



The jurisprudence of right to food: A myth or reality in Nigeria

Appolos Dimas¹, Faith Dang Gwom², Aisha Muhammed Umar³

¹ A Lecturer with the Nigerian Law School, Yola Campus, Nigeria

² Author Borno State ministry Maiduguri, Nigeria

³ A Lecturer with the Nigerian Law School, Abuja Campus, Nigeria

Abstract

The journey from right to food to right to life in Nigeria is not an easy one. Food is a basic necessity of life. It is the foundation of human survival. No wonder, it is now seek ye first the kingdom of the stomach and all other things shall be added unto you. As important as food is to human survival, a lot of Nigerians are stricken by hunger and starvation to the extent that the populace at a point in time; ran riot against the Nigerian government by looting grains stored in government granaries to help their stomachs. This article examined the importance of food to the realization of chapter four of the 1999 constitution as ammended. The article also examined why the right to food is not justiciable in Nigeria. It was discovered in this article that Nigeria despite being a signatory to a lot of treaties and conventions; some of which have been ratified, hunger is still the common currency that unites the country regardless of tribe and religion. The article also examined the provisions of various instruments that are relevant to the right to food. It was discovered regrettably that hunger and starvation have taken over a lot of homes in Nigeria. The article concluded by suggesting that unless the right to food is made justiciable in Nigeria, all the treaties and conventions on food to which Nigeria is a signatory will remain not only a myth but a tantalizing mirage.

Keywords: jurisprudence of right, Nigerian government, human rights

Introduction

Food is a basic necessity of life. It is the bedrock and anchor point of survival. It transcends barriers, of race, colour, nationality, religion, gender, circumstances of birth, etcetera. Without food, life-if it ever exists-is devoid of meaning ^[1] The "right to food" is a fundamental right that exists at the core of human survival, the need to survive and the need to have access to good and decent meals is something every individual craves and strives to satisfy. The right to food is the bases for other rights such as the right to life, health, education, etc. Is the right to food a right recognized under Nigerian legislation and to what extent has it been implemented? Does the Nigerian government have the burden of providing food for its citizens? If it does, to what extent and how well has it done regarding this right? This article would be examining the nature of human rights, the right to food under international law, the Nigerian constitution, and other laws, we also would be looking at how well the Nigerian government has fared concerning the right to food and also look at ways the government can take in providing for this right and also better the lives of Nigerians with regards to the right to food.

Statistics of Food and Hunger in Nigeria.

According to the United Nations Food and Agricultural Organization in collaboration with the Federal Ministry of Agriculture and Rural Development, about 19.4 million people will face food insecurity across Nigeria. The report said the foot crisis will affect Nigerians in 21 states and the FCT including, 416,000 Internally Displaced Persons (IDPs). It noted that about 14.4 million people including 385,000 IDPs in 21 States and the Federal Capital Territory are already in food crisis till May 2022. The analysis for the month of March, 2022 covered Abia, Adamawa, Benue, Borno, Cross-River, Edo, Enugu, Gombe, Jigawa, Kaduna,

Kano, Katsina, Kebbi, Lagos, Niger, Plateau, Sokoto, Taraba, Yobe, Zmfara and the Federal Capital Territory. The report estimated that 2.8 million Nigerians will go into famine by 2023. The report identified insecurity especially insurgency and kidnaping. Also, it said high inflation in soaring food commodity prices, which is associated with the economic downturn, will contribute to the hunger crisis in Nigeria ^[2].

Nature of Human Rights

Human rights are rights that anyone has just because they are a human being. ^[3] Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. ^[4] The UDHR states that all humans are born free and equal in rights and dignity, they are endowed with reason and conscience and should act toward one another in the spirit of brotherhood. ^[5] Human rights are held by individuals simply because they are part of the human specie. They are rights shared equally by everyone regardless of sex, race, nationality, and economic background they are universal in context. ^[6] Human rights are rights that humans are born with; they cannot be taken away or alienated from any other person.

1. The Nature and Characteristics of Human Rights

a. They are universal

human rights are universal, to every individual without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or another status. ^[7] Human rights are the same irrespective of your state or nationality.

b. They are inalienable

human rights are inalienable because cannot be given away or forfeited. ^[8] These rights cannot be taken away from one,

however; there are exceptions to the inalienable nature of human rights as they can be taken away lawfully where it is necessary.

- c. **They are indivisible:** this is the idea that no human right can be fully implemented or realized without fully realizing other rights.^[9] A few critics of this concept argue against indivisibility by distinguishing the concept from interdependence, though they may be interdependent to an extent, they are not indivisible.

Right to Food Under International Law

The right to food can be described as the right to have regular, permanent, and free access, either directly or through financial purchases, to quantitatively and qualitatively adequate food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear^[10]. The human right to food is recognized in Article 25, paragraph (1) of the Universal Declaration of Human Rights: Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control"^[11]

A lot of people around the world are suffering from lack of food or malnutrition causing the death of about 9 million people yearly.^[12] The right to food is a human right. It protects the right of all human beings to live in dignity, free from hunger, food insecurity, and malnutrition. The right to food is not about charity, but about ensuring that all people can feed themselves with dignity.^[13]

Under international law, the right to food entails the right to adequate food and the obligations upon states. The value of the right to food, and its significance, is crystallized in expressions that show how the recognition of the right to food goes through the birth of authentic (positive and negative) obligations of the states, which must take appropriate steps to ensure the enjoyment of this right.^[14]

The issue of adequate food has always been a problem globally and the need to fix this problem led to the emergence of several conventions and treaties such as the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights (1996), Convention on the Elimination of All forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), Convention Relating to the Status of Refugees (1951), Convention on the Rights of Persons with Disabilities (2006) and several regional human rights instruments. It will instructive to note that Nigeria is a signatory to some of the conventions and has ratified and domesticated some of them.

a. Universal Declaration of Human Rights

The first major international legal thinking on human rights was the Universal Declaration of Human Rights passed in 1948 in the aftermath of the horrors of the second world war. The declaration recognizes the human right to food in the context of the right to an adequate standard of living. Article 25 states that *everyone has the right to a standard of living adequate for the health and well-being of himself and*

his family, including food, clothing, housing, medical care, and necessary social services^[15]. The Declaration recognizes the human right to food in the context of the right to an adequate standard of living. Given that it did not have the legal status of a treaty, the Universal Declaration was subsequently implemented through two covenants that are binding on ratifying states: one for civil and political rights and the other for economic, social, and cultural rights. The right to food is in the second category of rights.

b. International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights recognizes the right to an adequate standard of living and be free from hunger and places a responsibility on state parties to recognize this right, establish the economic, political and necessary social conditions to achieve this right^[16]. This right would be exercised without discrimination on grounds of race, colour, sex, language, age, religion, political or other opinions, national or social origin, property, birth, or another status.^[17]

The committee on Economic, Social and Cultural Rights on the right to food submitted that *"the right to adequate food is realized when every man, woman, and child, alone or in community with others, has physical and economic access to food or means for its procurement. The core content of... 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"*.^[18] General comment 12 contributed to a better understanding of the obligation of states to respect, protect and fulfill the right to food. This obligation requires that states look at the impact of legislation, regulation, and government action on how people procure food. The obligation to *protect* the right to food requires states to adopt measures to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. This obligation provides that states regulate non-state actors and create entities to monitor and investigate third parties, and those institutions are in place to ensure that those whose rights have been violated can seek remedies. The obligation to *fulfill* the right to food has two elements: provide and facilitate. The obligation to *fulfill* (provide), requires that states meet the right to food directly when individuals or groups are unable to meet their food needs by their means, for example through food stamps, social security schemes, or food aid delivery. The obligation to *fulfill* (facilitate) requires states to be proactive in creating activities aiming at reinforcing people's access to and utilization of resources and means to ensure their livelihood, in the future, for example through reinvestment in small-scale farming or employment creation.

c. The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women provides for necessary actions that would create a conducive environment against discrimination socially which would enable them to enjoy their rights to food fully by protecting their rights to access work, land, social security programs, health care facilities, education, and equal treatment.

d. The Convention on the Rights of the Child

The Convention on the Rights of the Child gives special emphasis to the protection of the right to food by state parties. The Convention provides for the right to health and the right to an adequate standard of living for children.^[19]

The right to food has been accepted as a human right in various conventions. The principal obligation of a state party is to take steps to achieve progressively the full realization of the right to adequate food.^[20] whenever an individual or group is unable, for some reasons beyond their control, to enjoy the right to adequate food by means at their disposal, states should fulfill (provide) that right directly. This obligation also applies to persons who are victims of natural disasters or other disasters.^[21]

Right to Food Under the African Charter on Human and People's Rights 1986.

The African Charter established the African Commission on Human and People's Rights to protect human and people's rights promote human and people's rights and interpret the African Charter on Human and People's Rights.^[22] The Charter promotes a plethora of human rights that are classified as civil and political, social-economic and cultural, and individual and collective rights.^[23] However, the charter does not expressly create the right to food, it provides for rights such as the right to property,^[24] right to work under equitable and satisfactory conditions^[25] the right to health^[26] etc. the right to food can be exercised through rights such as the right to health or work.

The African Commission also draws inspiration from international law on Human and People's rights, particularly the charter of the UN, the Charter of the OAU, the UDHR, and other instruments adopted by the UN and African countries in the field of human rights^[27] when the need arises. An example is the case of the Ogoni people^[28]. The case grew out of the submission of two NGOs in 1996 – a Nigerian NGO, The Social and Economic Rights Action Center (SERAC), and an American NGO, The Center for Economic and Social Rights – to protect, among others, the right to food of the Ogoni people against the activities of a consortium constituted by the National Oil Company and Royal Dutch Shell.^[29] In its decision, the African Commission opined by recognizing that the ACHPR protects the right to food. The Commission found that: that the right to food is implicit in the African Charter, in such provisions as the right to life (Art. 4), the right to health (Art. 16), and the right to economic, social, and cultural development (Art. 22). By its violation of these rights, the Nigerian Government trampled upon not only the explicitly protected rights but also upon the right to food implicitly guaranteed.^[30] The Commission concluded that in the case in question, the Nigerian government had violated its obligation to respect and protect the right to food of the Ogoni people, including against the activities of national and transnational petroleum enterprises.^[31]

The African Charter and Socio-Economic Rights in Nigeria

Nigeria has ratified and domesticated the African Charter on Human and People's Rights via the African Charter (Ratification and Enforcement) Act under the provision of the constitution^[32]

The Nigerian constitution in chapter two provides for socio-economic rights, they are part of the fundamental objectives

and directive principle of state policy. This provision empowers the Nigerian government to control policies in such a way as to secure the maximum welfare of citizens and also to ensure equal opportunity concerning means of livelihood without discrimination of any sort^[33]. The provisions of chapter 2 are unenforceable;^[34] this means that though socio-economic rights are contained in the African Charter and Nigerian Constitution, the state cannot be compelled to adhere to them. Also, the African Charter is subject to the constitution^[35] rendering the rights under the Act 9 fundamental objectives of government policy) contradictory with the spirit of "ratification" regarding the African Charter.^[36]

Right to Food in Nigeria

The Nigerian constitution does not expressly provide for the right to food but section 16 *provides that the state shall direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, a reasonable national minimum living wage, old age care, and pension, and unemployment benefits and welfare of the disabled are provided for all citizens.*^[37] this is the closest that the constitution provides for the right to food but then, it is not enforceable against the state or designated public officers,^[38] they are regarded as mere directives and principles for governance, guidelines for parties, and government policy formulation.

Since fundamental rights are enforceable unlike the directive principles, the directive principles should be interpreted to run as accessories to the fundamental rights for them to become enforceable. This is because the rights in chapter 4 cannot be realized without the rights in chapter 2. The right to food and the right to life is interwoven and interdependent, without the right to food, all other rights would be meaningless.^[39] Furthermore, whether one speaks of human rights or basic human needs, 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.^[40]

The Nigerian courts should interpret chapter 2 of the constitution like the Supreme Court of India did in *People's Union for Civil Liberties v. Union of India &ors*^[41] where the court recognized that the right to food was enshrined under the right to life set in article 47^[42] which requires that the state undertakes measures to improve the nutritional state of the population. The court issued that the state should implement food distribution programs for the most disadvantaged.

Also, Nigeria should be held to respect and observe international treaties they have ratified and domesticated. This is to stop contracting parties from relying on the bases of their domestic laws as reasons for not performing their expected obligations under such treaties^[43]

Nigeria's Policies as To Food

To achieve the objective of providing adequate food for Nigerians, the federal government has continued to provide fertilizer at a subsidized price to farmers endlessly. One significant effort of the federal government at food production and security is the commercial agriculture development program (CADP) targeted at farmers and organized private sectors that are into agriculture as a business and are encouraged through deliberate public

policy to undertake large-scale agricultural production using mechanization and best practices in post-production activities. The goal of the program is to enhance food security, employment opportunities, and the availability of raw materials for industries and generally for agriculture to serve as the engine for broad-based economic development in Nigeria.^[44]

An All-Progressive Congress group known as the APC Legacy Awareness and Campaign, APC-LAC, said President Muhammadu Buhari-led administration was moving Nigeria steadily towards self-sufficiency in food production, “The President's agricultural revolution is underscored by several critical policies for the enhancement of growth and development. Such policies include the inauguration of the National Food Security Council (NFSC) which is to oversee the development and implementation of sustainable solutions to various issues impacting agricultural production in Nigeria, the Agriculture for Food and Jobs Plan (AFJP) which has commenced the analysis of tens of thousands of soil samples from farms, to guide local fertilizer blending, National Livestock Transformation Plan, the Anchors Borrowers Programme, and National Fertilizer Initiative (NFI)”.^[45]

Other initiatives include the Special-Agro Industrial Processing Zones (SAPZ) Programme, which will establish agro-processing centers across all 6 geo-political zones of the country; and the Green Imperative – a partnership between the Governments of Nigeria and Brazil to mechanize and modernize agricultural production in Nigeria, through the development of 632 privately-operated Mechanization Service Centers and 142 Agro-processing Service Centers, the reactivation of 6 privately owned tractor assembly plants nationwide, and training of 100,000 new extension workers.

Another policy the Nigerian government has put into place regarding food is ensuring we grow what we eat. President Buhari on the 15th of July tweeted that “I said we must grow what we eat and eat what we grow. We have always been very conscious of the need to achieve food security in Nigeria, and to encourage our local farmers and rural economies. This is a country that was once dependent on foreign rice. Confident that we can grow and eat Nigerian rice, we closed the border to foreign rice, and also put policies in place to support local production. Today Nigerians are eating home-grown rice.”^[46]

Despite all the policies being set in place to make food accessible to Nigerian citizens, there are challenges affecting the agricultural policies in Nigeria and the right to adequate food. The first is inadequate security for the farmers caused by herdsmen.^[47] Thousands of people have lost their lives due to insecurity^[48]. Due attention should be given to the security challenges in the country.

Policies such as operation feed the Nation, the National Accelerated Food Production project, the Green Revolution, the Marketing Boards, and the green alternatives all have a history of failure one after the other. The successive failure issues have been happening because each time they failed to make their policies work, o failed to put up policies that would ensure the entitlement of food for the people, and it has been inconsequential to the government. There was no outcome, no punishment, no agitation, no apology, no regret, and no actions follow in the law court^[49]. People should be held accountable for their actions and inactions when they are given a duty to serve as civil servants. In

2020, the government made provisions for covid19 palliative which was to be shared with the needy in society. The Ministry of Humanitarian Affairs, Disaster Management, and Social Development, under the headship of Hajiya Sadiya Umar Farouq, handles the distribution of food items. As expected at the end of every assignment, the Minister recently gave an account of her stewardship where she was quoted as saying that the palliatives got to the intended beneficiaries. In her words: “*There's hardly anyone in Nigeria who didn't receive the Federal Government palliative care during the COVID-19 pandemic period. All the tribes in Nigeria received palliative. It was evenly distributed*”^[50]. However, a lot of people claimed to have not received anything and if they did, it was meager. As usual, Ministry involved was not questioned or investigated. Recognition of the right to food in the constitution would ensure accountability, transparency, better governance, and policies to provide a thriving environment for optimum food productivity. It will make it easy to provide adequate food for persons in need from the fundamental rights approach.

Conclusion

This article analyzed the right to food under International Law and the African charter before delving into the right to food in Nigeria. Though the right to food can be found in chapter 2 of the Nigerian constitution, its presence cannot be felt as the rights in chapter 2 are unenforceable, and the state cannot be forced to comply with it. What the Nigerian constitution has successfully done is give (the right to food) with one hand and take it away with the other. Its non-justiciable and unenforceable nature makes it a myth that the common man can only hope comes to reality someday. To attain this reality, the right to food should be expressly stated in the Nigerian constitution and made enforceable, the courts should also tie the rights in chapter 2 to those in chapter 4 when interpreting the law just like the courts in India did. More so, Nigeria should respect and comply with international treaties to its party to. Lastly, the government should place realistic and sustainable policies on the ground that would aid the availability of adequate food as this would aid the citizens.

References

1. Dakas Cj Daksa, “The Jurisprudence and Politics of Right to Adequate Foot”, New Vista in Law Vol 2 pg. 75
2. <https://www.premiumtimesng.com/agriculture/agric-news>. Accessed 10/10/2022
3. Introduction to a human rights-based approach, UNICEF FINLAND, 2015 https://unicef.studio.crasman.fi/pub/public/pdf/HRBA_manuaali_FINAL_pdf_small2. p.32. visited10/2/2022
4. Global issues Human Rights < [https://www.un.org/en/global-issues/Human Rights](https://www.un.org/en/global-issues/Human_Rights)> visited10/02/2022
5. Article 1 Universal Declaration of Human Rights, 1948
6. Micheline R. Ishay: The History of Human Rights from Ancient Times to the Globalization Eva. University of California Press Berkeley 2008 p.3.
7. See article 2, UDHR 1948
8. Human Rights- Nature, Characteristics, Kinds - LawBhoomi <https://lawbhoomi.com> accessed09/5/2022
9. Are human rights really universal-inalienable-and indivisible <https://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-> > accessed 09/5/2022

10. The right to food. Report of the special rapporteur on the right to food, Mr. Jean Ziegler (7 Feb. 2001), Doc U.N.E/CN/2001/53, para.14
11. UDHR 1948
12. <https://www.wfp.org> accessed 10/6/2022
13. What is the Right to Food? | Right to food <http://www.righttofood.org/work> accessed 10/6/2022
14. General comment No. 15: The right to adequate food, 12 May 1999, ESCOR (2000) supp 2,102.
15. Article 25 UDHR1948
16. Articles 11 and 23 of ICESCR
17. Ibid article 2(2)
18. Committee, General Comment 12, para. 12
19. Articles 24 and 27, UN Convention on the Rights of the Child 1989
20. FAO, (The) Right to Food in Practice: Implementation at the National level (Rome, FAO 2006), FAO, International Conference on Nutrition: World Declaration and Plan of Action for nutrition, Rome, December 1992(Rome, FAO and WHO 1992).
21. FAO. Rome Declaration on World Food Security and World Food Summit Plan of Action, 13-17 November 1996, Rome, Italy (Rome, FAO 1996) <<http://www.fao.org/docrep/003/w36/3e/w3613e00.HTM>>.
22. Article 30ACHPR
23. Manisuli Ssenyonjo(ed) The African Regional Human Right System: 30 years after the African Charter on Human and People's Rights (Martinus Nijhoff Publishers, 2012)
24. Article 14, African Charter on Human and People's Rights
25. Ibid article 15
26. Ibid article 16
27. Ibid article 60
28. SERAC & ANOR. V NIGERIA (2001) AHRLR60(ACHPR 2001)
29. Nigeria: petition to African Commission on Human and People's rights < <https://cesr.org/nigeria-petition-african-commission-human-and-peoples-rights/> >accessed 10/7/2022
30. ACHPRCom, SERAC, Center for Economic and Social Rights v. Nigeria, 2001, paragraph 64
31. ACHPRCom, SERAC, Center for Economic and Social Rights v. Nigeria, 2001, paragraphs 65-66
32. See section 12 Constitution of the Federal Republic of Nigeria, 1999 as amended
33. J. Nnamdi Aduba, An Introduction to Human Rights Law in Nigeria. (Innovative communication Lagos 2016)23-25.
34. See section 6(6)(c) CFRN 1999 as amended
35. Sani Abacha v Chief Gani Fawehinmi (2000) SC NO. 45/1997
36. The Future of Socio-Economic Rights in Nigeria: Beyond COVID-19 | OHRH (ox.ac.uk) < <https://ohrh.law.ox.ac.uk/> > accessed 10/7/2022
37. See section 16(2)(d) CFRN 1999 as amended.
38. See section 6(6)(c) CFRN
39. Tunde Ogowewo, Wealth (Dis)creation through Corporate (Mis)governance and Banking (mis)supervision: The outlines of a reform agenda, cited in Olubayo Oluduro, exploitation and human right violations in Nigeria's oil-producing communities (Inters entire Publishing 2014): Femi Falana, fundamental rights enforcement in Nigeria (2nd edn, Legal Text Publishing 2010)
40. 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) 164-174
41. S.C (2001) No. 196/2001< www.righttofoodindia.org> accessed 9/10/2022
42. See article 47 of the Indian Constitution
43. Kenneth Ajibo, Facing the Truth: An Appraisal of the Potential Contributions, Paradoxes and Challenges of Implementing the United Nations Conventions for the International Sale of goods in Nigeria, (2013)2 Afe Babalola University, Journal of Sustainable Development Law and Policy 1, 186
44. Samuel Ayanywu, Parameters for Achieving Food Security in Nigeria - Federal Ministry of Information and Culture,1st November 2016 <https://fmic.gov.ng/parameters> accessed 10/10/2022
45. Buhari: Nigeria is better prepared for global food crises because of our policies, 15th July 2022 [https://. the cable.ng/](https://the.cable.ng/) accessed on 10/10/2022
46. Farmers/herders clash erupts in Ogun, five killed, January 16th, 2022 <https://www.vanguardngr.com> accessed 10/10/2022
47. More than 1,100 villagers killed in Nigeria this year: Amnesty | Humanitarian Crises News | Al Jazeera< <https://www.aljazeera.com/news/2020/8/24/>> accessed 10/10/2022
48. Femi Ibirogha, why food should become a human right in Nigeria's constitution 9th march 2020 <https://guardian.ng/features/why.o> accessed 10/10/2022
49. Onyedika Agbedo and others, FG'S Covid 19 Palliatives: Why Nigerians are not feeling the impact, 8th august 2020 < <https://guardian.ng/saturday-magazine/>> accessed 10/10/2020