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Tying the Knot: An Interdisciplinary Approach to Understanding the Human Right to Adequate Nutrition

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Tying the Knot: An Interdisciplinary Approach to Understanding the Human Right to Adequate Nutrition

JESSICA FANZO, KAITLIN Y. CORDES, ELIZABETH FOX, AND ANNA BULMAN*

Malnutrition is alarmingly prevalent, affecting one in three people worldwide. In this Article, we argue that a key reason the global community has been unsuccessful in combatting malnutrition is a lack of clarity outside the field of nutrition regarding the true meaning of “nutrition.” In particular, this has limited the effectiveness of international human rights law as a mechanism for addressing malnutrition.

In this interdisciplinary Article, which draws from both the legal and nutrition fields, we unpack the meaning of nutrition and demonstrate that a standalone right to adequate nutrition does indeed ex-

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ist in international human rights law as a sum of other rights. This right to nutrition is, essentially, the sum of the human rights to food, health, education, water and sanitation, a healthy environment, information, political participation, and social security, along with rights ensuring adequate protection of and non-discrimination against specific groups, such as women, children, and indigenous peoples. Having located the right to nutrition within international human rights law, we argue that it is important to package adequate nutrition as a standalone human right, and we propose the following definition:

“The right to adequate nutrition is realized when all people have access to (i) a diverse, adequate, quality, and safe diet that meets their basic nutritional needs, (ii) the biological means, conditions, and resources needed to support a health status that effectively manages or is absent of illness and disease, and (iii) the underlying resources that influence the contextual factors that affect a person’s nutrition and health status, such as water, sanitation, hygiene, information, education, skills, income, physical and social capital, economic and natural resources, social protection, and political participation.”

We then provide a diagnostic tool for using a human rights-based approach to address malnutrition, and conclude with practical recommendations for improving nutrition policy and governance in light of nutrition’s status as a standalone human right.

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INTRODUCTION

Malnutrition is insidious. It is not immediately disabling, yet it has serious long-term effects on the health and well-being of individuals and their communities around the world. Malnutrition manifests in at least three key ways: (1) undernourishment (hunger, stunting, and wasting), (2) micronutrient deficiencies (“hidden hunger”), and (3) overweight and obesity.¹ Together, these are known as the

1. PER PINSTRUP-ANDERSEN & DERRILL D. WATSON II, FOOD POLICY FOR DEVELOPING

*multiple burdens of malnutrition.*² These burdens can coexist within countries, households, and individuals, and their consequences reinforce one another.³

Malnutrition is pervasive. It affects approximately one in three people around the world in one or more of its forms.⁴ Nearly forty-five percent of deaths of children under the age of five are attributed to malnutrition.⁵ Malnutrition and poor diet are leading drivers of disease, including non-communicable diseases, such as cardiovascular disease, cancer, and diabetes.⁶ Malnutrition is also associated with poor educational outcomes, foregone labor market productivity, higher health system costs, and losses of ten percent in annual gross domestic product at the country-level.⁷

Malnutrition is complex. It is affected not only by the quantity and quality of food consumed, but also by sanitation and hygiene, child care, primary health care, household and individual behaviors, and various other environmental, political, economic, sociocultural, and demographic drivers that shape food value chains and food environments.⁸ The nutritional status of individuals is thus a function of

COUNTRIES: THE ROLE OF GOVERNMENT IN GLOBAL, NATIONAL, AND LOCAL FOOD SYSTEMS 58 (2011).

2. FOOD & AGRIC. ORG. OF THE UNITED NATIONS [“FAO”], THE STATE OF FOOD AND AGRICULTURE 13–25 (2013); INT’L FOOD POLICY RESEARCH INST., GLOBAL NUTRITION REPORT 2014: ACTIONS AND ACCOUNTABILITY TO ACCELERATE THE WORLD’S PROGRESS ON NUTRITION (2014) [hereinafter Global Nutrition Report 2014].

3. D.J. Barker, *The Developmental Origins of Adult Disease*, 23 J. AM. C. OF NUTRITION (Supp. 6) 588S–95S (2004); L.S. Adair et al., *Associations of Linear Growth and Relative Weight Gain during Early Life with Adult Health and Human Capital in Countries of Low and Middle Income: Findings from Five Birth Cohort Studies*, 382 LANCET 525–34 (2013).

4. See Global Nutrition Report 2014, *supra* note 2, at 23–24.

5. Robert E. Black et al., *Maternal and Child Undernutrition and Overweight in Low-income and Middle-income Countries*, 382 LANCET 427, 444 (2013); D.L. Pelletier et al., *The Effects of Malnutrition on Child Mortality in Developing Countries*, 73 BULL. WORLD HEALTH ORG. 443, 446 (1995).

6. INT’L FOOD POLICY RESEARCH INST., GLOBAL NUTRITION REPORT 2016: FROM PROMISE TO IMPACT: ENDING MALNUTRITION BY 2030, at 1 (2016) [hereinafter Global Nutrition Report 2016].

7. *Id.*; Sue Horton & Richard H. Steckel, *Malnutrition: Global Economic Losses Attributable to Malnutrition 1900–2000 and Projections to 2050*, in HOW MUCH HAVE GLOBAL PROBLEMS COST THE WORLD? A SCORECARD FROM 1900 TO 2050, at 247–72 (Bjørn Lomborg ed., 2013).

8. PINSTRUP-ANDERSEN & WATSON, *supra* note 1, at 56–57; HIGH LEVEL PANEL OF EXPERTS ON FOOD SEC. AND NUTRITION OF THE COMM. ON WORLD FOOD SEC., NUTRITION AND FOOD SYSTEMS 24–32 (2017), <http://www.fao.org/3/a-i7846e.pdf> [<https://perma.cc/98EV-VKBG>].

multiple factors with which individuals interact but over which they have little control.

In spite of the centrality of nutrition to development, global efforts to address malnutrition have been hampered by a lack of clarity in international law and policymaking regarding the true nature of “nutrition.” A general failure to understand the nuances of nutrition’s complexity has resulted in a deficit of comprehensive and multi-sectoral approaches for addressing modern global nutrition problems. This is particularly clear when viewed from the lens of international human rights law, where the legal status of nutrition has often been ignored, glossed over, or murky.

Efforts have been made to elevate the international legal status of nutrition through two primary avenues.⁹ The first is the recognition of a right for specific groups of people—but not all peoples. These groups include: children; pregnant and lactating women, as well as women in other specific settings; and, to some degree, people in certain regional areas. This approach, however, is deficient. It is ad hoc, does not apply to all peoples, and employs an incomplete understanding of nutrition. The second avenue is highlighting the nutrition elements of closely-related rights, such as the right to food and, to a lesser degree, the right to health. This second approach is better in that it expands the right to all peoples. Yet it is inherently limited because it over-emphasizes certain elements of adequate nutrition (e.g., diet or health) and overlooks the full range of elements necessary for the opportunity to achieve adequate nutrition.

In light of these limitations, we argue that nutrition requires

9. There are also efforts to elevate nutrition in the food security context. However, even though the two are commonly conflated, the concept of “food security and nutrition” is not the same as a right to nutrition or a right to food. The most immediately relevant difference between the concepts is that under the food security and nutrition paradigm, food security and nutrition are effectively treated as an objective or measurable outcome. By contrast, human rights are accompanied by legally binding obligations on States. For example, under the right to food, individuals have the right to food that is available, accessible, adequate, and sustainable, and can seek to hold States and others to account for failures to protect or respect their rights. *See, e.g.,* Ana Ayala & Benjamin Mason Meier, *A Human Rights Approach to the Health Implications of Food and Nutrition Insecurity*, 38 *PUB. HEALTH REV.* 10–32 (2017), <https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0056-5> [<https://perma.cc/53SB-UN9K>].

A slightly different angle is that, under a food security framework, people could be seen as recipients of charity and their hunger and nutritional statuses as outcomes, while under a human rights framework, these people are entitled rights holders. *See, e.g.,* Anne C. Bellows et al., *The Evolving Nature of the Human Rights System and the Development of the Right to Adequate Food and Nutrition Concept*, in *GENDER, NUTRITION, AND THE HUMAN RIGHT TO ADEQUATE FOOD* 1, 25–27 (Anne C. Bellows et al. eds., 2016) (discussing a human rights-based approach in the context of food and nutrition).

elucidation as its own standalone human right in order for the international legal system to contribute effectively to addressing malnutrition. This Article provides an argument for why nutrition should already be considered as an existing standalone human right, and helps to elaborate on the nature and practical implications of a right to adequate nutrition. We assume that the general mistreatment of adequate nutrition in international law stems at least in part from an insufficient understanding of “nutrition.” Combining the perspective of public international lawyers with that of nutritional scientists, in Part I we unpack the true meaning of “nutrition.” In Part II, we discuss the limitations of existing international human rights jurisprudence in dealing with nutrition as a human right for all peoples. We then argue that a right to adequate nutrition is realized when the rights to food, health, education, water and sanitation, a healthy environment, information, political participation, and social security are all fully realized—along with rights ensuring adequate protection of and non-discrimination against specific groups, such as women, children, and indigenous peoples. These are all widely accepted universal rights; nearly all are codified in binding legal instruments. As such, while we acknowledge that there is no universal codified right to adequate nutrition, we argue that a right to adequate nutrition does in fact exist as the sum total of these other rights.

In Part III, we propose a definition of the right to adequate nutrition:

The right to adequate nutrition is realized when all people have access to (i) a diverse, adequate, quality, and safe diet that meets their basic nutritional needs, (ii) the biological means, conditions, and resources needed to support a health status that effectively manages or is absent of illness and disease, and (iii) the underlying resources that influence the contextual factors that affect a person’s nutrition and health status, such as water, sanitation, hygiene, information, education, skills, income, physical and social capital, economic and natural resources, social protection, and political participation.

We then explain the importance of recognizing nutrition as a standalone human right and propose a diagnostic tool for a holistic, rights-based approach to addressing malnutrition. We conclude with recommendations for using the right to adequate nutrition as a tool for improving international and domestic policy.

I. UNDERSTANDING “NUTRITION”

A. *The Components of Optimal Nutrition*

Nutrition is often misinterpreted as dietary intake alone. However, although diet certainly influences a person’s nutrition, so does a person’s physiological and health status, as well as a number of micro- and macro-level factors, such as sociocultural, environmental, economic, behavioral, and political contexts, that inform individuals’ health and diets. For the purpose of this Article, we define optimal nutrition as having (i) a quality diet, (ii) good health, and (iii) an underlying socioecological context that supports individuals’ diet and health.¹⁰ We describe each of these components of nutrition in more detail below.

1. A Quality Diet

A “quality diet” varies based on individual needs (e.g., based on age, gender, health status, lifestyle, and degree of physical activity), cultural context, local food availability, and dietary customs.¹¹ Foods consumed in a quality diet need to be culturally acceptable and appropriate to the people consuming them. A “quality diet” is also affected by the types and quantities of foods and nutrients consumed, interactions between different types of foods, and interactions between individuals’ nutritional needs and their health.

Although there is no single “quality diet” that reflects the needs of all people at all times, there is general consensus on the characteristics of a diet that protects against malnutrition in all its forms.¹² These include:

(1) Sufficient **quantity or adequacy** of food energy and macro- and micronutrients that are necessary to maintain life, support physical activity, and achieve and maintain a healthy body weight;

(2) **Diversity** of nutrient-dense foods, such as vegetables, fruits, whole grains and cereals, dairy, and animal- and plant-based

10. UNICEF, UNICEF’S APPROACH TO SCALING UP NUTRITION FOR MOTHERS AND THEIR CHILDREN (2015), https://www.unicef.org/nutrition/files/Unicef_Nutrition_Strategy.pdf [<https://perma.cc/W3JK-C7HJ>].

11. World Health Organization [“WHO”], *Healthy Diet*, Fact Sheet No. 394 (2015), <http://www.who.int/mediacentre/factsheets/fs394/en/> [<https://perma.cc/36TY-6ZUR>].

12. HIGH LEVEL PANEL OF EXPERTS ON FOOD SECURITY AND NUTRITION, *supra* note 8, at 32–33; WHO, *supra* note 11; Vasanti S. Malik et al., *Global Obesity: Trends, Risk Factors and Policy Implications*, 9 NATURE REVIEWS ENDOCRINOLOGY 13 (2013).

proteins, that are appropriate to the geographical location and cultural context;

(3) **Balance** of foods, with only moderate amounts of processed animal-source foods and with limited consumption of nutrient-poor foods (such as those high in energy, saturated and trans fats, added sugars, and salts) that are associated with adverse health outcomes, including obesity and non-communicable disease;¹³ and

(4) **Safety** of foods so that they are free of contamination from harmful bacteria, viruses, parasites, or chemical substances during production, storage, distribution, and preparation.

2. Good Health

Individuals' health status is also a central component of their nutritional status. The World Health Organization ("WHO") defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹⁴ Health relates to a person's nutritional status because a person's health status can alter the foods and nutrients that a person can consume, digest, and absorb. When a person is sick, they might have increased energy requirements, altered metabolism, or decreased nutrient absorption; these factors alter what constitutes a "quality diet" for that individual and, in some circumstances, make it difficult for a person to adequately meet their nutritional needs. Poor health and immune function can also interfere with individuals' abilities to use the nutrients they consume; this is particularly true for young children. However, some diseases that are considered chronic or life-long (e.g., autoimmune diseases, genetic disorders, cancer, diabetes, and HIV) can be well-managed with treatment, medications, and/or lifestyle changes. As such, the presence of disease itself does not mean that a person is in poor health and does not preclude that person from achieving adequate nutrition. Poor health, with illnesses and diseases that are not well-managed and without changes to an individual's diet to account for increased nutritional needs due to disease, would make

13. Renata Micha et al., *Association Between Dietary Factors and Mortality From Heart Disease, Stroke, and Type 2 Diabetes in the United States*, 317 JAMA 912 (2017); Mohammad H. Forouzanfar et al., *Global, Regional, and National Comparative Risk Assessment of 79 Behavioural, Environmental, Occupational, and Metabolic Risks or Clusters of Risks in 188 Countries, 1990–2013: A Systematic Analysis for the Global Burden of Disease Study 2013*, 386 LANCET 2291, 2291–97 (2015).

14. WHO, CONSTITUTION OF THE WORLD HEALTH ORGANIZATION (2005), <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1> [<https://perma.cc/CG7H-9YW4>].

the achievement of adequate nutrition impossible. As such, for the purposes of this paper, good health needed to achieve adequate nutrition may be satisfied either by the absence of illness and disease or by effective management thereof.

3. Underlying Socioecological Context

Nutrition also involves the complex set of underlying factors that influence health and diet. At both individual and household levels, factors such as access to resources, knowledge of how and what to consume, access to health care, education, hygiene and sanitation, and clean water all influence health and the adequacy and content of diets consumed.¹⁵ Cultural norms that influence gender roles and social status also affect health and access to food. For instance, if women eat last in their households or do not control household resources, the quality of foods they consume may be poor.¹⁶ Other more macro-level factors, such as those tied to agriculture, natural resources, and economics, also influence individuals' health, diets, and their access to acceptable and affordable foods.¹⁷ As the 2016 Global Nutrition Report explains:

Malnutrition results from the interaction of poor-quality diets and poor-quality health and care environments and behaviors, which are shaped in part by a host of underlying factors, such as political instability, poor economic development, conflict, inequality, and some dimensions of globalization.¹⁸

The achievement of optimal nutrition thus builds off of a number of specific components: food, health, education, water and sanitation, a healthy environment, and access to information. Accessing these critical components often requires both sufficient resources as well as the ability to participate fully in civil and political life. Certain groups—such as women, children, and indigenous peoples—may be

15. Asbjørn Eide explained that food, health, and care, plus education as a cross-cutting dimension, determine human nutritional status. See, e.g., Asbjørn Eide (Special Rapporteur on the Right to Adequate Food as a Human Right), *The Human Right to Adequate Food and Freedom from Hunger*, ¶ 44, U.N. Doc. E/CN.4/Sub.2/1999/12 (June 28, 1999); Global Nutrition Report 2014, *supra* note 2, at xv.

16. Joel Gittelsohn & Amy E. Vastine, *Sociocultural and Household Factors Impacting on the Selection, Allocation and Consumption of Animal Source Foods: Current Knowledge and Application*, 133 J. NUTRITION 4036S, 4038S (2003).

17. PINSTRUP-ANDERSEN & WATSON, *supra* note 1, at 1–25; High Level Panel of Experts on Food Sec. and Nutrition, *supra* note 8, at 67–81.

18. Global Nutrition Report 2016, *supra* note 6, at 1–2.

more vulnerable in specific situations, thus requiring protection against discrimination that would otherwise prevent such access.

B. Methods of Measuring Nutritional Status

Various measures are commonly used to assess an individual's nutritional status. The most common proximal measures are anthropometric measures of underweight, stunting, wasting, overweight, and obesity.¹⁹ Measures of micronutrient deficiencies are also used to reflect nutritional status.²⁰ While these different indicators measure manifestations of malnutrition, they do not specify the underlying causes, which may be complex. For instance, a child might be wasted because she cannot access clean water, lacks nutrient-dense foods, suffers from diarrhea and/or some other underlying infection, or most likely, is affected by a combination of these fac-

19. Anthropometric measures compare height and/or weight to a standard that captures age, sex, and, sometimes, regional differences. For adults, anthropometric measures of nutritional status are most often represented by body mass index ("BMI"). BMI is an index of weight-to-height (weight in kilograms divided by height in meters squared). Cut-offs for adults are as follows: BMI < 17.0 indicates moderate and severe thinness, BMI < 18.5 indicates underweight, BMI 18.5 to 24.9 indicates normal weight, BMI ≥ 25.0 indicates overweight, and BMI ≥ 30.0 indicates obesity. For children, *underweight* is indicated by a child's weight being two standard deviations below normal for their age. *Stunting* reflects the long-term and cumulative effects of dietary energy deficiency, micronutrient deficiency, and infections since and before birth, and is indicated by a child's height being two standard deviations below normal for their age. *Wasting* is an indicator that reflects a recent and severe process of substantial weight loss associated with caloric deprivation (dietary energy deficiency) or disease and is indicated by a child's weight being two standard deviations below normal for their height (e.g., marasmus), a mid-upper arm circumference of less than 115mm, or bipedal pitting edema (e.g., kwashiorkor). Finally, *overweight* is typically representative of excess dietary energy, and is indicated by a child's weight being greater than two standard deviations above normal for their height. These are more proximal measures of malnutrition, as opposed to more distal measures, which include morbidity (i.e., the state of having a disease), mortality (i.e., death), and cognitive ability.

20. For instance, anemia (i.e., hemoglobin concentration in the blood < 110 mg/ml) is often used as an indicator of iron deficiency, even though iron-deficiency is not the only cause of anemia around the world. WHO, NUTRITION LANDSCAPE INFORMATION SYSTEM (NLIS): COUNTRY PROFILE INDICATORS 5 (2010), http://www.who.int/nutrition/nlis_interpretationguide_isbn9789241599955/en/ [<https://perma.cc/EG4W-CER4>]. Serum zinc is an important biomarker for zinc deficiencies in populations but can be difficult to reliably measure, Bruno de Benoist, et al., *Conclusions of the Joint WHO/UNICEF/IAEA/IZiNCG interagency meeting on zinc status indicators*, 28 FOOD AND NUTRITION BULL. S480–86 (2007). Beyond biochemical measures from blood and urine, clinical indicators such as night-blindness for vitamin A deficiency and goiter for iodine deficiency can also be used as proxies for certain micronutrient deficiencies that have specific physical manifestations. WHO, *supra* note 20.

tors.

With this understanding of nutrition, we now turn to an analysis of how nutrition has been dealt with to date in international human rights law. We then make suggestions for its recognition as a standalone human right.

II. INTERNATIONAL HUMAN RIGHTS LAW AND NUTRITION

There has been, to date, no clear and comprehensive articulation of nutrition in international and regional human rights law. Nutrition is not altogether ignored, but it has not yet been fully articulated or applied as a universal right for all people. Given the centrality of nutrition to human (and broader) development, the ad hoc and limited manner with which nutrition has been dealt in the human rights system is somewhat surprising. This piecemeal approach has left a key aspect of human vitality and well-being essentially outside the human rights legal framework, with only a few exceptions, and has resulted in an overly narrow conceptualization of nutrition within the human rights arena.

The relative neglect of nutrition in international human rights law might stem in part from the complexities inherent in the concept of “nutrition.” Conceptual difficulties regarding nutrition arise at two levels. First, as explained in Part I above, nutrition involves various factors (including health, diet, and socioecological factors) and interactions between those factors. Secondly, “nutrition” is not static, and what is considered adequate for a given person can vary over time, depending on health status and other factors.

This Part focuses first on the ad hoc manner in which nutrition has been treated in existing international and regional human rights law. In Part II.A, we analyze the way nutrition has been treated in international human rights law to date and find that treatment deficient. In Part II.B, we argue that in spite of the piecemeal and uncomprehensive treatment of nutrition in human rights law to date, and although nutrition has not yet been expressly codified as a universal human right in an international treaty, the human right to adequate nutrition does indeed exist. It arises as the sum of a number of other human rights and should be recognized as such.

A. Locating Nutrition in Human Rights Law

The concept of adequate nutrition as a human right is not new. Yet to date, references to a right to nutrition have primarily

been in relation to specific groups or as an element of other human rights.²¹ In this sub-section, we identify the two main ways in which human rights law has addressed malnutrition. First, the right to nutrition has been recognized in varying degrees of comprehensiveness in treaties, but limited to specific groups of people or regions. Second, the right to nutrition has been recognized as a component of other codified rights, namely the right to food or the right to health. In the first instance, both the scope of the right (in the sense of who it applies to) and the content (in the sense of what the right entails) suffer shortcomings in that the right does not have universal application or that key elements of nutrition are excluded. In the second instance, while the issue of scope is addressed (the codified rights we discuss do apply universally to all human beings), we find that the content remains deficient. In other words, neither variant captures the full meaning of nutrition in the full sense of the term and applies it universally to all people regardless of their gender, age, or location.

1. Nutrition as Explicitly Recognized in Treaties Relevant to Specific Groups or Regions

A universal right to nutrition is not codified in any legally binding international treaty. Only a few binding international and regional treaties explicitly mention nutrition. They all do so in the limited contexts of certain target groups or regions.²² Specifically, certain treaties protecting the rights of children and of women (although primarily in their status as child-bearers) recognize the importance of

21. Multiple U.N. experts have referenced a right to nutrition. For example, Hilal Elver, the current U.N. Special Rapporteur on the Right to Food, has written of a “right to adequate nutrition.” She notes that such a right is “[i]ncreasingly . . . recognized as an essential element of the right to food and the right to health.” Hilal Elver (Special Rapporteur on the Right to Food), *Interim Rep. of the Special Rapporteur on the Right to Food*, ¶ 1, U.N. Doc. A/71/282 (Aug. 3, 2016). In a 2014 article, Olivier De Schutter, the U.N. Special Rapporteur on the Right to Food from 2008–2014, states that a deeper understanding of under- and malnutrition requires moving beyond caloric availability to focus more on well-being and health. Olivier De Schutter, *The Right to Adequate Nutrition*, 57(2) DEVELOPMENT 147 (2014). See also UNITED NATIONS CHILDREN’S FUND [“UNICEF”], THE STATE OF THE WORLD’S CHILDREN 20 (1998) (stating that “[n]utrition has been expressed as a right in international human rights instruments since 1924” but focusing predominantly on nutrition references in treaties specific to women and children); Elver, *supra* note 21, ¶ 93.

22. While there are domestic examples of constitutionally enshrined nutritional rights, including rights for children, see, e.g., S. AFR. CONST., 1996, the focus of this Article is on regional and international mechanisms.

nutrition.²³ However, they do not necessarily expressly codify or acknowledge a human right to nutrition. Regionally, the only instance of an express right to adequate nutrition for all persons can be found in the Inter-American Human Rights system in the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”).²⁴ However, as we will show, the right to nutrition in the Inter-American System is arguably used as another way to describe the right to food. Therefore, it does not fully capture the full meaning of the right to adequate nutrition that we propose.

a. Children as a target group

Children’s nutritional needs are recognized and protected in the Convention on the Rights of the Child (“CRC”) as essential components of the rights to health and to an adequate standard of living.²⁵ While highlighting the linkages between these rights and nutrition, the CRC does not explicitly describe nutrition as a right in itself. Article 24 of the CRC recognizes the right of every child to the enjoyment of the highest attainable standard of health.²⁶ Under this article, a child’s right to health specifically requires States Parties to take appropriate measures:

- c) To combat disease and malnutrition, including within the framework of primary *health care*, through, *inter alia*, the application of readily available technology and through *the provision of adequate nutritious foods* and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- . . .
- e) 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*

23. U.N. Comm. on the Rights of the Child, General Comment No. 15, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013) [hereinafter CRC Gen. Comm. No. 15]; Convention on the Elimination of All Forms of Discrimination Against Women art. 12, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

24. Org. of Am. States (“OAS”), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Nov. 16, 1999, O.A.S.T.S. No. 69 [hereinafter Protocol of San Salvador].

25. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

26. *Id.* art. 24.

*knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents . . .*²⁷

Article 27 recognizes the right of every child to a standard of living adequate for their “physical, mental, spiritual, moral and social development.”²⁸ Sub-article 27(3) requires that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need *provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*”²⁹ Read together, Articles 24 and 27 direct States to address malnutrition by providing for certain elements of nutrition—namely, health care, food, water, education, and knowledge through material assistance and support programs.

The Committee on the Rights of the Child’s General Comment 15, which constitutes an authoritative interpretation of the CRC,³⁰ further recognizes the interconnectedness of nutrition and health.³¹ It recommends that “[c]omprehensive primary health-care programmes . . . be delivered alongside proven community-based efforts, including . . . nutritional interventions.”³² The General Comment also elaborates on the CRC’s requirement regarding the provision of nutritious foods. For instance, it notes the effectiveness of direct nutrition interventions for pregnant women, recommending the protection of breastfeeding,³³ and urges States to enshrine agreed standards concerning children’s right to health, such as the International Code on Marketing of Breast-milk Substitutes, into domestic law.³⁴ The General Comment further emphasizes the importance of adequate nutrition and growth monitoring in early childhood, encourages school feeding programs combined with nutrition and health education, and exhorts efforts to address child obesity, including by regulating the marketing of certain energy-dense and micronutrient-poor foods and drinks and restricting their availability in schools and

27. *Id.* art. 24(2) (emphasis added).

28. *Id.* art. 27(1).

29. *Id.* art. 27(3) (emphasis added).

30. International human rights treaties have corresponding treaty bodies that issue authoritative interpretations, usually through General Comments or General Recommendations.

31. CRC Gen. Comm. No. 15, *supra* note 23.

32. *Id.* ¶ 26.

33. *Id.* ¶¶ 43–44.

34. *Id.* ¶ 44.

other places.³⁵ In addition to connecting nutrition and the right to health in these ways, the General Comment also recommends, in the context of clean drinking water and sanitation, indicators on “malnutrition, diarrhoea and other water-related diseases and household size.”³⁶ However, although these issues are linked in the General Comment, the Committee has not delivered any advisory opinions relating to the nutrition of children through the treaty’s individual complaints mechanism.

The CRC and General Comment 15 strongly link nutrition with other codified human rights, such as the rights to health, water, environment, education, and social protection. They also provide a relatively (although not entirely) comprehensive description of the health and diet inputs required for children’s achievement of adequate nutrition as well as of the need for parental education and access to resources.³⁷ To date, the CRC is the binding instrument that most explicitly recognizes nutritional needs and links those needs to State duties. Yet the treaty’s protection of rights related to children’s nutritional needs are limited to children as a clearly defined group; they are not universal for those over eighteen years of age.³⁸ Further, while the coverage of nutrition is indeed relatively comprehensive, it does not address important micro-socioecological dimensions, such as cultural norms, social status, and gender, or macro-factors, such as agriculture, natural resources, and economics.

b. Women as a target group

A reference to nutrition also arises in the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”). The treaty provides specific human rights protections to women; however, it does not expressly codify a right to adequate nutrition for all women. Rather, Article 12, which focuses on equal access to health care, specifically requires States Parties to “ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”³⁹ Thus, the only express nutritional reference in the treaty relates to the “adequate nutrition” of women when they are pregnant and breast-

35. *Id.* ¶¶ 45–47.

36. *Id.* ¶ 48.

37. *Id.* ¶¶ 26, 41–50; CRC, *supra* note 25, arts. 24 & 27.

38. CRC, *supra* note 25, art. 1.

39. CEDAW, *supra* note 23, art. 12.

feeding.

However, some authoritative interpretations of the treaty by the Committee on the Elimination of Discrimination against Women have expanded references to nutrition beyond pregnant and breast-feeding women. In General Recommendation 24 on women and health, the Committee expands upon the text of Article 12 by referring to the needs of “all women.”⁴⁰ In the background section, the Committee states:

The Committee notes that the full realization of women’s right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women’s *fundamental human right to nutritional well-being* throughout their lifespan by means of a *food supply* that is safe, nutritious and adapted to local conditions. To this end, States parties should take steps to facilitate physical and economic access to productive resources, especially for rural women, and to otherwise ensure that the special nutritional needs of *all women* within their jurisdiction are met.⁴¹

This is a significant expansion beyond what is expressly codified in the treaty. Nonetheless, on the whole, while General Recommendation 24 employs a definition of nutrition that broadly refers to the needs of all women, it narrowly considers only the diet component of adequate nutrition.⁴² Other references to nutrition in the recommendation are vague in substance and limited to reporting requirements.⁴³

40. U.N. Comm. on the Elimination of Discrimination Against Women (“U.N. CEDAW”), Rep. of the Comm. on the Elimination of Discrimination against Women, at 3 ¶ 7, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter CEDAW Gen. Rec. No. 24], <http://www.un.org/womenwatch/daw/cedaw/reports/21report.pdf> [<https://perma.cc/38HN-6DGT>] (emphasis added).

41. *Id.*

42. General Recommendation 24 also mentions nutrition in the context of States reporting on “their health legislation, plans and policies for women with reliable data disaggregated by sex on . . . *conditions hazardous to women’s health and nutrition.*” *Id.* ¶ 9 (emphasis added). Among other things, the recommendation asserts that States’ reporting should cover how health care policies and measures address women’s needs, interests, and situations, including: “Socio-economic factors that vary for women in general and some groups of women in particular.” *Id.* ¶ 12. The recommendation goes on to cite negative effects on women’s nutrition and health, with “unequal power relationships between women and men” as an example. *Id.* However, the Committee does not elaborate on the ways in which a woman’s nutrition may be negatively affected in such circumstances, nor the underlying contextual factors that might influence women’s nutrition.

43. *See, e.g., id.* ¶ 9 (“States parties must report on their health legislation, plans and policies for women with reliable data disaggregated by sex on the incidence and severity of

The Committee has also highlighted the relevance of nutrition to the realization of different rights in other General Recommendations interpreting the treaty.⁴⁴ To varying degrees, it mentions nutrition in its General Recommendations on equality in marriage and family relations,⁴⁵ older women and protection of their human rights,⁴⁶ harmful practices,⁴⁷ rural women,⁴⁸ and the gender-related dimensions of disaster risk reduction in the context of climate change.⁴⁹

While each of the General Recommendations on equality in marriage and family relations, older women and protection of their human rights, and harmful practices do draw out nutrition elements of the rights of women, they are relatively limited in their analysis of

diseases and conditions hazardous to women's health and nutrition and on the availability and cost-effectiveness of preventive and curative measures.”).

44. For a full list of General Recommendations to CEDAW, see *Committee on the Elimination of Discrimination Against Women: General Recommendations*, OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> [<https://perma.cc/EJ8T-MTWN>].

45. U.N. CEDAW, Rep. on the Comm. on the Elimination of Discrimination Against Women on Its Thirteenth Session, ¶ 26, U.N. Doc. A/49/38 (Apr. 12, 1994) [hereinafter CEDAW Thirteenth Session Rep.].

46. U.N. CEDAW, CEDAW General Recommendation No. 27 on Older Women and the Protection of Their Human Rights, ¶ 45, U.N. Doc. CEDAW/C/GC/27 (Dec. 16, 2010) [hereinafter CEDAW Gen. Rec. No. 27].

47. U.N. CEDAW & U.N. Comm. on the Rights of the Child, Joint General Recommendation No. 31 of the Comm. on the Elimination of Discrimination Against Women / General Comment No. 18 of the Comm. on the Rights of the Child on Harmful Practices, ¶ 69, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (Nov. 14, 2014) [hereinafter CEDAW & CRC Joint Rec.].

48. U.N. CEDAW, CEDAW General Recommendation No. 34 (2016) on the Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (Mar. 7, 2016) [hereinafter CEDAW Gen Rec. No. 34].

49. U.N. CEDAW, CEDAW General Recommendation No. 37 (2018) on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018) [hereinafter CEDAW Gen. Rec. No. 37]. Technically, nutrition is mentioned in General Recommendation No. 36; however, the mention is not relevant for elucidating the right to adequate nutrition:

Between and within school types, students are also differentiated on the basis of perceptions of appropriate subject options for each sex. In academic schools, girls are often clustered in programmes in the humanities and underrepresented in science, technology, engineering and mathematics, while, in vocational schools, women and girls predominate in areas such as food and *nutrition*, cosmetology and clerical studies. The stratification of students and knowledge ultimately leads to girls being propelled into what are socially regarded as low-status occupations.

U.N. CEDAW, General Recommendation No. 36 (2017) on the Right of Girls and Women to Education, ¶ 60, U.N. Doc. CEDAW/C/GC/36 (Nov. 27, 2017) (emphasis added).

nutrition and generally appear to limit the focus to the element of diet. For example, General Recommendation No. 27, which focuses specifically on older women, again draws a connection between nutrition and the right to health. It underscores the importance of “interventions promoting behavioural and lifestyle changes to delay the onset of health problems, such as *healthy nutritional practices* and an active lifestyle” in the context of the State obligation to adopt “comprehensive health-care policy aimed at protecting the health needs of older women.”⁵⁰ However, no further explanation is offered for what is meant by “healthy nutritional practices,” thus shedding no light on what is involved. In General Recommendation No. 21 on equality in marriage and family relations, the Committee explains that “[t]he right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to *provide adequate housing and nutrition for herself and for her family.*”⁵¹

On the one hand, this reference to nutrition is again expansive, in that it applies to all women. On the other, it again does not explain what is meant by “nutrition,” although the use of the verb “to provide” implies that what is meant by “nutrition” is the dietary element. In their joint general recommendation on harmful practices, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child recommend that States Parties “[e]nsure that schools provide age-appropriate information on sexual and reproductive health and rights, including in relation to gender relations and responsible sexual behavior, HIV prevention, *nutrition* and protection from violence and harmful practices.”⁵² However, beyond this educational lens, no further mention of nutrition is made.

Two more recent General Recommendations from the Committee on the Elimination of Discrimination against Women provide more detailed interpretations of nutrition. In General Recommendation No. 34, which focuses on rural women, the Committee states that States Parties must ensure quality health care services that include nutrition counseling⁵³ as well as widely disseminated and accessible

50. CEDAW Gen. Rec. No. 27, *supra* note 46, ¶ 45 (emphasis added) (“Long-term care provisions should include interventions promoting behavioural and lifestyle changes to delay the onset of health problems, such as healthy nutritional practices and an active lifestyle, and affordable access to health-care services, including screening for and treatment of diseases, in particular those most prevalent among older women.”).

51. CEDAW Thirteenth Session Rep., *supra* note 45, ¶ 26 (emphasis added).

52. CEDAW & CRC Joint Rec., *supra* note 47 (emphasis added).

53. CEDAW Gen Rec. No. 34, *supra* note 48, ¶ 39(a).

health care information that includes information on healthy lifestyles and nutrition.⁵⁴ The Committee again links nutrition and pregnancy by noting that States must undertake systematic monitoring of the health and nutritional status of pregnant rural women, new mothers, and their infants,⁵⁵ and that, “[i]n case of malnutrition or lack of access to clean water, extra food rations and drinking water should be provided systematically throughout pregnancy and lactation.”⁵⁶ The Committee further elaborates on food and nutrition as relevant to women’s rights to land and natural resources.⁵⁷ Noting the critical role that rural women play in achieving food security and reducing malnutrition, as well as the ironic fact that they are often the most affected by food insecurity and malnutrition, the Committee asserts that States Parties should “ensure the realization of the right to food and nutrition of rural women within the framework of food sovereignty.”⁵⁸ Moreover, States Parties should “pay particular attention to the nutritional needs of rural women, particularly pregnant and lactating women, putting in place effective policies ensuring rural women have access to adequate food and nutrition,”⁵⁹ and should “adopt laws, policies and measures to promote and protect rural women’s diverse local agricultural methods and products . . . [and] ensure diversity of crops and medicinal resources to improve rural women’s food security and health.”⁶⁰ Through these references, the Committee continues to link food and nutrition but also incorporates health and education components. While it does single out pregnant women and mothers in some parts, in others it extends nutrition issues to all rural women. This is a very positive expansion and explanation of the relevance of nutrition to rural women,⁶¹ but the interpretation is obviously inherently limited as the General Recommendation is focusing only on rural and not even urban women or other people.

In its most recent recommendation, General Recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change, the Committee provides its most illustrative description to date of the relevance of nutrition, especially for

54. *Id.* ¶ 39(f).

55. *Id.* ¶ 39(d).

56. *Id.*

57. *Id.* ¶ 64.

58. *Id.*

59. *Id.* ¶ 65.

60. *Id.* ¶ 66.

61. *Id.* ¶ 64. The General Comment even refers to “the right to food and nutrition of rural women within the framework of food sovereignty.” *Id.*

showing underlying causes.⁶² The Recommendation explains that “higher levels of mortality and morbidity among women during and following disasters are also a result of *inequalities they face in access to adequate health care, food and nutrition, water and sanitation, education, technology and information.*”⁶³

The Recommendation highlights, in the context of the right to health, that “[t]he susceptibility of women and girls to disease is heightened as a result of *inequalities in access to food, nutrition and health care* as well as social expectations that women will act as primary care-givers for children, the elderly and the sick.”⁶⁴ It goes on to recommend that States Parties “[i]nvest in climate and disaster resilient health systems and services and *allocate the maximum of their available resources to the underlying determinants of health such as clean water, adequate nutrition and sanitation facilities and menstrual hygiene management.*”⁶⁵

In a subsection on the right to an adequate standard of living including food, land, housing, water, and sanitation, the Committee also demonstrates the interconnectedness of these rights with the negative outcome of malnutrition. It explains that:

There is evidence that the effects of food, land and water insecurity are not gender neutral and that women are more likely to suffer from undernourishment and malnutrition in times of food scarcity. . . .

Articles 12 and 14 of the Convention contain specific guarantees on *nutrition* and women’s equal participation in *decision-making about food production and consumption*. In addition, the core obligations of States to eliminate discrimination outlined in article 2 of the Convention, in article 5 (a) to modify cultural patterns of behavior based on discriminatory stereotypes, in article 15 to ensure equality before the law and in article 16 to guarantee equality within marriage and family relations are of central importance in addressing *women’s rights to land and productive resources that are vital for ensuring the right to food and sustainable livelihoods.*⁶⁶

62. CEDAW Gen. Rec. No. 37, *supra* note 49.

63. *Id.* ¶ 4 (emphasis added).

64. *Id.* ¶ 66 (emphasis added).

65. *Id.* ¶ 68(b) (emphasis added).

66. *Id.* ¶ 69 (emphasis added); *Id.* ¶ 71.

This General Recommendation is the most expansive elucidation by the Committee of the content of women's nutrition rights: it focuses on the nutrition of all women, and highlights some of the important underlying drivers that affect women's nutritional status, including socio-economic factors, by demonstrating the interconnectedness of nutrition with other human rights. Civil and political elements, such as participation and the right to information, are also implied, although not explicitly addressed. While this is a very positive contribution to understanding nutrition from a rights-based perspective, it ultimately (1) remains limited to women and (2) does not examine all the elements we have described that are essential for a person to have the opportunity to realize adequate nutrition.

In summary, the only explicit reference to nutrition within CEDAW relates to the "adequate nutrition" of women when they are pregnant and breastfeeding. Links between nutrition and women's rights have been expanded through various General Recommendations that authoritatively interpret the treaty. However, these references to nutrition remain limited because they are primarily concerned with the dietary dimension of nutrition and are generally vague. The General Recommendation on women's right to health, for example, asserts women's fundamental human right to nutritional well-being, and extends this right to all women; however, it employs a narrow and largely food-based conception of nutrition.⁶⁷ The General Recommendation on rural women also links nutrition with health care, including in the context of pregnancy, but additionally expands on nutrition by showing the link with women's rights to land and natural resources. Finally, the recent General Recommendation on the gender-related dimensions of disaster risk-reduction in the context of climate change provides the most comprehensive description of the relevance of nutrition and its components to date, and urges States Parties to allocate resources to underlying determinants of health such as adequate nutrition. While the more comprehensive discussion of nutrition and the focus on all women renders it the most expansive interpretation of nutrition in respect of treaty obligations to date, the General Recommendation does not exhaustively explain how nutrition can be realized, especially outside of a disaster context, nor does it articulate a right to nutrition per se.

c. Regional codification

The Protocol of San Salvador is the only treaty to expressly

67. CEDAW Gen. Rec. No. 24, *supra* note 40 (as seen with the wording "by means of a food supply . . .").

mention a right to adequate nutrition for all people.⁶⁸ The Protocol is legally binding on the sixteen States in the Americas that have ratified it,⁶⁹ meaning that people in those jurisdictions do have an explicitly recognized “right to adequate nutrition,” but the right appears to focus on food rather than the true meaning of nutrition. Indeed, Article 12 of the Protocol is titled “Right to Food,” even though the text then goes on to enshrine a “right to adequate nutrition”:

Article 12 Right to Food

1. Everyone has the right to adequate nutrition, which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.⁷⁰

While expressly mentioning a right to nutrition, Article 12 implies that adequate nutrition is to be realized primarily through food. For example, in paragraph 2, the article specifically focuses on food production, supply, and distribution; it does not consider health, education, information, or any of the other elements that we have identified as essential for a person to be able to achieve adequate nutrition. The right is also entitled and referred to as the right to food. This limited framing and focus on food ignores the other elements that are essential for achieving adequate nutrition.

Authoritative interpretations of Article 12 are limited, but further support the notion that Article 12 is concerned with the right to food alone. To date, the Inter-American Court on Human Rights has not elaborated on the content of Article 12 in any cases.⁷¹ A report

68. Protocol of San Salvador, *supra* note 24.

69. For a comprehensive list, see *Signatories and Ratifications, A-52: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”)*, OAS, <http://www.oas.org/juridico/english/sigs/a-52.html> [<https://perma.cc/KSE8-FHHW>].

70. Protocol of San Salvador, *supra* note 24, ¶ 12.

71. Search conducted on 10 July, 2018, of the Inter-American Court of Human Rights database using the search term “San Salvador,” <http://www.corteidh.or.cr/cf/Jurisprudencia2/index.cfm?lang=en> [<https://perma.cc/3KD5-RTW7>]. This is not to say that food or nutritional issues have not arisen in other cases. For example, the following case does consider such issues and even provides a reference in one instance to Article 12 but does not interpret it: *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 166 (Jun. 17, 2005).

by the Organization of American States explaining progress indicators for measuring rights under the Protocol does include some nutritional outcomes as indicators, but it does not discuss malnutrition holistically.⁷² Moreover, the document emphasizes that Article 12 focuses on the right to food, and thus only explores the diet element of nutrition.⁷³ The only broader explanations of nutrition provided in the document are acknowledgments that “the concept of access to resources is closely tied to that of nutrition” and that “[w]hen public policy is fragmented, focusing solely on nutrition, it neglects access to production resources; when public policies only focus on production, neglecting the need for nutritional diversity, both the social and cultural dimension of this right is affected.”⁷⁴ While this description is accurate, it is also tailored towards the food dimension of nutrition and overlooks the importance of all other elements required for a person to achieve nutrition that we discussed above.

Ultimately, the express right to nutrition in the Protocol appears to be limited to diet quality, leaving open the possibility that the term is simply being used as another way to describe the right to food. Further, it is limited in legal effect to those countries that have ratified the regional convention. Another regional treaty, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, also mentions nutrition, but it restricts the application of nutritional rights to women during pregnancy and while breastfeeding.⁷⁵

In short, there is no universally codified right to adequate nutrition. The treaty references that do exist either limit the right to a specific target group or, at best, to all people in the sixteen States that are party to the San Salvador Protocol—in the latter case, this right is

72. OAS, WORKING GRP. OF THE PROTOCOL OF SAN SALVADOR, PROGRESS INDICATORS FOR MEASURING RIGHTS UNDER THE PROTOCOL OF SAN SALVADOR (2d ed. 2015), http://www.oas.org/en/sedi/pub/progress_indicators.pdf [<https://perma.cc/38A4-33HD>].

73. The references provided in the report are indicative of the focus on food. See *id.* at 87 n.6 (“General Comment No. 12 of the International Covenant on Economic, Social and Cultural Rights (1966), the Voluntary Guidelines on the Right to Food in the Context of National Food Security (2004), the Guiding Principles on Extreme Poverty and Human Rights (2012), and the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests, paragraphs 75 and 76 (2012).”).

74. *Id.* at 88.

75. African Comm’n on Human and Peoples’ Rights, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women, art. 14 (July 11, 2003), <http://www.achpr.org/instruments/women-protocol/> [<https://perma.cc/U7S5-B3RB>] (“Health and Reproductive Rights: States Parties shall take all appropriate measures to . . . establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding.”).

not even conceptualized as covering the full range of issues relevant to nutrition, but rather serves more as a proxy for the right to food. The General Comments discussed do broaden the content of “nutrition,” but still do not fully encapsulate the meaning of nutrition. Beyond protecting aspects of nutrition for specific groups or people in a specific region, however, nutrition does arise within international human rights law in the context of other codified human rights. We now turn to the ways in which nutrition has been addressed as a component of other codified rights, in particular the rights to food and to health.

2. Nutrition as a Component of Other Codified Rights

A right to nutrition, as a component of other codified rights, has been asserted by some U.N. experts, legal scholars, and activists, primarily in the context of the right to food or, less frequently, the right to health. However, while this approach is beneficial for demonstrating the interdependence of nutrition with other rights, we argue that it runs the risk of glossing over the complexity of nutrition, thus missing important elements that need to be addressed when solving problems of malnutrition.

a. Right to Food

International human rights law instruments and scholarship most frequently reference nutrition in the context of the right to food. The right to food, which is codified most comprehensively in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”),⁷⁶ has four main elements: (i) availability, (ii) access, (iii) adequacy, and (iv) sustainability.⁷⁷ Nutritional requirements of food are incorporated into the adequacy element.⁷⁸ That is, food must be nutritious and must meet a person’s nutritional requirements in order to be considered adequate. The Committee on Economic, Social and Cultural Rights (“CESCR”), the body tasked with authori-

76. International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), art. 11, U.N. Doc. A/RES/21/220 (Dec. 16, 1966) [hereinafter ICESCR].

77. As compared to the food security paradigm, which swaps adequacy and sustainability for “utilization and stability.” FAO, DECLARATION OF THE WORLD SUMMIT ON FOOD SECURITY 1 n.1 (2009), http://www.fao.org/fileadmin/templates/wsfs/Summit/Docs/Final_Declaration/WSFS09_Declaration.pdf [https://perma.cc/K8E2-LFSZ].

78. Olivier De Schutter (Special Rapporteur on the Right to Food), *Final Rep.: The Transformative Potential of the Right to Food*, ¶ 2, U.N. Doc. A/HRC/25/57 (Jan. 24, 2014).

tatively interpreting the ICESCR, explains in its General Comment No. 12 that the right to food is not to be “interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.”⁷⁹ As described in General Comment No. 12, the core content of the right to food involves the sufficient availability of culturally acceptable food that satisfies individuals’ dietary needs through sustainable and rights-consistent access.⁸⁰ The CESCR explains in that comment that satisfying “dietary needs” means that “the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.”⁸¹ The General Comment also focuses on measures that States can implement to strengthen dietary diversity and improve consumption patterns. Rather, States are obliged to ensure both physical and economic “access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure . . . freedom from hunger” for all people under their jurisdiction.⁸²

Other guidance has similarly helped to elaborate the steps that States can take to realize the right to food. For example, the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (“Voluntary Guidelines”), which were adopted by the Food and Agriculture Organization of the United Nations (“FAO”), recommend that States take positive measures to enhance dietary diversity and encourage healthy eating habits and food preparation.⁸³ States should also encourage breastfeeding and make sure that dietary composition and intake are not affected by changes in availability and access to food supply.⁸⁴ While relevant to nutrition, this focus remains limited to the food element of adequate nutrition.

Recognizing the centrality of nutrition to the right to food, some scholars and activists have sought to elevate the nutritional

79. U.N. Comm. on Econ., Soc. and Cultural Rights (“CESCR”), General Comment No. 12: The Right to Adequate Food (Art. 11), ¶ 6 U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter CESCR Gen. Comment No. 12].

80. *Id.* ¶¶ 7, 8, 11, 13. See also Olivier de Schutter, *supra* note 78, ¶ 2.

81. CESCR Gen. Comment No. 12, *supra* note 79, ¶ 9.

82. *Id.* ¶ 14 (emphasis added).

83. FAO, Rep. of the Council of FAO on Its One Hundred and Twenty-Seventh Session, appendix D at 21, F.A.O Doc. CL 127/REP. See also CESCR, Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, U.N. Doc. E/CN.4/2005/131, annex (Nov. 2004).

84. *Id.*

component within the right to food, rendering it a “right to adequate food and nutrition.”⁸⁵ These commentators emphasize the underlying drivers of nutrition, such as control over the means of production, access to inputs and social protection, prevention of environmental degradation, use of culturally appropriate foods, and access to clean water and health services.⁸⁶ Building on a food sovereignty approach, scholar-activists Flavio Valente, Ana Franco, and Rita Montes assert that nutrition must be used as a measure at all stages of the food system, from seed to production, retail, and consumption.⁸⁷ Separating food and nutrition in law and policy, they argue, can impede the achievement of adequate nutritional outcomes, as systemic problems fail to be addressed.⁸⁸ They explain that the right to food requires “a healthy, productive, and active life, made possible, among other things, by [individuals’] nutritional well-being” and that a “more prominent inclusion of the nutritional dimension in the conceptual framework of the human right to food and nutrition is central for the proper understanding and realization of this right.”⁸⁹

Valente and colleagues contend that including nutrition more prominently within the right to food could help to avoid limited conceptualizations of the right that narrowly focus on food production, compensatory food assistance programs, or cash transfers.⁹⁰ They also warn that de-linking the nutritional dimension from the right to food risks a tendency to take a “medicalized and reductionist approach” to nutrition and malnutrition,⁹¹ and argue that their proposed conceptual change would provide a stronger “analytical tool to approach the different new forms of malnutrition,” including over-

85. See, e.g., Bellows et al., *supra* note 9; Elver *supra* note 21, ¶ 57.

86. Naomi Hossain, Dolf te Lintelo & Alexandra Wanjiku Kelbert, *A Common Sense Approach to the Right to Food* (Inst. of Dev. Studies, Working Paper No. 458, 2015), <https://www.ids.ac.uk/publications/a-common-sense-approach-to-the-right-to-food/> [<https://perma.cc/J5HW-8MDN>]; RIGHT TO FOOD & NUTRITION WATCH, TEN YEARS OF THE RIGHT TO FOOD GUIDELINES: GAINS, CONCERNS AND STRUGGLES 85–86 (Oct. 2014), https://www.righttofoodandnutrition.org/files/R_t_F_a_N_Watch_2014_eng.pdf [<https://perma.cc/V8TX-CTVY>].

87. Flavio L.S. Valente, Ana María Suárez Franco & Rita Denisse Córdova Montes, *Closing Protection Gaps Through a More Comprehensive Conceptual Framework for the Human Right to Adequate Food and Nutrition*, in GENDER, NUTRITION, AND THE HUMAN RIGHT TO ADEQUATE FOOD 341–408, 358 (Anne C. Bellows et al. eds., 2016).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

weight, obesity, and eating disorders.⁹²

Appending nutrition to the right to food does indeed help elucidate and emphasize the centrality of nutrition for the realization of the right to food. The approach is particularly useful when taking a food systems approach to addressing nutritional problems. Yet, as we have shown, there is much more to nutrition than diet. Assuming this approach may also risk minimizing other important components of nutrition, such as health and education. By contrast, a standalone right to adequate nutrition could play a similar role, while also more fully incorporating non-food elements of nutrition.

b. Right to Health

As is apparent from Part I above, health is an essential component of achieving adequate nutrition, and nutrition is integral for fully realizing the right to health. A universal right to health is codified in Article 12(2) in the ICESCR as the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁹³ The treaty sets out various steps for States Parties that are relevant to nutrition. These include: providing for the healthy development of the child, improving environmental hygiene, and preventing and treating diseases.⁹⁴ Authoritative interpretations of the right to health have also focused on nutritional aspects of the right, as well as links between the rights to health and food. None of those interpretations have specifically argued, however, that these links create an additional right to nutrition.

In General Comment 14, for example, the CESCR recognized the interconnectedness of the right to health and other human rights, including the right to food.⁹⁵ The Committee explained that “socio-

92. *Id.*

93. ICESCR, *supra* note 76, art. 12(2). While the right to food is codified in the ICESCR partly as a component of the right to an adequate standard of living, the right to health is not addressed as a component of an adequate standard of living, but rather in a separate provision. This represents a departure from how health was originally addressed in the Universal Declaration of Human Rights, in which it was explicitly linked to the right to standard of living “adequate for the health of himself and his family.” G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 25 (Dec. 10, 1948) [hereinafter UDHR].

94. ICESCR, *supra* note 76, art. 12(2)(a)–(d) (addressing medical care for the sick).

95. The others are housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly, and movement. CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶ 3, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

economic factors that promote conditions in which people can lead a healthy life” are “embrace[d] by” the right to health, and that the right also includes the underlying determinants of health, including adequate nutrition.⁹⁶ In the same comment, the Committee specifically referenced nutrition in explaining the right to health of children and adolescents,⁹⁷ and recognized the deep connection between the health of indigenous communities and their “traditional territories and environment,” particularly as the latter serve as important sources of nutrition.⁹⁸

Governments’ obligations related to the right to health include a specific obligation to appropriately disseminate information on healthy lifestyles and nutrition,⁹⁹ and a core obligation to ensure “access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone.”¹⁰⁰

During his mandate, the then-U.N. Special Rapporteur on the Right to Health Anand Grover specifically addressed the links between nutrient-related obligations under the rights to health and food in a report on unhealthy foods, diet-related non-communicable diseases, and the right to health.¹⁰¹ In that report, Grover highlighted the “urgent need for States to address structural changes in the food environment, which negatively impact individuals’ enjoyment of the right to adequate and nutritious food—an underlying determinant of the right to health.”¹⁰² Describing State obligations under the right to health that relate to food and nutrition, including education and public awareness programs,¹⁰³ he also linked nutrition and health care by stating that:

States should . . . formulate a time-bound plan by taking immediate and continuing steps to the maximum of their available resources. This obligation can be fulfilled, *inter alia*, by formulating policies related to

96. *Id.* ¶¶ 4, 11.

97. *Id.* ¶ 22 (“Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services.”).

98. *Id.* ¶ 27.

99. *Id.* ¶ 37.

100. *Id.* ¶ 43.

101. Anand Grover (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Unhealthy Foods, Non-communicable Diseases and the Right to Health*, U.N. Doc. A/HRC/26/31 (April 1, 2014).

102. *Id.* at Summary.

103. *Id.* ¶¶ 17–18.

health, as well as to sectors such as trade and agriculture. In particular, the right to health framework requires States to take measures to *prevent diet-related NCDs and provide equal and timely access to primary health care*. Thus, in order to ensure the three types of obligations under the right to health, namely to respect, protect and fulfill it, *States should not only provide nutritious food, but also institute measures in all areas of policymaking to reduce the burden of diet-related NCDs*.¹⁰⁴

These authoritative interpretations of the right to health highlight that nutrition, particularly as it is linked with food, is an integral aspect of the right to health. They recognize nutrition's status as a key underlying determinant of health and acknowledge that the right to health cannot be realized when States fail to take steps to protect and ensure adequate nutrition. The human rights framework has, however, been slower to specify how health, conversely, is an underlying determinant of nutritional status. Moreover, while health is key to nutrition, there are many more elements required for a person to achieve adequate nutrition, as discussed in Part I above.

While it is beneficial to elevate the importance of nutrition in the context of the right to food and in the context of the right to health, we argue that simply considering nutrition as a critical component of the rights to food and health fails to acknowledge the many other factors necessary for the achievement of adequate nutrition. In our view, recognizing nutrition as a standalone human right would support a more robust understanding of nutrition and make a rights-based approach more easily accessible when addressing global malnutrition. This perspective is bolstered by the evident interconnectedness of nutrition with human rights beyond food and health, as briefly demonstrated in the next sub-section.

3. The Interdependence of Nutrition with Other Codified Rights

In some cases, nutrition has a dual relationship with existing universal rights: serving as a critical component or requisite to the fulfillment of those rights, while also depending on the realization of those other rights in order to fully realize adequate nutrition. For example, a person requires education to learn about sanitation, diet, and food preparation. Education also increases individual earnings and national income and, through these pathways, can affect nutrition in

104. *Id.* ¶ 13 (second and third emphases added).

the long term.¹⁰⁵ At the same time, adequate nutrition is integral to the realization of the right to education. Malnutrition, and in particular micronutrient deficiencies, such as iron and iodine deficiencies, lowers children's ability to attend and perform at school and diminishes their chances to achieve a complete education.¹⁰⁶ Malnutrition affects the brain's ability to develop, and so can inhibit a person's physical ability to learn.¹⁰⁷ Malnourished learners may experience short-term effects, such as poor concentration and difficulty grasping concepts, as well as longer-term effects, such as an inability to retain what they have learned.¹⁰⁸

The right to life is another codified human right that both re-

105. Achieving educational attainment amongst adolescent girls can also provide long-term nutritional benefits. In addition, parental schooling and education is important for child nutrition and development. Educating women is an important tool for reducing child hunger, according to a cross-country analysis of sixty-three countries. The study found that women's educational gains accounted for forty-three percent of all progress in reducing child malnutrition. See David Gartner, Opinion, *Achieving the Millennium Development Goals: Education is the Key Missing Link*, BROOKINGS INST. (July 30, 2010), <https://www.brookings.edu/opinions/achieving-the-millennium-development-goals-education-is-the-key-missing-link/> [<https://perma.cc/HMH7-Q382>]. Although less significant than for maternal schooling, paternal education at both the primary and secondary levels also reduced the risk of stunting (Odds Ratio was 0.96 (95% confidence interval: 0.93–1.01) and 0.85 (95% confidence interval: 0.81–0.89), respectively). See Marie T. Ruel & Harold Alderman, *Nutrition-Sensitive Interventions and Programmes: How Can They Help to Accelerate Progress in Improving Maternal and Child Nutrition?* 382 LANCET 536, 543–45 (2013). See also Harold Alderman & Derek D. Headey, *How Important is Parental Education for Child Nutrition?* 94 WORLD DEV. 448 (2017). Interestingly, while the link between nutrition and the ability to learn has been well-documented in the fields of nutrition and early child development, this link has largely been overlooked in the international human rights law sphere.

106. See generally Maureen M. Black, *Micronutrient Deficiencies and Cognitive Functioning*, 133 J. NUTRITION 3927S (2003).

107. Günther Fink & Peter C. Rockers, *Childhood Growth, Schooling, and Cognitive Development: Further Evidence from the Young Lives Study*, 100 AM. J. CLINICAL NUTRITION 182 (2014).

108. Ruel & Alderman, *supra* note 105, at 542–45; Susan P. Walker et al., *Effects of Early Childhood Psychosocial Stimulation and Nutritional Supplementation on Cognition and Education in Growth-Stunted Jamaican Children: Prospective Cohort Study*, 366 LANCET 1804 (2005); Douglas S. Berkman et al., *Effects of Stunting, Diarrhoeal Disease, and Parasitic Infection During Infancy on Cognition in Late Childhood: A Follow-Up Study*, 359 LANCET 564 (2002); Benjamin T. Crookston et al., *Children Who Recover from Early Stunting and Children Who Are Not Stunted Demonstrate Similar Levels of Cognition*, 140 J. NUTRITION 1996 (2010); Susan P. Walker et al., *Early Childhood Stunting Is Associated with Lower Developmental Levels in the Subsequent Generation of Children*, 145 J. NUTRITION 823 (2015); Santiago Cueto et al., *Does Pre-School Improve Cognitive Abilities Among Children with Early-Life Stunting? A Longitudinal Study for Peru*, 75 INT'L J. EDUC. RES. 102 (2016); Fink & Rockers, *supra* note 107.

lies on nutrition for its realization and also is essential for adequate nutrition to be achieved. The right to life is defined in Article 6 of the International Covenant on Civil and Political Rights as: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁰⁹

In its General Comment Number 6, the Human Rights Committee, noting that the right to life is often narrowly interpreted, asserted that the right “cannot properly be understood in a restrictive manner” and so “requires that States adopt positive measures.”¹¹⁰ The Human Rights Committee further expressed the “desirab[ility]” for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.¹¹¹ The Human Rights Committee is currently drafting a new General Comment on the right to life, which will replace previous versions.¹¹² Among other points, the draft comment recognizes that States Parties “should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”¹¹³ The comment ex-

109. International Covenant on Civil and Political Rights art. 6, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

110. Human Rights Comm., General Comment No. 6: Article 6 (Right to Life), ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Apr. 30, 1982).

111. *Id.* This Comment was published in 1982, and the Committee’s use of the term “positive measures” reflects an earlier, and now dated, approach to understanding the nature of States’ rights obligations. Under that approach, civil and political rights were considered “negative rights” requiring non-interference by States, while social, economic, and cultural rights were considered “positive rights” requiring the investment of State resources for their realization. This is now recognized as a false dichotomy: State resources are often required to protect civil and political rights, while the respect of economic, social, and cultural rights often simply requires non-interference by States. Under the respect, protect, and fulfill framework of State obligations, every right involves elements of both non-obstruction and proactive action by States.

112. *Human Rights Committee This Morning Continues Draft General Comment on the Right to Life*, OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS (July 24, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23399&LangID=E> [https://perma.cc/3QKT-YEHW]. See also *Human Rights Committee Adopts 10 Additional Paragraphs to the Draft General Comments on the Right to Life*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS. (July 26, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23411&LangID=E> [https://perma.cc/XLP9-FZYV]; *Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights—Right to Life*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx> [https://perma.cc/HNV3-RANL].

113. Human Rights Comm., Draft General Comment No. 36 on Article 6 of the

plains that one of these general conditions is “widespread hunger and malnutrition.”¹¹⁴ The draft comment then lists “short-term measures designed to ensure access by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation.”¹¹⁵ In these ways, adequate nutrition is shown to be integral to the fulfillment of the right to life, while States’ efforts to fulfill their obligations under the right to life would also help with realization of adequate nutrition.

In other cases, some explicitly recognized rights are necessary to realize adequate nutrition, even if nutrition is not integral to fulfillment of those rights. The clearest example is the right to water and sanitation. Realization of the right to water and sanitation is essential for adequate nutrition: individuals need safe, clean water for food production, drinking, and hygiene, and adequate sanitation is also critical for optimal nutritional outcomes.¹¹⁶ Yet adequate nutrition does not lead to the realization of the right to water and sanitation.¹¹⁷

While all human rights are interconnected and rely on one another to be fulfilled, this is particularly relevant in the case of nutrition, given the multiple elements required to achieve adequate nutrition. In order to more clearly draw out these various elements, we contend that it is most appropriate to recognize nutrition as a standalone human right, in order for human rights law to help address global malnutrition, in all its forms, effectively.

B. Elaborating a Standalone “Right to Adequate Nutrition”

Although a universal right to adequate nutrition—one that would cover all individuals in all regions of the world—has not been specifically codified in a legally binding treaty, we argue that a general right to adequate nutrition already exists. A brief review of how other human rights have emerged is instructive for reflecting on the

International Covenant on Civil and Political Rights—Right to Life, ¶ 30, https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf [<https://perma.cc/G2YA-7C4A>].

114. *Id.*

115. *Id.*

116. SANITATION & HYGIENE APPLIED RESEARCH FOR EQUITY & UNICEF, THE IMPACT OF POOR SANITATION ON NUTRITION, <https://thousanddays.org/wp-content/uploads/The-Impact-of-Poor-Sanitation-on-Nutrition-1.pdf> [<https://perma.cc/5KUE-N3T8>].

117. The right to water is interpreted into Arts. 11 (Standard of Living) and 12 (Health) of the ICESCR. *See, e.g.*, CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

current status of nutrition within international human rights law. This section considers the ways in which some human rights have evolved into existence over time. Turning then to nutrition, we apply this understanding of rights evolution and assert that a universal human right to adequate nutrition already exists and should be recognized as such.

1. Recognizing “New” Human Rights

Like any area of law, international human rights law is not static. The human rights legal framework benefits from sustained and rigorous analysis that continues to refine, clarify, and occasionally move the law’s boundaries to ensure greater protections for those who are most in need. The process for change in the human rights systems can be “slow and painstaking.”¹¹⁸ Yet change has proven to be an essential characteristic of this legal system. An evolving system has supported a fuller realization of existing codified rights and has helped advance broader objectives of the human rights framework, including the essential principles that all people have the right to live in dignity and without discrimination.¹¹⁹

The most accepted and definitive, but also most laborious, avenue for the recognition of new human rights is through the development of new core treaties. This is rare. The path to a treaty can be long and winding, and only six core international human rights treaties have been adopted in the last five decades.¹²⁰ These newer treaties have been a critical addition to the human rights legal framework, providing new sources of binding obligations on States Parties. Yet they do not account for the full range of ways in which interna-

118. Bellows et al., *supra* note 9, at 6.

119. See, e.g., UDHR, *supra* note 93, *Introduction*.

120. Since the ICCPR, *supra* note 109, and ICESCR, *supra* note 76, were adopted in 1966 (both entering into force in 1976), six new treaties have been adopted and have entered into force: CEDAW, *supra* note 23 (adopted 1979), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1465 U.N.T.S. 85; CRC, *supra* note 25 (adopted 1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), Dec. 18, 1990, 2220 U.N.T.S. 3; International Convention for the Protection of All Persons from Enforced Disappearance (CPEd), Dec. 20, 2006, 2716 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3. Four of these treaties focus specifically on the protection of rights of specific groups: women, children, migrant workers, and persons with disabilities. See *The Core International Human Rights Instruments and Their Monitoring Bodies*, Office of the U.N. High Comm’r for Hum. Rights (2018), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> [http://perma.cc/8T8N-5959].

tional human rights law has evolved.

Authoritative interpretations of rights codified in existing treaties continuously shape how such rights are understood and applied. Subsequent to codification in binding international and regional treaties, human rights are authoritatively interpreted in ways that clarify their meaning, scope, and application to particular situations. Treaty bodies do this through their monitoring of State compliance with applicable treaties and through their General Comments on specific issues, in which they elaborate States Parties' duties under the treaty. Human rights tribunals and commissions do so through their mandates to adjudicate or interpret State actions in light of complaints. The normative content of rights, as well as assessments of States' compliance with them, is further shaped by other human rights bodies and official experts such as the U.N. Human Rights Council ("HRC") and Special Procedures, which are mandated to report and advise on human rights related to specific themes or countries.

While these authoritative interpretations do not give rise to new rights per se, they can engender the elaboration of rights or duties within parameters that were not explicitly discussed in the relevant binding treaty. For example, an obligation of States to refrain from, and protect against, forced evictions has been asserted in multiple authoritative interpretations of the ICESCR, even though the ICESCR text itself does not explicitly mention forced evictions.¹²¹

Soft law instruments provide further guidance for understanding the breadth, scope, and meaning of codified rights. These documents—such as declarations and resolutions adopted by the U.N. General Assembly or the HRC, as well as inter-governmentally negotiated texts (e.g., the Voluntary Guidelines)—are not legally binding on States. Yet they can serve as quasi-legal rules that help to illuminate State duties under human rights law; in doing so, such instruments refine, and potentially expand, conceptions of rights.¹²²

121. See, e.g., CESCR, Rep. on the Sixth Session, annex III, General Comment No. 4, ¶ 18, U.N. Doc. E/1992/23 (1992); CESCR, Rep. on the Sixteenth and Seventeenth Sessions, annex IV, General Comment No. 7, U.N. Doc. E/1998/22 (1998); Miloon Kothari (Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living), *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled "Human Rights Council,"* annex I, Basic Principles and Guidelines on Development-Based Evictions and Displacement, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007).

122. Soft law is generally considered to be quasi-legal rules that do not constitute legally binding obligations. See e.g., Andrew T. Guzman & Timothy L. Meyer, *International Soft Law*, 2 J. LEGAL ANALYSIS 171, 172–74 (2010). Soft law can help in the interpretation of binding legal obligations. Over time, soft law may begin to "harden" through the integration of soft law norms either into binding documents or into authoritative

In addition to express codification of new rights or expansion of existing rights through authoritative interpretations and soft law instruments, rights can exist by implication. Arguments recognizing existing rights, including those not explicitly codified in human rights treaties,¹²³ have asserted an implicit existence in one of two ways: (i) as a component of, or as something inextricably linked or instrumental to, the realization of codified rights,¹²⁴ or (ii) as the sum of those rights.¹²⁵ Because nutrition is so complex and based on the achievement of other essential factors, we argue that the right to adequate nutrition is a sum of other existing rights, and should be explicitly recognized as its own right for clarity in advancing and promoting nutrition initiatives. Arguments of implicit existence that have led to the explicit recognition and broad acceptance by the international community of certain rights are discussed in more detail below.

Of the more recent rights to emerge, the right to water provides one of the most successful examples of a new right that has

interpretations of legal requirements. *Id.*

123. It should go without saying that not all, or even most, legal scholars and advocates would necessarily agree on the validity of any specific argument. More broadly, not all legal scholars would even agree with the premise that human rights law could recognize rights that have not been explicitly consented to via either State agreements or State practice. This Article does not delve into such traditionalist and positivist arguments; for the purposes of this Article, the authors are content to side with the legal scholars who have already eloquently argued, for decades, the emergence or existence of certain rights. For a brief explanation on these arguments, see Luis E. Rodriguez-Rivera, *Is the Human Right to Environment Recognized Under International Law? It Depends on the Source*, 12 *COLO. J. INT'L ENVTL. L. & POL'Y* 1, 1–6 (2001).

124. See, e.g., CESCR, General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the ICESCR), ¶ 3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter CESCR General Comment No. 15] (recognizing that water is a human right “contained in” Art. 11(1), which covers the realization of a right to an adequate standard of living, and that is also “inextricably related to” the rights to health, housing, and food that are protected by the ICESCR); Olivier De Schutter, *The Emerging Human Right to Land*, 12 *INT'L COMMUNITY L. REV.* 303–34 (2010) (arguing that the “emerging” human right to land can sometimes be considered a self-standing right as a component of the right to food, and can sometimes be considered as a right that is instrumental to the right to food); Maeve McDonagh, *The Right to Information in International Human Rights Law*, 13 *HUM. RTS. L. REV.* 25, 26 (2013) (noting that “the right to information has been most commonly recognised by international human rights treaty bodies as coming within the scope of the right to freedom of expression” but that such a right has also been linked to other codified rights); Lea Shaver, *The Right to Read*, 54 *COLUM. J. TRANSNAT'L L.* 1 (asserting that the right to read is implicit in established principles of human rights law).

125. See Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Extreme Poverty and Human Rights*, ¶ 34, U.N. Doc. A/69/297 (Aug. 11, 2014) (noting that a right to social protection is simply “a combination of the right to social security and the right to an adequate standard of living”).

been found to exist, based both on its status as a component of already established rights and its inextricable links to such rights. The path to acceptance of this right has been documented extensively elsewhere¹²⁶ and does not require repeating here. In brief, while the right to water was not explicitly described as a right as such in any core human rights treaty,¹²⁷ the concept began to take hold through, amongst other things, various U.N. conferences. In 2002, the CESCR authoritatively interpreted the ICESCR as protecting the right to water, a right deemed to be both “contained” in the right to an adequate standard of living and also “inextricably related to” the rights to health, housing, and food protected by the Covenant.¹²⁸ Several years later, the HRC requested the Office of the United Nations High Commissioner for Human Rights to study the scope and content of human rights obligations related to equitable access to safe drinking water and sanitation.¹²⁹ By 2010, both the U.N. General Assembly and the HRC had adopted (non-binding) resolutions formally recognizing the right to water and sanitation.¹³⁰ The right to water, though not explicitly codified in legally binding instruments directly applicable to everyone, has nevertheless achieved general acceptance as a human right imposing duties on States. This example demonstrates that the emergence of rights can indeed occur without specific codification in a new treaty.

Another interesting example of recognizing “new” rights is the right to social protection, which arguably exists as a sum of other

126. See, e.g., Sharmila L. Murthy, *The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over-Privatization*, 31 BERKELEY J. INT’L L. 89 (2013); *International Decade for Action ‘Water for Life’ 2005–2015: Decade’s Milestones*, U.N. DEP’T OF ECON. AND SOC. AFFAIRS, <http://www.un.org/waterforlifedecade/milestones.shtml> [<https://perma.cc/M47G-CSXV>].

127. Water, though not the “right to water” per se, is explicitly mentioned in CEDAW, the CRC, and the Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3. See CEDAW, *supra* note 23, art. 14(2)(h); CRC, *supra* note 25, art. 24(2)(c); G.A. Res. 61/106, annex I, Convention on the Rights of Persons with Disabilities, art. 28(2)(a) (Dec. 13, 2006).

128. ICESCR General Comment No. 15, *supra* note 124, ¶ 3 (noting that the rights to housing and food are themselves explicitly listed components of the right to an adequate standard of living).

129. Human Rights Council Dec. 2/104, U.N. Doc. A/HRC/2/L.11/Add. 1 (Nov. 27, 2006).

130. In this interest of brevity, this summary did not do full justice to the right to sanitation, which has been linked to, but arguably should be seen as distinct from, the right to water. See Inga T. Winkler, *The Human Right to Sanitation*, 37 U. PA. J. INT’L L. 1331 (2016) (a detailed discussion of the right to sanitation, and whether it should be deemed a new human right or simply one that is newly recognized but implicit in existing human rights law).

codified rights and highlights why it is useful to consider the right to social protection as a standalone right. As the U.N. Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, explains in a report on social protection, such an argument means that “no claims are needed for novelty, nor is it necessary to argue that the whole is more than the sum of the parts. The right to social protection is thus no more than a combination of the right to social security and the right to an adequate standard of living.”¹³¹ Alston further notes, “the packaging of those two rights into a single concept is important, both because it highlights the synergy between them and facilitates the development of a package of measures to achieve their shared objectives.”¹³² Acceptance of this type of argument—that a right may exist simply as the sum of existing rights—from Alston is particularly notable, given the concerns he has articulated in the past regarding claims of new rights.¹³³

Through the mechanisms detailed in this section, multiple rights have emerged over time, to varying degrees and with varying levels of acceptance. They are generally posited as “new,” “emerging,” or previously unrecognized “existing” rights.¹³⁴ While the history of each emergent or newly recognized right is different, their existence highlights the fluidity within the human rights legal system that allows for incremental adaptation on critical questions of justice and human dignity.

2. Recognizing the Right to Adequate Nutrition

We adopt an approach akin to Alston’s to argue that the right to adequate nutrition is not necessarily a new right, but already exists as the sum of existing rights. As seen in Figure 1, adapted from the UNICEF conceptual framework,¹³⁵ a number of human rights can be

131. Alston, *supra* note 125, ¶ 34.

132. *Id.*

133. Philip Alston, *Conjuring up New Human Rights: A Proposal for Quality Control*, 78 AM. J. INT’L L. 607, 614–15 (1984).

134. This partly depends on the strength of the argument but can also be a function of how accepted a right becomes over time. Claims of new rights, ones that are not explicitly codified in treaties, have often been viewed with apprehension. States, unsurprisingly, may not be keen to be told that they have obligations regarding rights not included in the treaties they have ratified. Human rights experts, too, have expressed concern about the potential dilution or devaluation of fundamental rights with each new rights claim, and have proposed various criteria by which new claims could be evaluated. *See, e.g., id.*; Dinah Shelton, *Challenges to the Future of Civil and Political Rights*, 55 WASH. & LEE L. REV. 669 (1998).

135. UNICEF, UNICEF’S APPROACH TO SCALING UP NUTRITION FOR MOTHERS AND

mapped onto a broad framework of factors affecting nutrition. These rights include food, health, information, education, a healthy environment, water and sanitation, housing, social protection, cultural life, political participation, as well as labor, children, women and indigenous rights, and non-discrimination on the basis of disability or race.

THEIR CHILDREN (June 2015), https://www.unicef.org/nutrition/files/Unicef_Nutrition_Strategy.pdf [<https://perma.cc/D8MC-2MUE>]. The UNICEF conceptual framework is the most widely accepted framework for capturing a comprehensive view of nutrition—that is, its consequences and its immediate, underlying, and basic causes. In use since 1990, the framework highlights the underlying and more removed determinants that have an impact on nutritional status. Although this framework focuses specifically on maternal and child undernutrition, it sheds valuable light on the causes and consequences of malnutrition more broadly, including other burdens of malnutrition, such as overweight and obesity, for which many of the causes are similar. As such, we have adapted the framework so that it would apply to all peoples and not just pregnant or lactating women, and children. Our adapted version of the map explains that the immediate causes of malnutrition (in potentially any person) are inadequate dietary intake and/or disease. It then shows how these two immediate causes are shaped by the underlying causes of malnutrition: household food insecurity, inadequate care, unhealthy household environment, and inadequate health services. In turn, these underlying causes are shaped by basic causes, which comprise the sociocultural, economic, and political context; financial, human, physical, and social capital; and household access to resources (including land, education, employment, income, and technology). If a person is malnourished, it can have short-term consequences, such as mortality, morbidity, and disability. It can also have long-term consequences that affect adult height, cognitive ability, economic productivity, reproductive performance, overweight and obesity, and metabolic and cardiovascular disease. These can each feed back into the negative feedback loop of malnutrition, including through intergenerational means. The utility of the map is understanding that a problem in any one or more of these areas may be the cause of malnutrition in a person. Once the cause is identified, micro-level solutions can be pursued for the person, and macro-level policy solutions can be pursued to try to remedy the problem at a group or societal level.

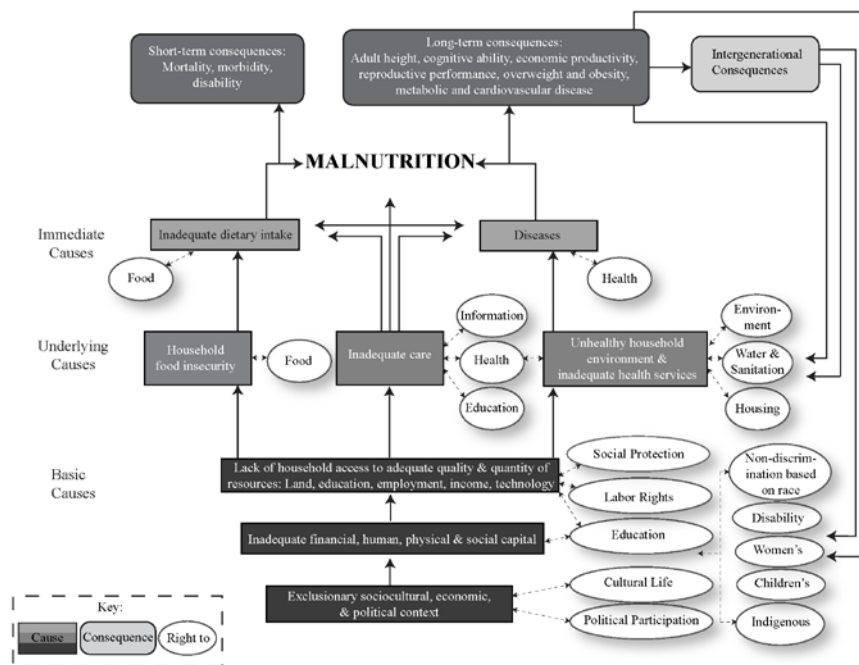


Figure 1. A diagnostic tool for addressing malnutrition through the human right to adequate nutrition¹³⁶

The human rights shown in Figure 1, if all fully realized, could guarantee the achievement of adequate nutrition. That is, if the rights to food, health, education, water and sanitation, a healthy environment, information, political participation, and social security were all fully realized—along with rights ensuring adequate protection of and non-discrimination against specific groups such as women, children, and indigenous peoples—adequate nutrition would also be realized.

The sum of these rights is, in effect, also a right: the right to adequate nutrition. While this “sum of rights” is longer and more complex than that used to argue for a right to social protection, it is essentially the same argument. A universal right to adequate nutrition exists as the sum of existing human rights.

If the right already exists, as we argue, then it is not absolutely necessary to codify a right to adequate nutrition in a new legally

136. Adapted from UNICEF, see *id.* The authors thank Claire Davis for her assistance in designing this figure. In this figure, labor rights include the right to just and favorable conditions of work, as well as other labor rights, such as those found in the ILO Declaration on Fundamental Principles and Rights at Work, 37 I.L.M. 1233 (1998).

binding treaty. Doing so would of course help to underscore State obligations regarding nutrition. Additionally, clarification of this right by an authoritative body such as the CESCR would strengthen understanding of the right's existence and its contours, as would the development of other non-binding instruments and documents, such as declarations by the HRC or the U.N. General Assembly. Yet, these are not inherently necessary for the recognition of a right to adequate nutrition.

Why focus on the right to adequate nutrition as a standalone right, if the realization of other rights would essentially lead to adequate nutrition? First, a recognized right to adequate nutrition would help with conceptual clarity, as the substantive core of adequate nutrition is essentially found scattered amongst multiple rights. This clarity could allow for a more nuanced human rights-based approach to nutrition, one that builds on a "right to food and nutrition" approach, but that focuses on a broader set of factors necessary for the achievement of a right to adequate nutrition. Second, and similarly, a right to adequate nutrition would help to clarify state obligations and business responsibilities regarding nutrition. It would provide a framework for analyzing laws, policies, and initiatives. In doing so, such a right could also promote greater accountability of relevant State and non-State actors regarding their actions or inactions related to nutrition. Third, a recognized right to adequate nutrition could help in the fulfillment of other human rights. As noted above, nutrition is integral to the realization of a number of rights. Greater clarity and accountability, and improved actions and initiatives, in the context of nutrition could thus help in realizing those rights of which nutrition is an essential component.

Importantly, while we focus in this Article on adequate nutrition and seek to elucidate its content as its own human right, we are not suggesting that nutrition should be viewed in isolation from other human rights. Quite the contrary. We argue that the right to adequate nutrition, as the sum of other human rights, can only be truly understood in combination with other rights. In recognizing the unique and vitally important role that nutrition plays in human development, our argument emphasizes nutrition's centrality to all the factors to which it relates.

III. THE RIGHT TO ADEQUATE NUTRITION—IN PRACTICE

For the right to adequate nutrition to be practically realized, it is essential to set out its specific elements. In this Part, we propose a definition. We then consider how the right to adequate nutrition

might be applied, particularly in the context of government obligations and business responsibilities. Finally, we suggest specific measures for realizing the right to adequate nutrition.

A. Definition

Building both on a nutritionist's understanding of the elements required to achieve adequate nutrition and on existing human rights, we argue that:

The right to adequate nutrition is realized when all people have access to (i) a diverse, adequate, quality, and safe diet that meets their basic nutritional needs, (ii) the biological means, conditions, and resources needed to support a health status that effectively manages or is absent of illness and disease, and (iii) the underlying resources that influence the contextual factors that affect a person's nutrition and health status, such as water, sanitation, hygiene, information, education, skills, income, physical and social capital, economic and natural resources, social protection, and political participation.

It is particularly important that groups who traditionally tend to be nutritionally-marginalized, such as children, adolescent girls, women, indigenous populations, displaced peoples, and the elderly, are able to achieve these different components of the right to adequate nutrition. Understood in this way, the human right to adequate nutrition is the right to have the opportunity to achieve adequate nutrition, as opposed to having a particular outcome in and of itself. Governments are not obligated to ensure specific nutritional outcomes; rather, their obligations relate to supporting individuals' opportunities and abilities to achieve adequate nutrition.

B. Application

While full realization of the long list of rights we identify above would lead to realization of the right to adequate nutrition, a packaging of the right to adequate nutrition as a standalone right is critical to advancing better nutritional outcomes in practice. A robustly understood right to adequate nutrition can help illustrate nutrition's deep relevance to policymakers, the private sector, and a range of other actors. In this section, we first examine the legal utility of a standalone right to nutrition, including how such a right might be applied in the context of government obligations and business responsi-

bilities. We then explain how a clear right to adequate nutrition could be applied to strengthen global nutrition policy, concluding with broad policy and governance recommendations for consideration at the international, regional, domestic, and local levels.

1. Legal Utility of Recognizing a Standalone Right to Adequate Nutrition

Aside from improving conceptual clarity of nutrition within human rights law, the benefits of packaging the right to adequate nutrition as a standalone right include (1) clarifying relevant obligations and responsibilities, and (2) providing an analytical framework, both of which can support greater accountability of State and non-State actors.

a. State Obligations

Human rights law and a human rights-based approach empower individuals and groups as legal rights holders and impose obligations on States, making them duty bearers. States have three specific types of human rights obligations: (1) to respect, (2) to protect, and (3) to fulfill the human rights enshrined in international law.¹³⁷ To *respect* rights, States must not interfere with the ability of individuals or groups to realize their rights.¹³⁸ In the context of the right to nutrition, the obligation to respect requires States to not take any action that prevents individuals' access to goods or services necessary for nutrition; this includes their access to adequate and nutritious food, health care, education, information, and safe water.

To *protect* rights, States must ensure that third parties, such as private individuals or businesses, do not deprive individuals or groups of their means to exercise their rights.¹³⁹ The obligation to protect the right to nutrition means that a State must implement measures to ensure that third parties, such as business enterprises, do not deprive individuals of their ability to realize adequate nutrition. This might entail, for example, regulations restricting the ability of corporations to target advertising of unhealthy foods to youth or other vulnerable populations.

137. See, e.g., *International Human Rights Law*, OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> [https://perma.cc/M7BJ-BEDV].

138. *Id.*

139. *Id.*

The obligation to *fulfill* rights can be broken into two components: to facilitate and to provide.¹⁴⁰ States facilitate human rights by taking steps to progressively realize them, effectively by strengthening individuals' or groups' ability to realize their rights.¹⁴¹ And in some cases, States are required to provide for the means of realization when individuals or groups are unable, for reasons beyond their control, to enjoy that status.¹⁴² A State's obligation to fulfill by facilitating the right to nutrition requires it to take steps to strengthen individuals' access to resources necessary for the opportunity to achieve adequate nutritional status. Examples include improving livelihood and employment opportunities, increasing the availability of safe, nutritious foods, and providing health facilities, sewerage and sanitation systems, water, and schools. In terms of provision, States are required to provide the means for the opportunity to achieve an adequate nutritional status to individuals or groups who are unable, for reasons beyond their control, to otherwise enjoy that status.

Most of the existing human rights that are critical components of a right to adequate nutrition, such as the rights to food, health, water, and education, are grounded in the ICESCR. Under the ICESCR, States Parties are obligated to take steps individually and through international assistance and cooperation. Given the centrality of these ICESCR rights to the right to adequate nutrition, there is a case to be made that State obligations regarding the right to adequate nutrition also may include obligations related to international assistance and cooperation.

b. Business Obligations

International human rights law has traditionally placed these obligations squarely on States.¹⁴³ Yet in light of the immense power wielded by corporations and business enterprises, and the significant impacts that their actions can have on ordinary people, human rights law has begun to evolve to grapple with the challenges posed by such actors. At the time of writing, the U.N. Guiding Principles on Business and Human Rights—which were endorsed by the HRC in 2011

140. See, e.g., CESCR Gen. Comment No. 12, *supra* note 79, ¶ 15.

141. See, e.g., *id.*

142. See, e.g., *id.*

143. See, e.g., *International Human Rights Law*, OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx> [<https://perma.cc/9WE8-78FA>].

and which have the status of soft law¹⁴⁴—are the predominant framework for understanding the role of business in the context of human rights law. Under the U.N. Guiding Principles, businesses have responsibilities, rather than obligations, to respect human rights, as well as to provide grievance mechanisms to resolve human rights harms.

Business can have both positive and negative effects on people's realization of the right to adequate nutrition. Businesses may, for example, provide employment opportunities, improve the availability of healthy foods, or provide funding for important socio-economic initiatives. On the other hand, business action or inaction may also have adverse impacts on individuals' ability to realize adequate nutrition. For example, a mining company may pollute productive land, affecting the safety and quality of both food and water. A clothing company may use child labor through its suppliers, preventing that child from receiving an education. These two examples are more familiar kinds of human rights violations. Yet in the nutrition realm, it is possible that discussions could extend beyond such examples to murkier waters, such as a supermarket chain choosing to stock less fresh fruit and vegetables in rural communities because of higher transportation costs. Each of these scenarios can adversely affect the nutritional status of a person in a number of ways, whether by affecting their access to nutritious food, water, education, information, or other factors relevant to nutrition. The question that is currently being debated at the international level is how far business obligations should extend.

The business responsibility to respect human rights specifically means that businesses “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”¹⁴⁵ This can be broken down into two categories. First, businesses must “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.”¹⁴⁶ Second, businesses must “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those im-

144. See *supra* note 122 and accompanying text.

145. John Ruggie (Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework*, princ. 11, U.N. Doc. A/HRC/17/31, annex (Mar. 21, 2011).

146. *Id.* princ. 13.

pacts.”¹⁴⁷ To do this, businesses need a strong policy commitment on human rights, a human rights due diligence process, and processes to remediate adverse impacts.¹⁴⁸

When it comes to nutrition, businesses thus must avoid causing or contributing to individuals’ inability to realize adequate nutrition and must seek to prevent or mitigate adverse nutritional impacts linked to their operations, products, or services. In the case of the hypothetical mining and clothing companies described above, the companies’ direct acts have direct and indirect impacts on the right to adequate nutrition—this is a breach of the company’s responsibility to respect human rights. The cereal company may argue it is providing cheap food, but the low nutritional content and targeted advertising fail to address particularly acute nutritional needs in poorer communities and may contribute to negative nutritional outcomes. To return to the trickier example, the supermarket is making a cost-reduction decision, but if it is the only store in that area and it is profiting from the area, is it not also failing to protect those people’s right to adequate nutrition if they are unable to access nutritious fresh fruit and vegetables? In today’s market economy, where do we draw the line on State versus business responsibilities?

This is an important area that would benefit from further investigation, especially in the context of the process to elaborate a treaty on transnational corporations and human rights. Relatedly, a new treaty to regulate the conduct of transnational corporations is currently being explored, and could have serious implications for challenging scenarios like those described above, potentially by affecting relevant obligations and duties of States and business.¹⁴⁹ It may also shape the discourse around a current trend—that is, a lack of public resources that in many contexts has led to enthusiastic pursuit of public-private partnerships in the nutrition context.¹⁵⁰ These partnerships may also have implications for the realization of the

147. *Id.*

148. *Id.* princ. 15.

149. Human Rights Council Res. 26/9, U.N. Doc. A/HRC/RES/26/9 (July 14, 2014).

150. See, e.g., U.N. Dep’t Econ. & Soc. Affairs, DESA Working Paper No. 148: Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for Purpose?, U.N. Doc. ST/ESA/2016/DWP/148 (Feb. 2016); U.N. Comm. on World Food Sec., Forty-First Session “Making a Difference in Food Security and Nutrition”: Principles for Responsible Investment in Agriculture and Food Systems, U.N. Doc. CSF 2014/41/1 Rev. 1 (Oct. 13–18, 2014); John Hoddinott, Stuart Gillespie & Sivan Yosef, *Public-Private Partnerships and Undernutrition: Examples and Future Prospects*, in 115 WORLD REV. OF NUTRITION AND DIETETICS HIDDEN HUNGER: MALNUTRITION AND THE FIRST 1,000 DAYS OF LIFE: CAUSES, CONSEQUENCES, AND SOLUTIONS 233 (H.K. Biesalski & R.E. Black eds., 2016).

right to adequate nutrition. Ultimately, a corporation's profit-motive underlies its actions; public-private partnerships thus may in some cases be in tension with adequate nutrition as a public good or with adequate nutrition as a human right. However, unpacking these implications under the U.N. Guiding Principles Reporting framework is in itself a significant topic requiring analysis well beyond the scope of this article. In this context, it suffices to note that we can expect that business responsibilities or obligations will continue to evolve.

c. Effects on Groups and Individuals Operationalizing the Right to Adequate Nutrition, and Limitations of this Framework

By clarifying relevant State obligations and business responsibilities as regards nutrition, a right to adequate nutrition also helps to provide an analytical framework for groups and individuals to assess specific situations of malnutrition and propose solutions using a human rights approach. This may be fairly complicated to do in practice. As discussed previously, malnutrition is complex, and often the result of multiple factors. Yet it is possible to examine situations of malnourishment to assess the ways in which the acts or omissions of a State, or acts of non-State actors such as multinational corporations, have led to or contributed to those situations.

Concurrently, human rights law poses its own unique set of challenges in implementation. Though a human rights approach can provide a framework for individuals, practitioners, and organizations to address a human right to adequate nutrition, we acknowledge that international human rights law in and of itself does not offer a one-size-fits-all solution to the problems of malnutrition. In order to try to flag some of these issues, in Table 1, we highlight some common challenges that are important to keep in mind by setting out some of the common practical uses and associated challenges of human rights and then add examples of how those uses might pose nutrition-specific challenges.

Table 1. Practical Uses and Challenges of Human Rights in the Nutrition Context

Use	Description	Examples of Nutrition-Specific Uses	General Challenges	Examples of Nutrition-Specific Challenges
Opening access to international human rights mechanisms.	There are some mechanisms available at the international and regional levels that victims can access if they have no further recourse domestically.	Provides an alternative option for people who struggle to overcome structural barriers that result in poor and inadequate nutrition.	International mechanisms to address socio-economic rights violations are extremely limited. Not all regions have access to regional mechanisms. Where they exist, mechanisms are often over-worked and under-resourced. Mechanisms are sometimes limited to advisory comments as opposed to binding opinions.	As a newly recognized standalone right, nutrition might need some time to develop normatively before a dispute would be raised based solely on the right to adequate nutrition.
Judicial interpretation.	Judges can call on international elaborations of human rights in their reasoning.	Provides information through a proposed General Comment on the Right to Adequate Nutrition for judges to call on during proceedings, and elaborates on the content of the right to adequate nutrition.	Use of international law in judicial interpretation may depend on a country's constitution or its legal culture.	If a judge does not fully understand the true meaning of "nutrition," they might be reluctant to interpret laws in line with the right to adequate nutrition.
Litigation	Using courts to pursue a claim.	Provides a mechanism to address claims associated with the right to adequate nutrition.	Right needs to be justiciable, but limitations in justiciability are often placed on economic, social, and cultural rights in particular.	Nutrition (e.g., obesity) is often seen as the responsibility of the individual rather than the government or private actors.

Use	Description	Examples of Nutrition-Specific Uses	General Challenges	Examples of Nutrition-Specific Challenges
Shaping global, regional, domestic, and local policy	Guiding policymakers to design policy that gives effect to rights.	Involves inter-departmental coordination and policy clarity when solving problems of malnutrition.	If not backed up by strong law, rights-incorporating policy may be inadequate to protect human rights.	Data is missing for many nutritional outcomes in many countries, and is often not well-measured, making it difficult to measure the effectiveness of policies.
Guiding constitutional, jurisprudential, and legislative development	Law and regulations incorporate international human rights language—recognition is a key step to realization. Jurisprudence can be guided by human rights law.	Takes nutrition out of the abstract and makes it a concrete, actionable rights claim.	Some States are extremely resistant to recognizing human rights, especially in their domestic law. Dualist systems can limit the effect of international human rights law.	The right to adequate nutrition has historically lacked analytical clarity in international law.
Providing normative guidance.	Human rights law defines what rights mean and what obligations States have regarding such rights.	Clearly sets out the fact that States do owe obligations when it comes to a person's ability to realize adequate nutrition.	Lack of clarity with some rights. Even when State obligations are understood, weak enforcement limits effectiveness.	Measures that would define adequate nutrition lack clarity (e.g., BMI and dietary diversity) and differ by region (e.g., different overweight cutoffs in USA and India), which could affect the understanding of State obligations. Nutrition is not static and changes over time, and normative guidance must adjust accordingly.
Articulating what people intuitively know is owed to them.	Clearly articulated rights give people a voice and validate the sense of injustice felt at a violation.	Provides a clear understanding of what people need in order to be able to realize their right to nutrition.	Knowledge of rights. Social norms that curb rights uptake—e.g., gender discrimination.	Individuals may not know they have a micronutrient deficiency, or the causes of that deficiency.

Beyond the specific uses and challenges we identify above, as with any system of law or regulation, human rights law is susceptible to influence by political economy, geopolitics, and socio-cultural norms. However, in spite of the various challenges raised, elucidating the content of the human right to adequate nutrition at the international level can lead to clearer law and policy drafting, and nutrition governance, at all levels. The following sub-section briefly explores the implications of such a right for global nutrition policy and governance.

2. Improving Nutrition Policy and Governance

The complexity of nutrition makes it particularly difficult to govern. Weak governance and poor policymaking, power dynamics, and poor distribution of goods and services result in inequities that significantly affect the nutritional outcomes of individuals. The myriad factors that shape nutrition require multi-sectoral efforts that enable and support people to address the underlying determinants of poor health and nutrition. We argue that to do this effectively, a human-rights based approach that is grounded in recognition of a right to adequate nutrition must be included as part of policy and programs. Yet, to date, it has not been sufficiently included.

Human rights references are limited in important international nutrition policy documents and commitments from the last decade.¹⁵¹ References focus on the right to adequate food and the fundamental right to be free from hunger, or on general calls for a human rights-based approach to be followed in domestic nutrition policy. The documents neglect consideration of other relevant rights, such as the rights to health, education, and water.¹⁵² This reflects the historically

151. Compare G.A. Res. 70/259, United Nations Decade of Action on Nutrition (2016–2025) (Apr. 1, 2016) [hereinafter U.N. Decade of Action on Nutrition]; World Health Assembly Res. 65.6 (May 26, 2012) (setting global targets to improve maternal, infant, and young child nutrition by 2025), WHO, GLOBAL ACTION PLAN FOR THE PREVENTION AND CONTROL OF NONCOMMUNICABLE DISEASES 2013–2020 (2013), http://apps.who.int/iris/bitstream/handle/10665/94384/9789241506236_eng.pdf;jsessionid=07C455395912705E8C011FF20F60BA2F?sequence=1 [<https://perma.cc/342X-G6RT>]; Second International Conference on Nutrition, *Conference Outcome Document: Rome Declaration on Nutrition*, U.N. Doc. ICN2 2014/2 (Oct. 2014) [hereinafter *Rome Declaration on Nutrition*], with Second International Conference on Nutrition, *Conference Outcome Document: Framework for Action*, U.N. Doc. ICN2 2014/3 Corr.1 (Oct. 2014) [hereinafter *Framework for Action*] (ensuring the right of everyone to safe, sufficient, and nutritious food are encouraging responses).

152. See our full list/discussion in Part II.B. *infra*.

“food-biased” approach to addressing malnutrition.¹⁵³ Additionally, documents recognize the impact of nutrition on health¹⁵⁴ but focus only on “interventions” in the health “sector”¹⁵⁵ or health systems reform.¹⁵⁶ They fail to recognize the relevance of other rights.

A clearly articulated right to adequate nutrition, however, gives substance to those general directives and synergies between other relevant rights for realizing nutrition. This right can also be explicitly incorporated into future international policy documents and commitments.

Incorporating the right to adequate nutrition into such high-level documents can have practical relevance, as the U.N. plays a central role in influencing policies of its member States, advocating for key themes to be included in relevant policies, and supporting government action. Beyond including references to the right to adequate nutrition in future documents, there are other things that the U.N. can do to promote the human right to adequate nutrition.

The first is that the CESCR could issue a new General Comment focused on the right to adequate nutrition. The development of a General Comment would be a significant contribution towards further articulating and cementing a right to adequate nutrition. Not only would development of such a comment result in an important authoritative interpretation, but it would also provide a participatory process and the opportunity to bring together people from a variety of disciplines to work out the wide-ranging problems underlying global malnutrition.¹⁵⁷ If given the right space and resources to be developed fully and carefully, this would be a unique opportunity to bring together a broad array of institutional, societal, and individual stakeholders to contribute different perspectives towards the articulation of nutrition as a human right. Importantly, while we are suggesting that the General Comment be issued by the CESCR, we emphasize that

153. See Urban Jonsson, *Nutrition and the Convention on the Rights of the Child*, 21 *FOOD POL'Y* 41 (1996). Jonsson states that this is because of the “food-biased approach” that has dominated the concept of nutrition, which equates malnutrition with the lack of food. He states, “As addressed in a large number of international and U.N. declarations and conventions, ‘freedom from hunger’ and the ‘right to food’, therefore, meant, implicitly at least, a right to nutrition.” *Id.* at 43.

154. *Rome Declaration on Nutrition*, *supra* note 151, at ¶ 4.

155. See WHO, *COMPREHENSIVE IMPLEMENTATION PLAN ON MATERNAL, INFANT, AND YOUNG CHILD NUTRITION 5* (2014) http://apps.who.int/iris/bitstream/handle/10665/113048/WHO_NMH_NHD_14.1_eng.pdf [<https://perma.cc/3VNZ-4RJ5>].

156. *Framework for Action*, *supra* note 151; U.N. Decade of Action on Nutrition, *supra* note 151.

157. Bellows et al., *supra* note 9.

the right to adequate nutrition also relies on civil and political rights—and not just economic, social, and cultural rights—for its realization.

A second specific action could be taken by the Committee on World Food Security (“CFS”)—the international and intergovernmental platform hosted at the FAO. The CFS provides a platform for all stakeholders to work together to ensure food security and nutrition for the world’s population,¹⁵⁸ including by promoting better coordination, policy convergence, and accountability, and by facilitating support, advice, and the sharing of best practices.¹⁵⁹ The CFS has recently focused on nutrition and its centrality to the right to food;¹⁶⁰ it could go further by specifically recommending recognition of a right to adequate nutrition.

A third way the U.N. could support improvements in nutrition policies through use of the right to adequate nutrition is to encourage better nutrition data collection that is grounded in a human rights-based approach. The WHO, for example, is beginning to set up a data repository of country-level commitments related to the U.N. Decade of Action for Nutrition.¹⁶¹ The WHO could mandate that each country makes SMART (specific, measurable, achievable, relevant, and timely) commitments towards the right to adequate nutrition that translate into programmatic action for their respective citizens. These commitments should be tracked, monitored, and evaluated to ensure transparency and accountability at the international level, which can then be used to shape effective policies at the domestic level.

Fourth, the U.N. could use recognition of the right to adequate nutrition to overcome coordination problems. The complexity

158. FAO Comm. on World Food Sec., Thirty-Fifth Session: Reform of the Committee on World Food Security, ¶ 4, U.N. Doc. CFS:2009/2 Rev. 2 (Oct. 2009).

159. U.N. FAO Comm. on World Food Sec., Forty-Fourth Session Making a Difference in Food Security and Nutrition: § 1.1, U.N. Doc. CFS 2017/44/10/Rev.1 (Oct. 9–13, 2017).

160. CFS made nutrition its main topic of discussion at the CFS 44 meeting in October 2017. U.N. FAO Comm. on World Food Sec., Rep. on Its Forty-Fourth Session “Making a Difference in Food Security and Nutrition”, § III, U.N. Doc. CFS 2017/44/Report (Oct. 2017). This built on the High Level Panel of Experts Report on Food Systems and Nutrition, which indicated that nutrition should be central to the right to food. *See* U.N. HIGH LEVEL PANEL OF EXPERTS, *supra* note 8. The CFS’s focus on nutrition mirrors the increasing attention to nutrition that has been building over the last three years in the UN, in large part due to the convening of the International Conference on Nutrition, the formulating of the U.N. Decade of Action on Nutrition roadmap, and the strengthening of the U.N. Standing Committee on Nutrition (UNSCN).

161. *See Global Health Observatory Data Repository*, WHO, <http://apps.who.int/gho/data/node.main.%20A897A?lang=en> [<https://perma.cc/JDH9-GWF5>].

of malnutrition is evidenced in its frequent lack of an institutional home when it comes to governance. This is seen at both the international and the domestic levels. Nutrition sits awkwardly between food production, food safety, health, education, water and sanitation, and economic opportunity. And, of course, departments of treasury hold the purse strings. As a result, no department or agency tends to fully “own” nutrition, and it gets sidelined as a secondary issue. The renewed focus on nutrition in the U.N. system provides an opportune moment to work collaboratively at the international level to solidify understanding of the right to adequate nutrition, while recognition of the right could also provide relevant U.N. agencies¹⁶² with a common human rights framework that they could apply to coordinated policy frameworks and action plans. This could facilitate coordination at both international and country levels.

Finally, the U.N. could develop or endorse a tool that clearly maps out how a human rights-based approach could respond to the challenge of the multiple burdens of malnutrition. Such a universal map—such as our adaptation of the UNICEF framework (Figure 1, in Part II.B)—could then be adapted for in-country use. Importantly, this type of tool would encourage the recognition that realizing adequate nutrition sits at the interface of many complex systems and is the sum of multiple important and recognized human rights.

CONCLUSION

The scourge of the multiple burdens of malnutrition is central to most of the great challenges facing humanity today. Malnutrition highlights the need for the global community to address poverty and inequality, to change how we currently use natural resources at the expense of the natural world, to fix our food systems, to challenge power imbalances, and to include all human beings equally.

In spite of its centrality, the complexity inherent in nutrition has relegated it to the sidelines both in global development debates and within the human rights system. But it is precisely this complexity that makes nutrition so vital to unlocking holistic solutions to broader social issues. Locating nutrition within international human rights law and recognizing it as a standalone right that exists as the sum of a number of human rights can help advance and strengthen such solutions.

A recognized right to adequate nutrition reframes how nutri-

162. *E.g.*, UNICEF, the World Food Programme (WFP), the WHO, and the FAO.

tion must be considered and addressed by governments and other actors. Nutrition becomes the object of governmental legal obligations and private sector responsibilities. A right to nutrition also provides a normative framework for assessing laws, policies, and other government and private sector actions and inactions. It creates new opportunities for accountability and for remedy. In a world in which one in three people are affected by malnutrition, and in which the multiple burdens of malnutrition have adverse short- and long-term impacts on the welfare of individuals and societies, recognizing and applying a human right to adequate nutrition opens up great possibilities for change.

Change starts with the mindset of the global development community and governments to consider nutrition as a necessary pillar of human capital. Individuals who are suffering from malnutrition are not able to fulfill their full potential. The right to adequate nutrition elevates nutrition and emphasizes its centrality within systems and its interdependence with other human rights. Recognizing and prioritizing nutrition as a standalone human right can help to advance more coherent and comprehensive approaches to improving the nutritional status of billions of people around the world.