

FOOD LAW AS A TOOL FOR TACKLING MALNUTRITION AND FOOD INSECURITY IN THE NIGERIAN LEGAL REGIME

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Abstract

Food insecurity and malnutrition remain pressing challenges in Nigeria, worsened by the intersecting pressures of climate change, internal conflict, and economic volatility. While these issues are typically framed through the lens of agricultural or economic policy, this article adopts a doctrinal approach to examine law as a tool for tackling malnutrition and food security in Nigeria. This article asserts that legal framework constitutes a critical yet underutilized instrument for achieving sustainable development goals. Moving beyond conventional policy analysis, this article critically examines three key legal instruments, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the National Agency for Food and Drug Administration and Control (NAFDAC) Act 2004, and the Federal Competition and Consumer Protection Act (FCCPA) 2018. The research identifies significant regulatory deficiencies, most notably the non-justiciable status of the right to food and the complete absence of legally binding standards for agricultural transportation and post-harvest logistics. It finds that a rights-based legal system is required to meet the biological need of the population. It concludes with concrete recommendations, including a constitutional amendment to render the right to food justiciable and the enactment of a comprehensive National Food Safety and Quality Bill to foster a more accountable, transparent, and resilient food system.

Keywords: Food Law, Malnutrition, Food Insecurity, Right to Food, Justiciability, Land Use Act

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1.0 Introduction

The structure of food acquisition in Nigeria was traditionally centred on local markets and direct interaction between producers and consumers. For many years, the distribution of food was based on local agricultural cycles rather than complex global supply chains. However, the last decade has shown a difficult shift in this system. This change has been caused by high economic volatility, disruptions in supply chains, and an increasing urban population that has lost connection with the sources of its nutrition. Although Nigeria has more than 84 million hectares of arable land, it consistently ranks low in global measures of nutritional stability. This indicates a major gap between the agricultural potential of the country and the actual food available for consumption⁴⁹

The current state of food access in Nigeria is a constant emergency. Recent reports from the Global Hunger Index categorize the situation as serious, with millions of people affected by food inflation and the movement of people due to conflict.⁵⁰ This crisis is found in both rural areas and large cities like Lagos, Kano, Kaduna, Ibadan and Ilorin, where the price of food has grown much faster than wages. While experts often blame low crop yields or the value of the currency, this article argues that food insecurity is primarily a legal and institutional failure.⁵¹ The state has failed to recognize food as a necessary requirement for the exercise of civil and political rights.

Malnutrition in Nigeria has become a dual problem involving both lack of calories and deficiencies in vitamins. Malnutrition is not just about a lack of food quantity, it involves the presence of hidden hunger, where people lack essential micronutrients because there is not enough regulation regarding food fortification.⁵² Public health data shows that even when food is available, it is often not safe or lacks proper nutrients. This reflects a lack of oversight regarding informal food processors.⁵³ The biological safety of food is just as important as how much food is available, but the Nigerian legal system has usually treated

⁴⁹ IO. Smith, *The Land Use Act as an Obstacle to Agricultural Development*, *Lagos State University Law Journal* (2008) (2) 45

⁵⁰ IFPRI, *Global Hunger Index: Nigeria Report* (Washington DC: International Food Policy Research Institute, 2024) 4

⁵¹ MM. Akanbi, *'The Legal Framework for Food Security in Nigeria'* *University of Ilorin Law Journal* (2012) (3) 12

⁵² A Ojo, *'Malnutrition in Nigerian Children: The Policy Gap'* *Journal of Public Health Policy* (2020) (12) 88

⁵³ B Anaba, *'Post-Harvest Losses and the Law: A Case for Nigerian Farmers'* *Food Security Review* (2019) (7) 34

these as different areas. One is seen as a health issue and the other as an agricultural or trade issue.

Internationally, the realization of the right to food has moved from focusing on farm output to using a legal framework based on rights and accountability. In Nigeria, this transition is difficult because of a policy system that is often slowed down by old and disconnected laws. Traditionally, the Nigerian government has treated food insecurity as a logistics problem to be fixed with food aid, fertilizers, or import bans.⁵⁴ These actions are mostly poverty palliative strategies instead of mechanisms to enforce rights. They treat citizens as people waiting for government help rather than individuals with a legal right.⁵⁵

There is a global movement toward food law as a specific field of study that goes beyond simple commerce.⁵⁶ This area of law recognizes that food is a unique item because its regulation directly impacts the right to life. In Nigeria, the shift from seeing food as a product to seeing it as a right is blocked by a constitution that places the right to food in a section that cannot be enforced in court.⁵⁷ This legal category creates a situation where rights exist without any way to enforce them. A citizen who is hungry has no legal standing to take the government to court for failing to provide adequate food as mentioned in the Directive Principles.⁵⁸

The social and economic results of this legal gap are very serious. Small farmers, who grow most of the food in Nigeria, work under land laws that make them feel insecure about their property. This prevents them from making long term investments in the land.⁵⁹ When farmers have to leave their land because of conflict, they have very little legal help to get back their livelihoods.⁶⁰ At the same time, the growth of the informal food economy means that many people are eating food that does not meet the standards set by NAFDAC. This leads to problems like undersized growth and poor brain development in children.⁶¹

⁵⁴ M Bello, 'Smallholder Farmers and Access to Justice in Nigeria' *International Journal of Law and Management* (2017) (9) 15

⁵⁵ NS. Okogbule, 'The Legal Dimensions of the Right to Food' *National Bar Journal* (2011) (22) 45

⁵⁶ O Ajai, 'Law and Policy of Food Safety in Nigeria' *Journal of Food Law* (2010) (1) 12

⁵⁷ F Olanrewaju, 'Constitutionalizing the Right to Food in Nigeria' *African Human Rights Law Journal* (2021) (15) 210

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 16(2)(d)

⁵⁹ A Otubu, *Land Law and Food Security in Nigeria* (Lagos, Princeton Publishing Co., 2018) 112

⁶⁰ M Bello, (n 6) 18.

⁶¹ A Ojo, (n 4) 90

2.0 Methodology

This paper adopts a doctrinal legal methodology, supplemented by a comparative legal analysis. The doctrinal component entails a systematic examination of primary legal sources, including the Constitution of the Federal Republic of Nigeria, the National Agency for Food and Drug Administration and Control (NAFDAC) Act, and the Federal Competition and Consumer Protection Commission (FCCPA) Act.⁶² These instruments are analysed alongside relevant regional and international human rights frameworks, specifically the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶³

The comparative component adopts two benchmarks, firstly, the reasonableness standard developed by the South African Constitutional Court in adjudicating socio economic rights claims, particularly the right of access to adequate food⁶⁴ and secondly, the international food safety and quality standards established by the Codex Alimentarius Commission.⁶⁵ This dual comparative approach serves two functions, it enables an assessment of the coherence and justiciability of Nigeria's extant food related legal provisions, and it provides a normative basis for recommending legal reforms aligned with globally recognised standards.

Justification for this methodology rests on the recognition that doctrinal analysis alone cannot remedy structural gaps in domestic food law, comparative insights from jurisdictions with enforceable socio-economic rights and from international technical standards offer practical pathways for legislative and constitutional reform in Nigeria

3.0 Conceptual Review: The Jurisprudence of Food Security and Sovereignty

To conduct a legal analysis of the food crisis, one must understand the concepts that guide food governance. The term food security is often used in politics to mean having a lot of

⁶² Constitution of the Federal Republic of Nigeria 1999; National Agency for Food and Drug Administration and Control Act, Cap N1, Laws of the Federation of Nigeria 2004; Federal Competition and Consumer Protection Commission Act 2018.

⁶³ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)

⁶⁴ *Government of the Republic of South Africa v Grootboom* [2001] 1 SA 46; *Mazibuko v City of Johannesburg* [2010] 4 SA 1

⁶⁵ Codex Alimentarius Commission, 'General Principles of Food Hygiene' (CXC 1-1969, rev 2020)

food, but its legal definition is specific. According to the Food and Agriculture Organisation, food security happens when everyone has physical and economic access to safe and nutritious food.⁶⁶ This definition has four parts: availability, accessibility, utilisation, and stability.⁶⁷ In Nigeria, the law has mostly focused on availability through subsidies. It has ignored accessibility and utilisation, which are controlled by price laws and safety rules.⁶⁸

There is also a shift toward the idea of food sovereignty, which is a more political and legal framework. Food sovereignty is the right of people to have healthy and culturally appropriate food grown through sustainable methods. It is also their right to define their own agricultural systems.⁶⁹ Unlike food security, which is about the goal of feeding people, food sovereignty is about who has the power in the food system. It argues that true security is impossible without legal protection for small farmers and the rejection of trade policies that hurt local markets.⁷⁰ For Nigeria, food sovereignty would require changing the law to prioritize local farmers over large international companies.⁷¹

In this legal framework, malnutrition is the physical result of a state failing to meet its basic obligations under international law.⁷² It includes both being underweight and having micronutrient deficiencies like a lack of Vitamin A.⁷³ Legally, this type of hunger is a violation of the utilization part of food security, it happens when the food in the market is of such low quality that it cannot keep a person healthy.⁷⁴ Reports from the World Bank show that the economic cost of this failure is very high, leading to a loss of national productivity and higher costs for healthcare.⁷⁵

Food law is a field that includes statutes, regulations, and court cases governing food from production to consumption.⁷⁶ It is not just part of business law, it involves human rights,

⁶⁶ FAO, *The State of Food Insecurity in the World* (Rome: Food and Agriculture Organisation, 2023) 12

⁶⁷ RO. Babatunde, 'Impact of Food Prices on Household Food Security in Nigeria' *Journal of Agricultural Science* (2010) (8) (1) 22

⁶⁸ MT. Ladan, *Introduction to ECOWAS Law and Institutions* (Abuja, Hubert & Co, 2009) 154

⁶⁹ A Otubu, (n 11) 115

⁷⁰ RO. Babatunde, (n 20) 25

⁷¹ MM. Akanbi, (n 3) 15

⁷² NS. Okogbule, (n 7) 46

⁷³ A Ojo, (n 3) 91

⁷⁴ UNICEF, 'The State of the World's Children: Nutrition Report' (New York, UNICEF, 2023) 5

⁷⁵ World Bank, 'Nigeria Development Update: Food Security Crisis' (Washington DC, World Bank, 2024) 18

⁷⁶ O Ajai, (n 8) 16

the environment, and international trade.⁷⁷ In Nigeria, food law is split between different agencies like NAFDAC and the Standards Organisation of Nigeria. This split creates a confusing situation where rules are not the same and enforcement are not consistent.⁷⁸ A strong understanding of food law requires seeing it to achieve social justice and protect the health of citizens.⁷⁹

4.0 The Legal Framework Governing Food Safety and Security In Nigeria

Nigeria's food laws comprise a fragmented assemblage of instruments, many conceived for a different regulatory era, which now inadequately address a mounting public health crisis. This section examines the international, regional, and domestic legal provisions bearing on food safety and security, highlighting critical gaps in justiciability and enforcement.

4.1 International and Regional Obligations

Nigeria is a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right of everyone to be free from hunger.⁸⁰ Under this treaty, the Nigerian state bears a core minimum obligation to ensure access to adequate food for its population.⁸¹ At the regional level, the African Charter on Human and Peoples' Rights constitutes a pivotal instrument.⁸² In the landmark *Social and Economic Rights Action Center (SERAC) v Nigeria*⁸³ case, the African Commission on Human and Peoples' Rights held that the rights to life and health, as enshrined in the Charter, implicitly encompass the right to food. This jurisprudence was recently reinforced by the Economic Community of West African States (ECOWAS) Court of Justice in *SERAP v Nigeria*,⁸⁴

⁷⁷ F Monye, *Law of Consumer Protection* (Ibadan, Spectrum Books, 2003) 105

⁷⁸ J Omojokun, 'Regulation and Enforcement of Legislation on Food Safety in Nigeria' in Hussaini Makun(ed), *Mycotoxin and food safety in developing countries* (London, Intech Open, 2013) 257

⁷⁹ O Ajai, (n 8) 18

⁸⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 11(2)

⁸¹ Committee on Economic, Social and Cultural Rights, 'General Comment No 12: The Right to Adequate Food' (1999) UN Doc E/C.12/1999/5, para 14

⁸² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5

⁸³ *Social and Economic Rights Action Center (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 64

⁸⁴ *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria* (ECOWAS Court of Justice, Suit No ECW/CCJ/APP/08/2020, judgment delivered 10 December 2021) (unreported)

which affirmed that the state bears a positive duty to protect food sources from contamination and destruction.

4.2 Constitutional Foundation: The Justiciability Gap

The principal legal obstacle resides in the Constitution of the Federal Republic of Nigeria 1999. Section 16(2)(d) provides that the state shall direct its policy towards ensuring adequate food and reasonable national minimum living wage.⁸⁵ Critically, this provision is located in Chapter II of the Constitution, which contains the Fundamental Objectives and Directive Principles of State Policy. By virtue of section 6(6)(c), these objectives are explicitly rendered non-justiciable, meaning they cannot be enforced by any court of law.⁸⁶ As Monye has argued, this creates a justiciability gap wherein citizens are precluded from seeking judicial remedies for the denial of basic subsistence needs.⁸⁷ Consequently, food is treated as a matter of political benevolence rather than an enforceable legal right.

4.3 NAFDAC and Statutory Oversight

Statutory oversight of food safety is principally vested in the National Agency for Food and Drug Administration and Control (NAFDAC). Under the NAFDAC Act and subsidiary regulations, the agency is empowered to regulate food manufacturing, importation, and distribution.⁸⁸ The NAFDAC (Food Fortification) Regulations 2019 mandate the fortification of certain staple foods with essential vitamins and minerals, representing a targeted intervention against micronutrient malnutrition.⁸⁹ Complementing this framework is the Federal Competition and Consumer Protection Commission (FCCP) Act, which provides a mechanism for consumers to seek redress for hazardous or substandard food products, thereby placing legal responsibility on producers and vendors.⁹⁰ Despite these provisions, enforcement remains inconsistent, and neither statute confers enforceable rights upon individuals to demand adequate food from the state.

⁸⁵ Constitution of the Federal Republic of Nigeria, s 16(2)(d)

⁸⁶ *ibid* s 6(6)(c)

⁸⁷ F Monye, 'Justiciability of Socio-Economic Rights in Nigeria: The Gap Between Law and Reality' *African Journal of Legal Studies* (2017) (9) (2) 107, 115

⁸⁸ National Agency for Food and Drug Administration and Control Act,

⁸⁹ National Agency for Food and Drug Administration and Control (Food Fortification) Regulations 2019, regs 3–5

⁹⁰ Federal Competition and Consumer Protection Commission Act 2018, ss 124–127

5.0 Emerging Legal Issues and Barriers in the Food Ecosystem

Beyond the constitutional justiciability gap and fragmented statutory oversight, deeper structural barriers within Nigeria's legal framework impede food production, preservation, and equitable access. This section examines three critical yet underexplored legal obstacles: land tenure insecurity under the Land Use Act, the regulatory vacuum governing post-harvest logistics, and the fortification gap exacerbated by the informal market.

5.1 The Land Use Act 1978 and Tenure Insecurity

Arguably the most significant legal barrier to agricultural productivity is the Land Use Act.⁹¹ The Act vests all land within each state in the Governor, who holds it in trust for the people, thereby abolishing private ownership and substituting it with statutory rights of occupancy.⁹² For smallholder farmers, who constitute the majority of Nigeria's food producers, this system generates profound tenure insecurity. Without a registrable title, farmers cannot leverage their land as collateral to access agricultural credit from financial institutions.⁹³ As Smith has observed, the cumbersome and discretionary process for obtaining certificates of occupancy deters commercial agricultural investment, owing to the ever-present risk that the Governor may revoke a right of occupancy in the name of public interest without adequate compensation.⁹⁴ This absence of legal security directly disincentivises long-term investments in soil improvement, irrigation, and mechanisation, contributing directly to systemic food shortages.⁹⁵

5.2 Post-Harvest Losses: The Regulatory Vacuum in Logistics

Nigeria loses an estimated 45-50 per cent of its fruit and vegetable production before these goods reach consumers, a figure driven overwhelmingly by post-harvest spoilage.⁹⁶ While the National Agency for Food and Drug Administration and Control (NAFDAC) exercises regulatory oversight over food manufacturing and processing, no equivalent legal

⁹¹ Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004 (originally enacted as Decree No 6 of 1978)

⁹² A Otubu (n 11) 112

⁹³ IO. Smith (n 1) 50

⁹⁴ *ibid*, 95

⁹⁵ Food and Agriculture Organization (FAO), 'Assessment of Agricultural Investment Needs in Nigeria' (FAO Report, 2018) 34

⁹⁶ Nigerian Stored Products Research Institute (NSPRI), 'National Post-Harvest Losses Assessment Report' (NSPRI, 2021) 12

framework governs the logistics of food transportation.⁹⁷ Nigeria currently lacks specific legislation mandating cold storage, temperature controlled transport, or hygiene standards for the movement of perishable agricultural produce. In the absence of mandatory temperature control regulations, nutritional integrity deteriorates significantly during transit.⁹⁸ Furthermore, under the Evidence Act 2011, a buyer seeking to establish that food became unsafe due to improper transport faces an almost insurmountable evidentiary burden, given the absence of presumptions or chain of custody requirements for perishable goods.⁹⁹ This regulatory vacuum effectively immunises transporters from liability for post-harvest losses.

5.3 The Fortification Gap and the Informal Market Crisis

Micronutrient malnutrition is exacerbated by the fortification gap that pervades Nigeria's informal food market. The NAFDAC (Food Fortification) Regulations¹⁰⁰ mandate the addition of specified vitamins and minerals to staple foods such as wheat flour, maize flour, vegetable oil, and sugar. Critically, these regulations bind only formal, registered food manufacturers. They do not extend to the vast informal market, open air markets, local millers, and artisanal producers, where the majority of low income Nigerians procure their food.¹⁰¹ Small scale millers and informal vendors routinely find the compliance costs associated with NAFDAC's fortification guidelines prohibitively expensive, requiring laboratory testing, equipment upgrades, and registration fees.¹⁰² The consequence is a split legal system, one tier of enforceable safety and nutrition standards for supermarket consumers, and a parallel unregulated tier of nutritionally deficient food for poorer citizens who depend on informal markets. This dual regime entrenches malnutrition as a function of economic status, undermining any claim to universal food safety.

⁹⁷ B Anaba (n 5)

⁹⁸ *ibid*

⁹⁹ Evidence Act 2011, ss 131-133

¹⁰⁰ National Agency for Food and Drug Administration and Control (Food Fortification) Regulations 2019, regs 3-6

¹⁰¹ World Bank, 'The Informal Food Economy in Nigeria: Drivers, Scale, and Policy Gaps' (World Bank Report No 145678-NG, 2020) 23-26

¹⁰² P Eze and C Okafor, 'Small-Scale Millers and Regulatory Compliance in Nigeria's Food Fortification Regime' *African Journal of Food Law and Policy* (2022) (14) (1) 15-18

6.0 Comparative Legal Analysis: Regional Precedents

The limitations of Nigeria's domestic legal framework may be illuminated by reference to regional and international standards. This section undertakes a comparative analysis, examining the South African reasonableness standard, international Codex Alimentarius benchmarks, and supranational regional frameworks. These precedents offer normative guidance for reforming Nigeria's fragmented approach to food governance.

6.1 The South African Reasonableness Standard

A compelling comparative model for Nigeria lies in the jurisprudence of the South African Constitutional Court, particularly its articulation of the 'reasonableness' standard in socio-economic rights adjudication. In *Government of the Republic of South Africa v Grootboom*,¹⁰³ the Court held that while the state cannot be required to achieve the progressive realisation of rights immediately, it must adopt a reasonable, clear, and inclusive plan directed at meeting the needs of vulnerable populations. The reasonableness test assesses whether government policies are comprehensive, coherent, adequately funded, and effectively implemented.¹⁰⁴ This standard was subsequently applied in *Mazibuko v City of Johannesburg*,¹⁰⁵ where the Court affirmed that reasonableness includes a duty to engage meaningfully with affected communities and to monitor policy outcomes. For Nigeria, the *Grootboom* reasonableness standard offers a doctrinal pathway for courts to exercise judicial oversight over food policies without requiring a fully justiciable right to food. Even within the current constitutional framework, Nigerian courts could, in theory, assess whether government food security programme meet a minimum threshold of reasonableness. However, as the non-justiciability provisions of section 6(6)(c) of the 1999 Constitution¹⁰⁶ currently preclude such review, this comparative insight underscores the necessity of constitutional amendment or judicial reinterpretation.

6.2 International Standards and Codex Alimentarius

The Codex Alimentarius, a collection of internationally recognised food safety standards, guidelines, and codes of practice established by the Food and Agriculture Organization

¹⁰³ *Government of the Republic of South Africa v Grootboom* [200] (11) BCLR 1169 (CC)

¹⁰⁴ *ibid*, para 42

¹⁰⁵ *Mazibuko v City of Johannesburg* [2010] 4 SA 1 (CC) paras 72-76

¹⁰⁶ Constitution of the Federal Republic of Nigeria, s 6(6)(c)

(FAO) and the World Health Organization (WHO), constitutes a further vital benchmark.¹⁰⁷ Jurisdictions that systematically incorporate Codex standards into domestic law have demonstrated measurable reductions in foodborne illnesses.¹⁰⁸ In Nigeria, by contrast, Codex standards are inconsistently enforced, partly due to overlapping and sometimes conflicting mandates among regulatory agencies such as NAFDAC, the Standards Organisation of Nigeria (SON), and the Federal Ministry of Agriculture and Natural Resources.¹⁰⁹

As Egbewole has argued, the absence of a unified legal standard referring explicitly to Codex Alimentarius exposes particularly vulnerable populations, notably children, to chemical contaminants, mycotoxins, and other toxins in food.¹¹⁰ A single, harmonised statutory provision mandating compliance with relevant Codex standards across all food products, irrespective of distribution channel, would substantially reduce ambiguity and strengthen enforcement. Moreover, such incorporation would facilitate international trade by aligning Nigerian food safety law with World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Agreement requirements.

6.3 Regional Frameworks: The Malabo Declaration and ECOWAS

At the supranational regional level, the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods (2014) commits African Union member states, including Nigeria, to ending hunger and halving poverty by 2025 through specific agricultural investment targets.¹¹¹ Additionally, the Economic Community of West African States (ECOWAS) has adopted the ECOWAP (ECOWAS Agricultural Policy), which provides a harmonised framework for food security,

¹⁰⁷ Codex Alimentarius Commission, *Codex Alimentarius: Understanding the Codex* (5th edn, FAO/WHO, 2018) 7

¹⁰⁸ World Health Organization, 'The Impact of Codex Alimentarius on National Food Safety Systems: A Comparative Study' (WHO Technical Report Series No 1028, 2019) 25-31

¹⁰⁹ FO. Ukwueze, 'Evaluation of Food Safety and Quality Regulations in Nigeria' *Journal of Law, Policy and Globalisation* (2019) (92)

¹¹⁰ W Egbewole, 'Food Safety Regulation and Child Health in Nigeria: The Unaddressed Toxicity Crisis' *Nigerian Journal of Public Law* (2021) (9) (3) 45, 58–60

¹¹¹ African Union, 'Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods' (Assembly of the African Union, Twenty-Third Ordinary Session, Malabo, June 2014) para 3

nutrition, and regional trade in agricultural products.¹¹² Crucially, the ECOWAP legal framework envisions the harmonisation of national food safety standards and the elimination of non-tariff barriers to agricultural trade.¹¹³ By domesticating these regional instruments through national legislation, for instance, via a comprehensive National Food Safety and Quality Bill, Nigeria could transcend its current fragmented, agency specific approach. Such domestication would align Nigerian law with emerging African regional norms, facilitate cross border food safety cooperation, and provide a coherent legal basis for enforcing food security obligations derived from both ECOWAS treaties and the African Charter.¹¹⁴

7.0 Model of Tackling Malnutrition and Food Insecurity Vide Food in Nigeria

Addressing malnutrition and food insecurity in Nigeria requires a multidimensional legal and institutional model that integrates constitutional protection, regulatory enforcement, agricultural sustainability, consumer protection, and social welfare interventions. Food law must therefore operate not merely as a regulatory instrument for commercial food transactions, but as a comprehensive governance framework capable of guaranteeing availability, accessibility, affordability, safety, and nutritional adequacy of food for all persons.¹¹⁵ The Nigerian experience demonstrates that isolated agricultural policies cannot adequately resolve food insecurity where the underlying legal structure remains fragmented and weakly enforceable. Consequently, a sustainable model must adopt a right based and institutionally coordinated approach.

The first component of this model is the constitutionalising the right to food. The present constitutional framework places food security within Chapter II of the Constitution, thereby rendering it non-justiciable.¹¹⁶ A viable model for tackling food insecurity must therefore begin with constitutional reform that transforms access to adequate food into an enforceable fundamental right. Comparative jurisprudence from South Africa demonstrates that constitutional protection creates legal accountability and compels governments to

¹¹² ECOWAS, 'ECOWAP (West African Agricultural Policy)' (ECOWAS Commission, adopted 2005, revised 2012) art 5(2)(b)

¹¹³ *ibid*

¹¹⁴ NS. Okogbule (n 7) 48

¹¹⁵ Committee on Economic, Social and Cultural Rights, (n 34) para 6.

¹¹⁶ Constitution of the Federal Republic of Nigeria, ss 6(6)(c) & 16(2)(d)

adopt measurable and inclusive policies for vulnerable populations.¹¹⁷ In *Government of the Republic of South Africa v Grootboom*,¹¹⁸ the Constitutional Court held that the state must implement reasonable legislative and policy measures to progressively realise socio economic rights. A similar constitutional framework in Nigeria would provide citizens with judicial remedies against state neglect in matters relating to hunger and malnutrition.

Secondly, the model requires an integrated food safety and nutrition regulatory regime. Nigeria's current food governance structure is characterised by overlapping mandates among the National Agency for Food and Drug Administration and Control (NAFDAC), the Standards Organisation of Nigeria (SON), and the Federal Ministry of Agriculture and Rural Development.¹¹⁹ This institutional fragmentation weakens enforcement and creates regulatory loopholes. An effective food law model should therefore establish a harmonised National Food Safety and Quality Commission with clear statutory authority over the entire food chain, from production to consumption. Such a body should incorporate *Codex Alimentarius* standards into domestic law and enforce mandatory nutritional and hygiene standards across both formal and informal markets.¹²⁰ By harmonising food regulation, Nigeria would reduce food contamination, improve consumer confidence, and strengthen public health outcomes.

Another important element of the model is agricultural law reform directed toward supporting smallholder farmers. Empirical evidence demonstrates that smallholder farmers account for a substantial proportion of food production in Nigeria, yet they remain constrained by insecure land tenure systems under the Land Use Act 1978.¹²¹ Without secure title to land, farmers cannot access agricultural financing, insurance, or long-term investments necessary for sustainable production.¹²² A modern food law framework should therefore reform land administration by simplifying access to certificates of occupancy, protecting customary land rights, and recognising community-based tenure arrangements. In addition, agricultural legislation should provide incentives for climate resilient farming,

¹¹⁷ F Olanrewaju (n 9) 216

¹¹⁸ *Government of the Republic of South Africa v Grootboom* (n 56)

¹¹⁹ FO Ukwueze, (n 62)

¹²⁰ Codex Alimentarius Commission (n 60)

¹²¹ A Otubu, (n 11)

¹²² IO Smith, (n 1) 50

irrigation systems, mechanised agriculture, and storage infrastructure. Such reforms would enhance domestic food production and reduce dependence on food importation.

Furthermore, a functional legal model for combating malnutrition must address post-harvest losses and food transportation deficiencies. Nigeria continues to experience massive losses in agricultural produce due to poor storage systems, inadequate transportation infrastructure, and the absence of enforceable standards for perishable food logistics.¹²³ Existing legislation does not sufficiently regulate temperature controlled transportation, cold chain systems, or hygienic handling of food products during transit.¹²⁴ To remedy this gap, comprehensive regulations should impose mandatory standards for food transportation and establish liability for spoilage caused by negligence in logistics operations. This would preserve nutritional quality, minimise waste, and improve food availability across urban and rural communities.

In addition, social protection legislation constitutes a central pillar in any sustainable anti-hunger model. Food insecurity in Nigeria is closely connected to poverty, unemployment, displacement, and economic inequality.¹²⁵ Consequently, food law must operate alongside legally guaranteed social welfare mechanisms such as school feeding programme, targeted nutritional support for pregnant women and children, agricultural subsidies, and emergency food assistance for internally displaced persons.¹²⁶ Unlike temporary political interventions, these programmes should derive legitimacy from statutory frameworks imposing enforceable duties on public authorities. The National Home-Grown School Feeding Programme, for example, should be codified through legislation that specifies funding obligations, nutritional standards, monitoring mechanisms, and sanctions for diversion of resources. Such legal backing would ensure continuity and accountability beyond changes in political administration.

Another significant component of this model involves strengthening consumer protection and public interest litigation. Consumers often lack awareness and effective legal remedies regarding unsafe or nutritionally deficient food products.¹²⁷ Although the Federal

¹²³ Nigerian Stored Products Research Institute (NSPRI) (n 49)

¹²⁴ B Anaba, (n 5)

¹²⁵ *ibid*

¹²⁶ A Otubu, (n 11)

¹²⁷ F Monye, (n 30) 105

Competition and Consumer Protection Commission Act¹²⁸ provides mechanisms for consumer redress, enforcement remains weak and inaccessible to low-income citizens. Food law reforms should therefore expand the powers of consumer protection agencies, encourage class actions in food related litigation, and permit civil society organisations to institute public interest suits on behalf of affected communities. Judicial activism in this regard would enhance corporate accountability within the food industry and compel compliance with nutritional and safety regulations.

The model must embrace regional and international cooperation. Food insecurity is increasingly trans-national, driven by climate change, armed conflict, inflationary pressures, and disruptions in global supply chains.¹²⁹ Nigeria should therefore domesticate relevant provisions of the Malabo Declaration, ECOWAP, and other African regional instruments relating to food security and agricultural transformation.¹³⁰ Harmonisation of food safety standards with regional and international obligations would facilitate cross border trade, improve food quality, and strengthen regional food resilience. More importantly, it would align Nigeria's domestic legal framework with emerging international norms recognising access to adequate food as an indispensable component of human dignity and sustainable development.

8.0 Conclusion

The trajectory of Nigeria's food crisis has outpaced the evolution of its legal framework. This article has demonstrated that the current legal system, comprising a non-justiciable constitutional aspiration, fragmented statutory mandates, and critical regulatory vacuums, creates a persistent state of legal uncertainty. Under this regime, the government may articulate ambitious agricultural policies while simultaneously failing to protect the population from hunger, malnutrition, and foodborne hazards. From the tenure insecurity perpetuated by the Land Use Act 1978 to the absence of any legally enforceable nutritional rights, the gaps in the system are not static but widening. As climate change intensifies agricultural volatility and digital commerce transforms food distribution channels, the protection of public health demands a corresponding legal transformation. It is no longer

¹²⁸ Federal Competition and Consumer Protection Commission Act 2018, ss 124-127

¹²⁹ African Union, (n 64)

¹³⁰ ECOWAS, (n 65)

tenable to treat food exclusively as a commodity for market exchange, rather, food must be legally recognised as a fundamental prerequisite for the enjoyment of human rights, including the rights to life, health, and human dignity.¹³¹

9.0 Recommendations

To bridge the widening chasm between Nigeria's existing legal architecture and the imperative of food security for all citizens, this article proposes the following actionable recommendations:

9.1 Constitutional Amendment to Render the Right to Food Justiciable

The right to food, currently located in section 16(2)(d) of Chapter II of the 1999 Constitution, should be relocated to Chapter IV (Fundamental Rights). This amendment would render the right to food justiciable, thereby empowering Nigerian courts to entertain claims for its enforcement. Judicial precedents from South Africa and India demonstrate that a justiciable socio-economic right can catalyse accountable governance without overwhelming the judiciary.

9.2 Enactment of the National Food Safety and Quality Bill

The National Assembly should urgently pass the National Food Safety and Quality Bill, which has been pending in various forms. This legislation should consolidate food safety oversight into a single, harmonised agency, eliminating the current jurisdictional overlaps among NAFDAC, SON, and the Federal Ministry of Agriculture and Natural Resources. The Bill should also explicitly incorporate relevant Codex Alimentarius standards and establish mandatory safety requirements for all stages of the food supply chain, including transport and storage.

9.3 Land Use Act Reform to Enhance Smallholder Tenure Security

The Land Use Act 1978 should be amended to introduce a tiered system of land titles that provides smallholder farmers with registrable, mortgageable interests. Specifically, a smallholder occupancy certificate, issued with minimal bureaucratic discretion and subject to judicial review, would enable farmers to use land as collateral for agricultural credit.

¹³¹ *Social and Economic Rights Action Center (SERAC) v Nigeria* [2001] AHRLR 60 (ACHPR 2001) para 64 (holding that the right to food is implicit in the rights to life, health, and dignity)

Such reform would directly address the link between tenure insecurity and low agricultural productivity.

9.4 Differentiated Fortification Support for Small Scale Millers

NAFDAC should adopt a differentiated compliance model for food fortification. Rather than enforcing uniform standards that disproportionately burden small scale millers, the agency should establish a support tier offering subsidised technology, micronutrient premixes, and simplified auditing procedures for informal market producers. This approach would extend the reach of fortification requirements to the markets where most low-income Nigerians purchase their food, thereby closing the current nutritional divide between formal and informal food systems.