

## 1 State Food Crimes

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This book discusses state food crimes; that is, crimes by states that deny their own citizens and others for whom they are directly responsible one of their most fundamental human rights, the right to food. The worst type of deprivation of food is famine. Not only are famines not pure natural disasters, they are often consequences of national policy decisions that benefit political elites at the expense of the populations whose well-being is entrusted to them. As de Waal argues, “The occurrence of famine is an indictment of the ethics of the country in which it has occurred” (de Waal 1991, 77). Through the use of four late twentieth and early twenty-first century case studies described in Part II, this book demonstrates that some states – or political elites in those states – deliberately deprive their citizens of food while others neglect to ensure that their citizens, or others for whom they are responsible, have adequate nutrition. The four cases are North Korea in the 1990s and twenty-first century; Zimbabwe since 2000; Venezuela since 1999; and the West Bank and Gaza (WBG) in the 1990s and twenty-first century. The factual descriptions of food policies in these countries end as of April 2015.

I draw these four cases from different areas of the world and different political systems. North Korea, an Asian country, was a pseudo-Communist dynastic regime. Zimbabwe in the 2000s became an authoritarian regime ruled by a small clique of family and allies surrounding President Robert Mugabe. Venezuela was ruled from 1999 to 2013 by an increasingly authoritarian populist, Hugo Chávez, succeeded by Nicolás Maduro, who intensified Chávez’s policies. Israel, internally a democracy, was an occupying power in the West Bank and exercised effective control over Gaza.

Many countries in which famine exists are at war. I have deliberately chosen three cases – North Korea, Zimbabwe, and Venezuela – in which war is not a complicating variable. In the case of WBG, the Gaza War of 2009 is one reason why Palestinians suffered malnutrition, but the main reason for malnutrition in the West Bank was colonialism. I have also chosen states with functioning (however corrupt or malevolent)

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governments, rather than failed states: thus, for example, I have chosen Zimbabwe over Somalia.

I chose these cases to illustrate different degrees of abuse of the right to food and different political and economic mechanisms that resulted in its abuse. I do not suggest that the cases are comparable in the severity of abuse of this right. North Korea is by far the worst case, followed by Zimbabwe. In Venezuela, food shortages caused by government policy had not, by 2015, resulted in massive malnutrition, as in Zimbabwe, or starvation, as in North Korea. In WBG, conflict and colonialism had contributed to widespread malnutrition, but not starvation. Thus, the state food crimes I discuss are of different levels of severity and caused by different economic and political policies.

I refer to state “crimes” in both the legal and moral senses. Legally, state food crimes fall under various aspects of international law, the most explicit of which is as a crime against humanity. Under the Rome Statute of the International Criminal Court (ICC), the crime of extermination includes deprivation of access to food (International Criminal Court 1998, Article 7,2, b). Deprivation of food is also a war crime under the Geneva Conventions, discussed in Chapter 8. Not all of what I consider to be state food crime is so under international law, however; thus, one of my aims is to persuade readers that there should be a broader interpretation of state food crimes than currently exists. (A similar, but not identical, argument was made by Jappah and Smith in 2012 in an article on what they called “state sponsored famine,” but with less specific reference to current international law (Jappah and Smith 2012).)

Whatever international law and humanitarian practice may currently be, these four cases also highlight the central importance of civil and political rights and the rule of law to protection of the “economic” human right to food. In all four cases, rule of law either does not exist or, in the case of WBG, does not apply to the population enduring malnutrition. Similarly, as I show in Chapter 10, in all four cases either the population never enjoyed civil and political rights, or those rights were progressively undermined at the same time as food became scarcer. In some or all of the four cases, citizenship rights, mobility rights, property rights, and the right to work were also undermined; these rights are not as thoroughly examined in the literature on famine as are rights to vote or to press freedom. In the end, as I show in Chapter 11 on liberal democracy, it is internal human rights, not external law and practice, that protect citizens against state food crimes. Nevertheless, as I argue in Chapter 12, a new international treaty on the right to food might have some value in protecting citizens against rulers who create the conditions for famine or serious malnutrition.

### **The Rights to Adequate Food and Freedom from Hunger**

I use the term “right to food” as shorthand for the rights to adequate food and freedom from hunger. The most basic document of the international law of human rights is the 1948 Universal Declaration of Human Rights (UDHR). Article 25,1 of the 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.” This reflects the famous speech by US President Franklin Delano Roosevelt in 1941, proclaiming his “Four Freedoms,” one of which was freedom from want (excerpted in Howard-Hassmann and Welch 2006, 211). The UDHR was followed by two international Covenants that codified its ideals into international law; namely, the 1976 International Covenant on Civil and Political Rights (ICCPR) and the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR includes the rights to adequate food (Article 11,1) and freedom from hunger (Article 11,2). Scholars usually separate these two rights, noting that freedom from hunger is more urgent than the right to adequate food. Nevertheless, freedom from hunger is a minimalist approach to the human right to food, implying that a “minimum daily nutritional intake” is sufficient to fulfill it, rather than that both the quality and quantity of food should be such as to allow the individual to lead a productive life fitting with the principle of human dignity (Alston 1984, 167).

Article 1,2 of both the ICCPR and the ICESCR includes the sentence “In no case may a people be deprived of its own means of subsistence.” This implies an international dimension to the right to food, suggesting that “a people” may not be deprived by outsiders of its means of subsistence, as I will argue was a consequence of Israeli policies in WBG. The meaning of “a people” is fluid, however, and might also refer to a minority group within a state, or indeed to the entire population, if the state imposes measures depriving it of its own means of subsistence, as occurred in both North Korea and Zimbabwe, as well as increasingly in Venezuela.

Article 2,1 of the ICESCR mandates that each state party to the Covenant (that is, each state that signs and ratifies the Covenant) is obliged to take steps “to the *maximum of its available resources*, with a view to achieving *progressively* the full realization of the rights recognized” in the ICESCR (my italics). This clause is usually interpreted to mean that developing states are not expected to fulfill all human rights immediately, but that they should do so progressively as the resources become available. However, the four cases I discuss in Part II are not instances in which developing states cannot provide enough food because they do not

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have the resources to do so. Rather, they are instances in which states deprive their citizens or those under their jurisdiction either directly of food or indirectly of the capacity to cultivate their own food; that is, they remove from the targeted populations resources that had been previously available.

Henry Shue argued in 1980 that for every basic right, states had three duties: to avoid depriving people of the right, to protect them from deprivation by others, and to aid those who were deprived of the right (Shue 1980, 52). This prescription has evolved into the idea that state responsibilities are first to respect human rights, second to protect them, and last to fulfill them. Fulfillment can be further divided into two steps: facilitating citizens' capacity to provide for themselves and actually providing the content of the right if citizens cannot do so (Eide 2006, 175). Regarding the rights to adequate food and freedom from hunger, this means that the state is obliged to protect access to food that already exists, prevent any undermining of this access, and fulfill the need for food when citizens cannot do so themselves, either by facilitating access to food, for example, by assisting farmers with fertilizer subsidies, or by directly providing food (or the means to purchase it) to citizens.

Food is a fundamental human biological need. Indeed, Alston notes that "the right to freedom from hunger is the only human right which the framers of the two international Human Rights Covenants specifically termed 'fundamental'" (Alston 1984, 162). Similarly, Shue argues that food is an aspect of minimal economic security. For Shue, food is a basic right: "Basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink." Basic rights, he maintains, must include "the provision of subsistence at least to those who cannot provide for themselves" (Shue 1980, 18, 24).

These opinions reflect a common-sense view that biological needs take priority over less biologically necessary wants or desires. If, for example, one were to ask people "What is it you cannot do without?" one would assume that the answer would be rooted in material needs (Felice 1996, 21), one of the most fundamental of which would be food. But contemporary interpretation of human rights stresses more than material needs; it stresses the need for human dignity. The starting point in understanding what are the core human rights that all individuals need lies, according to Beetham, "in identifying the grounds on which all humans deserve equal respect, or merit treating with equal dignity" (Beetham 1995, 46).

The preface to the UDHR states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

The rights to food and freedom from hunger are absolutely essential to human dignity. One essential aspect of human dignity is a sense of autonomy, a sense that an individual is in control of her life, yet a starving individual is incapable of enjoying or exercising any of her rights as an autonomous human being. The rights to adequate food and freedom from hunger are also essential to the wider meaning of human dignity, in which a dignified individual is one who enjoys other's concern and respect and who can participate in the community (Howard 1995, 16–17). Thus, the right to food has a much wider meaning than simply fulfillment of elementary biological need. A starving individual is preoccupied by her own hunger, too weak to take care of herself and family members, and certainly too weak to participate in any collective decision-making. Indeed, “individuals who do not know when (or even if) their next meal is coming are . . . reduced to a subhuman existence. There simply is no human dignity in suffering from starvation or malnutrition” (Carey et al. 2010, 91). By contrast, the properly fed individual, free from hunger and inadequate nutrition, is more likely to feel competent, empowered, and able in normal times to care for herself and her family and to participate in the wider community and polity.

In general, then, the right to food demonstrates the indivisibility and interdependence of civil and political and economic, social, and cultural human rights, as proclaimed at the 1993 United Nations' Vienna Conference on Human Rights; “All human rights are universal, indivisible and interdependent and interrelated” (United Nations 1993, Article 5). That is, to satisfy their economic human right to food, people also need to enjoy their civil and political human rights. An authoritarian government could keep its people alive, suggests Kent, merely by feeding everyone “prepackaged rations or capsules,” but this would mean that people would have “no chance to influence what and how they are fed.” It would also be undignified to be fed in such a manner rather than having the opportunity to provide for oneself (Kent 2009, 228).

The ICCPR and the ICESCR were followed by many other conventions, covenants, and declarations, some of which deal directly with the rights to adequate food and freedom from hunger. Indeed, the right to food is scattered all over international human rights law (Niada 2006–07), and many United Nations documents refer to it (Apodaca 2014): here I discuss only a few documents most relevant to state food crimes. The Universal Declaration on the Eradication of Hunger and Malnutrition was adopted by the World Food Conference and endorsed by the United Nations General Assembly (UNGA) in 1974 (World Food Conference 1974, December 17). This Declaration does not attribute any responsibility to states for depriving individuals of the right to food.

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Rather, it refers to the histories of colonialism and apartheid and to the market economy as causes of food deprivation, insisting on the principle of non-interference in the domestic affairs of states and respect for national sovereignty and independence (World Food Conference 1974, December 17, articles c, d, and h). Such non-interference implies that under the principle of sovereignty states enjoy the legal right to deprive their own citizens of food; thus, when the Khmer Rouge took power in Cambodia only a year after the World Food Conference, there was no mechanism in the Declaration to penalize or even denounce it for starving its own people.

In 1996, a World Food Summit resulted in a request to the United Nations Committee on Economic, Social, and Cultural Rights (CESCR) to interpret the right to food: the CESCR complied by issuing General Comment 12 in 1999. According to this Comment, the “core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; [and] The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights” (Committee on Economic Social and Cultural Rights 1999, Article 8). Referring to the consensus that human dignity is the basis of human rights, General Comment 12 also “affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person” (Committee on Economic Social and Cultural Rights 1999, Article 4). Perhaps in oblique reference to events since 1974, including mass starvation in Cambodia in the 1970s and North Korea in the 1990s, the General Comment also refers to “the use of food as a political weapon.” It notes that “Violations of the right to food can occur through the direct action of States” (Committee on Economic Social and Cultural Rights 1999, Articles 5 and 19).

In 2004, voluntary guidelines on food security were drafted and adopted by the Food and Agriculture Organization (FAO) (Windfuhr 2010, 138). These guidelines are modeled on the content of General Comment 12, and note the importance of civil and political rights to the economic human right to food. However, all these guidelines are still voluntary; there is no obligatory code of conduct for states to follow regarding food (Kent 2005a, 58). Guideline 1.2 focuses on democracy, good governance, human rights, and the rule of law and specifically mentions the human rights to freedom of opinion, expression, information, press, and assembly/association as key to the right to food. It further states that “Food should not be used as a tool for political and economic pressure” (Food and Agriculture Organization 2005, 9).

Without referring to the human right to own property mentioned in Article 17 of the UDHR, which I will argue in Chapter 10 is essential to the right to food, the FAO guidelines also mandate in Article 8,1 that “states should . . . protect the assets that are important for people’s livelihoods,” especially “the rights of individuals with respect to resources such as land, water, forests, fisheries, and livestock” (Food and Agriculture Organization 2005, p. 16). In mentioning the importance of access to assets, the guidelines reflect Amartya Sen’s thesis, discussed below, that deficits in asset entitlements are key causes of famines. States are also advised to ensure that humanitarian agencies have “safe and unimpeded access to the[ir] populations,” a rule both North Korea and Zimbabwe violated (Food and Agriculture Organization 2005, Guideline 15.3, p. 27).

The FAO guidelines also refer to international obligations to protect the right to food, particularly relevant in this volume to WBG. Quoting from the pre-existing and obligatory 1949 Geneva Conventions, the guidelines state that in the event of war “it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops [and] livestock” (Food and Agriculture Organization 2005, Guideline 16.2, p. 28). In situations of occupation, moreover, the occupying power must ensure that the civilian population has the food it needs, even if that means importing food (Food and Agriculture Organization 2005, Guideline 16.3, p. 28). Outside of situations of international warfare, the guidelines suggest international responsibility to protect the right to food, grounding this in the principle that “developed countries should assist developing countries in attaining development goals” (Food and Agriculture Organization 2005, III, Article 4, p. 33).

Related to the human rights to adequate food and freedom from hunger is a developing right to water, again pertinent in this volume to WBG. This right is not mentioned in the UDHR or the ICESCR, but in the twenty-first century various United Nations agencies were involved in proposing it. In so doing they referred especially to the right to “an adequate standard of living” mentioned in Article 11,1 of the ICESCR, and the right to the “highest attainable standard of physical . . . health” mentioned in Article 12,1.

The right to water is most clearly elaborated in General Comment 15 of the CESCR, which states that “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights” (Committee on Economic Social and Cultural Rights 2002, para. 1). The General Comment also refers to Article 14,2, h of the Convention on the Elimination of All Forms of



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Discrimination against Women, which stipulates that women must “enjoy adequate living conditions, particularly in relation to . . . water supply,” and to Article 24,2, c of the Convention on the Rights of the Child, which requires states to provide clean drinking water for children (Committee on Economic Social and Cultural Rights 2002, para. 4).

General Comment 15 notes a core obligation of states to “ensure access to the minimum essential amount of water . . . on a non-discriminatory basis” and refers to the World Health Organization’s (WHO) minimum standard of 20 liters of water per capita per day to ensure basic food and personal hygiene needs (World Health Organization 2013) (Committee on Economic Social and Cultural Rights 2002, para. 37, a and b, and fn.1); this does not, however, take account of agricultural needs. WHO’s recommended daily amount of water for all needs is 100 liters per day (Howard and Bartram 2003, Table S1). General Comment 15 became the basis for resolutions on the right to water in the UNGA in 2010 (United Nations General Assembly 2010, August 3) and in the Human Rights Council that same year (Human Rights Council 2010, September 24).

Thus, although as of 2015 there was not yet an elaborated international law or covenant dealing only with the right to food (including the right to water), there were various documents that delineated states’ responsibilities above and beyond the clauses in the UDHR and ICESCR. However, as Weissbrodt and de la Vega note, provisions for the right to food “are not so much a subject for lawyers and courts . . . Instead, the right to food is largely implemented by programs run by agronomists, biologists, doctors, engineers, farmers, managers, trade experts, and other technicians” (Weissbrodt and de la Vega 2007, 145). Yet the right to food ought to be a matter for lawyers and courts when states deliberately deprive their citizens or others for whom they are responsible of food. Individuals can be punished for egregious violations of civil and political rights such as genocide and crimes against humanity; they should also be punishable for what Jean Ziegler, the former United Nations Special Rapporteur on the Right to Food, calls “the daily massacre of hunger,” noting that this hunger “is not a question of fate: it is the result of human decisions” (Jean Ziegler, “Foreword” in Kent 2005a, xv).

### Civil/Political and Economic Human Rights

As the reference above to the two 1976 Covenants that succeeded the UDHR suggests, for some time there was an unfortunate split between advocacy of civil and political human rights and advocacy of economic,



social, and cultural human rights. In the eyes of some “non-Western” and/or socialist critics, civil and political rights were merely a “Western construct with limited applicability,” as two leftist American critics put it (Pollis and Schwab 1980). Some leaders of newly independent countries experimented with political systems in which civil and political rights were subordinated to what was then seen as an imperative to develop. For example, Julius Nyerere, the first president of independent Tanzania, said in 1969: “What freedom has our subsistence farmer? He scratches a bare living from the soil provided the rains do not fail; his children work at his side without schooling, medical care, or even good feeding . . . Only as his poverty is reduced will his existing political freedom become properly meaningful and his right to human dignity become a fact of human dignity” (quoted in Howard 1983, 467).

However, while Nyerere might honestly have believed that civil and political rights could be left in abeyance until economic human rights were achieved, his own policies proved him wrong. Between 1973 and 1976 he attempted a policy called “villagization,” moving about five million peasants who had hitherto been scattered across the countryside into centralized villages where they had access to schools, clinics, and other services. This villagization was conducted without consultation with the peasants concerned, often in an arbitrary, if not brutal, fashion (Scott 1998, 223–61). Food production in Tanzania consequently declined, as peasants did not know how to cultivate in their new locations and did not have the resources to do so. Among many other problems, they were moved from lands that had water to lands that did not; they were moved to areas where the soil was unsuitable for the crops they were supposed to cultivate; and they were forced to live in villages rather than live close to their crops so that they could keep an eye on pests (Scott 1998, 246). Nor could they protest against their arbitrary removals from their original homesteads, as freedom of speech, assembly, and the press were significantly curtailed in Tanzania’s one-party state (Howard 1986, 119–50).

By the early twenty-first century, it was clear that arguments such as Nyerere’s that there was insufficient attention to the right to food as compared to civil and political rights were disingenuous. So also were arguments by non-Western leaders accusing Westerners who criticized their food policies of harboring colonialist or imperialist motives. Among the cases that are the focus of this book, Venezuela had been independent since 1811, North Korea since 1948, and Zimbabwe since 1980. Food policies in all three countries were of the governments’ own making; comments by outsiders on their abuse of their citizens’ rights

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attest to universal moral concerns, not to attempts to reassert colonial control.

In the past, some observers also criticized international non-governmental organizations (NGOs) for neglect of economic human rights such as the right to food, but such criticisms are no longer valid. Amnesty International (AI) changed its mission in 2001 to include concern with all the rights listed in the UDHR and adopted a particular focus on poverty (Khan 2009, 119, 121). Another major organization, Human Rights Watch (HRW) decided that it could not focus on all failures to fulfill economic human rights but could report on specific violations particularly if they were consequences of arbitrary or discriminatory judgments by states (Roth 2004, 69). Both AI and HRW have produced many reports relevant to the state food crimes with which this book is concerned.

The criticism that “Western” human rights scholars and practitioners neglect economic, social, and cultural human rights is also unfair because however much we might wish that similar policies might be used to ensure, for example, both the civil human right to be protected from torture and the economic human right to adequate nutrition, in practice the former is much more amenable to narrow policy objectives and formal laws than the latter. This is not to promote a distinction between “negative” rights that supposedly require no action by the state other than forbearance and “positive” rights that require action and resources. The state must devote resources to train police to ensure that they do not torture citizens, but it is still much more difficult to fulfill the right to adequate food than the right to protection against torture. For the state to provide food requires many material resources and many different types of policy interventions.

On the other hand, the state’s obligation to protect access to food is partly a “negative” right; it requires that the state not prevent its citizens or others under its control from accessing food that is otherwise available to them: “It may well be that the state can avoid hunger better by being passive, by *not* interfering with the freedom of the individuals and with their control over their own resources” (Eide 1989, 38, italics in original). Some of the worst historical famines were caused by states’ attacks on populations that previously had enjoyed adequate food, rather than states’ inability to provide food to those who did not have access to it, as I will show in Chapter 2.

Above all, civil and political rights and economic rights such as the right to food are linked. The “full-belly thesis”: that is, the belief that civil and political rights are irrelevant until an individual’s belly is full, ignores the complexity of how access to food is protected or provided