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Defining and Achieving Freedom from Hunger: A Rights-Based Approach

Saurav Ghimire¹

If one is born in the right part of the world and in right social class, the problem of being hungry has its solution in the nearest refrigerator. However, if the situation is reverse, one may go hungry throughout one's short life, as 800million born in the wrong place and in wrong social class are doing as we discuss the concern. Peace cannot exist where the hunger prevails as the former signifies not merely the absence of armed conflict but the establishment of human rights for all people, and no human right is worth anything to a starving person. That is why the freedom from hunger is fundamental to live as human being and is a necessary part of right to life.

Introduction

The term 'freedom' is often used to refer to such matters as 'freedom from want' or 'freedom from hunger'. It has sometimes been suggested that this is a misuse of the concept of freedom and the ideas captured by the expressions have nothing much to do with the freedom in the real sense.² It is argued that not being hungry does add to one's well-being but it is not a matter of having more freedom in any sense. Ending hunger does not increase the range of options that one has, so there is no increase in freedom to choose. However, it cannot be denied that the freedoms to do various things are possible only when one is free from 'hunger'. Moreover, it is very obvious that one would have chosen life without hunger if the choice was given. Hunger hinders physical and mental development in persons and leaves them more vulnerable to illness and disease.³ It should be admitted that any other freedom keeps no value to a starving person.

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² Amartya Sen, *Inequality re-examined* (Oxford University Press 1991) 66.

³ For instance, respiratory infections and diarrhoea are common in undernourished children. Deficiency of vitamin A causes night blindness, deficiency of iron causes anaemia and deficiency of iodine causes goitre.

unger, in simple sense, is the desire to consume food. However, more than mere need of food it means continuous deprivation of food required for a healthy life. Amartya Sen aptly conceives that starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat.⁴ When a country is full of food and exporting it, there can be no famine,⁵ however, it does not imply there is no hunger. Hunger is created and maintained by human decisions.⁶ A person starves either because he/she does not have the ability to command enough food or because he/she does not use this ability to avoid starvation.⁷ 'No statistic can embody the sheer terror of hunger. For hundreds of millions of people, hunger is a fact of life that imperils their health, reduces their productivity and diminishes their educational attainment.'⁸ Almost all human rights are adversely affected in absence of adequate food, right to life⁹, right to health¹⁰, right to adequate housing¹¹, right to education¹², right to work¹³, freedom from torture, cruel, inhuman or degrading treatment¹⁴ and so forth.

Out of almost 60 percent of annual deaths worldwide, roughly 36 million deaths are a direct or indirect result of hunger and nutritional deficiencies and more than 840 million people worldwide are malnourished.¹⁵ Somewhere in the world, a child dies of hunger every five seconds even though the planet has more than enough food for all.¹⁶ No other disaster can be compared to the devastation of hunger. 'More people have died from hunger in the previous two years than were killed in World War I and World War II together.'¹⁷ In spite of

⁴ Amartya Sen, *Poverty and Famines* (Oxford University Press 1999) 1.

⁵ G. Bernard Shaw, *Man and Superman* (Penguin 1946) 196; Sen (n 4) 40.

⁶ Susan George & Nigel Peige, 'Food for Beginners' in IHRIP & AFHRD, *Circle of Rights-ESCR Activism: A training resource* (IHRIP & AFHRD 2000) 220.

⁷ Sen (n 4) 45.

⁸ *World Hunger Series* (2008).

⁹ When people are not able to feed themselves and face the risk of death by starvation, malnutrition or resulting illnesses, their right to life would also be at stake.

¹⁰ Nutrition is a component of both the right to health and the right to food. When a pregnant or breastfeeding woman is denied access to nutritious food, she and her baby can be malnourished even if she receives pre and post natal care.

¹¹ When a house lacks basic facilities, such as for cooking or storing food, adequate housing is not possible.

¹² Hunger and malnutrition impair children's learning abilities and may force them to drop out of school and work instead, thus undermining their enjoyment of the right to education.

¹³ Even though there may be willingness to work, the starvation hinders the capacity of a person to work adversely affecting his/her right to work.

¹⁴ Deprivation or lack of access to adequate food in prison or other forms of detention may constitute torture or inhuman and degrading treatment.

¹⁵ United Nations Development Program (UNDP), *Human Development Report* (2000).

¹⁶ (CNN News Story on Global Hunger) <www.CNN.com.htm> accessed 1 March 2012.

¹⁷ United Nations Children's Fund (UNICEF), 'The Hunger Project: Ending Hunger 1985' in Digumarti Bhaskara Rao, *International Encyclopaedia of Human Rights: Study Stories of Human Rights* (Discovery Publishing House 2001) 74.

the 1995 World Food Summit's commitment to reduce world hunger by half from 824 billion then to 412 billion by 2015, the number of hungry people has in fact increased by over 1 billion.¹⁸

The Myths of Hunger

Myth 1: There is no sufficient food produced in the world to feed everyone, there are too many people to feed.

Reality: Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food.¹⁹ For most areas in the world, with the exception of parts of Africa, the increase in food supply has been faster than expansion of population.²⁰ The world produces enough food for everyone. The problem is that many people do not have access to the resources to produce or purchase enough food. For example, poverty, social exclusion and discrimination often undermine people's access to food, not only in developing countries but also in some of the most economically developed countries where there is an abundance of food.²¹ The other reality is, contrary to popular belief, overpopulation is not the root cause of hunger. It is usually the other way round: hunger is one of the real causes of overpopulation. The more children a poor and hungry family has, the more likely some will survive to work in the fields or in the city to add to the family's small income and take care of the parents.²²

Myth 2: Hunger is caused by famine and natural disasters which cannot be controlled by people.

Reality: Hunger resulting from famine and natural disasters has good media coverage but in fact it only accounts for a small portion, eight percent of the hunger problem in the world. Primarily, the hunger results from lack of access to enough food, lack of resources to produce or purchase food or the lack of sufficient nutritional value in the food.²³

¹⁸ 'Right to Food as a basic human right' <www.WorldHungerNotes.org> accessed 1 February 2012.

¹⁹ See Committee on Economic, Social and Cultural Rights, 'General Comment No. 12' (prepared 1999, adopted 2003) UN Doc E/C 12/1999/5.

²⁰ Sen (n 4) 7.

²¹ Office of the High Commissioner for Human Rights (OHCHR), *The Right to Adequate Food, Fact sheet No. 34*, 4 <www.ohchr.org> accessed 5 March 2013.

²² Khwairakpam Bembem, *Child Hunger and Food Security in India*, in *Shaping a Drudgery Free World* (Vivekanand Swadhyay Mandal 2013) 114.

²³ Ibid.

The other reality: Poverty, scarcity and deaths due to lack of food are common phenomena in South Asia and many parts of the world. Quite contrary to the painful scenario, the South Asian Region spends billions of dollars in maintenance of the largest military in the world and the manufacture of sophisticated long range missiles. This consumes a huge amount of scarce revenue which otherwise could have been used for food medical care and many essential services necessary for dignified life.²⁴ A poverty free world can be built at a fraction of the cost that is spent on war preparation²⁵. Nations become very generous when it comes to making their war machine in name of ensuring peace. But how can peace exist where hunger prevails.

Right to Food v. Distribution of food

The ancient Hindu concept of *Dharma* laid extraordinary emphasis on individual and social action for growing and sharing food in abundance. It was realized that life arises from food and world is sustained by food.²⁶ The right to food is fundamental right of everyone to be free from hunger. It is interesting to note that the term fundamental is nowhere used in relation to any right in the two covenants²⁷ except in respect of the right to be free from hunger. It is the emphasis on importance of this right without which all other rights will have no meaning. That is why freedom from hunger is fundamental to live as human being and as such is necessary part of right to life. As this right is the most basic right which can never be denied, the states have an obligation to guarantee adequate food to everyone. It is not simply a right to a minimum ration of calories, proteins and other specific nutrients. It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them.

Many assume that the right to food means that Governments have to hand out free food to anyone who needs it. They conclude that this would not be feasible or might cause dependency. This is a misunderstanding. The right to food is not a right to be fed, but primarily the right to feed oneself in dignity. Individuals are expected to meet their own needs, through their own efforts and using their own resources. To be able to do this, a person must live in conditions that allow him or her either to produce food or to buy it. To produce his or her own food, a person needs land, seeds, water and other resources and to buy it, one needs money and access to the market. The right to food requires

²⁴ Yubaraj Sangroula, *Jurisprudence- The Philosophy of Law* (Kathmandu School of Law 2010) 483.

²⁵ M.L. Narasaiah, *Human Rights and Peace* (Discovery Publishing House 2003) 27.

²⁶ Ishowra Bhat, *Fundamental Rights: A Study of Their Relationship* (Eastern Law House 2005) 286.

²⁷ The two covenants here means International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

States to provide an enabling environment in which people can use their full potential to produce or procure adequate food for themselves and their families. However, when people are not able to feed themselves with their own means, for instance because of an armed conflict, natural disaster or because they are in detention, the State must provide food directly.²⁸ Thus, it should be clear that only when the individuals do not have the capacity to meet their food needs for reasons beyond their control, such as age, disability, economic downturn, famine, disaster, or discrimination, they will be entitled to receive food directly from state, under their right to be free from hunger.

The right to food is thus considered to comprise three main components: Availability, Accessibility and Adequacy:²⁹

Availability refers to the possibility for every person, at all times to either feed himself/herself directly from productive land or other natural resources and/or to rely on well functioning distribution, processing and market systems. It also refers to availability of food in quantity and quality sufficient to satisfy dietary needs of an individual.

Accessibility encompasses both economic and physical accessibility. Economic accessibility means that every person must be financially able not only to acquire sufficient quantity and quality food but also to satisfy his/her other basic needs. Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. The long term availability and accessibility means sustainability.³⁰

Adequacy is relevant for determining whether particular food or diet that is available and accessible can be considered most appropriate under in given circumstance in terms of their nutritional value and cultural acceptability. Adequate food must not be equated with a minimum package of calories, protein and other specific nutrition, as a whole it must contain a mix of nutrients which complies with psychological needs of a given individual.

²⁸ OHCHR, *The Right to Adequate Food*, Fact Sheet No. 3, 32 <www.ohchr.org> accessed 5 March 2013.

²⁹ *General Comment 12* (n 19), para. 8-13.

³⁰ *Ibid* para 7.

Everyone requires access to food which is sufficient, balanced and safe to satisfy nutritional requirement. It should also be culturally acceptable and accessible in a manner which does not destroy one's dignity as human being.

The Struggling Nepal

Nepal has still been struggling for ending the problem of hunger. In a report, Food First Information and Action Network (FIAN) highlights a number of cases of right to food violation which were not adequately addressed by Nepal, like, forced eviction of peasants from their land, lack of access of indigenous people to natural resources and so forth.³¹ The news story of hunger in western districts has been a common phenomenon.³² Despite net increases in government revenue between 1990 and 2005,³³ aggregate figures measuring levels of hunger in Nepal show little improvement over the same period of time: the percentage of the population experiencing hunger decreased a mere 2%, from 49% to 47%.³⁴ UNICEF reports that the decrease in percentage of stunted children was clearly insufficient, from 57% to 53% between 1990 and 2005. In terms of actual numbers, there are more hungry people now (4.1 million) than there were in 1990 (3.9 million) despite a series of improved economic indicators.³⁵ Furthermore, the number of landless households doubled between 1991 and 2001 to 24.4% and one million households.³⁶

There are more than 3.5 million highly food-insecure people in Nepal; more than half of the population is estimated to live on less than US\$1.25 per day.³⁷ Nepal ranks 144th out of 182 countries on the United Nations Development Program (UNDP) 2009 human development index. In 2009 the gross domestic product real growth rate was estimated at 4.7 percent, a decrease from 5.3 percent in 2008³⁸. These all facts reveal that Nepal has not

³¹ FIAN Nepal the nation sections of FIAN International for Nepal. The information was acquired by FIAN International in cooperation with FIAN Nepal in July 2010.

³² Nimendra Sahi, 'Khadyanya magdai koltibashia andolanma- bimansthal ra bazaar thappa' *Rajdhani* (Kathmandu 2 October 2012); 'Dashainko much ma anna abhav' *Annapurna post* (Nepal 2 October 2012).

³³ Government revenues in terms of GDP increased from 9% to 13.2% according to Asian Development Bank (ADB) 2007 figures; 'ABD Statistics for Nepal 2007' <www.adb.org.nepal> accessed 3 March 2013.

³⁴ See UNDP, *Nepal Millennium Development Goals: Progress Report* (UNDP 2005).

³⁵ 'Food and Agricultural Organization (FAO) STAT Nepal 2006' <www.fao.org/monitoringprogress/summit_en.html> accessed 3 March 2013.

³⁶ 'National Census 2001' in *Community Self-Reliance Centre- Land Rights in Nepal* (Community Self-Reliance Centre 2003).

³⁷ See World Food Program (WFP), *Nepal Operations Summary* (WFP 2010).

³⁸ 'The World Factbook' <www.cia.gov/library/publications/the-world-factbook/geos/np.html> accessed 14 March 2013.

been successful in fulfilling its commitment of freedom from hunger. Some possible challenges regarding food security include:

- Extremely difficult geographical conditions and the remoteness of food insecure districts, has created difficulties for the delivery of development and humanitarian assistance;
- Prevalence of high levels of malnutrition, resulting heavy disease burden and recurring food shortages. Nepal is ranked among the world's top ten countries for prevalence of stunting³⁹ and underweight rates in children under five indicate serious malnutrition.⁴⁰
- Poor households have been severely affected by food price inflation and continued supply shortages in rural markets, due to the frequent strikes and natural havoc.
- Natural disasters, droughts, flooding, erratic rainfall, landslides are increasingly common and drought poses a serious threat to vulnerable populations who depend on agriculture for domestic food production.⁴¹
- The food security in disaster prone areas are extremely challenging according to 2010 report of FIAN, out of 75 districts 32 were food insecure and 16 are extremely vulnerable in terms of food insecurity.

International laws and Documents regarding Freedom from Hunger

- a) *Right to an adequate standard of living, including food:* Article 25 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food. Article 11(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) states 'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food.' In its General Comment 12, the CESCR (Committee on Economic Social and Cultural Rights) clarified that 'the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement'.

³⁹ See WFP, *Proposed Nutrition Strategy for WFP Nepal* (WFP 2010).

⁴⁰ See Centre for Disease Control and Prevention, United States (CDC)/WFP, *A Manual: Measuring and Interpreting Malnutrition and Mortality* (WFP 2005).

⁴¹ UNDP, 'National Strategy for Disaster Risk Management in Nepal 2008' <www.undp.org.np/pdf/NSDRMFinalDraft.pdf> accessed 14 March 2013.

- b) *Freedom from hunger and right to life*: Article 11(2) of the ICESCR recognizes ‘the fundamental right of everyone to be free from hunger’, i.e. the right to at least a nutritional intake ensuring survival. This provision is to be understood in conjunction with those concerning the right to life enumerated in the UDHR (article 3); ICCPR(article 6)⁴² and the CRC (article 6). Although there is a widespread narrow interpretation of the right to life merely as a safeguard against arbitrary killing, the Human Rights Committee rejected such restrictive interpretation and invited States to adopt ‘positive measures’ to protect the right to life in a broader sense, including ‘measures to eliminate malnutrition and epidemics’. Similarly the Universal Declaration on the Eradication of Hunger and Malnutrition, 1974 recognizes right to be free from hunger and malnutrition as inalienable right of every person.
- c) *Rights of the child*: Article 27(1) of the CRC recognizes ‘the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development’. The States Parties to the Convention have the duty to ‘take appropriate measures’ to assist parents⁴³ in fulfilling their primary responsibility to implement such right, ‘particularly with regard to nutrition’ (article. 27(3)). Moreover, article 24(2)(c) of the CRC obliges states to combat child malnutrition.
- d) *Women's rights*: Under article 12(2) of CEDAW, states have to ensure a woman ‘adequate nutrition during pregnancy and lactation’.
- e) *Deprivation of food and of means of subsistence*: Article 1(2) of the ICCPR and ICESCR state that ‘in no case may a people be deprived of its own means of subsistence’.
- f) *Food as an instrument for political and economic pressure*: The Rome Declaration on World Food Security and the Vienna Declaration on Human Rights state that ‘food should not be used as an instrument for political and economic pressure’ (seventh paragraph and paragraph 31, respectively). The same principle was reiterated in the Declaration ‘International Alliance Against Hunger’ adopted by the World Food Summit and several resolutions of the Commission on Human Rights (preamble of Resolutions 1997/8, 1998/23, 1999/24, 2000/10, 2001/25 and 2002/25). Similarly,

⁴² The ICCPR does not recognize the right to food as such; however, the right to life guaranteed in article 6, has been interpreted in its general comment 6 on the right to life, the human rights committee considered that State parties are required to take positive steps to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

⁴³ *Human Rights Committee, General Comment 6* (adopted 30 April 1982) UN Doc A/37/40(1982) para. 5.

International Humanitarian Law⁴⁴ prohibits the starvation of civilians as a means of combat.⁴⁵ It also prohibits the destruction of objects indispensable for the civilian population, such as foodstuffs, agricultural area for food production, crops and livestock, drinking water installations, drinking water supplies and irrigation works.⁴⁶

Nepalese Legal Framework

The Interim Constitution of Nepal 2007 has guaranteed the right to life.⁴⁷ In addition to right to life, the constitution has stipulated that Nepal has guaranteed right to food sovereignty, which is fundamental to satisfy the right to food; the provision was absent in the previous constitutions.⁴⁸ The constitution also guarantees the right to employment and social security which are prerequisites for satisfying the need of food⁴⁹. The constitution subjected these rights to legislations. Therefore, there is need of specific enabling legislations to enjoy these rights.

Similarly, Article 33 of the Constitution, under duties and directive principles of the state, lists the following obligations, which are relevant for the right to food:

- Pursue the policy of establishing the rights of all citizens to education, health, housing, employment and adequate food;
- Adopt universally accepted fundamental human rights;
- Effectively implement international treaties and agreements of which the Nepali State is a party;
- Adopt a policy of providing economic and social security to the class that are socio economically backward such as the landless, bonded labours, tillers and shepherds.

The inclusion of right to food in constitutional provisions regarding directive principles of state policy and state obligation gives it more moral and political rather than legal weight.⁵⁰ However, these provisions can be instrumental to

⁴⁴ Such as the protection frameworks within the 1949 Geneva Conventions and its Additional Protocols.

⁴⁵ It should be noted that intentional starvation of civilians as a method of warfare is considered a war crime when committed in international armed conflict under the 1998 Rome Statute.

⁴⁶ Article 54 of the Protocol Additional to the Geneva Conventions Relating to International Armed Conflicts, and Article 69 and 70 of the protocol Additional to the Geneva Convention relating to Non-International Armed Conflict.

⁴⁷ *Interim Constitution of Nepal* 2007, art 12 (1).

⁴⁸ *Ibid* art 18(3).

⁴⁹ The other fundamental rights such as right to property, social justice and right of child, women and labour, right against exploitation are some other rights relevant to the right to food.

⁵⁰ Basant Prasad Adhikari, 'Right to Food in Nepal: National and International Legal Perspective' (2007) *Nepal Bar Council Law Journal*, 173.

interpret the right to life linking with the state to respect, protect and fulfil in accordance with the international human rights standards.

Besides, there are several laws somehow related to control over the source of food and its availability and accessibility. They include The Land Act 1964, Land Acquisition Act 1977, Land Revenue Act 1977, Land Measurement Act 1962, Trust Corporation Act 1977, Essential Commodities Protection Act 1955, National Food Corporation Regulation 1997, Iodized Salt Production and Distribution Act 1998 and so on.

Judicial Response So Far

The Supreme Court of Nepal has rolled out landmark decisions in some cases regarding right to food. In *Madhav Kumar Basnet v. Honourable Prime Minister Girija Prasad Koirala*⁵¹ the petitioner had appealed that the government had not paid serious attention to cope with the food shortage and drought problem in the districts of Humla, Jumla, Mugu, Dolpa, Bajhang, Bajura and Darchula. The court recognized that the government is responsible for supplying food grains to the people of the districts affected by the food deficit. But the court, without interpreting the right to food, had repealed the case on the basis of government initiatives to supply food.

In *Prakash Mani Sharma V. Nepal Government et. al.*⁵² the petitioner, on behalf of Pro Public (a Nepalese public interest NGO), had been monitoring right to food violations through news reports and studies on the situation of food security. Those report revealed that out of 75 districts, 32 were food insecure and 16 were extremely vulnerable in terms of food security. However, the government was not responding to the crisis, which resulted in a violation of the right to food. The court reaffirmed right to food sovereignty as a fundamental right and put emphasis on the role of the government authority for ensuring that food is accessible and affordable to the people. This is a significant step forward taken to ensure the respect, protection and fulfilment of right to food. The court has drawn attention to the links between the right to food and other human rights and basic necessities and holds the government responsible for ensuring its progressive realisation.

Similarly, in case of *Bajudin Miyaet. al. v. Nepal Government et. al.*⁵³, the petition was filed claiming the compensation on the damage of crops made by

⁵¹ *Madhav Kumar Basnet v. Honourable Prime Minister Girija Prasad Koirala*, Supreme Court Bulletin, WN 3341 (Nepal, 1996).

⁵² *Prakash Mani Sharma v. Nepal Government et al.*, Supreme Court Bulletin, WN. 0149 (Nepal, 2007).

⁵³ *BajudinMiya et al v Nepal Government et al.*, Nepal Law Review 2010, DN 8169, 961.

the protected animals in the National Parks Area. The court obliged government to create suitable environment to produce food themselves and to achieve easy access to food. The court also gave the directive order to enact law and policy for suitable economic environment so that the right to food of people will not be infringed.

‘Right to food and issue of supply and security has been long debate issue all over the world. In a case before the Indian Supreme Court, People’s Union for Civil Liberties, an NGO claimed that starvation deaths had occurred in drought-affected rural areas while public granaries were overflowing. The Court acknowledged that preventing hunger and starvation was one of the Government’s prime responsibilities and failure to do so would constitute a violation of the right to live with human dignity as well as the State’s duty to raise the level of nutrition and the standard of living of its people under the Constitution. It issued a series of interim orders directing the central and State Governments to implement several existing schemes, such as the Famine Code of 1962.’ Even though the judiciary of Nepal has been positive on ensuring the right to food, the hunger is still prevalent due to insufficient laws and policy.

Conclusion

The freedom from hunger is a precondition to exercise other freedoms. However, it should not be misunderstood as distribution of food for free to every citizen. It does mean that the government should create suitable environment: social, economical and political which facilitate people to earn the required food. Nevertheless, the government should also come forward to distribute food in case of emergencies and famines when extreme hunger is prevalent. Due regard must be given to cultural acceptability. Right to be free from hunger, is part of customary international law. Indeed, in that basic form, the freedom from hunger is directly linked to the right to life. Despite the presence of numerous international instruments and some national guidelines, Nepal has failed to ensure food security to its people. Insufficient implementation of agrarian reform objectives and failure to coordinate food security policies and programs between the capital, regions, districts, and government ministries is one of the many problems. The government should also focus on equitable control over the source of food ensuring the access of those who have been marginalized. Thus, a comprehensive legislation and government initiatives is direly needed.
