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A ‘Right to Nutrition’ in its Social, Legal, and Political Context: How International Human Rights Translate to Zambian Realities

Jody Harris*, Sarah Gibbons, O’Brien Kaaba, Tabitha Hrynick, and Ruth Stirton

Abstract

Every country has populations that are affected by malnutrition, and one third of all people in the world are malnourished. Among approaches to addressing malnutrition, the language of human rights is notably present in international nutrition discourse and national policy and covenants, but the conceptualization, implications and utility of human rights for nutrition practice are contested.

This empirical research explores how the utility of a ‘right to nutrition’ is perceived by different actors, and how differences in interpretation affect its potential for reducing malnutrition. In undertaking this qualitative case-study, we apply socio-legal, critical development studies, and political science approaches to compare and contrast written documents and stated viewpoints, across actors in different sectors and levels from global to local, with a focus on Zambia.

Human rights are clearly integrated with ideas of nutrition in written documents across levels, but these are largely rhetorical devices providing moral leverage and guiding language, not clearly directing action. Zambia has domesticated relevant international human rights law and has recent case law implicitly underpinning a right to nutrition; using the law brings a strengthening of policy, but also a narrowing of focus in terms of populations covered and issues justiciable. Views on what a right to nutrition means in practice are contested, with a lack of citizen’s rights education limiting participation, and a lack of clear norms on who should be doing what scattering accountability.

Our research demonstrates that there are three distinct aspects to a rights-based approach—rhetorical, legal and practical—but that these generally act in silos. We argue that explicitly acknowledging these three functions of human rights is an important first step if a right to nutrition is desired; and explicitly addressing these aspects in combination and in context is fundamental to a coherent rights-based approach to nutrition.
Keywords: Human rights; nutrition; policy; socio-legal; Zambia

Introduction

Every country has populations that are affected by malnutrition in its different forms, and one third of all people in the world are malnourished (Development Initiatives 2020). In Zambia, malnutrition in the form of stunted growth in children has afflicted over a third of children for decades (Harris, Seco et al. 2014). Micronutrient deficiencies such as inadequate vitamin A, B12 and zinc are widespread at levels defined as a public health problem (National Food and Nutrition Commission 2014). Hunger (particularly seasonal hunger) stands at around 45 per cent of the population (Harris 2019). These forms of malnutrition are indicative of failed systems—food systems and health systems, underpinned by social, economic and political systems—at global and national levels that mean adequate nutrition is not being achieved by significant parts of the population (Harris and Nisbett 2020). This disproportionately affects marginalized groups, including women and children, who are subject to wider discriminatory treatment and most vulnerable to malnutrition (Bellows, Valente et al. 2016; Nisbett, Harris et al. 2022).

Among many different approaches promoted to address these issues, the language of human rights is notably present in key international nutrition strategies (de Schutter 2012). A ‘right to nutrition’ (as distinct from—but underpinned by—a right to food or health) has been mooted as an approach for improving action on nutrition in the context of international development for decades (Oshaug, Eide et al. 1994; Fanzo, Cordes et al. 2019). These ideas are built on the international political architecture for nutrition with a foundation in human rights: United Nations (UN) bodies which work on nutrition are grounded in human rights mandates actioned through a complex system including treaty-monitoring bodies, special rapporteurs and the Human Rights Council. The major international UN convening bodies on nutrition until 2021, the UN Standing Committee on Nutrition (UNSCN) and the Scaling Up Nutrition (SUN) Movement, have had a human rights basis in their guiding principles (though it is so far unclear to what extent this will be continued in UN Nutrition, the new body which replaced these from 2021). Global networks such as FIAN International and the Global Network for the Right to Food and Nutrition have established practice and advocacy based in rights. Many non-governmental organizations (NGOs) working on international nutrition also base their work on human rights ideas (Noh 2016; Jenderedjian and Bellows 2019), even if these do not always end up shaping practice in discernible ways (Skogly 1996; Miller 2017). It has been noted however that the Sustainable Development Goals (SDGs) which frame much international development action do not explicitly use the language of rights in framing food or nutrition, despite rights-based approaches in related sectors such as health (Patnaik and Onema 2015; Vivero-Pol and Schuftan 2016), and that the SDGs and the system of international human rights law are fragmented and competing (Kim 2016). Human rights have therefore been invoked, but not entirely embedded, in international nutrition action (Elver 2016).

Human rights are also present in national nutrition policies and legislation in many countries (de Schutter 2012). Human rights are raised in Zambia’s defining National Food and Nutrition Policy, which states that ‘the Government reaffirms that equity of access to food and nutrition is a basic human right’ (Government of the Republic of Zambia 2008;
A right to nutrition was included in the draft Zambian Bill of Rights sent to referendum alongside a revised constitution in 2016, stating that ‘[a] child is further entitled to the following economic and social rights [including] adequate nutrition, shelter, basic health care services, social protection and social services’ (Government of the Republic of Zambia 2016: 14, para. 48.5(d)). Though the Bill did not pass the referendum stage and has not yet been resubmitted, this language is an indication that human rights have been a consideration for nutrition and legislative actors in Zambia.

While the language of human rights is therefore present in national and international documents with relation to nutrition, it is not clear how state or global actors have drawn on rights in undertaking action on nutrition, and the utility of a rights-based approach in practice is contested. Human rights can be understood from a number of perspectives, including as natural entitlements deriving from fundamental moral law; as a deliberative concept attempting to establish mutual co-existence of societies; as a way of redressing injustices through protest; and as a discursive concept relating to the promotion, analysis or challenge of global power (Ignatieff 2001: 102; Valente 2014; Chrichton, Haider et al. 2015). Inevitably, within these multiple perspectives and interpretations there is criticism of imposing normative standards upon distinct cultures, largely arising from the anthropological literature which has highlighted differing cultural norms and perceptions outside of the (largely Western) culture that gave rise to the UN and its rights declarations (Engle 2001).

The international nutrition community has rarely engaged in these philosophical debates, in general preferring to adopt a practical or technical focus to addressing malnutrition (Harris 2019), though with periodic calls to apply human rights principles by those aligning with their ethics (Barth-Eide, Kracht et al. 1996; Fanzo, Cordes et al. 2019). In general, we know very little about how human rights are used or understood in relation to addressing malnutrition in most national contexts.

There is therefore a need to better understand how human rights have shaped nutrition action, in order to make better decisions about how and where to invest the energy of the nutrition community going forward. A right to nutrition (or a right to freedom from malnutrition) has not been researched empirically either internationally or in any country setting, as far as we are aware, to understand how the concept is viewed (and might be accepted) as a framing for sustainably reducing malnutrition. This research used an empirical methodology (below) building on conceptual human rights literature to analyse how ideas of human rights and nutrition interact through different actors in different contexts from global to local levels, with a focus on Zambia. The aim was to uncover connections and disconnections between different policy and practice worlds and understand how synergies and differences in the use and interpretation of human rights by different groups affect their potential for addressing malnutrition.

In this article we shed light on the ways that human rights are understood and actioned in policy and by people, to start to steer global and national conversations beyond polarized positions and towards mutual understanding, in order to enable sustainable action to address malnutrition. We will show below that our research reveals three distinct aspects of a rights-based approach—rhetorical, legal and practical—but that these act in silos. We will argue that explicitly acknowledging these different functions of rights is an important first step; and addressing the rhetorical, legal and practical aspects of a right to nutrition altogether is fundamental to a coherent rights-based approach to nutrition. In practice, this will require better communication across sectors and levels of actors working on nutrition.
issues, to enable the different functions of human rights to play a joint role in addressing the issue of malnutrition.

**Research approach**

This empirical research used a qualitative case-study approach (Yin 2003) to understand perceptions of human rights in addressing the intractable issue of malnutrition both globally and in Zambia. It used an interdisciplinary methodology, bringing together socio-legal approaches (analysing the links between law and society), critical development studies approaches (interrogating the practices and narratives of international development), and political science approaches (interpreting findings through political theory). It explored the views of international agents, state actors, national civil society and legal professionals, and citizens, explicitly comparing and contrasting written documents and stated viewpoints across levels from global to local. These different levels are illustrated in the conceptual framework for the research, in Table 1, along with different concepts explored at each level.

The study was focused on nutrition as a global, national and local issue. Our initial working definition of nutrition to frame the literature review, document and legislation searches, and choice of interview respondents was based on the UNICEF Framework of Malnutrition (UNICEF 1990). This framework focuses largely on malnutrition in children, and describes malnutrition in its various forms being underpinned by inadequate access to food, insufficient health services and an unhealthy environment, and inadequate care particularly for women and children (summarized as food, health and care)—all of which are themselves underpinned by social, political and economic structures supporting or undermining these (Harris and Nisbett 2020). This framework is well-accepted in the nutrition world, which made it a useful heuristic device in the initial framing of the study. We had an explicit commitment to move away from this framing if the empirical data led us in different directions, however.

**Data collection and analysis**

**Document review.** The purpose of the document review was to describe the place of rights in the language used to elaborate legal and policy documents related to nutrition, and to look at synergies and tensions among these. Starting with a broad interpretation of what constituted relevant passages in reviewed documents (using the UNICEF food-health-care framework and keeping established human rights frameworks in mind), we mapped the existing formal legal and policy framework relating to a right to nutrition at the international level, regional (African) level and at national (Zambian) level. Through this process we found 59 documents with references to nutrition-related rights at different levels.

The provisions relating to nutrition in the documents were manually coded into a set of themes covering practical approaches enshrined in the documents towards achieving a right to nutrition. This included those that conferred rights on individuals, and those which imposed on states obligations relating to rights. The content of the rights conferred and the obligations imposed were coded as per Table 2. Themes were generated from the texts and were mapped along the international/regional/national and law/policy axes and chronologically, in order to understand any change in themes contained in policy and legislation over time and place.
The purpose of the doctrinal legal analysis was to establish whether and how a legal right to nutrition could exist in the Zambian context. This necessarily took account of the applicable international and supranational law and the legal systems of Zambia. The UNICEF food-health-care framework was used to identify relevant legislation and case law. There was a significant barrier in that many legal decisions remain in hard-copy format only in Zambia, and documents in the public domain do not reflect the entirety of existing legal documentation. The legal analysis was limited to the range and extent of the law that we were able to access both online and through court archives in Lusaka, which though complete for statutory law is more limited in terms of published case law. This consisted of 27 legislative documents, eight constitutional documents and 11 cases found to be relevant to the topics in Table 3. The doctrinal legal analysis involved reading and interpreting the law to establish the scope of its application and considering how the law might be extended in the future.

**Interviews and focus groups.** We undertook in-depth key informant interviews to explore with different groups the initial concepts that had emerged from the policy and legal reviews. A first round of interviews was undertaken with international actors, then a second round focused on the national level; these interviews defined concepts and issues to
explore further in a third round of interviews with communities and constituencies (citizens) affected by malnutrition at local level in Zambia, undertaken as sets of focus group discussions (FGDs) comprising seven to ten people each, to encourage debate and reflection on the issues. Table 4 details the number of interviews and focus groups with each actor group, and quotes used in this article are designated by the level of the respondent and the date of the interview, to maintain anonymity.

Interview and focus-group guides were semi-structured, exploring with respondents what rights meant to them; any engagement or understanding they had in relation to the right to nutrition; and their thoughts on the utility of rights-based approaches for nutrition. All key-informant interviews were undertaken in English, the working language of many international organizations and the official working language of the Zambian political and legal systems. It should be noted however that many of the citizen-level focus groups were conducted in local languages, which presented challenges for the research. None of Zambia’s recognized languages has a word that translates neatly as ‘nutrition’, so explanations using words such as ‘food’ or ‘health’ were required in order to get to the topic at hand. Similarly, the languages used in the focus group discussions do not have a direct translation of ‘human rights’; the English phrase was used where this was recognized, but in other cases explanations were necessary using words such as *ufulu* (meaning freedom/power in the Nyanja language, as has been used in research in the related ChiChewa

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**Table 2. Themes from the document review**

<table>
<thead>
<tr>
<th>Rights conferred on individuals</th>
<th>Obligations relating to rights imposed on states</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adequate standard of living</td>
<td>Full implementation</td>
</tr>
<tr>
<td>Best/highest attainable standard of health</td>
<td>Ensure realization</td>
</tr>
<tr>
<td>Freedom from hunger</td>
<td>Promote realization</td>
</tr>
<tr>
<td>Adequate food</td>
<td>Education</td>
</tr>
<tr>
<td>Adequate food and nutrition</td>
<td>Provide something specific</td>
</tr>
<tr>
<td></td>
<td>Do something specific</td>
</tr>
<tr>
<td></td>
<td>Recognize</td>
</tr>
<tr>
<td></td>
<td>Develop policy or law</td>
</tr>
</tbody>
</table>

**Table 3. Search terms used in the legal review**

<table>
<thead>
<tr>
<th>Nutrition</th>
<th>Food</th>
<th>Health</th>
<th>Care</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nutrition</td>
<td>Food security</td>
<td>Healthcare services</td>
<td>Women/woman</td>
<td>Right(s)</td>
</tr>
<tr>
<td>Malnutrition</td>
<td>Land rights/private property</td>
<td>Healthy environment</td>
<td>Child/children</td>
<td>Human right(s)</td>
</tr>
<tr>
<td></td>
<td>Forced evictions</td>
<td>Diet</td>
<td>Maternal</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Natural resources</td>
<td>Disease</td>
<td>Childcare</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Food price/subsidy</td>
<td>Water</td>
<td>Gender</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Water harvesting</td>
<td>Sanitation</td>
<td>Baby/ies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic farming</td>
<td>Hygiene</td>
<td>Infant(s)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Food types (e.g. dairy)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
language in Malawi (Sarelin 2014)). Because the aim of the study was to gauge respondents’ understandings of what these terms meant, it was problematic that respondents had to be led using specific language. This was mitigated to some extent by the skill of the facilitators in pushing for alternative language or definitions as discussions progressed, but language was clearly a limitation in discussing a human right to nutrition in communities with no language to translate either concept.

Interviews and focus groups were professionally transcribed verbatim in English (translated where necessary) and loaded into Quirkos qualitative analysis software. Initial open coding of the international and national level expert interviews was grounded in the texts with no a priori coding scheme, though acknowledging that the aims of the study and a knowledge of the human rights and nutrition literatures provided sensitizing concepts (Bowen 2006) that would emerge in the codes. Citizen focus groups were read and coded against the codes which had emerged out of the earlier interviews, as well as generating new codes which reflected the orientations of citizen-level respondents. As coding progressed, a total of 70 individual codes emerged (containing over 3,500 individual excerpts), and second-level codes started to emerge as codes clustered around seven themes as shown in Table 5.

Data synthesis
Concurrently with these rounds of analysis of policy and legal documents and interview transcripts, a review of academic literature from legal studies, development studies and political science fields revealed that human rights are discussed as rhetorical, legal, and practical concepts through different academic traditions. These concepts were used as a framework for a final round of analysis and synthesis, where data from the seven thematic codes were mapped onto the three concepts using framework analysis (Ritchie and Spencer 1994) in order to synthesize, reduce and refine the empirical analysis. This allowed the most salient points from the analysis to be brought forward into a final synthesis across data sources, weaving the empirical findings with the findings of conceptual writings on human rights, and with existing political, legal and social science theory.

The research traced narratives, discourse, ideas and ideology through multiple levels and communities, looking for continuity or change in framing over time and space, and aiming to understand where any disconnections or dilutions to rights concepts occur. The basis for the analysis was the gaps between the international, national and citizen-level

Table 4. Number and sector of interviewees

<table>
<thead>
<tr>
<th></th>
<th>UN, donor, academic</th>
<th>Government</th>
<th>Legal</th>
<th>NGO and civil society</th>
<th>Citizens</th>
</tr>
</thead>
<tbody>
<tr>
<td>International</td>
<td>3</td>
<td>NA</td>
<td>2</td>
<td>2</td>
<td>NA</td>
</tr>
<tr>
<td>and regional</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>6</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>NA</td>
</tr>
<tr>
<td>Local</td>
<td>NA</td>
<td>7 (1 FGD)</td>
<td>7 (1 FGD)</td>
<td>15 (2 FGDs)</td>
<td>63 (9 FGDs)**</td>
</tr>
</tbody>
</table>

*Legal actors were academia or UN-affiliated but with legal mandates or experience.

**Citizen discussions were split into groups: in Mumbwa district (rural)—elders, farmers, leaders (headmen), mothers, professionals, and youths; in Lusaka city (urban)—mothers, youths, and professionals.
notions of a right to nutrition, and their written or verbal expression by the different actor
groups at different times.

Ethical considerations

This research received research ethical approval both from the Institute of Development
Studies Institutional Review Board in the UK, and from the ERES Converge ethical ap-
proval body in Zambia (IRB No. 00005948). All interview respondents at all levels under-
went informed consent procedures including an explanation of the study aims and
processes, definitions of personal or professional risk, and opportunity to ask questions or
withdraw from the research at any stage. Two respondents at international level, two at re-
gional level, and one at national level declined to participate in interviews when contacted.
All transcripts were anonymized before analysis and reporting to protect the identities of
respondents.

Findings

Human rights have had a contested history over hundreds of years, but rights in an interna-
tional development context have their root in anti-colonial struggles in the twentieth cen-
tury as a basis for social justice, and later in debates around a ‘right to development’
(Cornwall and Nyamu-Musembi 2006). Human rights therefore have a clear ethical angle,
notwithstanding ongoing academic debate centring on the contested universality of human
rights ideas (Morsink 1999; Ignatieff 2001; United Nations 2008; Cox and Yoo 2009;
O’Connor 2014). The promise of a ‘universal moral vision’ has led to rights language being
a strong rhetorical device for calls to action on addressing basic needs such as nutrition
(Ayala and Meier 2017). Gradually, human rights in development practice have become a
normative approach to policy and action, based on these ethical visions but refined into
more actionable ‘rights-based approaches’ underpinned by several operational principles
derived from philosophical debates (Damman, Eide et al. 2008; de Schutter 2014; Valente
2014; Fanzo, Cordes et al. 2019). The principles have been bound into frameworks express-
ing potential approaches for designing nutrition programmes with a human rights focus
(Barth-Eide, Kracht et al. 1996; Bloem and de Pee 2013), even if these tend to elaborate less
on the power structures that impedes access to rights in the first place (Gaventa and
Martorano 2016). Quite separately to the world of development practice, the global legal
system has constructed legal avenues through which citizens might uphold rights and enti-
tlements to basic needs such as food (de Schutter 2012), with ongoing debate about the

<table>
<thead>
<tr>
<th>Thematic codes for analysis and synthesis</th>
<th>Non-thematic codes for context</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The meaning of rights</td>
<td>National context</td>
</tr>
<tr>
<td>2. The meaning of a right to nutrition</td>
<td>Practical issues around achieving good nutrition</td>
</tr>
<tr>
<td>3. Legal understandings</td>
<td>Practical understandings of nutrition</td>
</tr>
<tr>
<td>4. Practical legal action</td>
<td></td>
</tr>
<tr>
<td>5. Practical aspects of achieving rights</td>
<td></td>
</tr>
<tr>
<td>6. Political issues affecting rights</td>
<td></td>
</tr>
<tr>
<td>7. Citizen participation</td>
<td></td>
</tr>
</tbody>
</table>
justiciability of global covenants and how these might be translated into national legal contexts (Robertson 1996; Dréze 2004; Courtis 2007; Nathan 2008; Ramanujam, Caivano et al. 2015). A right to nutrition can therefore be understood from three marked perspectives suggested by the existing literature: rhetorical, practical and legal. These distinct ‘lenses’ used to discuss a right to nutrition were evident also in the empirical data collected and analysed, and have therefore shaped our analysis below.

A right to nutrition in policy: rights as rhetorical
Formal human rights as the codified rights of every individual are seen to start with the Universal Declaration of Human Rights (UDHR 1948) agreed upon by the then 56-member states of the nascent United Nations. The UDHR states in Article 3 that ‘Everyone has the right to life’, and in Article 25 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’. The UDHR is a declaration rather than a convention, meaning that while it has shaped much of subsequent human rights rhetoric, law and action, it is not seen as one of the core international human rights instruments.

Of the nine core human rights instruments, several contain clauses relating to nutrition, either explicitly or implicitly. The right to life is taken forward in the International Covenant on Civil and Political Rights (ICCPR 1966) Article 6, and in its General Comment no. 36 (2018), which further clarifies that ‘the measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, ...’. Rights more specifically to food and nutrition are taken forward in the UN International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) with states parties recognizing ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food ... [including] by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems’; and in its subsequent General Comment No. 12 (1999) on the right to adequate food, which puts forward specific definitions and recommendations on what a right to food entails and achieves, and calls on governments ‘to respect, to protect and to fulfil’ this right. Rights relating to malnutrition in children are most clearly articulated in international instruments, largely in the UN Convention on the Rights of the Child (UNCRC 1989) which recognizes ‘the right of the child to the enjoyment of the highest attainable standard of health’, with states parties taking appropriate measures 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’ and to ensure that society is supported in ‘the use of basic knowledge of child health and nutrition’. These rights are also contained in its subsequent General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, with Article 24 obligating states to ‘ensure access to nutritionally adequate, culturally appropriate and safe food and to combat malnutrition ... according to the specific context’, with explicit reference to addressing micronutrient deficiencies, promoting breastfeeding, managing severe malnutrition, providing school feeding, and addressing obesity. General Recommendation No. 24 (1999) on Article 12 of the UN Convention on the Elimination of All Forms of Discrimination against Women (1979) recognizes ‘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’, whereas the original 1979 Convention focused largely on women’s reproductive and family roles. The core instruments therefore reference rights to nutrition and its determinants for both children and adults.

Further to the core instruments, other declarations have clarified and reaffirmed rights relevant to nutrition and given them policy (rather than legal) traction. The Universal Declaration on Eradication of Hunger and Malnutrition (1974) at the World Food Conference in Rome declared that ‘every man, woman and child has the inalienable right to be free from hunger and malnutrition’; and the Rome Declaration on World Food Security (1996) at the World Food Summit similarly confirmed ‘the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger’, as did subsequent meetings in 2002 and 2009, with the Voluntary Guidelines on the Right to Food (2004) in the interim. The World Declaration on Nutrition and Plan of Action for Nutrition (1992) at the International Conference on Nutrition did not mention rights; and the subsequent Rome Declaration on Nutrition (2014) affirmed ‘the right of everyone to have access to safe, sufficient, and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger’ but not malnutrition. The Millennium Development Goals (2000) affirmed that men and women have the ‘right to live their lives and raise their children in dignity, free from hunger’; while the subsequent Sustainable Development Goals (2015) declaration mentions rights as the basis for the goals, human rights are notably absent from the sections on food, hunger and malnutrition.

The two major UN bodies for nutrition both highlight a right to adequate food and nutrition in their guiding principles: the Scaling Up Nutrition (SUN) strategy (2016–20) and the UN Standing Committee on Nutrition (UNSCN) Strategic Plan (2016–2020). The UNSCN goes further in noting that ‘not realizing this right makes other fundamental rights more difficult to uphold (right to survival, right to development, right to health)’. Most of the major UN agencies with nutrition mandates reference rights in their nutrition strategies: UNICEF’s Approach to Scaling Up Nutrition (2015) states that ‘UNICEF adopts a human rights-based approach to programming in nutrition’; the WHO Ambition and Action in Nutrition (2016–25) states that ‘nutrition needs to be addressed at every stage of life and access to a healthy diet is a human right’; and the Strategy and Vision for FAO’s Work in Nutrition (2014) does not mention rights, but the FAO Right to Food office promotes a cross-cutting human rights-based approach to food security and nutrition.

The language of rights also exists in policy and legal documents at the African regional level. Most explicitly, and most recently, the 2019 African Commission on Human and Peoples’ Rights (ACHPR) ‘Resolution on the Right to Food and Nutrition in Africa’ calls on states parties to take appropriate policy, institutional and legislative measures to ensure the full enjoyment of the right to food, including provisions on inclusive platforms, protecting vulnerable groups in crisis, ending resource grabbing, ensuring the rights of prisoners, and fostering local and organic food production. Underpinning this, Article 14 of the African Union (AU) Youth Charter (2006) recognizes the right of young people to be free from hunger, and Article 16 to enjoy the best attainable physical health; the latter Article echoes the African Charter on Human and Peoples’ Rights (1981; Article 16) and the African Charter on the Rights and Welfare of the Child (1990; Article 14). The latter goes further, defining that states shall undertake to ‘ensure the provision of adequate nutrition’ as a specific measure towards this end (Article 14:2c). The protocol to the African Charter
on Human and Peoples’ Rights on the Rights of Women in Africa (2003) affirms that ‘State parties shall ensure that women have the right to adequate and nutritious food’, defined as the means to produce nutritious foods and ensure adequate systems of food supply (Article 15).

Regional nutrition policies and strategies also call on rights language. Though the African Union Agenda 2063 contains the goal of ‘healthy and well-nourished citizens’ without reference to rights, the Africa Regional Nutrition Strategy (2015-25) recognizes that it is ‘the responsibility of each AU member state to fulfil their obligations towards realization of the right to nutrition security for all their citizens’ (2015–2025), as well as the AU’s role to support these efforts, and describes malnutrition as a critical human rights issue. Similarly, the Southern Africa Development Community (SADC) Food and Nutrition Security Strategy (2015-25) calls on member states to ‘develop, review, enact and implement laws and policies that guarantee and protect food as a human right’. Rights language is notably absent in the Comprehensive Africa Agriculture Development Programme (CAADP, 2003) which frames much regional action on food and agriculture, however, and in its more recent renewal in the Malabo Declaration (2014).

Human rights are written into domestic policy and law in Zambia. The Zambian Bill of Rights (1996) includes a right to life but no social or economic rights. The draft 2016 Bill of Rights included a right to nutrition for children and to food and health for all, though it didn’t pass a popular vote alongside the new constitution. The national guiding Vision 2030 (2006) is based on ‘respect for human rights’ as one of seven basic principles as a basis for the vision, and the seventh National Development Plan (2017) which articulates national strategy at a more granular level mentions ensuring rights to education, health and development (Section 4.2.2), of family farmers and farm workers (Section 7.4.6), and to economic resources, and access to basic services, ownership and control over land (Section 8.1). The Zambia National Health Policy (2012) recognizes that the Zambian constitution guarantees the right to life and health, though it does not use rights language throughout. Rights are invoked in the country’s defining National Food and Nutrition Policy (2008), in which it states that the ‘Government reaffirms that equity of access to food and nutrition is a basic human right’ (Section 5.1c) and that ‘its citizens have a right to adequate and safe food supply’ (Section 5.1d). In the National Food and Nutrition Strategic Plan (2011) which operationalizes the policy, however, the document only notes that ‘the use of the rights-based approach has also been identified as a catalyst’ to achieving nutrition targets, and the 1000 Most Critical Days Programme (2013) that emerged from the strategy does not mention rights at all.

Human rights are therefore clearly integrated with ideas of nutrition—and of nutrition’s core determinants, food and health—in written covenants, conventions and policy across international, regional and national levels. Rights covenants are becoming more explicit on issues of food and nutrition globally and regionally, and rights are mentioned in high-level strategy in Zambia. But this rights language is used without clear meaning in some instances, across levels of documents, and the language becomes weaker and less defined (and eventually disappears altogether), and the population groups covered narrower (focusing on children and occasionally women) as the documents get closer to being actionable within the Zambian national context.

In interviews for this research several respondents at international and national levels suggested that rights language was being deployed as a rhetorical device rather than a clear basis for action:
And then, of course now you see that they have adopted it in wording. But what they do, heaven knows [Int_180619].

Some policy actors at international level described rights as occurring in preambles but being lost in practice, while some civil society actors described rights variously as window-dressing, ‘keeping up with the Joneses’, and a public relations measure. International civil society respondents also noted that rights to food and nutrition are not present in the SDGs, and described human rights as marginalized in the modern UN—possibly due to a lack of understanding of rights in practice, leading to low or slow impact, disappointment and critique. At national level, a legal actor noted that political players needed to speak the language of rights to aspire to office, but often as cherry-picked rhetoric. Some national policy actors noted that while rights language might be useful in dialogue, to set the tone of discussions, rights were often ignored even when they were codified in legal and policy documents.

A political player would need to speak a human rights language if he or she is to aspire for particular offices. For instance, one might speak of, for instance on a day like today, one would speak very highly of press freedom so that he or she gains kudos on the basis of being a press freedom advocate. On a day like World Aids Day, one would speak highly of the rights of people living with HIV for the sake of gaining kudos. So it’s reconciled in a cherry picking kind of form. ... Yes, I think rhetoric is the best way to put it. Not necessarily practical [Nat_180503].

The language of rights is therefore found to be largely rhetorical in written documents and high-level statements—providing moral leverage, a range of conceptual ideas, and a call to act—but not directing action in clear or consistent ways.

In academic work on policy processes, the role of ideas in setting policy agendas is recognized to take different forms, with shared beliefs leading groups to a common aim; shared ways of understanding an issue leading to the establishment of certain types of knowledge; and shared ideologies leading to dominant norms or standards of behaviour (Cairney 2012). A human right to nutrition is one such idea, with ideas of rights providing a broad ‘rallying cry’ to action (Vivero-Pol and Schuftan 2016); moral leverage or ethical legitimacy for certain actions (Haddad and Oshaug 1998; López and Gadsden 2017); or a way to change the mindset of global and national policy communities (Fanzo, Cordes et al. 2019). Researchers and practitioners caution however that declaring a right is not enough without enforcement (Vivero-Pol and Schuftan 2016); specific implications of general statements are needed for practical impact (Leary 1994); and proclamations alone cannot secure rights, as they are bound up with power relations (Valente 2014). It has been noted before that rights talk—using the language of rights—can be empty rhetoric or a brave stand, depending on who is talking and in what context (Cornwall and Nyamu-Musembi 2006). The document review and interviews analysed here suggest that the balance has been largely on the side of rhetoric when it comes to a right to nutrition, but that rhetoric can be useful in framing the issue to enable for further action.

A right to nutrition in law: rights as legally enforceable

The legal framework relating to a right to nutrition in Zambia has two distinct strands. The first is the international and regional legal rights frameworks to which Zambia has acceded, and which it has ratified and domesticated. The second is the domestic law of Zambia, including legislation, case law and customary law, which affords some groups of individuals
rights in relation to nutrition. There is both a barrier and a connection between the two strands, and the key to understanding the legal aspect of the right to nutrition in Zambia is analysing how these two strands interact with each other.

In order to fully understand the current status of the right to nutrition it is necessary to look at the law from a developmental perspective and consider how and why the law has developed in the way that it has. ‘Path dependence’ offers a useful perspective to help address this question. It is much more than saying that ‘history matters’ (Pierson 2011: 20), but rather, it is the assertion that ‘once a country . . . has started down a track, the costs of reversal are very high’ and ‘the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice’ (Levi 1997: 28). This means that the early decisions in the way that a country approaches its legal position set the tone for the institutional approach in the future. Once the legal and policy institutions have embraced the early, ‘tone-setting’ decisions, then the institutional processes become focused on that framework, and usually it continues to develop over time in the same vein.

The first important decisions in the development of the right to nutrition in Zambia were made by the UN in relation to the wording of various parts of the international conventions to which Zambia acceded. The wording in the conventions is broad, as seen in the excerpts above, and this wording was embraced by the policy development organizations as well, and we see it repeated in multiple international and regional documents. These high-level policy documents help to entrench this wording at the international level and commit international and regional policy communities to these legal frameworks. This same format of wording is then also used at the national policy level in Zambia. We can see that the wording of these rights statements was created by decisions made at the UN in the 1960s and 1990s, and that this path has been broadly followed since then across levels and over time, evolving only slightly as global focus has alighted on different population groups.

The question that arises is the extent to which this language grants valuable legal rights to the citizens of Zambia, and, if so, what the status of the right to nutrition is in Zambia. The Zambian legal system requires that international and regional obligations must be domesticated into Zambian law before they can have legal effects either as state obligations or individual rights (Section 2, The Ratification of International Agreements Act (2016) No. 34 of 2016, Zambia).

The value of legal rights is in their strength in changing the way that states interact with their citizens and vice versa. A strong legal right to nutrition would have clear content and scope and a strong enforceability mechanism for the individual to hold the state to account. The extent to which Zambia is likely to uphold rights contained in international instruments is dependent on the nature of ratification of each relevant treaty, and the influence and authority given to precedential case law either directly related to the case at hand or more generally in relation to interpretation of international law. It has been assumed that the ratification of treaties and conventions indicates a willingness on the part of the Zambian parliament to act consistently with such provisions and that Zambia feels somewhat ‘morally bound’ to interpret grey areas of domestic law in line with such international agreements (Mbambi 2014). The political and legal situation as it currently stands in Zambia has however created a challenging and at times unclear legal context and as such impedes the ability of citizens to use the law to compel their government to meet its international obligations (Shezongo-Macmillan 2013).

Our data demonstrates that there is a balance to be made between scope and enforceability of the right to nutrition. As we move from the global to the national level, that
balance changes such that as legal enforceability increases, breadth of content decreases. At the international and regional levels the rights are full of content and are broad and applicable to all. However, there is no real enforcement mechanism available to the ordinary individual from this level. While the Affiliation and Maintenance of Children Act 1995 specifically domesticates the UN Convention on the Rights of the Child (UNCRC) into Zambian law, for instance, it makes no reference to the UNCRC provisions relating to food, nutrition, health or care. These rights are therefore not justiciable in the Zambian courts. Furthermore, since Zambia has a dualist legal system encompassing customary law as well as the formal common-law legal system, the formal courts are not easily accessible to much of the population, who rely on customary law decisions at local levels. Given the challenges for the ordinary individual to access in-country legal services, the option to complain to the relevant international UN Treaty Body to enforce their rights is so distant as to barely count as an option. In practice, these international rights are largely unenforceable by the individual right holder, as articulated by a respondent in our work:

‘You can actually sue them, it’s just that maybe we don’t know that, but we can sue them. We can even sue the government . . . we just don’t know how’ [Zam_300919].

The domestication requirement is therefore a significant barrier to the enforceability of international rights by individual rights holders.

This domestication process is the point at which parliament and the government decide on the scope or content of a right and the enforcement mechanisms that it will attract. If we look at the way in which the rights to food and health from the ICESCR and the ACHPR were domesticated into Zambian law, we can see a pattern whereby the content of the right is reduced, while the enforceability nominally increases. For example, the rights to an adequate standard of living and the best attainable standard of health were domesticated in Articles 111 and 112 of the 1991 Zambian Constitution. Article 112 sets out the directive principles of state policy while Article 111 deems them to be non-justiciable. This means that the principles within Article 112 cannot be a ground for legal action against the state and are not legally enforceable ‘in any court, tribunal or administrative institution or entity’ (1991 Constitution, Art 111). Although this appears to offer no enforcement mechanism at all, there is a greater degree of enforceability than there would have been if these rights had not been domesticated at all, because these principles may be referred to by a court as persuasive guiding principles in a case brought on other justiciable grounds. This is only a minor increase in enforceability since it requires in addition that rights holders bring a case under a (separate) justiciable right to the courts. The justiciable rights are found in Articles 11 to 24, and contain such rights as the right to life, privacy, freedom of expression, to be free of inhuman or degrading treatment, for example. If a rights holder can bring a claim under any of these Articles, then they could also bring in relevant principles from (non-justiciable) Article 112. For a Zambian individual, this is still extremely difficult to fulfil, and as such enforcement of a right to nutrition is significantly distanced from the ordinary citizen. This minor increase in enforceability is accompanied by a considerable decrease in the scope of the rights from the original international documents.

Where the development of law has been entrenched in a ‘path dependent’ framework, the tendency is for that development to carry on incrementally building on the original ideas and language, gradually narrowing scope as it increases justiciability. However, these paths may be broken, and the development of the law may be moved onto a different path. The mechanisms by which this occurs are described both as critical junctures (Collier and
Collier 1991) and formative moments (Arvind et al. 2021). While both are characterized by events that cause a change to the direction of the future development of the law, there is a difference in the underpinning concepts of causation. Formative moments afford agency to the people involved in making the change, and the premise is that formative moments can give rise to deliberate choices to change the direction of the development of the law. Critical junctures offer less recognition to the change agents involved and tend to see event X as having caused change Y, without necessarily taking account of the human agency involved in the change. Whether we call them critical junctures or formative moments, there are periods of change that have affected the incremental development of the law in Zambia and have resulted in a right to nutrition which is to some extent protected by the domestic law. The most pertinent to nutrition (though focusing on adult nutrition rather than child) is the case of George Peter Mwanza and Melvin Beene v Attorney General (2019), which relates to food provision for prisoners.

The critical junctures and formative moments literature is effective in assisting us when looking backwards; however, it is a little more challenging when one is in the midst of an event to establish whether it is a critical juncture or a formative moment. The Mwanza case is a significant indication that change is happening in Zambia with regards to a right to nutrition. In that case, the appellants were HIV-positive, and were in custody at Lusaka Central Prison. They claimed that the state-provided food was inadequate in quantity and deficient in nutritional content and did not take into account their health condition. As such, this was a breach of their rights to life and to be protected from inhuman and degrading treatment under the Zambian constitution. The Supreme Court of Zambia agreed, finding in favour of the appellants and holding that these rights had been breached. The case itself is limited, in that the men were held to be entitled to be provided with different food on account of their HIV status and incarceration.

However, the potential ramifications of this case are dramatic: the Supreme Court held that the right to life encompasses a right to nutrition. What this creates is a foothold in the law for the right to nutrition (here for adult male prisoners, but hypothetically also for other population groups), which has previously only been notionally accessible by the ordinary citizen. The consequence of the Mwanza case is that a legal claim could be brought where nutrition is so poor that it threatens the life of an individual citizen. While we cannot know yet, this could be the formative moment which fully incorporates the right to nutrition into Zambian law. This case has already had an impact at the international level: in November 2019, the African Commission on Human Rights adopted Resolution 431 on the Right to Food and Nutrition in Africa which focuses on prisoners’ rights, and their rights to food and care. State parties are required to create policies that ensure prisoners are provided with adequate nutritious food. Our findings from this project were that at the domestic legal level, prior to the Mwanza case, it was almost impossible to use the law to enforce a right to nutrition. Mwanza changes that. There is scope for domestic legal enforcement of a right to nutrition in Zambia, albeit more limited than the original international conventions had in mind.

A right to nutrition in action: rights as practical
We have established that a right to nutrition exists to some extent: in international conventions shaping rhetoric and informing national policy; and on a limited legal basis in Zambian domestic law. Beyond this, we investigated different views on what a right to
nutrition should be, or whether it should exist separately at all, to inform the action of nutrition and rights communities going forward.

In our interviews with respondents at international level, even just among policy actors, there was disagreement about what constitutes a right to nutrition, and whether it should be a separate right. Different respondents connected nutrition most strongly with food, through nutrients; with health, in terms of staying healthy; or with the technical food-health-care framework, in terms of avoiding (child) malnutrition. Generally though, nutrition was described as indivisible from other issues or rights, and particularly these issues. On whether nutrition should be a separate right, there were differences rooted in both interpretation and practicality: some felt that nutrition already is a right that can and should be interpreted from other written rights such as food and health, and that proliferation of ever more rights would not be positive for the view of rights in general; others felt that nutrition underpins multiple other rights, and so should be recognized separately.

From my point of view, already pushing for a human right to adequate food to be respected is a big, big challenge. As a human right you'll find some sort of resistance in some countries at country level without the need of adding more fundamental human rights to the lists ... Nutrition underpins more than just one human right. If it becomes a human right on its own, it's gonna lose this sort of more encompassing dimension that is so important to it [Int_180511].

But if we went towards the right to nutrition, I think it will be much more explicit that at least at the ... underlying level you need both food, health and care to attain good nutritional outcomes. As it is now, sitting there implicitly, good nutrition, people think of food [Int_180613].

International civil society mirrored many of these issues, often adding detail connected to 'real-world' issues: for instance, some civil society actors made the distinction between nutrition as part of food sovereignty and people's lived experiences, compared to nutrition as the technical discipline that underpins much policy and action at the global level. Civil society actors also broadened the list of rights to which nutrition is conceptually connected, including women's rights and the right to life; and questioned whether many people working in the field have a clear vision of what rights (or a right to nutrition) mean. Overall, international respondents across sectors focused on largely conceptual issues of what a right to nutrition might mean.

At national level in Zambia, respondents made similar links to interconnected sets of rights, but went much further in describing the practical aspects of what claiming a right to nutrition might mean in context, particularly in terms of related policy and programmatic areas. National policy respondents described the changing government response to a notional constitutional right to food, from provision of government coupons to be used in government shops during the second republic's one-party state (1972–90), to how this evolved into the role of the Food Reserve Agency in keeping grain reserves, combined later with social protection cash transfers since the 1990s—all of which were interpreted as upholding a right to food. National policy respondents also recognized the indivisibility of rights—in particular to food, social protection, and life—but some felt that this grouping of rights made action more difficult, alongside confusion over definitions of food, nutrition and rights. National legal respondents echoed the indivisibility of a right to nutrition—in particular with rights to life, health, and land—and in some senses simplified these definitions in distilling them down to legal rights and focusing on what is written (or omitted) in the constitution, Bill of Rights, and case law. National civil society respondents brought
back some of the complexity, providing a similar list of related rights—including social protection, food, and employment—and detailing some of the social policies that practically underpin these rights—including food security policies, support of women in breastfeeding, emergency food relief, and food labelling. As with other respondent groups at different levels, some national civil society respondents would see a separate right to nutrition as useful, in particular for keeping focus, clarifying expectations on duty-bearers, and for accountability purposes; whereas others felt a right to nutrition already exists implicitly within rights to food, health and life, and that these should be the foundation for a right to nutrition. One civil society respondent interviewed before the decision in the Mwanza case referred to the legal basis for rights, and the need to convince judges to interpret nutrition from these other rights. One national civil society respondent also mentioned the role of the individual’s own responsibility in realizing a right to nutrition, a theme which echoes strongly with many citizen respondents.

Citizen focus groups revealed even more practical orientations to the idea of a ‘right to nutrition’ at the community level. In and of itself, ‘rights’ was a difficult concept to grasp in several groups, and only through facilitation from the researchers and comparison with indigenous concepts and local languages loosely translating to ‘freedom’ was a consensus around its meaning achieved; it came to be understood as the ability to freely choose what one eats (or buys or cultivates) without interference (but also often without reference to an obligation of support from the state or any duty-bearer). Much of the focus group discussion turned on challenges to achieving these freedoms, particularly on people’s (lack of) ability to grow crops or afford basic foodstuffs (usually maize); vulnerable people (such as the elderly, widowed, families of ‘drunkards’ and those in poverty) were described to be particularly at risk of not having these freedoms. Respondents did see a practical role for the state and for civil society in helping people overcome these barriers, including through reform of the national fertiliser programme (FISP) and expansion to provide seed, and through support to people otherwise unable to cultivate or purchase food (implicitly, social protection); but were less vocal about any obligation on the state as any kind of duty-bearer. Where there was recognition of challenges and support more directly associated with nutrition, respondents emphasized a lack of knowledge of their rights, and thus, a need for rights education (particularly stressed by local NGO representatives and local service providers).

Although several respondents had heard about rights on the radio or in school and believed they ‘came from’ government and were codified in laws or the constitution, the right to nutrition was primarily interpreted as a matter of common sense, as natural, or ‘God given’. People, it was explained, simply know they should eat and feed others appropriately to support health, and this knowledge is in-born, or passed down generationally. Community respondents did not often directly link the language of rights to obligations of the state, and indeed, a narrative of individual responsibility to work hard laced their discussions around the right to nutrition. There was not consistent acknowledgement of the circumstances within which people were working and living, though some did acknowledge the government’s role: a farmer emphasized that the state regularly failed to make good on its responsibilities, even when citizens did what they could:

At least we are trying our level best, but [the government] they are poor in helping us. We can say we need a borehole here, so that we do our part. Yes, but they are failing [us] [FGD_Farmer Mumbwa].
Ultimately, the bulk of the community-level citizen discussions were only incidentally linked to the notion of the ‘right to nutrition’—and often only through the attempts of facilitators to reconnect to it. This demonstrates the limited resonance of this concept at the community level and the focus on the practical dimensions of food security and nutrition. Indeed, a few respondents questioned the usefulness of the concept. A youth in Lusaka, for instance, claimed that even if people knew they had this right, they could hold no-one accountable for it.

Views on what a right to nutrition means in practice change across levels, therefore, from international technical experts to national citizens. International actors tend to speak and write about nutrition rights drawing on technical frameworks based on the conceptual determinants of nutrition (food, health and care), whereas citizens jump directly to food as the primary driver and health as the outcome. There is also lack of consensus over the process of ensuring rights, from lobbying government for policy change to bringing legal cases to educating communities about their entitlements. Respondents at each level are not homogenous, though similarities in responses can be seen among respondent groups (policy, legal, civil society and citizens).

These debates over what a right to nutrition should be, do, or bring to nutrition practice are therefore disconnected, across respondent groups and across levels. There was however some consensus on which areas needed practical work to achieve rights, where these were mentioned: citizen participation, and authority accountability. Some have argued that action towards a right to nutrition should come from affected communities themselves (Florencio 1996; Kent 2010), an idea which echoes participatory approaches to development (Chambers 1994). It has been suggested that the way to make human rights culturally legitimate in practice is to tailor their practical application to cultural contexts, rather than change their underlying value of protecting human dignity (Chrichton, Haider et al. 2015). Some empirical work has been undertaken to understand how the concept of human rights is understood or internalized by different groups affected by it, including through the concept of ‘vernacularising’ human rights into intelligible ideas in different contexts (Merry 2006). With a specific focus on the right to food, Hossain, te Lintelo et al. (2015) asked individuals in communities affected by the 2008 global food price crisis what this right meant in their everyday lives, finding that while ideas of the right to food did not generally use international human rights language, an understanding of innate or natural rights to food was ‘common sense’, shared across contexts and groups, and part of how people negotiate their right to food in everyday life. We found some similarities on the practical nature of nutrition concerns at local (citizen) level in Zambia, though the ideas were perhaps more complex for nutrition than they were for food alone. Our work suggests that to find consensus on nutrition norms, one would have to work with very specific groups (likely small, homogenous and localized) because definitions of both nutrition and rights are varied, and so are the contexts within which people might aim to claim these rights (for instance rural farmers or urban consumers). In particular, some citizen groups lacked the language to talk about rights, though they were much clearer on the practical issues limiting their ability to secure good nutrition. Some rights proponents have suggested that rights education is key here, and that rights systems only work when the rights holders know what their rights are (Kent 2010), so a careful balance would have to be struck between allowing principles to emerge from communities, while also introducing education from a normative rights perspective.
Our work also has something to say on accountability. In practical terms, it has been claimed that accountability is the key mechanism that makes rights an effective approach, and is the major added value of a rights-based approach (de Schutter 2012). It has also been shown however that the lack of a norm for economic and social rights underpinning issues such as freedom from hunger means that in many cases there is no clear actor to be held to account—or rather that there may be multiple responsible actors at different times and in different contexts, but that there are no clear consequences for inaction backed up by social consensus (Jurkovich 2020a). Our work demonstrates that there is no clear norm, and no clear accountability target identified by respondents, meaning that accountability for a right to nutrition is also diffuse. The average Zambian citizen also has little access to formal legal systems, limiting avenues to legal accountability—and the customary law system does not work through rights or accountability mechanisms. Because of this plurality in accountability focus and process, it has been suggested that a ‘buckshot’ approach to advocacy is needed, which simultaneously apportions responsibility to multiple actors (government, civil society or business) using multiple causal frames depending on context, and in which advocates might be national or international civil society actors working with states as allies or targets (Jurkovich 2020a). Others have also noted the need for a plurality of approaches, such as pursuing accountability through upstream (international agreements) and downstream (grassroots initiatives) routes (Valente 2014). Again, this suggests a need for local communities to identify for their own contexts who the duty-bearers might be, and work towards accountability that way, as is being trialled in countries with an institutionalized right to food such as India (Nisbett, Ahmed et al. 2017; Feruglio and Nisbett 2018).

Bringing participation and accountability together, Goetz and Gaventa (2001) have examined the effectiveness of policy initiatives that seek to increase citizens’ voice and public sector responsiveness in delivery of services, finding through a review of 60 case studies that meaningful participation requires formal recognition of citizens groups, their right to information about decision-making and spending, and rights to seek redress for poor services. Little work on nutrition to date has focussed on power claimed through grassroots mobilization or confrontation however (Pelletier, Haider et al. 2013; te Lintelo, Nisbett et al. 2016), and Zambia is not generally seen as a country with strong activist movements. If rights are to be pursued, practical steps would need to build on legal gains, with further public-interest cases brought to test the right to nutrition, at the same time as pursuing rights education and participatory accountability.

Conclusions and implications

This study of the right to nutrition in global and national contexts has highlighted the rhetorical nature of calls for rights in many policies, covenants and organizational mandates—which does not always provide clear basis for action but does set the moral and legal tone. It has also shown how this language has shaped in more concrete ways the engagement of Zambian law with a right to nutrition—albeit one of more limited scope in order to achieve justiciability—and the possibility that formative moments can be grasped to shape the law in ways even more supportive of the right. It has also highlighted the lack of action in practice—particularly in the areas of rights education, participation and accountability—that might enable ordinary citizens to access these rights through legal mechanisms or raising the accountability of authorities. We also see that focusing on a right to nutrition for a
single group, such as children, is probably counterproductive, in part because of the indivisibility of rights, and in part because many legal routes—not to mention community perceptions of rights—focus on a range of different population groups, and the gradual push towards this right benefits from action across populations. In Zambia, the rhetoric of a right to nutrition is relatively clear, and the Mwanza case provides a legal basis for a limited right to nutrition, but practical action engaging with local realities is lacking. These three aspects of human rights—the rhetoric, the law, and the practice—will no doubt play out differently in different national (and local) contexts, but this empirical analysis has revealed them each to be critical faces of human rights that work together (and should be considered together) in understanding the achievement of rights more generally.

It was clear from our analysis of the rhetorical, legal and practical aspects of a right to nutrition that the different actors engaged in these different worlds—policy, law or activism—rarely interacted (particularly at the national level), and that with some exceptions, these worlds existed in silos. In our research, different understandings, contestation, or sometimes outright disagreement about what a right to nutrition might mean in practice across these silos (and lack of coherence on whether it is the malnutrition of children or of broader populations that are being worked towards) means that there is no consistent narrative behind which to rally for the right. In the related field of hunger, this state has been defined as a lack of a norm—a morally grounded, collectively shared, sufficiently specific, socially obligatory idea with clear duties and consequences for defined actors—for the right to food (Jurkovich 2020a, Jurkovich 2020b). For malnutrition (as for hunger), while the moral frame for action clearly exists and has shaped rhetoric, the lack of a norm means there is no consensus on who should be acting, what they should be doing, or what should be the consequences if they do not. This is not the case for many civil and political rights, where states are clearly duty-bearers and the imperative of not committing torture or disenfranchising citizens is clear; for food and nutrition (and many social and economic rights) however, actors span states, civil society and the private sector, and there is a huge variety of potential actions to take (Jurkovich 2020a). This lack of a norm for a right to nutrition makes action less coherent, and therefore makes it possible to dismiss human rights as a useful mode of action altogether.

Contributing to the lack of a clear human rights norm is nutrition’s position as an international development issue with multiple interested constituencies. The field of international nutrition has been described as having a technical bias and often avoiding the political and power issues inherent in rights work (Pelletier 2001; Heaver 2005; Harris 2019). Historical assessment of international nutrition as a field of practice has speculated that two contemporary international nutrition paradigms have been in competition: the ‘investment in nutrition paradigm’, proposing that allocating more money to technical nutrition interventions to scale up service provision to larger populations would speed improvements in malnutrition outcomes; and the ‘human rights approach to nutrition paradigm’, proposing that political action towards greater entitlements to and accountability for good nutrition would be required to catalyse improvements in both process and outcomes (Jonsson 2010). In researching human rights and hunger, Jurkovich (2020a) also makes a distinction between approaches grounded in human rights (generally more political, legalistic and state-focused) and standard development approaches (generally more economically or technically focused, working at the level of written policy or its practical implementation). In our work, it is clear that both approaches are needed to span the rhetorical, legal and practical aspects of rights.
In trying to bridge these divides, Uvin (2002) proposes three different ways in which rights might be incorporated into development practice: the incorporation of human rights terminology and language into standard development discourse, which does not challenge existing patterns of working but rather adds a notion of validation through claim of the moral high ground, as we discuss above in uncovering the rhetoric; the addition of human rights objectives to existing goals, allowing for the establishment of discrete programmes with ostensibly political aims, such as ‘good governance’; or the redefinition of development mandates in human rights terms, allowing for a fundamental re-thinking of how development can work, as development outcomes are claimed as an entitlement rather than provided through charity. Uvin was sceptical of the value of these activities, considering them to be ‘window dressing’ to hide apathy for change. However, he also cited the rhetoric of international law making a ‘real difference in the longer run’ (Uvin 2002: 3). Eighteen years later, the Mwanza case in Zambia gave HIV-positive prisoners a legally enforceable right to nutritious food. However early in the development of the legal process, there is a possibility that this case will be a formative moment that can be built upon, and, at least in this regard and for this population group, human rights rhetoric will have moved towards ‘real difference’, certainly slowly, but possibly more sustainably than current project-focused approaches.

The presence of this ‘real difference’ is not a wide-ranging conclusion, however. While there is considerable international focus on the value of rights-based approaches to malnutrition, it is evident from our research that there is still no agreed understanding among different sets of actors involved of what a rights-based approach is. There is no accepted understanding of what conditions need to be in place in order to call an approach rights-based. The different approaches to the right to nutrition seem to be in silos of rhetorical, legal and practical approaches, and there is very little crossover between the three of them in practice—in their academic literature, or between the actors working through these different routes to a right to nutrition. This is problematic for those working in policy, practice or law to address malnutrition, without reference to the other aspects of a right to nutrition.

We argue that a right to freedom from malnutrition (or access to good nutrition) can only be fully realized if the rhetorical, legal and practical aspects are taken together, and understood and addressed with reference to different contexts. In order to implement a useful rights-based approach to tackling malnutrition, these aspects need to be brought out of their silos and efforts made to communicate both across the different sectors working towards a right to nutrition (policy, law and practice), and across the ‘levels’ of actors from global to local. If the rhetorical and the legal aspects are brought together with the messiness and complexity of practical work, then it may be possible to formulate a coherent rights-based approach which is stronger and more successful than the current siloed approach at addressing the issue of malnutrition, which all involved in a right to nutrition are trying to do.

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