Abstract. This paper highlights the implications of the World Trade Organisation’s (WTO) Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) on the right to food in Africa. The paper highlights that modern agricultural biotechnology research and development is dominated by multinationals with distinct commercial interests while this industry is driven by intellectual property rights (IPRs). Due to the distinct and different needs of this industry and African countries, the right to food of African rural communities (and indeed other developing countries) is threatened. It shows that with a strengthened intellectual property rights regime under TRIPS, the individual’s right to food (and food security) is in jeopardy. The paper thus analyses the implications of TRIPS on the right to food, and in this regard, a study of other relevant international and regional agreements is made to assess the impact of TRIPS. Finally, Africa’s compliance with its international obligations under TRIPS is reviewed and assessed in light of the aforementioned implications.

1. HUMAN RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

1.1. Concept of Intellectual Property

Intellectual property refers to creations of the human mind, the human ‘intellect’. Therefore, intellectual property rights are those rights derived from human intellectual creativity. These rights protect the interests of the inventors by giving them property rights over their creativity or inventions. IP law is today divided into two branches: industrial property law and copyrights law. There are different forms of industrial property rights, e.g. plant breeder’s rights, patents, petty patents/utility models, geographical indications, trademarks, undisclosed information/trade secrets, industrial designs. Each industrial property right has different requirements and grants different rights.

Industrial property rights were originally developed as a way to reward creativity and promote innovation in the 19th century during the Industrial
Revolution and were thus limited to industrial or mechanical inventions. The form and scope of industrial property rights has since expanded, especially in the recent past with the substantial developments in science and technology, to now include ‘inventions’ over life forms.

The expression ‘copyright’ refers to the act of making copies of the creator's work. Copies may only be made by the author or with his authorisation. The intent of copyright law is to protect a creator’s work from being copied without his express permission. Copyright protection extends to the ‘form’ of the art and not the ‘ideas’ expressed, i.e. it protects only the form of expression of ideas, not the ideas themselves.

In general, property rights by their very nature vest exclusive legal rights to their owners; i.e. the owner has the right to use his property as he wishes while others can only lawfully use his property with his authorisation. In the same way, intellectual property rights grant the creator or inventor exclusive legal rights over his creation or invention.

Intellectual property rights are granted in order to stimulate human intellectual creativity for the benefit of the public. They also promote international trade in goods and services.

1.2. Historical Analysis of Intellectual Property Protection

The different subject areas of intellectual property rights originate in different places and at different times. Some researchers state that the origins of intellectual property date back to Aristotle in the fourth century BC or to ninth century China. However, the Venetians are credited with the first properly developed patent law in 1474 and their model spread to other European states. Modern copyright law began in England with the 1709 Statute of Anne.

At inception, intellectual property protection was dominated by the principle of territoriality; i.e. intellectual property rights did not extend beyond the territory of the sovereign or state, which had granted the rights in the first place. This meant that an intellectual property law passed by country A did not apply in country B. This principle showed the interrelationship between state sovereignty, property rights and territory. As a result, intellectual property rights owners faced problems due to the free copying of their creations in other countries. This inevitably led to the expansion of intellectual property protection to two distinct periods, i.e. the international period and the global period.

3 Chapman, supra note 1.
4 Drahos, supra note 2, p. 352.