Feast or Famine: Do Ethiopians Have a Choice?

Janice J. Bole

Follow this and additional works at: http://elibrary.law.psu.edu/psilr

Part of the Human Rights Law Commons, and the International Law Commons

Recommended Citation

Available at: http://elibrary.law.psu.edu/psilr/vol5/iss1/6
Feast or Famine: Do Ethiopians Have a Choice?

I. Background

[T]his is just the beginning of a resurgence of caring for others. It says something about getting back to the basic human family. It’s a dream, a positive dream.¹

This and other inspirational comments² were voiced on July 13, 1985, the day the Live Aid Concert united the world to raise money to feed the starving people in Africa. With 90,000³ people jammed into Philadelphia’s John F. Kennedy stadium, 72,000⁴ in London’s Wembly Stadium and uncounted others at smaller concerts throughout the world,⁵ Live Aid may be the largest humanitarian effort ever.⁶ The sixteen hour⁷ worldwide rock concert raised sixty-five million dollars,⁸ all of which was intended to aid African famine victims.⁹

Live Aid was the brainchild of Bob Geldof, an Irish rock musician who coordinated the entire event. “To me [Live Aid] is simply a means of keeping people alive,” Geldof said.¹⁰ He pledged that the bulk of the Live Aid proceeds would be used in the Sudan and Ethiopia where the famine has hit the hardest.¹¹

¹ Remarks on the “Live Aid” concert by Mary Travers, former member of the folk group, Peter, Paul and Mary. N.Y. Times, July 15, 1985, at C18, col. 1.
² Folk singer Joan Baez welcomed the Philadelphia crowd by saying, “Good morning, children of the 80’s. This is your Woodstock and it’s long overdue.” Id. Singer and guitarist Neil Young also recalled the 1969 Woodstock concert in Bethal, New York, but noted the difference between that concert and Live Aid. “Last time we all got together to see what would happen. This time it’s for somebody. This time you know it’s going to help.” N.Y. Times, July 14, 1985, at A14, col. 2. A seventeen year old from New Jersey observed, “The spirit is just bouncing off people.” Id.
³ N.Y. Times, July 14, 1985, at A14, col. 2.
⁴ Id.
⁵ Concerts were held in the Netherlands, Japan, West Germany, Austria, Yugoslavia, the Soviet Union, and Australia. Additionally, 152 countries watched this massive event by satellite. Id.
⁶ Id. An estimated 1.9 billion people watched Live Aid on television or listened to it on the radio. N.Y. Times, July 15, 1985, at C18, col. 1.
⁷ Id. Times, July 15, 1985, at C18, col. 1.
⁸ Trimble, Rain and Aid Save Millions of Africans - For Now, U.S. NEWS & WORLD REP., Jan. 20, 1986, at 32.
⁹ Organizer Bob Geldof told the London audience that 100% of the money pledged would go directly to buying food, medical supplies, and farming equipment. N.Y. Times, July 15, 1985, at C18, col. 1.
¹¹ Additionally, Geldof stated that Chad, Mali, and Burkina Faso would each receive a
Ethiopia paints the bleakest picture of the African famine. In October 1984, the world became aware of the African famine through a BBC television film depicting the camps in Wollo, an Ethiopian province. In that year alone, as a result of population expansion, civil wars, drought, desertification, and the priority of cash cropping for export over peasant farming, Ethiopia was in need of tons of food to feed its two million starving people. In 1985 Ethiopia required 1.5 million tons of food aid and has asked for 1.6 million tons to meet its needs in 1986. Ethiopia's leader, Lieutenant Colonel Mengistu Haile Mariam has accused the West of failing to provide adequate long-term aid. He has also asserted that Western donors have not provided enough trucks and spare parts.

Some commentators deny that human rights are part of international law. The general consensus, however, is that some basic human rights are protected by an international minimum standard. Although the right to food is given much attention in international forums, it generally is not a right that states are required to guarantee their citizens. Nevertheless, the right to life and the right to be free from torture are universally recognized human rights. Therefore, recent acts by the Ethiopian government that deprive its people of food may give breadth to these two more basic rights.

This Comment will discuss whether an international human right to food can exist and, if so, whether Ethiopians have a right to be fed by their government given the circumstances of the current famine. An overview of Ethiopia's political and social environment will be followed by an examination of international human rights law as it is reflected in treaties, international agreements, and the customs and practices of states.

A. The World Comes to Ethiopia's Rescue

In October of 1984, the United States Government made a de-

---

12. Shepherd, _The Denial of the Right to Food: Development and Intervention in Africa_, 15 CAL. W. INT'L L.J. 528 (1985). Shepherd notes that the socialist concept of the state farm has been as disastrous in achieving development in Africa as the capitalist concept of cash cropping for export. Generally, he believes that East-West tugs of war with African economies must cease for Africa to become self-reliant. Id. at 535-36.


19. See infra text accompanying notes 146-56.
cision to increase dramatically emergency food aid to Ethiopia.\textsuperscript{20} Over a period of two months, food deliveries jumped from 45,000 to 332,000 metric tons.\textsuperscript{21} One year later, United States assistance included trucks, planes, medical supplies, tents, and other disaster aid plus 550,000 metric tons of food.\textsuperscript{22} Government assistance, combined with the aid raised by countless private groups,\textsuperscript{23} makes the United States Ethiopia's largest food supplier.\textsuperscript{24} Moreover, groups such as the Red Cross and other charitable organizations have been providing aid workers to distribute food, administer medical treatment, and teach new farming methods to the Ethiopian people.\textsuperscript{25} Additionally, other countries have contributed what they could to feed Ethiopia's starving population.\textsuperscript{26}

\textbf{B. The Ethiopian Government's Response}

The Marxist Ethiopian government, known as the Dergue, and its leader, Lieutenant Colonel Mengistu Haile Mariam, have been using foreign aid as a strategic tool in Ethiopia's twenty-five year old civil war.\textsuperscript{27} The war that engulfs Ethiopia actually is a series of smaller wars with several of the country's ethnic groups. Eritrea, a former Italian colony, was federated with Ethiopia in 1952 through a United Nations resolution.\textsuperscript{28} In 1962, when Emperor Haile Selassie changed Eritrea's status from a territory to a region, he sparked a civil war that continues to this day.\textsuperscript{29} In addition to this war, similar wars exist with the Tigrean People's Liberation Front and the

\begin{itemize}
  \item[21.] Id.
  \item[22.] Id.
  \item[23.] N.Y. Times, Oct. 27, 1985, at A46, col. 1 (seventy-five competitors in the New York City Marathon raised money to feed the hungry); N.Y. Times, Oct. 23, 1985, at C20, col. 3 (plans for Hands Across America); Christian Science Monitor, Nov. 30, 1984, at 24, col. 1 (list of various groups that raised money for famine relief). Many other groups have held inventive fundraising events to feed the hungry.
  \item[24.] N.Y. Times, Aug. 18, 1985, at A13, col. 1. The United States supplies more than a third of the food relief entering Ethiopia at a cost exceeding a quarter of a billion dollars. \textit{Id}.
  \item[27.] Silence on Ethiopia?, Wall St. J., Feb. 13, 1986, at 30, col. 1. The Ethiopian government is using “Western food as bait to lure hungry people to feeding sites from which they could be captured and deported.” \textit{Id}.
  \item[28.] N.Y. Times, July 15, 1985, at A3, col. 4.
\end{itemize}
rebels in Wollo.

The famine has become so severe that at least one faction is willing to work with the government to feed the hungry. According to Semere Russom, an Eritrean rebel spokesman, the Eritrean group is willing to enter into a cease-fire with the Ethiopian government in order to aid the distribution of relief assistance to famine victims. The government has rebuffed these offers, resulting in a denial of food to the provinces of Eritrea, Tigre, and Wollo, while food stockpiles in less needy areas.

Instead of promptly unloading food at the port, Lieutenant Colonel Mengistu has given priority to unloading Soviet ships bearing military equipment. Meanwhile ships carrying nonmilitary aid wait in the harbor an average of nine days before unloading. Once on the dock, the food may sit for weeks unshielded from the elements. Other aid equipment is treated similarly.

In February of 1985, aid officials reported that almost half of the donated trucks in the country were in disrepair because of mismanagement and misuse. This situation is representative of the deeper problem caused by the Ethiopian government’s blatant disregard of its people: while people are starving to death in Eritrea, Tigre, and Wollo, food is accumulating in store houses in the Ethiopian capital of Addis Ababa. The Dergue attributes the problem to transportation difficulties, yet “a joint Oxfam/Save the Children Fund fleet went for two months without being given any grain to move.”

Approximately one year ago, the Ethiopian government em-

31. Id.
33. N.Y. Times, Oct. 31, 1985, at A27, col. 1 ("[W]hile the United States is donating at most 600,000 metric tons of food, the Soviet Union which has sold Ethiopia $2.5 billion in military aid has sent merely 10,000 metric tons."); London, Who Says We Are the World?, N.Y. Times, July 19, 1985, at A27, col. 1; N.Y. Times, Feb. 18, 1985, at A8, col. 1; see Make Ethiopia Stop Shooting, supra note 14, at 10.
35. In July, 1985, a rainstorm destroyed 10,000 metric tons of food. Id.
36. Bob Geldof’s organization, “Band Aid,” sent a convoy of Land Rovers meant for food distribution. The vehicles sat outside Ethiopian customs sheds for months. Id.
38. See supra note 29; N.Y. Times, Sept. 29, 1985, at A13, col. 1. “According to Interfam, only 10% of the two million famine victims in rebel-held areas of Eritrea are receiving regular aid shipments.”; N.Y. Times, Aug. 14, 1985, at A13, col. 1. Tesfa A. Seyoum, Executive Director of the Eritrean Relief Committee, said that “except for the feeding stations set up by the Ethiopian Government for public relations purposes, none of the food aid sent to Ethiopia reached the people in Eritrea and Tigre.”; see also N.Y. Times, July 19, 1985, at A27, col. 1.
39. Starving Wollo: An Empty Excuse, London Times, Aug. 14, 1985, at 10, col. 2 [hereinafter Starving Wollo]. In the first four months of 1985, the province of Wollo was receiving less than 9,000 tons of its needed 35,000 tons of grain each month while the Ethiopian capital, Addis Ababa, was receiving 12,000 tons of food aid each month. Id.
barked on a huge resettlement program. Although the government claims it is relocating people to the south for the purpose of fighting hunger, 40 the manner in which Ethiopia is transporting its people conveys a much different purpose. 41 Without any prior warning, people are often rounded up at the relief stations, 42 where they are detained for several days while awaiting transport by bus, truck, or plane. 43 Often, these already hungry and weakened people receive nothing to eat or drink. 44 In one case, there were only two water pipes in May Dero, where 4,000 to 8,000 people were waiting for transport. 45 One pipe was reserved for the soldiers, and the other was available to the peasants provided the soldiers did not need it to wash their uniforms. 46 The resettlers who were not weakened by hunger before they reached the collection camps fell sick in the camps due to catastrophic sanitary conditions. 47

Within a year of its initiation, the resettlement program claimed the lives of some 100,000 peasants. 48 One editorial compares this treatment to a “mass extermination on the order of the Khmer Rouge killing fields and the deportation of Armenians in 1915, with the added horror that it wouldn’t have been possible without the aid and silence of Western famine relief.” 49 The editorial notes that while resettlement continues, Lieutenant Colonel Mengistu’s army is launching major military offenses in the heart of the famine regions. 50 The army draws its logistical support from the relief stockpiles while it burns the rebels’ crops. 51

The Ethiopian government does not respect either Western donors or aid workers much more than its own people living in the

40. Today’s Holocaust, Wall St. J., Jan 27, 1986, at 24, col. 1. The places in which persons are relocated are infested with malaria, water parasites, and, at some relocation sites, the deadly tsetse fly. Fenton, supra note 26, at 18. Although the Dergue had difficulty in transporting the food to Korem, a town in Wollo, it had plans to move the 100,000 population of Korem to Sekota, a town that is nine hours further along a bad road. Starving Wollo, supra note 39, at 10, col. 2.

41. Today’s Holocaust, supra note 40, at 24, col. 1. The relocation program is not directed by the Relief and Rehabilitation Commission, but by the Office for the Nationality Problem. It was planned as early as 1981 after Lieutenant Colonel Mengistu’s “Red Star” offensive failed in Eritrea and Tigre. Id.


44. Id.

45. Id.

46. Id.

47. Id. Upon arrival of the resettlers at Bole airport in Addis Ababa, “men were already waiting with stretchers to carry away the dead and squashed passengers.” Id.

48. This figure represents 20% of the resettlement program’s targets. Today’s Holocaust, supra note 40, at 24, col. 1.

49. Id.

50. Id.

51. Id.
The following examples indicate the Ethiopian government's cavalier attitude toward those who wish to aid Ethiopians located in rebel areas: Ethiopia gave the United States neither thanks nor recognition for its gift of 550,000 metric tons of foods aid; a French doctors' group was denied permission to set up a children's feeding center in Wollo; Lieutenant Colonel Mengistu rejected a plan proposed by Kurt Janasson, United Nations Assistant Secretary General for Relief Operations in Ethiopia, to lead unarmed convoys under Red Cross flags into contested areas; the Dergue informed the government's Relief and Rehabilitation Commission (RRC) that there were far too many foreign aid workers, or expatriates as the Dergue calls them, working in Addis Ababa with relief agencies; and, all 450 expatriates' jobs were to be reviewed with the idea of reducing them to one expert per agency. Generally, the Ethiopian government has assumed a defensive attitude toward Western donors. Lieutenant Colonel Mengistu believes foreign relief agencies are trying to run Ethiopia and, consequently, has demanded that aid be sent directly to the government rather than through private relief groups.

In an attempt to escape resettlement and starvation, peasants flee to the Sudan. In February of 1985, as many as 3,000 people per day were reported crossing from Eritrea and Tigre into the Sudan. Although the Sudan is the second hungriest nation, the refugees apparently believe their chances for survival are better in the Sudan than in Ethiopia. The Sudan has also provided a means of entry into Ethiopia. Due to resistance encountered with the Ethiopian government, relief agencies have been trying to reach the people of Eritrea and Tigre from the Sudan. These efforts have not always suc-
There is one documented case in which Ethiopia confiscated grain worth over one million dollars — grain that had been consigned to relief organizations affiliated with Ethiopian rebel groups based in the Sudan.62

Although the West has done its part to feed the starving millions in Ethiopia, the Ethiopian government could do more for its people. One commentator summed up this frustrating situation as follows:

It is, in general, when the funds reach Ethiopia that reasoning stubs it toe. Suddenly there is a government blocking the way. Suddenly there is a war. Suddenly, where once there was only the pure impulse of sympathy, there are politics and frustration. And suddenly there is a seven day walk to get the food from A to B.63

II. Internal or International Concern?

At the annual meeting of the United Nations Human Rights Commission, the United States delegation planned to introduce a resolution calling for United Nations action on the Ethiopian resettlement program.64 The United States government also drafted a resolution for the Commission requesting a special rapporteur to investigate the resettlement program.65 Although United States diplomats and State Department decision makers are aware of the horrifying reports concerning the program, some officials do not want to push the resolutions.66 These United States officials reportedly want to use Ethiopia as a bargaining chip to induce African cooperation on projects favored by the United States.67 The officials possibly are concerned about alerting contributors to the fact that their money is being used to perpetuate a war rather than to feed starving people.68 Alternatively, the officials may believe the Ethiopian situation is an internal matter in which other governments should not interfere.69 Because the United States’ official position is that a nation’s human rights policies are an international concern,70 the latter explanation...
is most unlikely.

A. Human Rights are a Valid Part of International Law

1. United Nations Charter. — An examination of whether human rights are an international concern should begin with an examination of the United Nations Charter. The Charter’s drafters were concerned about human rights, and this concern is reflected in at least three of its Articles. The first mention of human rights appears in Article 1, which establishes the following goals for the United Nations: “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . . .” The drafters reiterated the importance of human rights to the United Nations’ goals later in the Charter and stated that “[w]ith a view to the creation of conditions or stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Additionally, the Charter imposes an affirmative obligation on member states to take both joint and separate action to ensure the observance of these human rights and fundamental freedoms.

The United Nations Charter is an important multilateral document in international law. The Charter marks the beginning of modern international organization and continues to shape international relations. Essentially, the Charter is recognized as the equivalent of a constitution in a domestic legal system. Moreover, the Charter’s express provisions concerning human rights are for some scholars persuasive authority as to the binding effect of these provisions.

pattern of gross violations of internationally recognized human rights.” The Act defines “gross violations of internationally recognized human rights” as including “torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charge and trial, and other flagrant denial of the right to life, liberty or the security of a person.” Id.

71. U.N. CHARTER art. 1, para. 3.

72. Id. art. 55, para. c.

73. “All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.” U.N. CHARTER art. 56.

74. As a result of studying the practice of nations for thirty-five years, Sohn concluded that the impact of the “Charter law” was equivalent to domestic constitutional law. Sohn, The International Law of Human Rights: A Reply to Recent Criticisms, 9 Hofstra L. Rev. 347, 355 (1981).

2. Other Human Rights Covenants and Treaties. — The Charter forms the foundation for a plethora of international and regional instruments that identify and guarantee specific human rights. The earliest and most highly regarded of these other instruments is the Universal Declaration of Human Rights. The Declaration outlines specific rights due to all persons including the right to life and liberty; the right not to be enslaved; the right not to be tortured or subject to degrading treatment; the right not to be arbitrarily arrested or detained; and the right to freedom of thought, conscience, and religion.

The Universal Declaration of Human Rights articulates the right to an adequate standard of living, including food. The enormous weight attributed to the Declaration is evidenced by a statement in the Teheran Proclamation, which provides that the Universal Declaration of Human Rights is viewed as "the common understanding of the peoples of the world." Additionally, leaders of both the United States and the USSR adhere to a view expressed in the Helsinki Accords that requires states to "act in conformity with the principles of the Universal Declaration of Human Rights."

The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration compose the international "Bill of Rights." In evaluating the significance of the International Covenant on Civil
and Political Rights, one commentator noted as follows: "For the first time, the international community reached an agreement not only on the list of basic human rights, but also on the content of each right and on the most important limitations to such rights . . . ."86 The rights recognized in this Covenant include the right to life;87 the right to be free from torture and enslavement;88 the right to liberty and security of the person, including protection from arbitrary arrest or detention;89 and the right to humane treatment of persons in prison.90 The Economic, Social and Cultural Covenant encompasses the right of all persons to freely determine their political status and freely pursue their economic, social, and cultural development;91 the right to work;92 the right to safe and healthy working conditions;93 the right to the highest attainable standard of physical and mental health;94 and the right to education.95 The Economic, Social and Cultural Covenant specifically articulates the right to adequate food:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.96

Since the delivery of many of these rights depends upon the state's economic position, the Economic, Social and Cultural Covenant directs each State Party "to take steps individually and through international assistance and cooperation . . . to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant."97 The Human Rights Committee is the organ responsible for implementing the Civil and Political Covenant, while the Economic and Social Council is the organ responsible for implementing the Economic, So-

87. Civil and Political Covenant, supra note 85, art. 6.
88. Id. arts. 7, 8.
89. Id. art. 9.
90. Id. art. 10.
91. Economic, Social and Cultural Covenant, supra note 85, art. 1.
92. Id. art. 6.
93. Id. art. 7.
94. Id. art. 12.
95. Id. art. 13.
96. Id. art. 11.
97. Id. art. 2, para. 1; see generally Lippman, supra note 85, at 477-79; see also Schwelb, Some Aspects of the International Covenants on Human Rights of December 1966 in International Protection of Human Rights 103, 108.
Regional instruments addressing human rights include the European Convention on Human Rights and Fundamental Freedoms,\textsuperscript{99} the American Convention on Human Rights,\textsuperscript{100} and the African Charter on Human and Peoples’ Rights.\textsuperscript{101} The European and American Conventions are similar in both their language and the rights each guarantees. Both instruments provide for the right to life;\textsuperscript{102} prohibitions against torture, cruel, inhumane treatment, and slavery;\textsuperscript{103} the right of an individual to have his cause heard;\textsuperscript{104} the right to defense;\textsuperscript{105} the presumption of innocence until proven guilty;\textsuperscript{106} and the right to detailed notification of charges against the accused.\textsuperscript{107} These Conventions have a legally binding effect on the Parties.\textsuperscript{108} The Inter-American Court of Human Rights, which has ad-

\textsuperscript{98} Civil and Political Covenant, \textit{supra} note 85, art. 28. Members of the Human Rights Committee are elected by the Parties to the Covenant. The Committee studies reports submitted by the Parties and transmits its comments to the Parties concerned, studies and helps resolve interstate communications alleging that a Party is not implementing the Covenant (the Parties involved must first recognize the Committee’s competence to receive interstate communications), appoints with the consent of the Parties concerned ad hoc conciliation commissions to amicably solve problems, receives communications from individuals claiming to be victims of Covenant violations (Parties must ratify the Optional Protocol to the Covenant on Civil and Political Rights thereby authorizing the Committee to consider communications from individuals), and reports to the Economic and Social Council on its annual activities. Lippman, \textit{supra} note 85, at 482-505; see also Shelton, \textit{International Enforcement of Human Rights Effectiveness and Alternatives}, 1980 Am. Soc’y Int’l L. Proc. 6, 9-11. The Economic and Social Council requires Parties to submit biennial reports for various parts of the Covenant. Economic, Social and Cultural Covenant, \textit{supra} note 85, arts. 16-22; see also Shelton, \textit{supra}, at 9.


\textsuperscript{102} European Convention, \textit{supra} note 99, art. 2; American Convention, \textit{supra} note 100, art. 6.

\textsuperscript{103} European Convention, \textit{supra} note 99, art. 3; American Convention, \textit{supra} note 100, art. 5, para. 2.

\textsuperscript{104} European Convention, \textit{supra} note 99, art. 6; American Convention, \textit{supra} note 100, art. 8.

\textsuperscript{105} European Convention, \textit{supra} note 99, art. 6, para. 3(c); American Convention, \textit{supra} note 100, art. 8, para. 2(e).

\textsuperscript{106} European Convention, \textit{supra} note 99, art. 6, para. 3(a); American Convention, \textit{supra} note 100, art. 8, para. 2(b).

\textsuperscript{107} European Convention, \textit{supra} note 99, art. 6, para. e(a); American Convention, \textit{supra} note 100, art. 8, para. 2(b). The right not to incriminate oneself and the right to confess only absent coercion are unique to the American Convention. See American Convention, \textit{supra} note 100, art. 8, paras. 2(g), 3.

\textsuperscript{108} The European Convention reads as follows: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.” European Convention, \textit{supra} note 99, art. 1. The American Convention reads as follows: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons . . . the full and free exercise of those rights and freedoms . . . .” American Convention, \textit{supra} note 100, art. 1.
judicatory and advisory jurisdiction,\textsuperscript{109} is the judicial body responsible for enforcing the American Convention.\textsuperscript{110} Its counterpart in the European Convention is the European Court of Human Rights.\textsuperscript{111}

The African Charter has been passed by the Organization of African Unity's Assembly of Heads of State and Government but is not yet in force.\textsuperscript{112} The African Charter, although similar in some respects to the European and American Conventions, reflects African principles and was designed to meet particular African needs.\textsuperscript{113} The preamble recognizes the African tradition of responsibility to the community by providing that "[t]he enjoyment of rights and freedoms also implies the performance of duties on the part of everyone."\textsuperscript{114} This concept expressing an individual's obligations to the State is absent in other regional human rights documents.\textsuperscript{115} Additionally, the language contained in the preamble implies that when economic and social programs collide with civil and political rights, the former will be given preference:\textsuperscript{116}

[I]t is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated with economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.\textsuperscript{117}

Another distinction between Western human rights instruments and the African Charter is the inclusion of "ethnic groups" as a cat-

\begin{itemize}
\item \textsuperscript{109} Adjudicatory jurisdiction empowers the Court to decide disputes involving charges that a State Party had violated the human rights guaranteed by the Convention. Advisory jurisdiction allows the Court to interpret the Convention as well as other human rights instruments at the request of Organization of American States organs and member states. Burgenthal, \textit{The Inter-American Court of Human Rights}, 76 AM. J. INT'L. L. 231, 235 (1982).
\item \textsuperscript{110} American Convention, \textit{supra} note 100, art. 33, para. b.
\item \textsuperscript{111} European Convention, \textit{supra} note 99, art. 19, para. 2.
\item \textsuperscript{113} Gittleman, \textit{supra} note 112, at 674.
\item \textsuperscript{114} African Charter, \textit{supra} note 101, preamble, cl. 6.
\item \textsuperscript{115} The concept of "duties" generally refers only to a State's obligation to its citizens. In drafting the African Charter, the socialist States such as Ethiopia and Mozambique could not reconcile the concept of "individual" rights with the socialist philosophy. To ensure that all States would ratify the African Charter, its drafters provided that an individual must have obligations flowing back to the State. Gittleman, \textit{supra} note 112, at 676-77.
\item \textsuperscript{116} \textit{Id.} at 677.
\item \textsuperscript{117} African Charter, \textit{supra} note 101, preamble, cl. 7.
\end{itemize}
egory in the African Charter’s nondiscrimination clause. One commentator has written that this express prohibition against discrimination by ethnic group “constitutes a major step for the continent as a whole because the realization of this right will lead to greater economic opportunity for those peoples not of the same kinship as the head of State of government.” This same commentator emphasizes that while discrimination will not stop overnight, African leaders may feel pressured into modifying such abuse to escape public rebuke from the African Commission on Human and Peoples’ Rights.

Some rights guaranteed by the African Charter are the right to life; the right to dignity and legal status, which is bolstered by a prohibition of “[a]ll forms of exploitation and degradation of man particularly slave trade, torture, cruel, inhumane or degrading punishment and treatment;” the right to have a cause heard; the right to be tried within a reasonable time by an impartial court or tribunal; the right to work under satisfactory conditions with equal pay for equal work; the right to the provision of necessary health care by the State; the right to an education; the right to freely participate in the cultural life of the community; and, the rights of the family. The Charter also provides for the elimination of discrimination against women and the care of the aged and disabled. One scholar finds the right to food to be implicit in Article 22 of this Charter, which provides as follows:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to

---

118. Individuals are entitled to the African Charter’s protections “without distinction of any kind such as race, ethnic group, color, sex, language, religion, political, or any other opinion, national and social origin, fortune, birth or other status.” Id. art 2.
120. Gittleman, supra note 112, at 683.
121. African Charter, supra note 101, art. 4.
122. Id. art. 5.
123. Id. art. 7, para. 1.
124. Id. art. 7, para. 1(d).
125. Id. art. 15.
126. Id. art. 16.
127. Id. art. 17, para. 1.
128. Id. art. 17, para. 2.
129. Id. art. 18, paras. 1, 2.
130. Id. art. 18, para. 3.
131. Id. art. 18, para. 4.
ensure the exercise of the right to development.\textsuperscript{132}

The legal effect of the African Charter is not as clear as that of the American or European Conventions. Parties to the African Charter have an obligation to “recognize the rights, duties and freedoms enshrined” in it.\textsuperscript{133} Because there is no express guarantee of the implementation of rights, the African Charter may be interpreted as a set of rights to be promoted, rather than protected.\textsuperscript{134} On the other hand, the African Charter may be taken as binding by the clause obligating member States to “undertake to adopt legislation or other measures to give effect to [the rights, duties and freedoms enshrined in the African Charter].”\textsuperscript{135}

3. Customary International Law. — Of the human rights documents discussed above, Ethiopia is a signatory to only one, the United Nations Charter.\textsuperscript{136} This does not mean that Ethiopia or other nonparties are totally immune from the principles espoused in the other documents discussed above. Just as customs and traditions constitute a part of a state’s domestic law, customs and traditions comprise a part of international law. In addition to the many scholars\textsuperscript{137} who believe customary international law exists, Judge Ammoun, Vice President of the International Court of Justice in the Namibia case acknowledged and applied customary international law: “Although the affirmations of the Declaration are not binding qua international convention within the meaning of Article 38, paragraph 1(a) of the Statute of the Court, they can bind States on the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{132} Id. art. 22; see also Shepherd, supra note 12, at 529.
\item \textsuperscript{133} African Charter, supra note 101, art. 1.
\item \textsuperscript{134} Gittleman, supra note 112, at 688-89. In a promotional document, states set forth standards that they pledge themselves to secure progressively. Conversely, in a protective document, states are obligated to give effect to the rights. Id. Lippman and Schwelb discuss whether the Civil and Political Covenant and the Economic, Social and Cultural Covenant are protective or promotional. See Lippman, supra note 85, at 477-78; see also Schwelb, supra note 97.
\item \textsuperscript{135} African Charter, supra note 101, art. 1; see also Gittleman, supra note 112, at 688-89. An earlier draft version provided that States “shall guarantee the rights and freedoms stated in the present Covenant [sic] and shall undertake to adopt, in accordance with their constitutional provisions, legislative and other measures to ensure their respect.” African Charter on Human and Peoples’ Rights, O.A.U. Doc. CAB/LEG/67/3/Rev. 1 (1979) (draft prepared by a Meeting of Experts of the Organization of African Unity, Dakar, Senegal, Nov. 23-Dec. 8, 1979). Had this version been adopted, the argument for the African Charter’s binding legal effect would be more persuasive.
\item \textsuperscript{136} Ethiopia became a member of the United Nations on November 13, 1945. Roster of the United Nations, 1960 U.N.Y.B 693.
\end{itemize}
\end{footnotesize}
basis of custom within the meaning of paragraph 1(b) of the same Article.” The United States Supreme Court has recognized customary international law and held that it is “part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.”

Human Rights are binding as a result of the combined effect of treaties, United Nations resolutions, and other international and regional documents. One commentator explains this process as follows:

[T]reaties play a crucial role in the creation of these [human rights] laws — but not just through the usual method of creating strictly defined obligations that restrict the ratifying parties. More importantly, treaties containing generalized principles of international law generate rules of customary international law that bind even non-signatories.

According to this interpretation, when certain state practices become customary and are further recognized by States as obligatory, a custom of international law is created, and states are legally bound to adhere to that norm.

The Universal Declaration of Human Rights is the single most important reflection of the customary international law of human rights. Although the Declaration was originally created as a non-binding document, many of its principles have gained wide acceptance, thereby establishing them as “binding” principles of custom-

138. Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), [1971] I.C.J. 67, 76. Article 38 1(a) and (b) of the Statute of the International Court of Justice provides as follows:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law, . . . .

139. The Paquete Habana, 175 U.S. 677 (1900); see generally Lillich, supra note 137. Lillich explores the possibilities and problems of using international human rights law in domestic litigation.

140. See, e.g., McDougal, supra note 137, at 7-27.

141. D’Amato, supra note 137, at 1127.

142. The establishment of a custom is a specific stage in the formation of customary international law. The decisive element is that states recognize the custom as legally binding. All states need not follow the custom or practice for it to become part of customary international law. G. Tūnkīn, Theory of International Law 113-27 (1974).

143. See, e.g., Burgenthal, supra note 75, at 16; Lillich, supra note 137.

144. A United Nations study on human rights observed as follows:

Evidence of the impact of the Universal Declaration of Human rights may be found in texts of various national constitutions which were adopted after the adoption of the Declaration. Several of these constitutions expressly refer, either in their preambles or in their operative provisions, to the Declaration. In addition, many other constitutions contain detailed provisions on a number of human
ary international law. This customary or universal standard of human rights recognizes those fundamental rights that are the most basic ingredients necessary for life and from which no state may derogate. In part, fundamental rights include the freedom from torture, slavery, and arbitrary deprivation of life; the "right to recognition everywhere as a person before the law"; the "right to freedom of thought, conscience and religion"; and the right not to be "held guilty of a criminal offense at the time when it was committed." In addition to these rights, certain other rights that are uniformly accepted as part of the human rights catalogue can be included above. These other rights, however, are not considered fundamental because a state may derogate from such rights.

4. Lack of Enforcement Does Not Invalidate. — Under international law, human rights enforcement lacks a centralized, compulsive judicial component; however, human rights persist as an important ideal for the international legal community. Those

**Rights, most of which are inspired by, or often modeled on, the text of the articles of the Declaration.**


145. McDougal, supra note 137.

146. Derogation clauses allow States to deviate from certain human rights practices in time of war or national emergency. The Civil and Political Covenant permits derogation in the following instances:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Civil and Political Covenant, supra note 85, art. 4, para. 1. Paragraph two lists those rights from which no State may derogate. Id. para. 2.

147. Id. art. 8; European Convention, supra note 99, art. 4; American Convention, supra note 100, art. 6.

148. Civil and Political Covenant, supra note 85, art. 6; European Convention, supra note 99, art. 6; American Convention, supra note 100, art. 5.

149. Civil and Political Covenant, supra note 85, art. 7; European Convention, supra note 99, art. 3; American Convention, supra note 100, art. 3.

150. Civil and Political Covenant, supra note 85, art. 16; European Convention, supra note 99, art. 2; American Convention, supra note 100, art. 5.

151. Civil and Political Covenant, supra note 85, art. 18; European Convention, supra note 99, art. 9; American Convention, supra note 100, art. 12.

152. Civil and Political Covenant, supra note 85, art. 15; European Convention, supra note 99, art. 7; American Convention, supra note 100, art. 5.

153. See Teson, supra note 137, at 874. Rights upon which international instruments agree comprise human rights law regardless of how many or which States are parties to the instruments.


Enforcement has always been seen as the weak link in international law, to the point of providing an argument to some that it does not exist. There are at least two bases on which disagreement with this negative approach can rest: one is with the factual premise that enforcement does not - or cannot - occur; the other
commentators who believe that the lack of enforcement essentially diminishes the importance of these human rights agreements are overlooking the general inefficacy of all international enforcement mechanisms. Therefore, if their argument is accepted, one must deny the legal character of international law altogether.\textsuperscript{186} Additionally, this view clearly ignores the manner in which international law works:

Unlike domestic societies where legislatures, courts, and governmental agencies create law, law in the international arena results from the subtle interplay of claims, counterclaims, actions and missions of many international actors. Thus, what nations do and say, even if they sometimes do not believe it, becomes part of the raw material from which international law ultimately springs.\textsuperscript{186}

It is admittedly difficult to document the effectiveness of international human rights treaties and the various principles promulgated under such treaties. There are several factors that may be influencing a nation’s human rights policy at any given time. Human rights may be improved in response to subtle pressures from internal as well as external groups who hold the potential to publicly investigate or condemn official actions. This may result in positive changes for the parties involved, but, unfortunately, there is no way to determine what source actually instigates the changes.\textsuperscript{187} Meanwhile, the lack of effective enforcement procedures permits gross violations of human rights to go unchecked.

\section*{B. Human Rights Cannot be Part of International Law}

\textbf{1. United Nations Charter and Other International Instruments.} — Some scholars believe that despite the growing codification of human rights obligations,\textsuperscript{188} legally and realistically, human rights do not belong in the sphere of international law.\textsuperscript{189} Proponents of this view recognize that the United Nations Charter and the Universal

\begin{itemize}
  \item is opposition to the narrow conceptual approach to law which premises its existence on the availability of a police force to sanction lawbreakers.
  \item Shelton, \textit{supra} note 98, at 7.
  \item 155. Teson, \textit{supra} note 137, at 876.
  \item 156. \textit{Id.}
  \item 157. No comprehensive study has ever been done on the effects of human rights procedures on the laws and practices of states. Shelton, \textit{supra} note 98, at 7.
  \item 158. Human rights obligations are codified in fifty United Nations treaties, two major regional instruments, and more than one hundred labor standards treaties of the International Labour Organization. \textit{Id.}
\end{itemize}
Declaration of Human Rights speak of "human rights and fundamental freedoms" and "the inherent dignity of the equal and inalienable rights of all members of the human family." Nevertheless, it must be emphasized that these documents protecting human rights were drafted against the background of World War II's devastation. Consequently, instead of providing effective mechanisms for enforcement, these documents contain explicit nonintervention clauses that perpetuate the Westphalian legal order and belie a willingness to give legal force and effect to the protection of human rights. The nonintervention clause of the United Nations Charter affirms the importance of the Westphalian concepts of sovereign equality and domestic jurisdiction, and states that

[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application and enforcement measures under Chapter VII.

The location of the nonintervention clause in Article 2 of the Charter indicates its superiority over the human rights provisions. One scholar explains that while human rights are mentioned in Article 1, the purposes article, the opening sentence in Article 2 effectively states that its principles have a higher priority than the purposes of Article 1. That sentence states as follows: "The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following principles . . . ." From that statement comes the argument that the Charter imposes guiding principles and not legal obligations on member states concerning human rights.

2. Cultural Relativism. — Cultural relativism is another concept that rejects the existence of international human rights. As the

160. U.N. CHARTER art. 1, para. 3.
161. Universal Declaration of Human Rights, supra note 76, preamble.
162. Lane, supra note 159, at 281.
163. In 1648, the Peace of Westphalia marked the end of the Thirty Years War. The Westphalian world legal order emphasized decentralization, territorial sovereignty, and sovereign equality. Under that order, an individual's rights were protected only at the volition of the individual State. Thus, international recognition and protection of human rights were not features of the Westphalian philosophy. Id. at 270-71.
164. U.N. CHARTER art. 2, para. 7.
name implies, cultural relativists believe that the existence of customs and traditions unique to each culture necessitates a relative definition of human rights.\textsuperscript{167} Cultural relativists believe that no transboundary legal or moral standards may be judged either as acceptable or unacceptable against human rights practices.\textsuperscript{168} According to the relativist, cultural traditions should be honored, and the West especially should not impose its ideas of human rights on Third World societies.\textsuperscript{169}

3. \textit{Lack of Enforcement Invalidates}. — Finally, pragmatists argue against the existence of a universal human rights body of law. Their basic tenet is that without effective enforcement of international human rights, such a concept can be nothing more than an ideal.\textsuperscript{170} These commentators emphasize the wide gap between a state’s verbal assertions concerning human rights and its actual behavior. Further, they assert that customary international law cannot be based on a state’s verbal assertions because custom by definition is a reflection of a state’s actual practice.\textsuperscript{171} If customary law were based on goals rather than practice, there could be no guarantee that a state would obey the law. Presently, since international organizations are incapable of enforcing state conformity, a universal human rights body of law is nonexistent.\textsuperscript{172}

C. \textit{Prevailing View}

A consensus can be reached between these two opposing approaches regarding the existence of universally accepted human rights. Essentially, certain human rights are so basic that they exist among all cultures. Some relativists agree that the right to life and

\begin{footnotes}
\item[168.] For a description of some unique customs, see Teson, supra note 137, at 870, 870 n.10.
\item[169.] See supra note 163. Alternatively, relativists contend that if substantive human rights norms do in fact exist, their meaning varies substantially from culture to culture. See Polis, supra note 167, at 23.
\item[170.] L. Oppenheim, supra note 166, \S\ 13A, at 19-20; Lane, supra note 159, at 282-83; Murphy, supra note 167; Watson, \textit{Legal Theory}, supra note 159, at 626; Watson, supra note 165, at 3-5.
\item[171.] Watson, supra note 165, at 5. States already behave in compliance with the evolving norm because it is their behavior that defines the norm. \textit{Id}.
\item[172.] Teson, supra note 137, at 874. The existence of an international human rights regime protecting individuals against state abuse is no longer a precatory concept, but a political fact. See Burgenthal, supra note 137; McDougal, supra note 137, at 5-6; Henkin, supra note 137, at 15; Sohn, supra note 74.
\end{footnotes}
the freedom from torture are absolute rights.\textsuperscript{173} Moreover, an increasing number of Third World scholars reject the relativist approach.\textsuperscript{174} The Soviet Union has also departed from the relativist approach. By its signing of the Helsinki Accords, the Soviet Union has indicated its acceptance of the principles contained in the Universal Declaration of Human Rights.\textsuperscript{175} Spokesmen for the Eastern bloc states have suggested that the principle of nonintervention does not apply in cases in which mass violations of human rights occur.\textsuperscript{176} Finally, the present unenforceability of human rights is not tantamount to their nonexistence.\textsuperscript{177}

III. The Right to Food — An International Human Right?

The right to food is not a new concept to international law. This right is explicitly addressed in both the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights. The African Charter on Human and People’s Rights implicitly provides for the right to food.\textsuperscript{178} Moreover, numerous resolutions promulgated by the United Nations deal with the problems of food shortages, desertification and agricultural techniques.\textsuperscript{179} The underlying purpose of these resolutions is to promote “the fundamental right of everyone to be free from hunger.”\textsuperscript{180}

In 1974 the Programme of Action on the Establishment of a New International Economic Order was adopted by the General Assembly of the United Nations for the purpose of helping the developing countries mitigate their economic difficulties.\textsuperscript{181} The section on food provides as follows:

All efforts should be made

(a) To take full account of specific problems of de-

\begin{footnotesize}
\footnotesize
\begin{itemize}
\item \textsuperscript{173} Teson, supra note 137, at 873.
\item \textsuperscript{175} Supra note 84 and accompanying text.
\item \textsuperscript{177} See supra notes 154-57 and accompanying text; text accompanying note 242.
\item \textsuperscript{178} See supra notes 82, 92, 132 and accompanying text.
\item \textsuperscript{179} See \textit{infra} notes 181-201 and accompanying text.
\item \textsuperscript{180} Economic, Social and Cultural Covenant, supra note 85, art. 11, para. 2.
\end{itemize}
\end{footnotesize}
developing countries, particularly in times of food shortages, in the international effort connected with the food problem; . . .

(c) By the international community to undertake concrete and speedy measures with a view to arresting desertification, salination and damage by locusts or any other similar phenomenon involving several developing countries, particularly in Africa . . .

(f) To insure that developing countries can import the necessary quantity of food without undue strain on their foreign exchange resources . . .

(g) To insure that concrete measures to increase food production and storage facilities in developing countries are introduced . . . 182

The World Food Conference, 183 held in November 1974, adopted the Universal Declaration on the Eradication of Hunger and Malnutrition 184 and various other resolutions 185 dealing with food problems. The Universal Declaration on the Eradication of Hunger and Malnutrition recognized that a world food security system that ensured an adequate availability of food at all times, irrespective of weather fluctuations and free of political and economic pressures, should facilitate the development process of developing countries. It also declared the wide gap separating developed and developing countries must be eliminated to bring about a long term solution to the food problem. 186 Accordingly, the Declaration proclaimed as follows:

1. Every man, woman and child has the inalienable right to be free from hunger and malnutrition . . . [T]he eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help.

2. It is a fundamental responsibility of Governments to work together for higher food production and a more equitable and efficient distribution of food between countries and within countries . . .

4. It is a responsibility of each State concerned, in accor-

182. Id. at 5-6. The purpose of the Programme was to ensure application of the Declaration on the Establishment of a New International Economic Order, Special Session 6 U.N. GAOR (2295th plen. mtg) Supp. (No. 1) at 1, U.N. Doc A/3201 (1974). The Declaration called upon the international community to assist the depressed economies of the developing countries. It states that the Declaration shall be one of the most important bases of economic relations between all peoples and all nations. Id. at 5.


184. Id. ch. IV.

185. Id. ch. V.

186. Id. ch. IV, para 9.
dance with its sovereign judgment and internal legislation, to re-
move the obstacles to food production and provide proper incen-
tives to agricultural producers . . . . 187

The Declaration further directs developed countries to provide
developing countries with sustained technical and financial assistance
on favorable terms. This assistance should be free of conditions in-
consistent with the sovereignty of the receiving States. 188 It calls for
all countries to establish a world food security system, in part, by
earmarking stocks or funds for meeting international emergency
food requirements. 189 The Declaration concludes by affirming the in-
tent of the participating States to make full use of the United Na-
tions system in implementing the Declaration and other decisions
adopted by the Conference. These other resolutions concern objec-
tives and strategies of food production, priorities for agricultural and
rural development, fertilizers, policies to improve nutrition, scientific
water management, the balance between population and food supply,
world food security, and the establishment of an International Fund
for Agricultural Development. 190 The twenty-ninth session of the
General Assembly of the United Nations endorsed these resolutions
and, upon the Conference's recommendations, established a World
Food Council. 191

The Food and Agricultural Organization (FAO) is another
body of the United Nations working toward solving the world's food
problems. 192 The FAO and the United Nations jointly established
the World Food Programme (WFP) to provide food aid to develop-
ing countries. 193 At pledging conferences, Member States of the
United Nations pledge commodities, cash, and services to the WFP.
The members then apply this aid to emergency feeding operations
for drought relief and other development projects such as school and
hospital feeding, post-primary education, agricultural development,
land and water development, erosion control, and construction of
roads, community facilities, and other infrastructural works. 194 At
the 1984 pledging conference, the President of the Conference, Mr.
Anwarul Karim Chowdhury of Bangladesh, hailed the WFP as be-

187. Id. ch. IV.
188. Id. ch. IV, para 7.
189. Id. ch. IV, para. 12.
190. Id. ch. V.
192. See Constitution of the Food and Agriculture Organization of the United Nations,
1946 U.N.Y.B. 693. The Constitution of the FAO was adopted by the United Nations Conference
on Food and Agriculture at Hot Springs, Virginia on July 13, 1943 and entered into force
on October 16, 1945. Id.
1714 (1961).
ing one of the largest international assistance organizations and, more importantly, one of the most important sources of multilateral assistance. The Conference intended to raise 1.35 billion dollars in voluntary contributions for the regular resources of the Programme for the 1985-86 biennium and a minimum of 500,000 tons a year for the International Emergency Food Reserve.

In response to the current emergency situation in Africa, the Secretary-General of the United Nations established the Office for Emergency Operations in Africa (OEOA). This Office’s main function is to ensure that all elements of the United Nations system closely cooperate with the African countries affected, the specialized agencies of the United Nations, donor governments, and nongovernmental organizations in order to provide emergency assistance to the affected countries in both a timely and effective manner. The Conference on the Emergency Situation in Africa convened on March 11, 1985, informing the international community of the situations surrounding the drought and famine in twenty sub-Saharan African countries. To convey this information, the OEOA compiled summary reports on each country, assessed its need for food and determined any other relief items sought during 1985. The report based this determination on the total cost of assessed unmet needs against the aid already pledged. Donor governments were asked to confirm their previous pledges of assistance and requested to make new pledges to cover the 1.6 billion dollars of required funds.

A. Arguments For and Against the Right to Food

The immense international response to the current famine in Africa may be attributed to the apparent existence of a right to food. Indeed, spokesmen for the above-described United Nations’ bodies have referred to the right to be free from hunger. The Universal

---

196. Id. At the close of the conference, $658.3 million or 49% of the target and 475,000 tons of food grains were pledged. As a rule, pledges equal one-half of the target at the end of a conference, and there are always new pledges. Id. at 11.
198. Id. at 2.
199. The Conference was convened after a meeting on the Ethiopian situation held in New York on December 18, 1984. Id. at 12.
200. At the end of January 1985, the reports estimated Ethiopia’s total food requirements for 1985 to be 1,500,000 tons and the total cost of assessed unmet needs (including non-food meals) to be $379.3 million. Id. at 59, 60-62.
201. Id. at 5.
202. The President of the Conference urged everyone, in particular the donor countries, to consider carefully the current situation in the developing countries, particularly those in Africa, and to pledge contributions so that the targets of the Programme might be met and
Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights explicitly provide for the right to adequate food while the African Charter, the Declaration on the Eradication of Hunger and Malnutrition, and the other United Nations resolutions addressing food problems implicitly acknowledge the right to be free from hunger. One commentator asserts that the right to food is a primary right in the Third World. If a person is not provided sufficient food to live, his extensive list of civil, political, economic, social, and cultural human rights is rendered meaningless.

The reality, irrespective of good intentions, is that it is sometimes very difficult, if not impossible, for a nation to adequately feed all of its people. The causes of this inability are manifold. In Africa alone, the lack of rainfall, the population explosion, pressures from the super powers, and the self-serving policies of ruling elites have all culminated in the present emergency. While the African Charter implies a right to food, it is not yet in force, and the entire African Charter may be interpreted as having no binding legal effect. Given these limitations, commentators have argued that developing states cannot be expected to guarantee economic rights such as the right to adequate food. The documents mentioned above do not expressly articulate that the right to food imposes affirmative obligations upon the Party States to guarantee this right. Even if documents did impose affirmative obligations, nonsignatories would not be bound unless the right to food had become part of customary international law. As discussed earlier, the Economic, Social and Cultural Covenant directs each party to take steps to realize the rights in the Covenant "to the maximum of its available resources." The Universal Declaration of Human Rights was created as a nonbinding document, and although parts of it are now binding through customary international law, the right to adequate food has not been included in its list of universal human rights.

Conversely, certain civil and political rights can and should be
guaranteed in treaties and as part of customary international law because they do not involve financial outlay, commitment of resources, or other positive action on the part of governments. The right to be free from torture, for example, merely requires that the government refrain from committing torturous acts upon its citizens. Hence, both the perceived importance of the right and the government’s ability to honor the right without hardship characterize the rights that commonly are regarded as binding upon all states.

B. Ethiopians' Right to Food

At first glance, there appears to be no obligation imposed upon the Ethiopian government to feed its people. Ethiopia has signed no treaty specifically requiring it to provide its people with adequate food. The United Nations Charter, of which Ethiopia is a party, stresses the importance of human rights and fundamental freedoms but does not define either of these terms. Ethiopia would be legally bound to adequately feed its people if the right to food were considered a customary or universal human right. As the above discussion reveals, this is not the case. Although the FAO, WFP, OEOA, and other United Nations' bodies work diligently to feed the starving people of Ethiopia, it is not because these people have a universal right to be free from hunger. The aid organizations were established for humanitarian and possibly political purposes, but not for the fulfillment of any legal obligation to feed the world.

Nevertheless, as discussed in Part I, under the circumstances existing in Ethiopia, there is a compelling argument that the Ethiopian people have a right to be fed. The Ethiopian government is not being asked to use nonexistent resources to feed its people. A nation cannot be compelled to guarantee something that it is unable to deliver. Tons of food, however, are being delivered daily. The food sits on the docks and stockpiles in the capital while the regions that do not share the Dergue’s political views go hungry. The peoples from Eritrea, Tigre, and Wollo may not have a right to food, but they do have a right to life and a right to be free from torture.

For the Ethiopian people, the right to life and the right to be free from torture are not derived from a charter or covenant, but
from customary international law. Both of these rights do not require any observance or positive action on the part of the Ethiopian government. This action comes from the foreign aid workers. These workers aid the Ethiopians by distributing both food and supplies. Moreover, their efficient administration of this program facilitates increased coordination of such programs. Instead of allowing these aid workers to perform their missions with no obstructions, the Ethiopian government has tried to limit the number of aid workers and has prevented charitable groups from delivering food to rebel areas. Ethiopia has also embarked on a major resettlement program in which it subjects peasants from rebel areas to inhumane conditions, including starvation. Many resettlers would have lived but for the action of their government. By preventing their access to available food, the government has discriminatorily taken their right to life. The resettlement program, as it is presently being conducted, violates both the Ethiopian peoples' right to be free from torture and their right to life. Forcing people to endure unsanitary and cramped conditions for several weeks with little water or no food is as torturous as any beating, especially considering that 100,000 persons already have died during “resettlement.”

IV. Possible Solutions

The actions taken by the Ethiopian government could be examined under specific guidelines if the African Charter were ratified. The African Commission of Human Rights as provided for in the African Charter could consider complaints against Ethiopia brought by another state or by individuals. One commentator has suggested that an African Court of Human Rights be created; this court would have jurisdiction over all cases referred by the Commission. If such a court were created, perhaps the Ethiopian government would alter its practices so the Commission would not need to undertake public investigations.

217. See supra notes 136-53 and accompanying text.
218. See supra text accompanying notes 44-60.
219. This would not be the case if the government did not have the food at its disposal. No international instrument obligates a state to feed its people when food is unavailable. See supra text accompanying notes 207-209.
220. See supra note 48.
221. African Charter, supra note 101, arts. 49, 55. Traditionally, interstate complaint procedures have rarely been used. States treat the procedures very seriously because of fears that states will misuse the system to pursue political goals. Furthermore, states do not want to disrupt otherwise friendly relations with other states, and a state may fear a closer look at its own human rights record. Shelton, supra note 98, at 11.
223. Gittleman, supra note 112, at 683. The Ethiopian government's concern about its
Unfortunately, the African Charter is not yet in force. Only fourteen of the requisite twenty-six states have signed it.224 The slow ratification process that characterizes other human rights instruments makes it very unlikely that the African Charter will take effect in time to address the present emergency.225 Furthermore, there is no guarantee Ethiopia would be a signatory. Ethiopian representatives participated in drafting the African Charter; however, their input may be indicative of their overall willingness to sign a human rights agreement.226 Even if Ethiopia signs, the numerous clawback causes may prevent a meaningful implementation of the African Charter. Clawback clauses allow states to restrict rights to the extent permitted by domestic law or in the case of national emergency.227 Thus, even if the African Commission were to investigate the Ethiopian situation, it could then conclude that the government’s actions are legally within the boundaries of Ethiopian law.

The United Nations has several mechanisms to address the Ethiopian government’s actions. First, there is the self-reporting procedure that requires states to submit reports every three years regarding civil and political rights; economic, social, and cultural rights; and freedom of information.228 Nongovernmental organizations, acting as consultants, are also invited to submit their comments and observations on human rights situations.229 These comments along with the state reports are forwarded to the United Nations Human Rights Commission, the Commission on the Status of Women, and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.230 There is little reason to expect that reports submitted by Ethiopian governmental officials will highlight their discriminatory and torturous practices connected with the distribution of emergency aid.

Second, victims of a government’s practices, their friends and

---

224. See supra note 39, at 10, col. 2.
225. See supra note 112.
226. Ethiopia and Mozambique were instrumental in including provisions that list an individual’s obligation to the State and in excluding a prohibition of involuntary servitude. See supra note 118; see also Gittleman, supra note 112, at 685 n.97.
227. Derogation clauses protect an individual’s right more than clawback clauses. Under derogation clauses, a State may deviate from human rights standards only in limited circumstances such as war or other public emergencies. Furthermore, derogation clauses specify rights that are always nonderogable. Clawback clauses allow a State, in normal circumstances, to restrict rights according to local law. Gittleman, supra note 112, at 691-92.
228. ECOSOC Res. 1074C (XXXIX) of 28 July 1965; see also U.N. CHARTER art. 64 (providing for the presentation of state reports).
229. Id.
230. Shelton, supra note 98, at 8.
their attorneys can petition the United Nations Human Rights Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. These bodies examine information from individuals alleging violations of internationally recognized human rights. This system's effectiveness is limited by the fact that governmental officials, rather than independent experts, consider the allegations. Consequently, decisionmaking by the Human Rights Commission is hampered by political considerations. Politics have already entered the Ethiopian situation.

Third, the Human Rights Commission can establish an investigating committee or appoint a special rapporteur to evaluate human rights violations in a particular country. The United States government and the United States delegation to the annual meeting of the Human Rights Commission had plans to introduce resolutions calling for an ad hoc investigation in Ethiopia. Even if an investigation were launched, the Ethiopian government would have to cooperate fully to make the investigation effective. In the past, countries have refused to permit investigating groups to conduct on-site inspections. After being pressured for several years, the country may eventually cooperate or even change its policies, but, at this time, Ethiopia does not appear ready to do either.

Last, donor countries and organizations could attach political strings to their contributions. The Reagan Administration has utilized U.S. aid as an opportunity to articulate foreign policy arguments. It has urged Ethiopia to increase its own efforts to control famine, to reduce the pace of resettlement, and to evacuate the relief camps more humanely. Attaching strict conditions to the aid for Ethiopia is of limited efficacy, however, since the Ethiopian government could simply choose not to receive the aid. In that case, the Ethiopian people, not the government, would be harmed.

---

233. Other than the United Nations procedures, all systems allow independent experts rather than government officials to consider the communications. While the independent Sub-Commission on Prevention of Discrimination and Protection of Minorities has reported on some 20 cases, the governmental Human Rights Commission has taken action on only two. Id.
234. See supra text accompanying notes 65-68.
235. Shelton, supra note 98, at 15.
236. See supra notes 64-65 and accompanying text.
237. Shelton, supra note 98, at 15.
238. After three years of refusing to allow an Ad Hoc Working Group on Chile, established by the United Nations Human Rights Commission, to enter Chile, the Chilean government allowed a visit in 1978. Prior to the first on-site investigation, the government declared an amnesty involving the release from prison of a large number of individuals. Id.
239. See supra note 70.
241. Id.
V. Conclusion

Whether by virtue of the United Nations Charter or customary international law, the Ethiopian people have a human right to life and a human right to be free from torture. By depriving select ethnic groups of donated food and relief supplies, the Ethiopian government is violating the most fundamental human right of all — the right to life. Likewise, the inhumane manner in which the resettlement program is being conducted violates the right to be free from torture. Enforcement mechanisms exist, but they are unlikely to redress these violations. Further, each day that these mechanisms are not enforced, literally thousands die from starvation. Perhaps the only realistic way to help the Ethiopian people is through the power of political and economic pressures from governments worldwide. International law often works best through its informal channels. Lieutenant Colonel Mengistu may not care about universal human rights, but a world outcry against his practices may make him think twice. After all, the international collaboration of peoples and governments has already saved the lives of thousands of Ethiopians.

Janice J. Bole

242. Teson, supra note 137, at 885 n.82. It should be noted that international human rights procedures are no more than 30 years old, with most procedures less than 10 years old. Like the Fourteenth Amendment to the United States Constitution, their effectiveness at implementation may have no bearing on their effectiveness in another 30 years. Shelton, supra note 98, at 7.