

The background of the book cover is a composite image. The top half features the Nigerian flag (green, white, and green vertical stripes) waving against a clear blue sky. The bottom half shows a perspective view of a green agricultural field with rows of crops, leading towards a line of trees on the horizon.

FOOD AND AGRICULTURAL LAW

*Readings on Sustainable Agriculture
and the Law in Nigeria*

RHUKS T. AKO • DAMILOLA S. OLAWUYI



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and the Law in Nigeria*

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LEGAL AND THEORETICAL ASSESSMENT OF THE RIGHT TO FOOD IN NIGERIA

EGHOSA O EKHATOR AND KENNETH I AJIBO

OVERVIEW

Access to food is essential to human survival. The 'right to food' is a human right; the fulfilment of which impinges on the realization of many other human rights. Nigeria is a signatory to many international and regional that acknowledge and codify the right to food. Although the Nigerian constitution does not expressly refer to the right to food, fundamental rights, specifically, the 'right to life' and 'right to dignity' (amongst others) are arguably inextricably linked with the right to food. The chapter posits that although there is arguably an obligation on the Nigerian government to fulfil the right to food for her teeming population, the pervasiveness of hunger in the country starkly illustrates the on-going failure to fulfil these rights. In spite of many policies initiated by the successive governments, including the transformational drives in the agricultural sector by the current government, it is to be seen that much progress has not been made in terms of availability, accessibility and enforcement of these rights. This chapter presents a comprehensive overview of the evolution of the right to food as a human right in international and regional laws.

1. INTRODUCTION

The 'right to food' is a fundamental human right and its realization is inextricably linked to the fulfilment of other human rights such as the right to life, health, education and the right to work as well.¹ Lack of adequate food, hunger and undernourishment, impede learning and psychosocial development and directly or indirectly account for over half of the deaths in the world.² This chapter explores the theoretical and legal basis for the existence of the 'right to food' in Nigeria. The chapter is divided into five sections. After this introduction, section two traces the theoretical and legal basis of right to food as a human right and adopts the natural law school of thought as the conceptual basis why the right, like other fundamental human rights contained in the Nigerian constitution should be inalienable. Section three defines the legal right to food and analyses its evolution from the framework of international and regional human rights law. It then examines the extent to which commitments to respect, protect, and fulfil the right to food at the international, regional and national levels are upheld in practice. Section four highlights the right to food under the African Human rights system. This is followed by a critical review of the contemporary policy challenges and transformational drives in Nigeria's agricultural sector. The last section will be the conclusion of the chapter.

2. NATURE OF HUMAN RIGHTS

The definition of 'rights' is a primary question that arises in any philosophical enquiry into the nature of human rights.³ The term is cha-

1 See Chris Downes, 'Must the Losers of Free Trade Go Hungry? Reconciling WTO Obligations and the Right to Food', (2007) 47 *Virginia Journal of International Law* 619, 671-72 (2007); Committee on Economic, Social and Cultural Rights, *General Comment 12, the Right to Adequate Food (Article 11 of the Covenant)*, UN Document No E/C12/1999/5, 12 May 1999. Michael McDermott, 'Constitutionalizing an Enforceable Right to Food: A Tool for Combating Hunger', (2012) 35 *Boston College International and Comparative Law Review* 543; GA, *Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights* (December 10, 2008), Doc UN A/RES/63/117; Final report of Asbjørn Eide, Special Rapporteur on the right to adequate food of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1987/23). This was the so-called "four freedoms of speech", the four being freedom from fear, freedom from want, freedom of religion, freedom of expression. Mr Eide updated his study in 1999 at the request of the Sub-Commission, UN, Sub-Commission on the Promotion and Protection of Human Rights. *Updated Study on the Right to Food*, submitted by Mr. Asbjørn Eide, UN Document No E/CN.4/Sub.2/1999/12, 28 June 1999.

2 FAO Legislative Study 68, *Extracts from International and Regional Instruments and Declarations, and other Authoritative Texts Addressing the Right to Food*, Rome 1999.

3 See Jerome Shestack, 'The Philosophic Foundation of Human Rights', (1998) 20 *Human Rights Quarterly* 2, 201-234.

meleon-like in that it may be used to describe a variety of legal relationships.⁴ In a strict sense, 'right' is used to epitomise the right holder being entitled to something with a correlative duty in another. It could indicate immunity from having a legal status altered or a privilege to do something⁵ or a power to create a legal relationship. All these different ascriptions of 'rights' each invoke different protections.⁶ For example, when speaking of an inalienable right, does one mean a right to which no expectations or limitations are valid? Or does one mean a *prima facie* right with a special burden on the proponent of any limitation? Or is it a principle that one must follow unless some other principle weighty enough to allow abridgement arises?⁷

The definitional answers to these questions are obviously complex. Given that international law has established a conventional system of human rights and a jurisprudential understanding of the nature of rights, it is necessary to discuss the conception of human rights with respect to the right to food in Nigeria. Understanding the conception of the 'right' involved can help clarify one's consideration of the degree of protection available, the nature of derogation or exceptions, the priorities to be afforded to various rights, the question of the hierarchical relationship in a series of rights, the question of whether rights *trumps* competing claims based on cultural rooting, and similar problem.⁸ To be sure, the answers to these questions may evolve over time through legal rulings, interpretations, decisions, and pragmatic compromises. However how those answers emerge will be influenced, if not driven by, the moral justification of the human rights in issue.⁹ Given

4 *Ibid.* See also, Wesley Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (Yale: Yale University Press, 1923) 21.

5 *Ibid.*

6 *Ibid.*

7 Similarly, if speaking of 'right' from the perspective of the International Covenant of Economic, Social and Cultural Rights (ICESCR), what does one intend by rights such as the right to social security, health, food, education, fair wages, a decent standard of living, and even holiday with pay? Are these rights that an individual can realistically assert, or are they aspirational? Assuming they are rights as intended, on whom are the correlative duties imposed? If one speaks of privileges, other concerns arise. If the privileges are granted by the state, then presumably the state is entitled to condition them. Does the right of a state to derogate from rights in an international covenant mean that the rights are, in fact only privileges? Here too, the answer is connected to moral strength and inviolability of the 'right' or 'privilege' that is involved. See Bix Brian, *Jurisprudence: Theory and Context* (Boulder, CO: Westview Press 1996a) 32; Hilliary Putnam, 'Are legal values made or discovered?', (1995) 1 *Legal Theory* 5; UN, *International Covenant on Economic, Social and Cultural Rights* adopted 16 Dec. 1996, 993 U.N.T.S.3.G.A Res 2200 (XX1), U.N. GAOR, 21st Sess, Supp No.16, U.N. Doc A/6316 (1966) entered into force Jan. 3, 1976).

8 See Putnam (n 7) 34.

the desirability to make 'right to food' an enforceable right under the Nigerian constitutional jurisprudence, it is apposite to examine whether 'right to food' has met the minimum doctrinal qualification as a human right that can be enforced under substantive international human right law in Nigeria.

Requirement of Human Rights

As the perceived usefulness of attaching the label 'human right' to a given goal or value increases, the UN organs may be under a considerable pressure to proclaim a new right without giving some appreciable consideration to their desirability, scope or form.¹⁰ Alston argued that one of the substantive criteria that a claim must satisfy in order to qualify as a human right in terms of international laws is the eligibility for recognition on the ground that it is an interpretation of the UN Charter obligations.¹¹ Similarly, it should also reflect customary rules or formulation from general principles of law – which should be consistent with existing body of international human rights law among others.¹²

However, given the debate on the elements to be included in such list of substantive criteria for what qualifies as a human right, it becomes difficult to state what should precisely be a qualification to attain a human right.¹³ The reasons are that the establishment of criteria of enduring relevance is almost impossible in a field that is frequently undergoing evolutionary flux. Second, even if such criteria could be agreed upon, the process of transforming a claim into international human rights is far from being scientifically pure.¹⁴ This argument could further be supported when one considers the barrage

9 *Ibid.*

10 Philip Alston and Ryan Goodman, *International Human Rights* (Oxford: Oxford University Press, 2012) Chapter 3.

11 Philip Alston, 'Conjuring up New Human Rights: A Proposal for Quality Control', (1984) 78 *American Journal of International Law* 3, 607.

12 *Ibid.* see for example the UNESCO Committee on the Theoretical Bases of Human Right established in 1947 with a view to contributing on the reflection on the approach to be adopted in the proposed Universal Declaration of Human Right which defined the 'right' as a 'condition of living without which in any given historical stage of society, men cannot give the best of themselves as active members of the community because they are deprived of the means to fulfill themselves as human being. Similarly, another often-quoted example of the list of criteria was given by Maurice Cranston according to which a 'right by definition is a universal moral right, something which all men everywhere, at all times ought to have, something of which no one may be deprived without a great affront to justice, something which is owing to human being simply for being human. For more see Maurice Cranston, *What Are Human Rights?* (London: Bodley Head, 1973).

13 *Ibid.*; Philip Alston et al, *International Human Rights in Context: Law, Politics, Morals*, (3rd edn, Oxford: Oxford University Press, 2007) Chapter 2.

14 *Ibid.*

of debates during 1950s over whether or not self-determination should be considered a human right.¹⁵ As that controversy clearly indicated, and given the states in support and against the issue, it would be at best artificial or better still unrewarding to seek to distil from the broad range of human rights already proclaimed by the General Assembly any scientifically valid criteria that would be capable of practical application with respect to new claims.¹⁶

For instance, by applying his own criteria, Cranston arrived at the conclusion that the right proclaimed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) were simply not valid since they did not satisfy the requirements of practicability or paramount importance.¹⁷ By contrast, other philosophers and jurists have applied the same criteria and arrived at the opposite conclusion.¹⁸

This implies that the application of the formal list of substantive requirements that could be agreed by all (philosophers and jurists) is thus an unworkable approach. On that basis, the normative validity of rights recognised by the General Assembly cannot be made subject to their validity with respect to philosophical or any other supposedly 'objective' criteria.¹⁹ This gives credence to the argument of Builder's conclusion that a claim is an international human right if the General Assembly says it is.²⁰ Given that the Universal Declaration of Human Rights is an important legal instrument embodying one conception of natural right (right to food) into international soft law, it is argued that the right to food meets the doctrinal requirement from the natural law conceptual foundation. Furthermore, given the pervasiveness of hunger that confronts the average Nigerian citizen, it is further argued that the Nigerian government has a moral obligation to protect and promote the 'right to food' for its citizens. This is irrespective of the fact that the 'right' remains non-justiciable under the constitution despite the country being a signatory to many international and regional conventions.²¹ The following section examines the meaning of the right to food under international law with respect to the language of food as it applies to Nigeria.

15 Cornelius Murphy, 'Objections to Western Conceptions of Human Rights', (1981) 9 *Hofstra Law Review* 2, 433, 438

16 *Ibid.*

17 Francis Jacobs, 'The Extension of European Convention on Human Right to Include Economic, Social and Cultural Rights', (1976) 3 *Human Right Review* 166

18 *Ibid.*

19 *Ibid.*

20 Richard Builder, 'Rethinking International Human Rights: Some Basic Questions', (1969) *Wisconsin Law Review* 1, 551-608.

Right to food under International Law

In legal terms, the concept of food as a human right emerged along with the rest of contemporary international law in the aftermath of World War II. The right to food was initially codified in the UN Declaration of Human Rights in 1948.²² The full scope of the right to food has evolved under international law not only in response to global efforts to combat hunger and malnutrition but also due to the growth to understand the factors that contribute to hunger and malnutrition. The treaty refers to the right to food as one aspect of the right to a standard of living adequate to ensure the health and wellbeing of each person.²³ The right to food is thus explicitly linked to individuals' health and wellbeing. The right to adequate food is a 'relative standard,' in that it is subject to progressive realization. In essence, states that are party to the Convention are required to put in place measures, policies, and programs that lead to its full realization over time. But the right to freedom from discrimination in accessing adequate food is an 'absolute standard' thus immediately actionable and universally applied equally.²⁴ The right to food under international law implies the right to means of production or procurement of food of sufficient quantity and quality, free from adverse substances and culturally acceptable.²⁵

Under international law, the State is accountable for the enjoyment of human rights within its territory.²⁶ However, the State may assign responsibilities to different levels of government, and should indeed, through its national strategy or legislation, assign as precise a responsibility for action as possible, especially in addressing multisectoral and multidimensional problems such as food insecurity.²⁷ While the importance of creating an enabling environment where everyone can enjoy the right to food by their

21 See the Charter of the United Nations - the Universal Declaration of Human Rights 1948, article 25; International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, arts 2, 11; the African Charter on Human and People's Rights (also known as the Banjul Charter) adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 Rev (1982) 21 I.L.M. 58; see *Constitution of Federal Republic of Nigeria* 1999 (as amended) Chapter 2.

22 UN General Assembly Resolution 3217A, III, article 25 was reaffirmed in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the treaty recognized as part of an adequate standard of living, which also includes housing and clothing, and separately as the fundamental right to be free from hunger. See FAO, *Basic Texts*, Rome 1999; FAO Legislative Study 68, *Extracts from international and regional instruments and declarations, and other authoritative texts addressing the right to food*, Rome 1999.

23 See UN Declaration of Human Right 1948, art 25 para 2.

24 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, art 2, 11.

25 *Ibid* art 11.

26 *Ibid* art 3-11.

27 *Ibid*.

3. THE AFRICAN HUMAN RIGHTS SYSTEM

The African Charter on Human and People's Rights (African Charter)³⁵ is the cornerstone of the African Human rights architecture³⁶ and it establishes a system or framework for the promotion and protection of human rights in Africa within the framework of the African Union (AU). The African Charter promotes a plethora of human rights that are classified as civil and political, socio-economic and cultural, individual and collective rights.³⁷ The Charter is the first regional mechanism to incorporate the different classes of human rights in a single document.³⁸ The African Commission on Human and People's Rights (African Commission) is a part time quasi-judicial institution of the AU vested with the tasks of promoting, interpreting and protecting the rights localised in the African Charter.³⁹ The African Commission is the most significant international (or regional) body for the realization of human rights in Africa and it monitors human rights developments in all the member states of the AU⁴⁰ and it is established by virtue of article 30 of the African Charter.

African Commission and Jurisprudence of Right to Food

The African Charter expressly recognises a plethora of socio-economic rights such as right to health (article 16), right to education (article 17) and right to a general satisfactory environment (article 24) amongst others. However, some socio-economic rights are not included in the African Charter such as the right to water and sanitation, right to adequate standard of living; including the right to food, housing and clothing, and right to rest and leisure

35 African Charter of Human and Peoples' Rights (also known as the Banjul Charter) adopted 27 June 1981, OAU CAB/LEG/67/3.

36 Obiora Okafor, *The African Human Rights System, Activist Forces, and International Institutions* (Cambridge: Cambridge University Press, 2007) 1-2.

37 Manisuli Ssenyonjo (ed) *The African Regional Human Rights System: 30 Years after the African Charter on Human and Peoples' Rights* (Martinus Nijhoff Publishers, 2012).

38 Manisuli Ssenyonjo, 'Economic, Social and Cultural Rights in the African Charter' in Ssenyonjo (n 37), 55-100.

39 Manisuli Ssenyonjo, 'An Introduction to the Development of the African Regional Human Rights System: 30 Years after the Adoption of the African Charter on Human and People's Rights' in Ssenyonjo (n 37), 3-26.

40 Magnus Killander, 'The African Commission on Human and Peoples' Rights' in Ssenyonjo (n 37). However, the African Commission is not the only human rights body in the AU. See Chidi Odinkalu, 'From Architecture to Geometry: The Relationship Between the African Commission on Human and People's Rights and Organs of the African Union' (2013) 35 *Human Rights Quarterly* 4, 850-869.

by workers amongst others.⁴¹ Notwithstanding that the right to food is not expressly enshrined in the African Charter, the African Commission posits that there is an implied right to food in the African Charter thus is arguably developing this jurisprudence. The Commission in *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* (SERAC Case),⁴² argued that the right to food is implicit in the African Charter flowing from the provisions on the right to life (article 4), right to health (article 16) and the right to economic, social and cultural development (article 22).⁴³ In the case that centred on oil-related human rights violations that occurred in Ogoniland,⁴⁴ the African Commission averred that the right to food is interlinked with the right to dignity of human beings and it is essential for the enjoyment and fulfilment of such others such as the right to health, right to education, right to work and right to political participation.⁴⁵ According to the African Commission, the 'African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens.'⁴⁶

The opinion of the African Commission in implying substantive rights in the African Charter can be criticised on the basis that it created supplementary rights, which contracting states (to the African Charter) never consented to.⁴⁷ However, the position of the African Commission is in tandem with its (African Commission) Reporting Guidelines, which enjoins states to report on rights not expressly enshrined in the African Charter.⁴⁸ Furthermore, many of the supplementary rights that have been implicit by the African Commission are already protected under many international conventions, which African countries have signed up to and in some cases without reservations.⁴⁹ Another justification for the implicit recognition of

41 Generally see Ssenyonjo (n 38) 56.

42 Communication 155/96, (2001), Also available online <<http://www.escri-net.org/sites/default/files/serac.pdf>> accessed 29 May 2014.

43 SERAC case *ibid* para 64.

44 Morne Van Der Linde & Lorette Louw, 'Considering the Interpretation and Implementation of Article 24 of the African Charter on Human and People's Rights in the Light of the SERAC Communication', (2003) 3 African Human Rights Law Journal 167, 168.

45 SERAC case (n 42) para 65.

46 *Ibid*.

47 Ssenyonjo (n 38), Christof Heyns, 'The African Regional Rights System: The African Charter' (2003-2004), 108 *Penn State Law Review* 679, 691 contends that the African Charter 'is an outdated document in need of revision to ensure that it actually says, loud and clear, what it has been interpreted by the Commission to say.'

48 Guidelines for National Periodic Reports, in Second Annual Activity Report of the African Commission on Human and People's Rights 1988-1989, ACHPR/RPT/2nd, Annex XII cited in Ssenyonjo (n 38) 73.

49 Ssenyonjo (n 38).

supplementary rights in the African Charter by the African Commission can be extrapolated from the Statement on Social, Economic and Cultural Rights in Africa, adopted in September 2004 in Pretoria, South Africa⁵⁰ and which has been adopted by the African Commission.⁵¹ The Statement avers that socio-economic rights 'explicitly provided for under the African Charter, read together with other rights in the Charter, such as the right to life and respect for inherent human dignity, imply the recognition of other economic and social rights, including the right to shelter, the right to basic nutrition and the right to social security.'⁵²

4. THE AFRICAN CHARTER AND SOCIO-ECONOMIC RIGHTS IN NIGERIA

Nigeria has ratified and domesticated the African Charter via the African Charter (Ratification and Enforcement) Act 1983.⁵³ Nigeria operates a dualist system wherein treaties are not applied domestically unless incorporated via the machinery of legislation⁵⁴ by virtue of section 12(1) of the Nigerian Constitution 1999.⁵⁵ The Nigerian Supreme Court in *General Sani Abacha v. Chief Gani Fawehinmi*⁵⁶ held that the Charter is part of Nigerian law and courts must enforce its provisions. However, the provisions of the African Charter are subject to the constitution. This presents an interesting

50 For full text see (2005) 5(1) *African Human Rights Law Journal*, 182-193 <http://www.ahrlj.up.ac.za/images/ahrlj/2005/ahrlj_vol5_no1_2005_seminar_statement.pdf> accessed 20 May 2014. Also cited in Ssenyonjo (n 38) 74.

51 Resolution on Economic, Social and Cultural Rights in Africa. ACHPR/Res.73(XXXVI)04, (2004). Cited in Ssenyonjo (n 38) 73.

52 *Ibid.*

53 Chidi Odinkalu, 'The Impact of Economic and Social Rights in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights' in Varun Gauri and Daniel Brinks (eds.) *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in Developing World*, (Cambridge: Cambridge University Press, 2008) 183.

54 Generally see Edwin Egede, 'Bringing Human Rights Homes: An Examination of the Domestication of Human Rights Treaties in Nigeria', (2007) 51 *Journal of African Law* 2, 249; Amos Enabulele, 'Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts' (2009) 17 *African Journal of International and Comparative Law* 2, 326.

55 However, there are other approaches wherein international treaties are domesticated in Nigeria. One approach relates to treaties entered into by the British colonial administration and extended to Nigeria by virtue of the colonial authority. An example is the Warsaw Convention made applicable to Nigeria by virtue of the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953. Generally see Eghosa Ekhatior 'Improving Access to Environmental Justice under the African Charter: The Roles of NGOs in Nigeria', (2014) 22 *African Journal of International and Comparative Law* 1, 63, 70.

56 (2000) SC No 45/1997.

situation in Nigeria because while socio-economic and civil and political rights (including other rights) are enforceable under the African Charter, socio-economic rights are not enforceable going by the express provisions of Nigeria's constitution.

In Nigeria, socio-economic rights are contained in chapter II of the Constitution that lists the fundamental objectives and directive principles of state policy, which are not enforceable against the State by virtue of section 6 (c) (c) of the constitution. However, civil and political rights listed under chapter IV of constitution are enforceable against the State and citizens. Although the Nigerian judiciary⁵⁷ has consistently held that socio-economic rights are not justiciable notwithstanding that a plethora of scholars have contended that chapter II of the constitution can be made justiciable.⁵⁸ Notably, some lower courts in Nigeria have relied upon the African Charter to promote socio-economic rights. For example, in *Gbemre v. Shell*,⁵⁹ the plaintiff filed a suit against Shell, the Attorney General and the Nigerian National Petroleum Corporation (NNPC) to end the practice of gas flaring. The court held that the extant gas flaring laws 'was inconsistent with the Applicant's right to life and/or dignity of human person' as enshrined in the Nigerian Constitution and the African Charter.⁶⁰

5. RIGHT TO FOOD IN NIGERIA

In Nigeria, there is the absence of an explicit right to food provision in the constitution. However, a semblance of right to food or food security is localised in Section 16 (2) (d) of the constitution that states that the State shall direct its policy towards ensuring suitable and adequate shelter, suitable and adequate food are provided for all citizens. However, this is contained in

⁵⁷ See *Archbishop Olubunmi Okogie and Others v. The Attorney General of Lagos State* (1981) NCLR 337, 350. However, in *A.G. Ondo State v. A.G of Nigeria and Others* (2002) 9NWLR (Pt 772) 222, where it held that the National Assembly is competent to enact laws on corruption by the creation of a national body to tackle the menace.

⁵⁸ See Tunde Ogowewo, *Wealth (Dis)creation through Corporate (Mis)governance and Banking(Mis)supervision: The Outlines of a Reform Agenda*, being a paper presented in Honour of Hon. Justice EO Ayoola on 25 November 2009 at the Nigerian Institute of International Affairs, 3 cited in Olubayo Oluduro *Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities* (Intersentia Publishing 2014); Femi Falana, *Fundamental Rights Enforcement in Nigeria* (2nd edn, Legal Text Publishing 2010).

⁵⁹ Suit No FHC/B/CS/153/05. Also available online at the African Human Rights Law Database at <<http://www.chr.up.ac.za/index.php/browse-by-subject/418-nigeria-gbemre-v-shell-petroleum-development-company-nigeria-limited-and-others-2005-ahrlr-151-ng-hc-2005.html>> accessed May 20, 2014.

⁶⁰ Ekhaton (n 55).

Chapter II of the constitution, which is neither justiciable nor enforceable. It can be posited that notwithstanding that the 'right to food' provision in the constitution is not enforceable against the State, this provision can be made justiciable and enforceable via different mechanisms.

The right to food can be implied into the Nigerian constitution via chapter IV of the constitution, which is enforceable. For example, the right to food and right to life are interwoven and interdependent.⁶¹ As Oluduro has argued, '[w]ithout the right to food, all other rights will be meaningless.'⁶² Furthermore, 'whether one speaks of human rights or basic human need, the right to food is the most basic of all. Unless that right is fulfilled, the protection of other human rights becomes a mockery for those who must spend all their energy merely to maintain life itself.'⁶³ In implying justiciability and enforceability into the right to food provision in the constitution, Nigerian courts can make allusions to the evolution of the right in other countries especially India. Indeed, the socio-economic rights provisions of Nigeria's constitution are modelled on the Indian constitution where this category of rights is not expressly justiciable or enforceable.⁶⁴

However, the Indian judiciary has consistently creatively interpreted the constitutional provisions regarding socio-economic rights to make them justiciable and enforceable. With specific regards to the provision on the 'right to food', Article 47 of the Indian Constitution enjoins the government to raise the 'level of nutrition and the standard of living of its people.'⁶⁵ While expressly non-justiciable or unenforceable as it is one of the directive principles originally created to guide state policies,⁶⁶ it has been interpreted as a subset of the right to life contained in article 21⁶⁷ that has also been

61 Oluduro (n 58) 244.

62 *Ibid.*

63 Presidential Commission on World Hunger, 1980, cited in Philip Alston, 'International Law and the Right to Food' in Wenche Eide and Uwe Kracht (eds.) *Food as Human Right* (United Nations University, Tokyo 1984) 162-174.

64 Lidija Knuth and Margaret Vidar, *Constitutional and Legal Protection of the Right to Food around the World* (FAO 2011) 14, the variants of the constitutional recognition of the right to food include: '(i) Explicit and direct recognition, as a human right in itself or as part of another, broader human right; (ii) Right to food implicit in a broader human right; (iii) Explicit recognition of the right to food as a goal or directive principle within the constitutional order; and (iv) Indirect recognition, through interpretation of other human rights by the judiciary.' However, very few countries have enforceable domestic provisions on the right to food. Brazil, South Africa, Colombia and Belarus are examples of countries with enforceable provisions on right to food in their constitutions.

65 Article 47 of the Indian Constitution, copy available online <<http://lawmin.nic.in/coi/coia-son/29july08.pdf>> accessed 29 May 2014.

66 McDermott (n 1).

67 *Mullin v. Adm'r*, (1981) 2 S.C.R. 516, 529 (India).

interpreted to include the right to live with dignity.⁶⁸ The Supreme Court of India in *Kishen Pattnayak & another v. State of Orissa*⁶⁹ and *People's Union for Civil Liberties (PUCL) V. Union of India and others*⁷⁰ recognised the right to food by virtue of the right to life encapsulated in article 21 of the Indian constitution with 'reference also to the Directive Principle of State Policy concerning nutrition, contained in article 47.'⁷¹

Nigerian courts should take a cue from the jurisprudence from the right to food cases in Indian courts and make implicit the right to food by virtue of Chapter IV of the Nigerian constitution. This is more so that while there are similar provisions with regard to the right to life and dignity in both constitutions, decisions from Indian courts are of persuasive influence to their Nigerian counterparts. Arguably, the situation should not be different with respect to the right to food debate. Another mechanism wherein the right to food may be enforced in Nigeria is by holding the country to respect international obligations regarding the conventions it has ratified in respect of the right to food.⁷² A major reason for this is that contracting countries to treaties cannot rely on the basis of its domestic laws as reasons or justification for not performing its expected obligations under such treaties.⁷³ Nigeria must be seen to respect and implement the various treaties it has ratified. Furthermore by virtue of section 19(d) of the Nigeria's Constitution, 'respect for international law' is one of the foreign policy objectives of the Nigerian government enunciated in the constitution.

Thus, the Nigerian government should observe and enforce international law in the country⁷⁴ as it has in the past. For instance, in 2002, the Nigerian government implemented the judgement of the International

68 *Ibid* 529.

69 See *Kishen Pattnayak & Another v. State of Orissa* cited in Knuth and Vidar (n 64) 14.

70 See *People's Union for Civil Liberties v. Union of India & Ors.* (S.C. 2001) Writ Petition (Civil) No. 196/2001, cited in Knuth and Vidar (n 64) 14.

71 Knuth and Vidar (n 64) 14.

72 Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and the African Charter on Human and People's Rights amongst others.

73 Generally see Kenneth Ajibo, 'Facing the Truth: An Appraisal of the Potential Contributions, Paradoxes and Challenges of Implementing the United Nations Conventions on Contracts for the International Sale of Goods (CISG) in Nigeria' (2013) 2 *Afe Babalola University: Journal of Sustainable Development Law and Policy* 1, 186.

74 Funmi Abioye, 'The Rule Of Law In English Speaking African Countries: The Case of Nigeria and South Africa', A PhD thesis submitted to the University of Pretoria, South Africa 2011, 233

Court of Justice (ICJ) between Cameroon and Nigeria,⁷⁵ which ceded the ownership of Bakassi Peninsula to Cameroon. The enforcement of the ICJ ruling by Nigeria was made notwithstanding the opposition of the many Nigerians and scholars to this ruling under the guise of the country conceding to international law.⁷⁶ Arguably, this action amplifies the fact that Nigeria enforces international treaties or obligations thus the conceding to the provisions of such instruments promoting the right to food should not be the exception.

Furthermore, the judiciary has a potentially major role to play in the actualization of the right to food in Nigeria. Generally, Nigerian judges make allusions to international law for clarification in necessary circumstances. For example, in *Mojekwu v Mojekwu*⁷⁷ the Court of Appeal relied on the provisions of the African Charter and other conventions prohibiting the discrimination of women (in addition to the constitution) to nullify a customary practice (law) that prevented daughters of a deceased man from inheriting his property.⁷⁸ In the same vein, Nigerian judges could, and should, make allusions to conventions such as the UDHR, ICESR and CEDAW amongst others, that imply the right to food as well as decisions of the African Commission in construing the right to food in Nigeria. The Commission in *SERAC* case posited that the Nigerian government violated the right to food of the Ogoni people of the Niger Delta. In a *note verbale*, the Nigerian government averred that it has taken remedial measures to ameliorate the impacts of the activities of the multinational corporations on the Niger Delta environment. Notably, the general consensus in academic literature is that governmental initiatives have been ineffectual in Nigeria.⁷⁹

⁷⁵ See Land and Maritime Boundary between Cameroon and Nigeria, ICJ Reports (2002), 303 cited in Edwin Egede, Bakaasi: The Green Tree Agreement (GTA) and section 12 of the Nigerian 1999 Constitution (2008) Daily Independent Newspaper (Nigeria). Available online http://works.bepress.com/edwin_egede/8/ accessed 20 July 2014.

⁷⁶ *Ibid.* Enabulele (n 54).

⁷⁷ [1997] NWLR (pt. 512) 283, 302-305.

⁷⁸ Generally see Amos Enabulele and Bright Bazuaye, *Basic Teachings on Basic Topics in Public International Law* (Benin: Ambik Press 2014) for an extensive analysis of the relationship between municipal law and domestic law in Nigeria.

⁷⁹ Generally see Emeka Chianu, 'NDDC-Another shot at Infrastructural Development of Nigeria 'Oil Producing Areas', (2001) 58 *International Energy Law and Taxation Review* 9, 214. See also, Eghosa Ekhatior, 'Environmental Protection in the Oil and Gas industry in Nigeria: the Roles of Governmental Agencies', (2013) 5 *International Energy Law Review*, 196.

6. NIGERIAN GOVERNMENT POLICIES ON FOOD SECURITY

This section will discuss the challenges of Nigerian government agricultural policies in attaining food security and the current administration's transformational efforts in the sector. It is the considered view that attainment of food security is imperative if Nigeria is to unlock her fullest potential as any system where food demand is insufficiently matched by supply is no doubt one with looming food crisis.⁸⁰ The very survival of the state is linked to the ability of its economy to meet the material demands of both people and government⁸¹ thus it is imperative that states are able to formulate and effectively implement agricultural and food policies.⁸²

Hence, it is a priority for developed and developing countries alike to continuously make efforts to boost their food production and by extension, food security.⁸³ Food security refers not only to an adequate aggregate supply of food, but also that all people at all times have both physical and economic access to basic food.⁸⁴ Availability, access and affordability are all elements of food security complex issues that encompass a wide range of interrelated economic, social and political factors – internal and external, which challenge Africa's ability to address food security.⁸⁵

A survey of government policies from the 1970s to the current administration reveals that successive regimes initiated policies geared towards ameliorating food security problems.⁸⁶ But the widening gap between the government objectives and practices has always been the bane of Nigeria's agricultural policies.⁸⁷ A number of problems have been briefly identified that impede the effectiveness of agricultural policies. The first of these is 'policy somersault', that is, the frequent changes of policies, generally speaking and with regard to agriculture in particular, as governments change. Such frequent change in policies is not good for an important industry such as agriculture wherein farmers and other potential investors

⁸⁰ Jenny Clover, 'Food Security in Sub-Saharan Africa' (2003) 12 *African Security Review* 1, 5-15.

⁸¹ Emmanuel Ojo, 'Public Opinion and the Conduct of Nigeria's Foreign Policy: Two Selected case studies', (2004) 3 *Nigerian Journal of the Social Science* 1, 48-62.

⁸² Craig Jenkins and Stephen Scanlan, 'Food Security in Less Developed Countries 1970-1990', (2001) 66 *American Sociological Review* 5, 718-744

⁸³ Emmanuel Ojo and Peter Adebayo, 'Food Security in Nigeria: An Overview', (2012) 1 *European Journal of Sustainable Development* 2, 199, 201.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

need a relative stability to guide their investments.⁸⁸

Furthermore, corruption that has been a serious problem in the country has also affected the agriculture sector.⁸⁹ For instance, fertilizer procurement and distribution has been riddled with corrupt practices.⁹⁰ In some instances, sand was mixed with fertilizers and sold to government; payments were made for fertilizer not supplied; and subsidized fertilizers were either resold to government or to neighboring countries.⁹¹ As a result, no more than 11 per cent of all the farmers in the country received fertilizers distributed by the government.⁹²

Reforms in Agricultural Industry

The current effort to attain food security in line with global standard is commendable but it remains to be seen whether the same ugly fate of policy somersault and corruption will not affect the industry in the

87 As already discussed in Chapter two of this book, a review of agricultural policies and programmes in Nigeria shows that in 1976, General Obasanjo government started what was known as Operation Feed the Nation (OFN). The policy was intended as some kind of agricultural revolution in which everyone was asked to be involved in planting something, anything, and anywhere. However, for various reasons, these efforts did not produce the bumper harvest that was expected and the cynical Nigerians nicknamed the programme Operation Fool the Nation. In 1979, when Shehu Shagari took over as President, he embarked on a mere change of name. He called his own initiative Green Revolution (GR) without any aggressive change in conception, content or context of the policy and it ended without making any appreciable impact to Nigerians. Then came General Babangida's Directorate of Food, Roads and Rural Infrastructure (DFRRI) in 1985. It was supposed to be a comprehensive, integrated programme for massive food production and rural transformation. On paper, it was great but in actual practice, the policy was infested with massive corruption and eventually failed. With the advent of civilian administration in 1999, greater attention was given to food production. One major policy that deserved comment during 1999-2007 was the 'cassava initiative'. The policy was to promote exportation and increased productivity, which even resulted in the 'cassava glut'. The policy review so far demonstrates the previous efforts by the government of Nigeria to meet the global demand for food security. Nevertheless, it is instructive to appreciate that over the years, agricultural sector has not received up to 10 per cent allocation in federal budget, which is the minimum requirement according to Maputo Declaration of sufficient food production. See Isaac Akinyele, *Ensuring food and nutrition security in rural Nigeria: An assessment of the challenges, information needs, and analytical capacity*, (Nigeria: International Food Policy Research Institute 2009) 70.

88 See Olaniyan Olayiwola, 'Nigeria Food Security at Glance' (2014) 1 *Sai Om Journal of Commerce and Management* 1, 10.

89 *Ibid.* See also, Adesina Akinwumi, 'Transforming Nigeria's Agriculture' being a Speech delivered at the Inauguration of the Agriculture and Food Security Center of the Earth Institute of Columbia University, New York, USA September 10, 2013. <<http://agriculture.colombia.edu/past/event>> accessed 29 May 2014.

90 *Ibid.*

91 See Andohol Jerome, 'Nigeria's Food Security Programs: Implications for MDG's Goal of Extreme Hunger Eradication', (2012) 3 *International Journal of Business and Social Science* 2, 243-253.

92 *Ibid.*

nearest future.⁹³ In this connection, policy somersault and corruption could undermine the potential or practical initiatives government may have with respect to right to food in Nigeria. The reason is because successive regimes have often changed agricultural policies to suit the government's strategy even sometimes at the expense of the citizens and such government's action or inaction cannot be challenged given that right to food remains non-justiciable in the constitution.⁹⁴ This is why the right to food should be made justiciable as a human right in the constitution to improve the living standard of Nigerian citizens. Furthermore, it should be noted that availability of food alone does not seem sufficient to explain the attainment of this standard.⁹⁵ Accessibility and safety should be given priority to further protect the health of the people, which seems less than satisfactory in the sector.⁹⁶

7. CONCLUSION

This chapter has analysed the right to food paradigm in international law (including the African Charter) and Nigeria. One of the key barriers for developing capacity and practices, and promoting sustainable agriculture and farming in Nigeria is the absence of an enforceable right to food in the constitution. This chapter has contended that notwithstanding the absence of the right to food in the Nigerian constitutional framework, this right can be made implicit via the other enforceable rights in the constitution such as the right to life and right to dignity. It is suggested that Nigerian judges should take a cue from India. The latter has a similar constitutional framework with Nigeria, wherein socio-economic rights are not justiciable and enforceable. Notably, the Indian judiciary has made the right to food enforceable by making it implicit via the right to life and right to dignity. Finally, Nigeria should fulfil its international obligations under the right to food centred conventions as a civilised member of the international comity of nations. To attain food security, government policies should be supported with making the right to food justiciable and enforceable in the constitution.

⁹³ It seems that the current government has made significant inroads into improving the agricultural sector as the administration aims to ensure that Nigeria becomes a global powerhouse in food security. The aim is to use agriculture to end hunger, create wealth and jobs and drive equitable economic growth in Africa to lift millions out of poverty by aggressively implementing bold policy reforms, reduced decades of corruption in the fertilizer sector and pursued innovative agricultural investment programs to expand opportunities for the private sector to add value to crops produced in Nigeria.

⁹⁴ See Constitution of the Federal Republic of Nigeria 1999 (as amended), s.16 (2) (d).

⁹⁵ Richard Akinbami, 'A review of government policy on agricultural mechanization in Nigeria', (2013) 5 *Journal of Agricultural Extension and Rural Development* 8, 146, 152.

⁹⁶ *Ibid.*

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