracts. Suppose you have a contract with me in which I promise to provide goods or services in exchange for a specified amount of money. That contract is not simply an articulation of claims; if it is legally binding it represents *enforceable* claims. If one of us is not satisfied, there is some third party to whom we can go to press for fulfillment of the contractual obligations. Similarly, a human rights regime can be understood as representing an implicit contract between citizens and government, comparable to that described by Rousseau in *The Social Contract* of 1762. If that contract is to be taken seriously, there must be some basis on which claims against the government can be enforced.

People in power may resist the articulation of specific rights because rights imply accountability – and political people don't like the idea of being called to account. Nevertheless, the argument is worth pressing. Talk about human rights does not mean much if it does not mean accountability.

Funding

Strengthening children's right to adequate nutrition means *assuring* that children get what they should have. We may press for fuller funding for programs so that all who meet the eligibility criteria can in fact get the service. But full funding this year does not assure full funding next year. Increased funding for nutrition programs certainly is worth pursuing, but it leaves children vulnerable to the see-saw of the budgeting process. Funding may be increased for a time, but with the next war or drought or bank crisis, the budgeters are likely to say there is not enough money, and funding for the programs will be ratcheted down again. Even when funding is adequate there may be nothing to assure that *all* who are eligible actually receive the services to which they are – or should be – entitled.

Those who meet the eligibility qualifications should not have to do without the services because someone says there is not enough money. Those denied services for which they are qualified should have clear and readily accessible legal recourse, just as retirees who do not get their social security checks have a legal basis for demanding what is theirs.

Hard rights provide assured entitlements; services are not provided only "if possible" or "if budgets allow." A right to service implies *first call* on public resources, so that these are paid for first, before anything else. Those most in need are served first. Increasing funding for service programs does not in itself alter the balance of power. It is important to assure than those who are

eligible for such programs receive the services as *a matter of right*. Effectively implemented rights strengthen the weak in the face of the strong and thus benefit them over the long run.

Capping entitlements

The idea of the right to nutrition has not advanced partly because there is resistance to any suggestion that individuals ought to have the right to demand that they be fed. No one wants the neighborhood vagrant to have a right of access to his or her personal cupboard. No one is proposing that. The proposal is that carefully designed governmental programs should be established to assure that no child should have to suffer from serious and sustained malnutrition.

There is resistance to the idea of economic rights of any kind because there is a fear that opening that door would obligate the society to unlimited demands for costly services.[20] But first call does not mean an unlimited call. Unquestionably, entitlements must be capped, and they must be well targeted. Well-framed rights are based on clear, detailed criteria regarding who is eligible for services. The law regarding children's right to adequate nutrition should spell out the nature of the service to be provided, and establish clear limits regarding age and other considerations. The criteria can be set to keep the pool of eligible people to a manageable size.

Services to assure adequate nutrition need to be provided only to those who are malnourished or at risk of malnutrition. Using conventional anthropometric indicators, it could be decided that all children who are *moderately* or *severely* malnourished would be entitled to specific services. Perhaps the right would apply only to children under some particular age.

The obligation is not to deliver a specific quantum of food or services to all children, but to bring about a particular result. For example, the law might state that the government must provide services, following specified protocols, to any child under twelve years of age who is moderately or severely underweight according to commonly accepted anthropometric measures and standards. The government may find that the most cost-effective means for *preventing* children from becoming underweight is through establishing a good immunization program, maintaining effective sanitation systems, and educating mothers about family budgeting and food handling. Governments could achieve the required results in different ways, depending on local circumstances.

In some countries the government's promoting the clear identification of

[20] The concern is elaborated in Peter G. Peterson and Neil Howe (1988) *On Borrowed Time: How the Growth in Entitlement Spending Threatens America's Future*, San Francisco: ICS Press. But "the major entitlement programs – Medicare, Social Security, farm aid – give huge subsidies to retirees and farmers who earn more than $100,000" in what can be described as "federal welfare spending for the wealthy". "A Time for Leadership", *Time*, December 9, 1991, pp. 22–24.

malnourished children might be enough to stimulate increased attention by the community to those children's needs. If children do get more attention from their parents and from their communities simply because they are identified as malnourished, the cost to government for remedial services could be kept very low.

Very poor countries might limit their commitment to providing service only to severely malnourished children under five years of age, while others might assure that services would be provided for both moderately and severely malnourished children up to the age of sixteen. 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. Whatever total amount of service can be provided by government, it is important to assure that it begins with those who have the greatest needs.

The idea of a right to adequate nutrition will not be politically feasible unless the obligations imposed on others by that right is capped, and a good way to cap it is by limiting it to young children who are significantly malnourished.

Using existing programs

The work of ending childhood malnutrition worldwide should be focused where the problem is most intense, but it may be more feasible to develop the methods where the problem is moderate and capacities to respond to the problem are large. In this sense, developed countries such as those in western Europe, Japan, and the United States are well placed to provide leadership in showing how children's right to adequate nutrition could be made into a hard right. Moreover, the call for a United Nations Convention on the Right to Food seems infeasible so long as it comes from countries that ask the international community to do what they do not do for their own people.

In the United States there will be some ideological resistance to the establishment of any sort of economic right. In the law, however, the distance to be traveled is not great:

> The U.S. Supreme Court has ruled that there is no fundamental federal constitutional right to such goods as food, shelter, or education, but the rights to the basics of life are frequently set out in federal or state statutes or state constitutions. For example . . . the AFDC statute gives federal matching funds to states "to furnish financial assistance . . . to help maintain and strengthen family life." And state welfare statutes frequently require that payments be adequate to meet basic needs. While such requirements are often ignored in practice, their existence in federal and state law demonstrates that many of the principles and rights embedded in article 27(3) [of the Convention on the Rights of the Child], already are to be found in a significant part in U.S. law.[21]

[21] James Weill (1990) Assuring an Adequate Standard of Living for the Child, in: Cynthia Price

No new service programs need to be developed; if all who were eligible for programs such as the Special Supplemental Food Program for Women, Infants and Children (WIC) and Aid to Families with Dependent Children (AFDC) did in fact participate, hunger could for all practical purposes be ended. The *Medford Declaration to End Hunger in the U.S.* asserts that "If we fully utilize existing public programs – in conjunction with the heroic efforts of voluntary food providers in local communities – we can end hunger very soon."

The United States has designed an elaborate nutrition monitoring system,[22] and it has many different kinds of nutrition programs. However, the monitoring system looks in many different directions and serves many different objectives. It looks more at the nutrition patterns of middle class people than at the malnutrition of marginalized people. If the system cannot (or chooses not to) see the problem of childhood malnutrition it is not going to fix it. While many important elements are present in the United States, they are not integrated into a single system directed toward the goal of ending malnutrition. The point is not simply to monitor, but to firmly link the results of monitoring to goal-directed action. There is not much point to keeping your eyes on the road if your hands are not on the steering wheel.

Existing programs should be used wherever feasible. In the United States, children's right to adequate nutrition could be established by providing unambiguous, enforceable rights to Medicaid coverage and WIC, AFDC, Food Stamps and other established programs. Other countries could make more systematic use of whatever monitoring and service programs they already have in place. In poor nations as well as rich nations, if entitlements are capped and existing service programs are used, recognizing and implementing the right of children to adequate nutrition need not be costly. Indeed, focusing the effort could result in more efficient use of existing programs.

Many developing countries have nutrition programs in place which could be adapted to acknowledge children's nutrition rights. In the state of Tamilnadu in India, for example, the Tamilnadu Integrated Nutrition Program (TINP) was introduced in October 1980. It targeted feeding to children at nutritional risk as demonstrated by growth faltering based on weight-for-age. In July 1982 the government introduced the noon meal program, covering all children between two and five years of age regardless of their nutritional status. In September 1984 coverage was expended to include all poor children going to school, up to the age of 15. In the view of Dr. Anuradha Khati Rajivan, Collector in the Pudukkottai District:

Cohen and Howard A. Davidson, eds. (1990), *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*, Washington, D.C.: American Bar Association and Defense for Children International-USA, pp. 197–217; quoted from p. 213.

[22] Department of Health and Human Services and Department of Agriculture 'Ten-Year Comprehensive Plan for the National Nutrition Monitoring and Related Research Program', *Federal Register*, Vol. 56, No. 209 (Tuesday, October 29, 1991), pp. 55716–55734.

> In the State of Tamilnadu, India, it is now possible to think of the feeding programs for children as entitlement programs. Here the term entitlement is being used in the sense of a right, something accepted by the society and political leadership and which is unlikely to be questioned for reasons of resource constraints. . . . Budgetary pressures have not led to cutbacks for the feeding program. . . . The noon meal program now has a first call on the state budget along with food subsidies of the public distribution system and electricity subsidies.

It is still not a hard right in the sense that there are explicit laws assuring children of this entitlement and providing some recourse in case the right is not fulfilled. However, it might not be difficult to take that step. The number of beneficiaries has been increasing steadily, straining the budget. If it becomes necessary to limit the categories of those eligible, it may at the same time be feasible to provide legal assurances for those who are designated as eligible.

Nutrition rights are not promoted as an alternative to other means of alleviating malnutrition. Rather, the rights approach complements and indeed reinforces the necessity for a variety of actions to alleviate malnutrition. Reorganizing existing programs within a rights framework could make them more streamlined and efficient, and thus result in more cost-effective service.

Task force on children's nutrition rights

In December 1992 in Rome, just prior to the International Conference on Nutrition, a Task Force on Children's Nutrition Rights was established. Functioning under the umbrella of the World Alliance on Nutrition and Human Rights, the task force promotes the strengthening of children's nutrition rights in local, national, and international law. I serve as its coordinator. The Task Force facilitates and encourages a variety of activities such as research and lobbying on the issue, but its work centers on encouraging the organization of national workshops on the theme. These national workshops are designed to launch locally-based long-term campaigns to strengthen children's nutrition rights, giving attention both to their articulation in the law and the effective implementation of that law. Individuals from both governmental and non-governmental organizations will be invited to participate.

The workshops will use a variation of the "triple-A approach" recommended by UNICEF:

> The three most important elements of this strategy consist of a continuous and self-refining process of Assessment, Analysis and Action (followed by reassessment, clearer analysis, more focused action, etc.). The first step describes how information should be used. The second provides a guide

for discerning what data should be collected. The third suggests the action to be taken.[23]

While UNICEF uses this approach to help communities and governments develop overall strategies for dealing with malnutrition, in these workshops the focus is narrowed to the ways in which childrens' nutrition rights, explicitly stated in the law, can be developed and strengthened.

The *assessment* of the situation will involve describing the current nutrition problems and responses to them, and will also require examination of existing law. Has the nation agreed to any of the major international instruments that affirm rights to adequate nutrition? Are those rights currently articulated in national law? If they are present in the law, are they clear and strong, or vague and abstract? Are children's nutrition rights actually implemented in practice? Are there measures of accountability to assure that food, health, and care programs reach all who should be reached?

The *analysis* will explore explanations for why the nutrition situation is as it is, and why the law is as it is.

On the basis of these foundations, the workshops will then consider *action*, developing strategies for strengthening children's nutrition rights in the nation. The first stage will involve a brainstorming exercise in which many different kinds of approaches are considered, and then these will be reviewed and reformulated to shape concrete plans, with specific steps, and clear commitments by different individuals and organizations to follow through.

The first workshop was held in Guatemala in February 1993 and the second in Mexico in May 1993. Others are planned, and discussions are underway with potential organizers elsewhere. Organizers are being asked to invite individuals to their workshops who might arrange similar programs in other nations in their regions. Hopefully this will lead to an ongoing process of facilitation, networking, and learning. It is too early to show any results, but we are confident that this process will in time lead to increasing recognition of children's right to adequate nutrition.

[23] UNICEF (1992) *Food, Health, and Care: The UNICEF Vision and Strategy for a World Free from Hunger and Malnutrition*, New York: UNICEF.