LEGAL IMPLICATION OF SOVERIEGN DEBTS IN THIRD WORLD COUNTRIES: NIGERIA AS A CASE STUDY

Nwachukwu, Nkiruka Tasie[1]

Abstract

Most of the 3rd world countries upon creation had their affairs controlled by the colonial masters who colonised them. Upon independence, their sovereignty becomes so pronounced that other nations recognise their territorial integrity and political independence. The aftermath of this independence is their ability to elect leaders independent of outside interference and their ability to make decisions that affect their political, economic and social welfare. This article seeks to explore the legality of these sovereign debts incurred through transnational lending arrangement and will explore the benefits of borrowing from multinational organizations like world Bank and International Monetary Fund juxtaposition transnational lending arrangements with countries like China. To achieve this aim and objectives, doctrinal approach will be adopted. Recourse will be made to opinion of scholars and statutes. This article recommends the need to eliminate corruption which is the sole foundation of misappropriation through developing a system of accountability by the arms of government; need to explore and harness other sources of revenues comprising of biodiversity resources arising from traditional knowledge by creating a system of sustainable use and development and the need to invest in the tourist centre as a means of generating income.

Keywords: Sovereign debt, territorial integrity, sovereignty, biodiversity

1.0 Introduction

UN Charter recognises the sovereign equality of member states.[2] By this, it means that all states are equal under international law despite

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[1] LLB(IMSU), BL(ABUJA),LLM(RSU), PhD(RSU), Senior Associate Counsel at Atejimah & Steve, Port Harcourt, Nigeria. Email: nkudums@yahoo.com.

[2] UN Charter 1945, art 2(1).

inequality in areas like economy, technological advancement, industrialization and military power.[3] The UN Charter went further to state that member state is to refrain from any international relations that might threaten their territorial integrity and political independence.[4] The effect of sovereignty and equality of states are:[5]

a. Exclusive jurisdiction over a territory and the permanent population there;
b. Non-intervention in the domestic or national affairs of other states;
c. Ability to stand independent of any decisions made by a state.

Sovereignty is used to describe the legal competence which states have in general. In other words, the collection of rights held by a state in its capacity as an entity entitled to exercise control over its territory and its capacity to act on the international terrain representing that territory and its people.[6] The equality of state is said to have emerged largely from the natural law school of thought.[7] The natural law notion of equality of humans as a natural right was transferred into the concept of how States are expected to relate to each other. The juridical approach to state sovereignty was articulated by Hans Kelsen when he stated that;[8]

> The sovereignty of the states as subjects of international law is the legal authority of the states under the authority of international law. If sovereignty means supreme authority, the sovereignty of the states as subjects of international law cannot mean an absolutely but only a relatively supreme authority; the state's legal authority is supreme in so far as it is not subjected to the legal authority of any other state. By this, it means that the state is sovereign since it is subjected only to international law and not to the national law of any other state.

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[3] A Ansong, 'The Concept of Sovereign Equality of States in International Law' (2016) 2(1) *GIMPA Law Review*, 4.

[4] UN Charter(n2), art 2(4).

[5] Law Explorer, *'Sovereignty and Equality of States'* (2018) https://www.lawexplores.com accessed 23 March 2023.

[6] Law Explorer(n5).

[7] Ansong (n3).

[8] H Kelsen, *Peace Through Law* (New Jersey: The Lawbook Exchange Ltd 2000)34.

The summary of what Hans is saying is that a state's sovereignty under international law is that state's legal independence from other state. Most often sovereignty of nations gets threatened by actions embarked by the government through transnational lending arrangements.

2.0History of National Debts

Prior to the independence of nation in the sub- Saharan Africa, the economic affairs of those nations were controlled by the colonial masters and raw materials found in those regions were mostly channelled towards boosting the economic wealth of the colonial powers at play.

Sovereign debt as we have come to understand cannot be explored without taking into cognizance series of events in the past that prompted them into existence. Some of the notable ones are:[9]

a. France control of Tunisia's economy in 1869 as a result of their default in repaying their debt.
b. In 1919 post World War II, the Treaty of Versailles imposed a $32 billion debt on Germany.
c. French and Belgian to prompt the payment of the Versailles's debt occupy the Ruhir to ensure access to Germany's coals.
d. In 1924, US, UK and other European nations lent Germany money to help it establish a new currency and in exchange, took control over Germany's central bank,
e. 1929 gave rise to the "Great Depression" as a result of London and New York stock market crash in value.
f. 1n 1944, The Bretton wood institutions are established with a purpose to create a system that will regulate loans between countries.
g. In 1947, United States Marshall Plan is introduced to help rebuild Europe.

By the 2nd half of 1982, debt crisis arose around the world particularly in the developing countries as a result of several factors such as the development in world economy and ineffective economic policies that deride these countries from economic growth and development. To

[9]Debt Justice, *History of Debt*<https://www. debtjustice.org.uk> accessed 15 February 2024.

extend a form of helping hand, the International monetary Fund and the World Bank launched the Heavily Indebted Poor Countries Initiative to help ensure no poor country is weighed down by unmanageable debt burden.[10] To qualify for theinitiative, a country must:[11]

a. Have an unsustainable debt situation after the full application of traditional debt relief mechanism;
b. Be only eligible for highly concessional assistance from the international development and from the IMF's poverty reduction and growth Trust;
c. Have established a track record of refund and sound policies through IMF and WB supported program;
d. Have established a track record of reform and develops a poverty reduction strategy paper that involves civil society participation.

Nigeria's first loan was obtained from the Paris club of creditor. The Paris club of creditors are an informal group of official money lenders formed in 1956 with its secretariat in Paris.[12] After the discovery of oil in Olobiri in 1956, the resultant oil bloom in 1971-1981 introduced an era of huge borrowing in Nigeria to embark on major developments and reconstruction projects. The crashes of oil prices in 1982 worsen the debt situation Nigeria found itself in. Despite the return to civilian rule in 1999, the plight of the country pertaining to its debt's crisis was not alleviated till 2005 when the Paris club and Nigeria agreed on a US $18 Billion debt relief package.[13] The debt relief Nigeria sought with the Paris club entailed preconditions such as:[14]

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[10] IMF, '*Debt Relief Under the Heavily Indebted Poor Countries(HIPC) Initiative'*<https://www.imf.org>accessed 16 February 2024.

[11] The World Bank, *'Heavily Indebted Poor Countries Initiatives'*<https://www.worldbank.org>accessed 16 February 2024.

[12] US Department of State, '*The Paris Club*' <https://www.1997-2001.state.gov> accessed 16 February 2024.

[13] Debt Management Office, *'Nigeria's Debt Relief deal with the Paris Club'*<https://www.dmo.gov.ng>accessed 16 February 2024.

[14] N Okonjo-Iweala, *'Nigeria's Fight for Debt Relief: Tracing the Path'*<https://www. brookings.ed>accessed 16 February 2024.

a. Implementation of economic reforms under a formal IMF Program;
b. Regularization of debt service or establishment of a good debt service record;
c. Dealing with debt sustainability analysis and thresholds;
d. Eligibility for the World Bank's international Development Association only status at the World Bank. Despite its staggering debts, Nigeria was not eligible forHighly Indebted PoorCountries debt initiative but was classified by World Bank as being eligible to borrow from IDA and IBRD. This position unfortunately stems majorly from the country'slow creditworthiness and corruption.

3.0 The Concept of Sovereign Debt

This can best be defined as a central government debt. Another term used to define sovereign debt is government debt, public debt and national debt.[15] It is a debt that arises from transnational lending arrangement. This debt is issued by the government of an independent political entity usually in the form of securities such as bonds, bills or other debt securities.[16]

Sovereign debt maybe owned to foreigners and in special circumstances the country may owe citizens. It can be denominated in the domestic currency of a country or nation as well as the foreign ones.[17] Most often, sovereign debt comes in foreign currency unlike government debt that is issued in domestic currency.[18]Sovereigndebt has over the years become an integral way for government to finance investments in growth and development. This debt comes with a promissory to forgo an asset of the government in the event that a government fails to offset the loan taken. Sovereign debt comes in

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[15] Focus Economics, *'What is Public Debt?'* <https://www. focus-economics.com/economic-indicator/public debt>accessed 26 May 2023.

[16] J Chen, '*Sovereign Debt'* (2022)<https://www.investopedia.com>accessed 26 May 2023.

[17]*Ibid.*

[18] IMF, *'The IMF and Sovereign Debt'*<https://www.imf.org>accessed 26 May 2023.

foreign currency unlike government debt that is issued in domestic currency.[19]

Prior to granting loans to developing countries, investors have to concern themselves with the stability of the government seeking loans, how the government intends to repay the loan and the possibility of the government defaulting in their payment due to weak economy. Instances where a country inserted a waiver clause in its loan agreement with another nation, default on their part can lead to dire consequences.

4.0 Legality of Sovereign Debt

In recognising the sovereign equality of state, the UN Charter went a step further to enjoin parties to desist from relations that might threaten their political independence and territorial integrity.[20] There has been a shift in recent times from absolute immunity to restrictive immunity. In other words, it means that a nation can no longer hide under the defence of sovereign immunity with respect to their commercial transactions with foreign investors. Countries like United States and United Kingdom have codified restrictive immunity into their laws.[21] By adopting this action, their level of liability is controlled.

For UK, restrictive immunity was codified into Sovereign (or State) Immunity Act.[22] The Act states that the property of the states shall not be subject to any process for the enforcement of a judgement, or arbitration award or an action in rem for its arrest, detention or sale.[23] United States codified restrictive immunity into the legislation Foreign (State) Immunity Act 1976. Another legislation of importance that have an impact is the UN Convention on Jurisdictional Immunity of States and their Property 2004 which states that state immunity cannot be invoked for commercial transaction.

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[19] IMF (n18).

[20] UN Charter 1945, art. 2(4).

[21] E C Okeke, 'Overview of Sources of Law of State Immunity' (2018) *Oxford Academia Journal*, 41-66.

[22] (UK) State Immunity Act 1978.

[23] *Ibid*.

This raises questions about the legality of sovereign debt taking into consideration that each state is sovereign. Once a nation has waived their sovereign debt, it means that in the event of a breach, that state cannot turn around to claim their sovereign immunity. This was the case in *A Coy Ltd v. Republic of X*,[24] where the plaintiff alleged breach of agreement by republic who had waived their immunity in a contract. The Plaintiff obtained a Mareva Injunction against republic. Their defence minister tried to invoke immunity citing the State Immunity Act 1978 section 1 and 2; Diplomatic Privilege Act 1964 and it was rejected. The court held that the injunction could hold.

In *Texaco Oversea Petroleum Company v Government of the Libyan Arab Republic,* 2 US Company's Calasiastic and Texaco Company in 1955 sought to explore oil reserve in the Libya dessert. They signed a 14 deed of Concession. In 1974 and 75, the Libya Government nationalised the rights, interest and property granted to the companies. The company objected by appointing an arbitrator. The Libya government refused to appoint an arbitrator on the ground that it was a sovereign nation. The president of ICJ appointed an arbitrator who ruled that there was a breach of obligation.

These cases above illustrate the legality of sovereign debt and the liability that comes from it. Once a country waives its sovereignty on the altar of loan, it cannot turn back to cry wolf and attempt to hide its liability under the guise of its territorial integrity and sovereign.

5.0 Instances of Nigeria Sovereign Debts with Other Countries

Nigeria has been so enmeshed in debt from 5 countries that its external loan reports obtained from the Debt Management office indicate a rise by 206.96 % from $1,58 billion in June 2015 to $4.85 billion by September 2022.[25] Some stipulated amount of Nigeria sovereign debts are as follows; $1.39 billion from Exim bank of China; $140.25 million from *Agence Francaise de* Development; $43.10million from

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[24]*A Company Ltd v Republic of X* [1990] 2 Lloyd's Rep.520.

[25]S Olatunji and E Ikpoto, 'FG owes China, Japan, Germany, Two Others $4.85Billion*'Punch Newspaper* (19th January 2023)

Japan's International Cooperation Agency; $11.73million from Germany's *Kreditanstatl Fur Wiederaufbua*.[26]

Under the regime of President Major General Muhammed Buhari, Nigeria accumulated a debt of $14.79million in 2018.[27] China holds the record for the country that is Nigeria's largest bilateral creditor over the years. Despite efforts to use the loans to implement several infrastructural projects, the government has faced several backlashes by its citizens for not using the loan strictly for the intended purpose. The poor management of the loans have played a role towards the rise of the total external debt from $10.32billion on June 30th 2015 to $40.06billion as at June 30th 2022. The question arises of possibilities that may arise with respect to the Brettonwood institutions.

6.0 Consequences of Sovereign Debt

The UN Charter enjoins its members to refrain from any international relation that might threaten their political independence and territorial integrity.[28]

On May 11 2014, Chinese Exim bank and the government of Kenya signed 2 loan agreements worth about $3.604 billion for phase 1 of the standard Gauge Railway Project.[29]To guarantee repayment of its loan, the government of Kenya agreed to levy new tax on imported goods and deposit rail traffic revenues in an escrow account fund. Kenya Railway Corporation and the Kenyan Ports Authority were also to sign a take or pay agreement.[30] The Kenyan Government agreed to a sovereign immunity waiver in the loan agreement which stipulates that in the event that the government is unable to pay up, China Exim bank would seize their assets.

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[26]*Ibid.*

[27]*Ibid.*

[28]UN Charter 1945, art 2(4).

[29]AIDDATA, *'China Exim Bank Provides $2.003 Billion Buyer's Credit Loan for Phase 1 of Standard Gauge Railway Project'*<https://www china.aiddata. org>accessed 10 July 2023.

[30]Ibid.

In December 2017, the Sri Lankan Government lost its Hambantota Port to China for a lease period of 99 years after failure on their part to repay the billions of dollar in loan.[31] Default in their payment gave China control of the territory not far from the shores of rival India.In September 2018, Zambia lost Kenneth Kaunda International Airport to China over default in repayment of loan.[32]

With the advent of COVID and the crippling of world economy, most nations were hard hit and those who had taken loan were hard hit and those who had taken loan were faced with their inability to repay those loans. Uganda unfortunately was one of the countries hard hit as it had to surrender its international airport to China for failure to pay the loan it took in 2015.[33]

Uganda took a loan USD 207 million from the export-import bank of China. The terms of agreement between the parties were to the effect that the rights and obligations of both parties were to be governed by the laws of China. Inclusive of this agreement was the waive of any immunity to its assets including its sovereignty from any suits. Every effort by the president to negotiate the agreement was declined by China.[34]

In 2018, the Nigerian government waived its immunity in a loan agreement with China with respect to the National Information and Communication Technology(ICT) Infrastructure Backbone Phase II Project.[35]

From the above, it is obvious that there are countries that in a bid to secure loans, end up putting their sovereignty comprising of their political independence and territorial integrity at risk thereby going

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[31]African Stand, '*China to Take Over Kenya's Main Port over Unpaid Huge Chinese Loan'* (2020) <https://www.hellenicsshippingnews.com>accessed 14 March 2022.
[32]*Ibid.*
[33]K Yusuf, Uganda's Loss of International Airport to China' Punch Newspaper (Lagos, 6 December 2021)>
[34]Yusuf(n33).
[35]B Bankole and I Abidoye, 'Waiver of Soveriegn Immunity Clause in Finance Documentation' Business Day (27 August 2020).

against what the UN Charter stipulated. The facts remains that the debt if used appropriately can also have a positive effect.

7.0 Positive Effects of Debt

The assessment of a country's economic and political health rests on its debt to GDP ratio.[36] High debt to GDP ratio makes it less likely for a country to pay back its debt and as such raises the stake with respect to default. A statistics conducted by World Bank stipulates that a debt to GDP ratio exceeding 77% is an indication of a slowing economy.[37] Despite the misgivings associated with public debts, there exists some positive outcome depending on the country's economic policy approach. Some notable positive effects of public debt are:[38]

a. Boost Economic growth: Countries are able to meet their deficit through borrowing which in tune is used to fund developmental projects in the country. When the money is utilised properly, public debt can improve the standard of living of a country. Switzerland is a country that has utilised it's public debt 46% of GDP by 2019 well.[39]Switzerland has one of the most advanced and value-added economies in the world. World-class infrastructure allows the Swiss economy to boost trade, tourism and mobility. Despite being surrounded by mountains, it also enjoys an enviable road network, which allows it to benefit from its geographical position at the centre of Europe. Swiss economy spends 3% of GDP on research and development which has placed the country on the global map for its economic growth and development.[40]Swiss companies have the highest levels of investment in R&D with 6.6% of their net income[41]. Another country that has done extremely well with its public debt equivalent to 37% of its Gross Domestic Product is Sweden. The country is one of the wealthiest countries in Europe.

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[36]D Vaidya and Others, '*Soveriegn Debt'*< https://www. wallstreetmojo. com>accessed 16 February 2024.
[37]*Ibid.*
[38]*Ibid*.
[39]*Ibid*
[40]Vaidya and Others(n36).
[41]*Ibid.*

b. Provides Extra Funds: Funds secured through public debt can be used to generate extra fund. Typical example will be Norway that has shown that with healthy public finances and a public debt that stands at 41% of GDP per capita which is one of the highest in the world, the loans secured are used towards the developmental plans for its natural resources, its oil and natural gas reserve. This enables the country to generate extra funds directed at growing its economy. Another country that has done exceedingly well is Taiwan with a public debt below 33% GDP.[42] The country has been able to distinguish itself as one of the world leading countries in the manufacture of semiconductors and other electronic equipment by channelling its extra funds well.

8.0 IMF and World Bank Loans to Nigeria and its Sustainability

In July 1944, right before the war ended, 44 nations came together to discuss global issues at the UN Monetary and Financial Conference which became known as the "Brettonwoods Conference." The aftermath of this conference was the establishment of two institutions known as the International Monetary Fund and IBRD. These institutions were established to cure the aftermath and devastating effect of the war and to boost the economies with war torn areas. These institutions have contributed to the growth of international economic relations.

The IMF conducts Fiscal policies monitoring by recommending policies for growth and financial stability. Members are encouraged to adopt fiscal policies to promote stability, and reduce vulnerability to crisis. IMF also grants loans to member countries experiencing financial problems through adjustment problem. IMF through article 1(4) of its Article of Agreement stipulates conditions upon which IMF can grant loan to member nations These conditionality can range from stipulations by IMF for the removal of fuel subsidy, political reform, economic decisions among others. The implication of this article is that, the members who set up the institution and who ought to be treated as master now find themselves in an agency agreement. IMF

[42] *Ibid*

which ought to be the agent of member states now dictate to member states on steps needed to take so as to guarantee fund.

IBRD which was later renamed World Bank on the other hand provides low or zero-interest loans for reconstruction and development to nations so as to eradicate poverty. The implication of these steps is executed by them providing government loans for improving agricultural farming, water crisis, health, and education.
Unfortunately all through the years, Nigeria has become so enmeshed in debt with IMF and WB. Despite the stringent measures imposed by these institutions, it has not stopped Nigerian government from securing loan after loan at the detriment of economic growth and development of the nation.

The indebtedness incurred by the government has led the Central Bank of Nigeria to spend $13.1 billion in 11 years to settle foreign debt obligation.[43] The rundown of the servicing of debts are as follows:[44]$1.34 billion for debt servicing and payment in 2019, $606 million spent on service debt from July to October, $82.3 million spent on debt service in April, $148.57 and $69.83 million between November and December 2021. Before the past President Buhari left office, a loan of $800 million was approved by the House of Representatives Committee on Loans.[45]

The current government have begun to toll in the same step as it pertains to loans taken by previous government. Irrespective of whether the loan arises from sovereign debt or a loan gotten from financial institutions like IMF and World Bank, the facts remain that Nigeria is weighed down by so much debts and the ability of the nation to offset all these debts makes the future look gleam. The Global debt level from other countries, slow global trade and lockdown measures implemented during COVID pandemic has done little or nothing to help the uncertain future. The oil bunkering and

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[43]K Tokede, 'How Nigeria Serviced World Bank, IMF, Other Debts with $13.1 billion in 11 Years' *THISDAY LIVE*(14 March 2022).
[44]*Ibid*.
[45]O Ariemu, 'Buhari's $800m World Bank Loan Approved' *Daily Post* (19 May 2023)

theft, vandalization of the pipelines have not helped the Nigerian economy. There have been several assertions by experts in various fields on the hopelessness of the situation.

Another contributory factor is because the naira currency has lost its value. This unfortunate situation has increased Nigeria's debt service burden and worsened its ability to service debt. The continuous increase in the nation's debt stock possess some risk economically for the country as it imposes huge debt service on the economy already at risk because of low revenue from oil as a result of oil vandalization.

Idakolo Gbolade Chief Executive Officer of SD&D Capital Management believes that Nigeria might forfeit certain assets in the event of a loan default.[46] By this it is glaring for all to see that constant borrowing by the government imposes unending debt on generations unborn. This is the position since Nigeria is channelling these loans into channels that are not yielding income to pay back. It is only proper to have a plan in place when taking loan to ensure or encourage infrastructural developments that will ensure the loans are paid back.

Tella47 proposes the need for evaluation of all loan agreements between Nigeria and external sources.[48] This will enable us as a country to evaluate the necessity of obtaining loans and the possibility of executing projects without borrowing. After all accountability is a watch word needed to ensure the loans are used for the purpose intended. Taking all these into account, it has become necessary to evaluate result oriented steps to effect the much needed change.

9.0 Conclusion

Nigeria is so enmeshed in debt that it does not matter whether the loan is secured from organisation like IMF and WB or even through sovereign debt. The fact remains that these public debts have led to severe economic problems because of lack of proper management.

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[46] A Orijude and S Olatunji, 'Nigeria Risks Losing Assets to China Over $3.48 bn Loan' *Punch Newspaper*(28 November 2023)

[47] Sheriffdeen Tella a professor of Economics at Olabisi Onabanjo University Ogun state

[48] *Ibid*

This unfortunately has created a hitch and restrictions on economic growth and development. Despite the negativity associated with public debts, the facts remains that if properly managed, loans can guarantee extra funds for a country which can be channelled towards infrastructural development. This in turn can open the gate to economic growth. Development is part of what a country needs to progress but it should not be at the expense of that country's economic stability and growth. This unfortunately is what Nigerian government has not understood. To generate the much needed change, it is important to take some necessary steps so as generate positive impact to the economy.

10 Way Forward

1. Elimination of Corruption. At the root of misappropriation is corruption. Corruption can eat deep into a system or government to render it unproductive. The best way to eliminate corruption is to have a transparent accountability to the public on how the usage of the loans have been utilised. To effectively carry out this, it is incumbent on the arms of government to be diligent in carrying out its duties. Legislature which is the arm charge with making laws should do everything within its powers to limit frivolous loans taken for the purpose of selfish interest. A committee should be charged with ensuring that in the event that the legislature upholds a loan application by the president that measures are put in place to guarantee the repayment of such loans. The executive on the other hand should invest wisely by exploring the options of returns on their investment so it becomes easy to pay back the loans.

2. Need to explore and harness other source of revenue

Nigeria is a country richly blessed with biodiversity resources. The absence of a strong structural protection has exposed these biodiversity resources to unhindered access. Having a structural system that can guarantee sustainable use and development of these resources can generate income that can be channelled towards value creations of our products and innovations which in turn will attract the much need foreign investment. The resources made from these investments can be used to repay most of the loans taken. As such it is time for the

Nigerian government to channel the resources available through our traditional knowledge/ cultural expressions.

3. Investment in Infrastructures like refineries and boosting the tourist centres. Countries like Dubai and Paris have development their tourist centres and are making so much from tourism. In Nigeria, the tourist centres such as Ikogosi warm spring, Obudu Mountain Resort, Idanre Hill among others are not generating the much needed income because of insecurity. Its time for the Nigerian government to channel their energy toward boosting the tourist centres so as to generate the much needed income.

4. Diversification into other sectors like Agriculture: At a time like this when there is so much famine and hunger in the land. It is time to diversify into other sectors like agriculture. Nigeria as a giant of Africa can generate a enough food which apart from feeding its citizen can also be exported into other countries to generate income. The mono economy which this country has so much cherished and projected is no longer sustainable with the oil bunkering and insecurity that has plagued the nation. International Oil companies are slowly leaving the country, a point to buttress the fact that oil as a mono economy is no longer sustainable. Even with the diversification to agriculture, it is important to guarantee security for the farmers so as to avoid herdsmen- farmers clash. A fact which can be achieved by establishing ranches for rearing animals.