

## LEGAL FRAMEWORKS ON HERDERS-FARMERS CRISIS IN NIGERIA \*

### ABSTRACT

*The southward migration of herders in Nigeria is causing violent clashes with local farmers. To prevent the crisis from escalating, the government enacted some legal frameworks which have not been able to arrest the crisis. The objective of this paper is appraising the extant legal frameworks against the herders – farmers crisis with a view to determining their effectiveness or otherwise and suggesting the way-forward. This paper employs the non-doctrinal library-based research method. The findings of this paper include the fact that the legal frameworks are too weak to arrest the menace. A few of the legal frameworks are tribalistic, biased, unfair and /or poorly executed. This paper therefore suggests appropriate review of the statutes and policies. This paper concludes that effective implementation of reviewed version of the legal frameworks will arrest the crisis.*

**Key words: Legal framework, Herder, Crisis, Open grazing, Ranch**

### 1.1 INTRODUCTION

Pervasion of herders-farmers crisis has become a serious issue confronting Nigeria and has escalated in the most recent time assuming a more sophisticated dimension. The government of Nigeria has made concerted efforts in the forms of enacting laws and adopting military approach to address the issue but rather than abetting, the crisis continues to be in the increase. It can be deduced that, as a problem, the existing legal frameworks for fighting the crisis in Nigeria are inefficient and ineffective.

This study, therefore, investigates the herders-farmers crisis in Nigeria as well as the strategies put in place by the legal frameworks to address the issues. The study explores the possibility of reviewing the laws and policies addressing the crisis in Nigeria. The objectives of this study are to examine the nature, development, causes and implications of the crisis in Nigeria and to critically examine the existing legal frameworks for the fight against the crisis in Nigeria and their adequacy or otherwise.

The study applies non-doctrinal research method, specifically the library-based method. Data will be gathered from both primary and secondary sources of law. The primary sources include statutes such as domestic legislation, (e.g. Open Grazing

Prohibition of Cattle and Other Ruminants Grazing Act, 2016; Rural Grazing (RUGA) Policy 2019; and some states' laws addressing the crisis in Nigeria. The secondary sources include relevant information in textbooks, encyclopaedia, journal articles, case reports, historical records, government documents and media accounts. Internet resources, as a useful tool of modern research, is utilized for analysing and up-dating the materials.

## **2.0 CONCEPT AND SCOPE OF HERDERS-FARMERS CRISIS IN NIGERIA**

A major insecurity challenge facing Nigeria currently is the herders-farmers crisis. Several conflicts have arisen between the herders and the farmers in several parts of the country, killing people and rendering others homeless. A study by Ofuoku and Isife traced the historical background of the clashes. It revealed that there have been violent disputes between nomadic animal herders and farmers in Nigeria for many years over the use of land and water, as well as grazing routes and the conditions have been exacerbated by climate change and the spread of the Sahara Desert, as herders move further south looking for pasture. Both farmers and herders always need water for sustaining their work. Consequently, therefore, scarcity of water which technically has been responsible for insufficient grazing of land has led to violent clashes among farmers and herders.<sup>1</sup>

Though the Fulani herdsmen have been historically embroiled in altercation with farmers, but in recent times, the nature and character of this interaction has metamorphosed and degenerated into full blown militancy with the former acquiring and welding sophisticated weapons to terrorize the sedentary crop farmers starting from the north central zone of the Nigeria and now, transcended to southern parts of Nigeria.

A study by Okolie and Nnamani revealed that the conflicts between the Fulani herdsmen and crops farmers in Benue, Plateau, Nasarawa, Kogi States and other southern parts of Nigeria were exacerbated by factors such as destruction of crops, contamination of the host's stream by cattle, sexual harassment, indiscriminate defecation on the roads, cattle rustling, arms running and among many others.<sup>2</sup> Aligning with this, Okoli and Atelhe argues that the historical development of Fulani

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<sup>1</sup> A. U. Ofuoku and B. I. Isife, 'Causes, effects and resolutions of farmer – nomadic cattle herdsmen conflict in Delta State' [2009] *Nigeria International Journal of Sociology and Anthropology* 1 (2) 47.

<sup>2</sup> A. Okolie and K. E. Nnamani, 'Fulani herdsmen militancy, environmental security and sustainability of livelihood in Nigeria' [2017] *Studies in Politics and Society* 5(1) 93.

herdsmen militancy show that the phenomenon has progressively transmitted from a rudimentary communal skirmishes to an organized armed confrontation while its contemporary manifestations has further transformed itself into a form of guerrilla warfare full of immense brutal sophistication and efficiency.<sup>3</sup>

Counting the havoc of the clashes, Osimen, in his study, posited that aside the losses of lives, the Fulani herdsmen have serially raped both young and old women in their host communities<sup>4</sup>, exposing them to health risk and most times, confining the victims to perpetual regret and trauma. This development perhaps has contributed in deepening gender-based violence in Nigeria. Some writers have also blamed herders for kidnapping people and demanding a ransom.<sup>5</sup> The tension has led to some state governors banning grazing on open land, and thus creating friction with the federal government. In 2019, federal authorities launched a 10-year National Livestock Transformation Plan to curtail the movement of herders and boost livestock production in an attempt to stop the conflict. But critics say a lack of political leadership, expertise and funding, plus delays are derailing the project.<sup>6</sup>

In another scholarly work, Ikhilae posited that in 2015, the Sydney, Australia-based Institute for Economics and Peace (IEP), in its Global Terrorism Index (GTI), labelled Fulani herdsmen as the fourth deadliest global terror organization after Book Haram, the Islamic State in Syria and Iraq (ISIS) and al-Shabab in Somalia.<sup>7</sup> Another global body, the International Crisis Group (ICG), in its September 2017 report, noted that violent conflicts between nomadic herders from northern Nigeria and sedentary agrarian communities in the central and southern zones are threatening the country's security and stability.<sup>8</sup>

The armed herdsmen, who usually lead their flock in search of pasture because of the rich vegetation in the Ketu-speaking villages of Ogun State, have also been fingered in the destruction of cash crops belonging to natives, attacks, killing and raping of women who are mostly natives of the communities.<sup>9</sup> On 10 January 2020, herders

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<sup>3</sup> A. C. Okoli and G. A. Atelhe, 'Nomads against natives: A political ecology of herder/farmer conflicts in Nasarawa State, Nigeria' [2014] *American International Journal of Contemporary Research* 4(2) 76.

<sup>4</sup> G. U. Osimen and others, 'Fulani herdsmen and rural communities/farmers conflict in Nigeria' [2017] *IJRDO – Journal of Social Science and Humanities Research* 2(6) 32.

<sup>5</sup> I. Khalid, 'Nigeria's Boko Haram militants: Six reasons they have not been defeated' *BBC News* (Abuja, 17 May 2021).

<sup>6</sup> *Ibid.*

<sup>7</sup> E. Ikhilae, 'Open Grazing: Cattle rights vs human rights?' *The Nation* (Nigeria, 25 May 2021) see [thenationonline.net](http://thenationonline.net) accessed on 18 December 2021.

<sup>8</sup> *ibid*

<sup>9</sup> *ibid*

reportedly hacked 70-year-old, Pa Sola Ilo to death, and chopped off his son, Abidemi's hand in broad daylight at Agbon village, Ogun State. Worried by the incident, villagers from the 29 communities staged a rally in protest and declared the herders' persona non grata. One person was reportedly killed on Tuesday 5 May 2020 when suspected herders abducted a policewoman and injured two others in separate attacks in Ayetoro area of Yewa North Local Government of Ogun State. The herders who had laid siege to the road were said to have shot dead the driver of a commercial bus commuting from Abeokuta to Ayetoro, while the unidentified female police officer attached to the Police Area Command in Ayetoro was abducted and the car she drove was abandoned at the roadside.<sup>10</sup>

Edokwe provides illustrative and narrative exposition on the case of 'Oko Oloyun'<sup>11</sup> who was killed during a visit to his country house.<sup>12</sup> He was killed at Igbo Ora, Oyo State in January, 2020. The Government said they would unravel the facts behind his killing but the matter has not been unravelled. Dr Fatai Aborode<sup>13</sup> returned from overseas and cultivated a farmland in Igangan. He employed about 300 people. When his farm was plundered by cattle, he lodged a complaint with the Seriki Fulani. Few days after, killer herders kidnapped him, tied him and butchered him. Nothing was done and no arrest was made. His killers insisted on getting money before releasing his corpse. After that, they also killed a woman, an Alhaja, a native of Imeko who brought the ransom. Many like that had been killed, including the son to Oba Abdulazeez Adeoye of Igangan.<sup>14</sup>

The Arewa Consultative Forum (ACF) asked Governors of the South West and the Federal Government, to stop the attacks on Fulani communities in the region. The ACF warned that the attacks if not immediately stopped, may lead to counterattacks in the North and even a repeat of the 1967 civil war.<sup>15</sup> On 11 February 2021, Governor Bala Mohammed of Bauchi State said that Fulani herders carry AK-47 for self-defence because cattle rustlers are attacking them due to government's failure.<sup>16</sup> Governor Mohammed said on a national television that a Fulani man is a

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<sup>10</sup>A. Hadiyatullahi, 'Text of Press Conference Delivered by Sheikh Abdur'rasheed Hadiyatullahi Vice President Supreme Council for Sharia in Nigeria And Co-Ordinator Concerned Yoruba Muslims Scholars In Nigeria', (2021).

<sup>11</sup> He was a herbal medicine practitioner.

<sup>12</sup> B. Edokwe, 'Why I'm angry with killer herdsmen – Sunday Igboho' *BarristerNG* (24 January 2021).

<sup>13</sup> A native of Igangan, Oyo State.

<sup>14</sup> Ibid.

<sup>15</sup> B. Edokwe, 'Attacks on Fulani in South-West may trigger 2nd civil war, ACF warns' (*BarristerNG* 23 January 2021).

<sup>16</sup> B. Edokwe, 'What Law Permits Herders to Carry AK-47? Governor Ortom Fires Back at Bala Muhammed' (*BarristerNG* 13 February 2021).

global citizen and therefore does not need a visa to come to Nigeria and that the forests belong to herdsmen.<sup>17</sup> One wonders if he knows a thing or two about the horrendous activities of herders in parts of the country to warrant the emotional defence and justification that he has repeatedly put forward in their favour. He also accused Governor Samuel Ortom of Benue State of worsening the herder-farmer crisis by criminalizing the entire Fulani across the country.<sup>18</sup>

Indigenes of Ogbaru community in Anambra State also ejected herdsmen and their cattle from the entire local government area, over destruction of farms.<sup>19</sup> The Indigenous People of Biafra (IPOB) in October, 2021, banned the rearing and consumption of cows in the South-East region, and that only local breed would henceforth be consumed and used for all ceremonies in Biafraland. The ban followed constant attacks on their people by suspected Fulani herders, resulting in killing, raping of their women and other forms of assaults.<sup>20</sup>

Open grazing as a concept means that herders will be free to trespass upon land anywhere and at any time, with their cattle, whether or not that may lead to destruction of crops on farmlands is immaterial.<sup>21</sup> Open grazing would have been appropriate at the time when human and animal populations were small with many virgin grazing lands,<sup>22</sup> but now, over the decades, both human and animal populations of have quadrupled, with many fallow lands now being inhabited. Weather patterns have also changed due to climate change and global warming. As a result, experts are of the view that changing this primitive culture of open grazing system in Nigeria has become inevitable imperative.<sup>23</sup>

Open grazing type of pasturing is now obsolete and outdated in many countries of the world, however, Fulani herdsmen in Nigeria use the open grazing method indiscriminately despite its attendant negative consequences.<sup>24</sup> Fulani herdsmen are used to living a nomadic lifestyle as opposed to settling down in modern ranches. The

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> B. Edokwe, 'Anti Grazing Law: Anambra community ejects herdsmen, cattle over destruction of farms' (BarristerNG27 November2021).

<sup>20</sup> B. Edokwe, 'IPOB Bans Rearing, Consumption of Cows in South-East Nigeria' (BarristerNG10 October2021).

<sup>21</sup> Ibid

<sup>22</sup> Ibid.

<sup>23</sup> C. J. Igbokwe-Ibeto, I. L. Nnaji and A. Mac-Ozigbo, 'Open Grazing, Food Insecurity and Sustainable Human Development in Nigeria: A Horn of Dilemma' [2021] *KIU Journal of Social Sciences* Kampala International University 7(1) 63.

<sup>24</sup> E. O. Olugbenga, 'Peace by Pieces: Politics of Herdsmen Attack, Grazing Regulation Law 2016' [2017] *Advances in Social Sciences Research Journal* 4(5) 79.

nomadic lifestyle encourages them to continue operating open grazing method as opposed to the modern ranching method.<sup>25</sup>

The Middle Belt region of Nigeria is considered the “food basket” of the country. The fertile soil and temperate climate offer a favourable environment for farmers and herders to thrive. These two communities have been farming and rearing cattle in Nigeria for centuries, benefiting from mutually beneficial relationships – farmers benefit from cattle manure to fertilize their crops and herders benefit from crop refuse to nutritionally feed their herds.<sup>26</sup> This symbiotic practice tied the wellbeing of the farmer to the wellbeing of the herder and allowed for most disputes between the two groups to be resolved non-violently, through traditional mediation mechanisms.<sup>27</sup>

### **3.1 Rural Grazing Area (RUGA) Policy**

As a measure to address farmers-herders conflict, the Federal Government, in July 2019, established the Rural Grazing Area (RUGA) policy, which allows the creation of settlements for herders in any part of the country. The policy, which did not enjoy popular support, was later challenged by the Benue State Government before the Federal High Court, Makurdi. Delivering judgment on February 4, 2020, in the case filed in the name of the Attorney-General of Benue State against the AGF, Justice Mobolaji Olajuwon held that any move by the government to acquire land for RUGA or cattle colony in Benue State, without the permission of the state government, was null and void.<sup>28</sup>

Justice Olajuwon, who cited many constitutional provisions such as sections 5(6), 9(2), 20, 44(1), 58 and 315(5) and 6(b), and sections 1, 2, 5, 6, 26, 28 and 49 of the *Land Use Act*, as well as sections 4, 5, 6, 7 and 19(c) of the *Benue State Open Grazing Prohibition and Ranches Establishment Law of 2017*, granted an order nullifying every action of the government to establish RUGA or cattle colony.

It was argued on behalf of the Benue State Government that the Attorney-General of the Federation misdirected himself to have sought to equate animal rights with human rights, arguing that open grazing of cattle has become hazardous to peaceful co-existence across the length and breadth of the country that there should be no legal squabbles on whether or not the practice should be scrapped because it belongs to a

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<sup>25</sup> C. J. Igbokwe-Ibeto, I. L. Nnaji and A. Mac-Ozigbo, Op cit.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> FHC/MKD/CS/59/19.

by-gone era. Moreover, a governor of a state remains the Chief Executive and Chief Security Officer of that state.<sup>29</sup>

In addition, by the provision of the Land Use Act, 1978, the management and control of all land in the territory of each state is vested in the governor of the state.<sup>30</sup> The governor is given the power to hold such land in trust and administered for the use and common benefit of all Nigerians, thereby making the governor the ultimate decider of the usage of the land in his state. The power to approve the physical planning of the land in every state was the exclusive responsibility of state governments, and the forest reserves owned by state governments are equally regulated by laws enacted by the States' Houses of Assembly.

Under the laws, it is a criminal offence to occupy any part of the reserve area without authorization of the state government by the combined effect of the Land Use Act, Regional Planning Laws and Forest Laws applicable in all the states of the federation.<sup>31</sup> Thus, pursuant to such laws the Federal Government has directed state governments to take charge of all the forests in all states. It is, therefore, grossly misleading to argue that herders have unquestionable power to graze their cattle on any land without the authorization of the appropriate authorities.

This is without prejudice to the citizens' fundamental right to freedom of movement and right to own and acquire land in any part of Nigeria by virtue of the Nigerian Constitution<sup>32</sup>. The rights do not guarantee herders the liberty to acquire land for cattle business under the Land Use Act.

Arguably, the continuous insecurity which the RUGA seeks to address can still be accommodated in Nigeria if herders can embrace the modern animal husbandry as practiced in some African countries such as Botswana, South Africa, Mozambique, Kenya and Ethiopia. They have effectively adopted ranching to end clashes between herders and farmers. In those countries, herders live on the ranches with family members including their children and wards who attend schools in the neighbourhood.<sup>33</sup>

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<sup>29</sup> by the provisions of CFRN 1999 ss 176 (1) and 214-216.

<sup>30</sup> Land Use Act 1978 s 1.

<sup>31</sup> See Land Use Act 1978 ss 1, 28, 34, 49 and 59; Urban and Regional Planning and Development Law of Ekiti State 2011 ss 2, 3 and 4; Forest Law of Benue State ss 15, 16, 17, 22, 38 and 39.

<sup>32</sup> CFRN 1999 ss 41 and 43.

<sup>33</sup> E. Ikhilae, 'Open Grazing: Cattle Rights vs Human Rights?' *The Nation* (Nigeria, 25 May 2021) <thenationonline.net> accessed 18 December 2021.

In another perspective, government can take the advantage of Section 45 of the 1999 Constitution to override the right to free movement in Section 42 of the Constitution which is the basis of the herders' argument in support of grazing their animals because all the fundamental rights guaranteed by the 1999 Constitution are not absolute:

*Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:*

- a. In the interest of defence, public safety, public order, public morality or public health, or*
- b. For the purpose of protecting the rights and freedom of others.<sup>34</sup>*

Therefore, the decision of the southern states to enact a law to ban open grazing in the interests of public safety within the regions or for the purpose of protecting the rights and freedoms of their people, particularly farmers, majority of whom are the victims of incessant attacks and kidnapping by the herdsmen is constitutional. Consequently, individual rights to movement cannot be claimed to be violated by the various states' anti-grazing laws because the laws were enacted in the interest of public safety, public order, public defence and public morality.

### **3.2 Anti-Open Grazing Laws and Policies**

Some states in Nigeria have enacted laws banning open grazing in their state notwithstanding the AGF's position on the constitutionality of such action. Similarly, the AGF has not taken steps to challenge in the court the constitutionality of the action of enacting the laws against open grazing by states such as Ekiti, Osun, Oyo, Taraba, Benue, Bayelsa, Abia and Ondo.

Ekiti State enacted the *Prohibition of Cattle and other Ruminants Grazing Law 2016*; Taraba, the *Anti-Open Grazing Prohibition and Ranches Establishment Law 2017*, Benue the *Open Grazing Prohibition and Ranches Establishment Law 2017*. Also, Bayelsa State has the *Livestock Breeding and Marketing Regulation Law 2021*; Abia State has worked on the *Control of Nomadic Cattle Rearing and Prohibition of Grazing Routes/Reserve Law*, while in Ondo, there exists Section 42(e) and (g) of the *Ondo State Forestry Law*, which prohibit cattle trespassing and cattle pasteurization

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<sup>34</sup>CFRN 1999 s 45.

without the authority in writing of a prescribed government official. Other states are currently working on similar laws.

In order to get rid of the cause of the farmers-herders crisis, the Federal Government, as far back as 2018, indicated its support for the abolition of open grazing when the National Executive Council (NEC) on April 26, 2018, accepted the recommendation of its sub-committee<sup>35</sup> that open grazing of cattle be banned across the country and opted for the establishment of ranches.<sup>36</sup>

Members of the Northern Governors' Forum, at a virtual meeting held on 9 February 2021, chaired by their Chairman and Governor of Plateau State, Simon Lalong, were unanimous that the 'current system of herding conducted mainly through open grazing is no longer sustainable because of growing urbanization and the population of the country.' They agreed on other methods like ranching and urged other governors to consider their position.<sup>37</sup> As if taking a cue from the northern governors, all the 36 governors, at the virtual meeting of the Nigeria Governors' Forum (NGF) held on 11 February 2021 unanimously agreed to end nomadic and pastoral cattle wandering and to develop modern systems of animal husbandry that would replace open, night and underage grazing in the country. They identified ranching as an alternative to open grazing.<sup>38</sup>

In the first half of 2021, the governors of the 17 southern states decided to ban open grazing of cattle and other animals in their states. The governors' decision was a measure to curb the herders-farmers crisis. Reacting to the development, Abubakar Malami, SAN, the Attorney-General of the Federation (AGF), queried the legality of the decision, arguing that it violated the constitutionally guaranteed right to freedom of movement, adding that it "does not hold water" within the context of human rights as enshrined in the constitution.<sup>39</sup> The AGF's comments raised the question of the constitutionality or otherwise of the policy. In a suit on open cattle grazing,<sup>40</sup> Hon Justice Adewale Thompson held:

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<sup>35</sup> President Muhammadu Buhari, in February 2018, constituted the sub-committee on herdsman/farmers clashes, led by Ebonyi State Governor Dave Umahi. The committee was, among others, mandated to unravel the causes of herdsman/farmers clashes and to dialogue with relevant stakeholders on ways to end the killings of innocent citizens.

<sup>36</sup> E. Ikhilae Op cit.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> AB/26/66 held on 17th April 1969 at Abeokuta Division of the High Court (unreported suit) quoted in E Ikhilae, Op cit.

*I do not accept the contention of Defendants that a custom exists which imposes an obligation on the owner of farm to fence his farm whilst the owner of cattle allows his cattle to wander like pests and cause damage. Such a custom if it exists, is unreasonable and I hold that it is repugnant to natural justice, equity and good conscience and therefore unenforceable...in that it is highly unreasonable to impose the burden of fencing a farm on the farmer without the corresponding obligation on the cattle owner to fence in his cattle.” Sequence to that I banned open grazing for it is inimical to peace and tranquility and the cattle owners must fence or ranch their animals for peace to reign in these communities.<sup>41</sup>*

More recently, Justice Ijeoma Ojukwu of the Federal High Court Abuja on 20 May 2021 upheld the validity of the anti-open grazing law enacted by Benue State in a judgment on a suit by Mathew Tile Nyiutsa, in which he sought to compel President Buhari to instruct security agencies in the country to enforce the Benue State’s law.<sup>42</sup> Justice Ojukwu was of the opinion that the Benue anti-grazing law, having been validly made by the state’s House of Assembly, and having not been invalidated by any competent court, remains a valid law, which is enforceable by the state, using all legitimate law enforcement agencies. Ojukwu held:

*There is no contest that the Open Grazing Prohibition and Ranching Establishment Law 2017 was validly passed by the Benue State House of Assembly and that the law is still in force, especially as the law has not been struck down by any court of law or court of competent jurisdiction.*

*It behooves the people of Benue State and law enforcement agencies. Task force, etc, to employ all legitimate means to implement that law. It is not the duty of the defendant on record. It is only where there is an infraction of the provision of the law that the court may be invited to impose the prescribed sanctions. In so far as the President has not issued any Executive Order, which runs contrary to the said law, this court cannot hold him accountable.<sup>43</sup>*

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<sup>41</sup> Ibid.

<sup>42</sup> *Mathew Nyiutsa v Federal Government of Nigeria* FHC/ABJ/CS/499/18 (unreported suit) quoted in NAN, ‘Court Rejects Suit Seeking to Compel Buhari to Enforce Anti-Open Grazing Law’ *The Guardian* (Nigeria, 20 May 2021) <<https://guardian.ng/news/>> accessed 7 October 2022.

<sup>43</sup> Ibid.

Without any law or judicial pronouncement contradicting the above position of the Federal High Court, the laws of and declaration by the Southern State governors remain valid, in particular as it relates to the protection of peace, security, lives and property as well as private homes of southerners is in line with the stipulation of the Nigeria Constitution 1999<sup>44</sup>. They are also for the purpose of protecting the rights and freedom of other persons.

The decision of the southern governors does not in actuality impede the rights of herders to own cattle. It merely limits their ability to openly graze on lands that are not theirs in the first place and inflict misery on the indigenous owners.<sup>45</sup> The ban will also ignite more anti-grazing laws in other states in Nigeria. Arguably, banning open grazing is another paradigm of putting a stop to one of the greatest sources of insurgency and terrorist convergence in Nigeria.

### **3.3 Ondo State Governor Akeredolu's 7-Day Quit Order on Herdsmen of 2021**

In January 2021, Governor Rotimi Akeredolu of Ondo State issued a seven-day quit order on herders from Ondo State.<sup>46</sup> This was as a result of the high rate of criminalities which come in form of kidnappings, raping of women and killings allegedly being committed by criminals hiding in forests across Ondo State.<sup>47</sup> In order to show that he meant business, the governor of Ondo, ordered massive recruitment into the state chapter of the Western Nigeria Security Network, Amotekun.

There were different reactions to the governor's directive. Garba Shehu, presidential spokesman, reacted that the governor could not unilaterally oust thousands of herders "who have lived all their lives in the state". Afenifere, Yoruba socio-political group, said Shehu's response showed that President Muhammadu Buhari's government prioritized Fulani interests above those of other ethnic groups. The Northern Elders' Forum (NEF) told herders to disregard the governor's directive.<sup>48</sup> The National President of Miyetti Allah Kautal Hore, Bello Abdullahi Bodejo, in response to the quit notice, declared that all land in Nigeria belongs to the Fulani; and that no power

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<sup>44</sup> CFRN 1999 s 37.

<sup>45</sup> *Mathew Nyiutsa v Federal Government of Nigeria* (unreported suit) Op cit.

<sup>46</sup> Edokwe, B. Akeredolu orders massive recruitment into Amotekun as quit notice to herders draws nearer. BarristerNG on January, 23, 2021.

<sup>47</sup> Edokwe, B. (2021). Fulani own all lands in Nigeria – Miyetti Allah reveals plan against Gov. Akeredolu. BarristerNG on January, 24, 2021.

<sup>48</sup> Edokwe B. (2021). Akeredolu orders massive recruitment into Amotekun as quit notice to herders draws nearer. Barrister NG on January, 23, 2021.

can remove Fulani herdsmen from any forest in any state. Bodejo also revealed that the herdsmen had concluded plans to drag Governor Akeredolu to court over the eviction notice. Bodejo said:

*All the lands in this country belong to the Fulani, but we don't have any business to do with land if it doesn't have areas for grazing; if the land doesn't have cow food, we won't have any business with it. We don't sell land, we don't farm. What we consider is the areas that have cow food. If the place is good for grazing, we don't need anybody's permission to go there. Fulani have been in the forests he is talking about even before he [Gov. Akeredolu] was born; they have been there for over 250 years.<sup>49</sup>*

Some Nigerians were in support of the Ondo State Government's blanket order given to herders to quit Ondo forest reserves within 7 days.<sup>50</sup> Illegality should not be employed because two wrong things cannot make a right. Nigerians should not be legally stopped from doing their trade in any part of Nigeria, if the trade is done legitimately and in accordance with extant laws.

The *Land Use Act of 1978* (LUA) provides answers to the question who controls land in Nigeria. The Act provides that 'all land comprised in the territory of each state in the Federation are hereby vested in the Governor of that State such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act'.<sup>51</sup> The Act states 'all Nigerians', not only indigenes of a state. The case of *Nzenwata & Ors v Nzenwata*<sup>52</sup> gives a detailed explanation of the control and management of land under the Land Use Act, 1978, in the following words:

*By the provisions of Sections 1 and 2 of the Land Use Act, 1978, all land comprised in the territory of each State in the Federation were/are vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act (Section 1 of the Act). Also, as from the commencement of the Act, all land in the*

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<sup>49</sup> Edokwe B. (2021). Fulani own all lands in Nigeria – Miyetti Allah reveals plan against Gov. Akeredolu Barrister NG on January, 24, 2021.

<sup>50</sup> Edokwe B. (2021). The Constitutionality or Otherwise of Governor Akeredolu's 7-Day Quit Order on Herdsmen in Ondo –By Chief Mike Ozekhome, SAN. BarristerNG.com on January 26, 2021.

<sup>51</sup> Sections 1 and 2 of the Land Use Act, 1978.

<sup>52</sup> (2016) LPELR-410 89(CA).

*urban areas shall be under control and management of the Governor of each State and all other land shall, subject to the Act, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated. (Section 2(a) and (b) of the Act). By the provisions of Sections 5 (1) and 6(1) of the Act which deal with the Principles of Tenure, Powers of the Governor and Local Governments and Rights of Occupiers: It shall be lawful for the Governor in respect of land, whether or not in an urban Area- (a) to grant statutory rights of occupancy to any person for all purposes.” Section 5(1) (a) Section 6 (1) of the Act on the other hand provides that: It shall be lawful for a Local Government in respect of land not in an urban area- (a) to grant customary rights of occupancy to any person or organization for the use of land in the Local Government Area for agricultural, residential and other purposes.” The combined effect of the provisions of all the Sections of the Act above quoted is that all lands in urban areas as well as the Rural Areas are either vested in the Governors or Local Government Chairmen and all citizens of this Country who hitherto owned land or not are mere beneficial occupiers or owners as the State Governor in cases of land in Urban areas hold such land in trust for them. See Savannah Bank of (Nig) Ltd. & Anor v. Ajilo & Anor<sup>53</sup> Per Belgore, JSC (as he then was) at pages 84-85, Paragraphs A-C). Per AGUBE, J.C.A. (Pp. 32-34, Paras. D-D).*

From the above provisions, it is crystal clear that the Ondo State government has control over all lands within his State territory. It is also clear that “*all citizens of this country who hitherto owned land or not are mere beneficial occupiers or owners as the state Governor, in cases of land in urban areas, hold such in trust for them*”.

Additionally, the Act provides for the powers of the Governor to revoke a right of occupancy already granted for overriding public interest.<sup>54</sup> From the aforementioned, it is within the powers of the Ondo State Governor to exorcise and expel occupants of lands within its territories, if it is shown to be in the overriding interest of the public, such as security matters. Governor Akeredolu can therefore, in exercising the rights granted to him by virtue of his position as Governor of Ondo State, issue the order asking herders to vacate the forests reserves within seven days, simply on the ground that the reserve belongs to the Ondo State government. Indeed, the Governor can compulsorily acquire such lands in accordance with provisions of the 1999

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<sup>53</sup> (1989) LPELR-3019 (SC).

<sup>54</sup> section 28 of the LUA, 1978.

Constitution.<sup>55</sup> In such a lawful event, the Governor is expected to make prompt payment of compensation to the herders, who have lawfully been in occupation without criminal records in accordance with section 44(1)(a) of the Constitution. See *Aigoro v Commissioner of Lands and Housing, Kwara State*.<sup>56</sup> Thus, the Governor's 7 days quit notice to the herdsmen is constitutional and legal.

However, it is trite law that the Governor's powers are only effective up to the extent that they do not arbitrarily affect a citizen's fundamental rights under the 1999 Constitution, without resort to due process of law. The Constitution of the Federal Republic of Nigeria (1999) as amended, supersedes the provisions of the Land Use Act. It is the highest law of the land, the grundnorm, the *font act origo*, and supreme law. See *Abacha & Ors v Fawehinmi*.<sup>57</sup> Thus, where any law or provisions of laws conflict with the Constitution, such a law is null and void to the extent of its inconsistency.

Inherently, Governors are bound by their oath of office to obey and uphold the Constitution and all other laws that uphold it. No Governor can therefore unilaterally and arbitrarily order a group of people, tribe or religion to vacate, by fiat and ultimatum, any part of a state which they govern, without resort to due process and the law courts, as this will amount to encroaching on the fundamental rights of citizens as guaranteed by the Constitution. These rights include right to freedom of movement<sup>58</sup>; right to freedom from discrimination<sup>59</sup>; and right to own movable and immovable property<sup>60</sup>. It is not fair and equitable for the Governor to issue a 7day quit notice from a habit where people have lived all their lives, some for decade.

It is arguable that the herdsmen were actually being arbitrarily sent away from lands over which they have since legally acquired title and possession over. Where it is proven that some herdsmen have peacefully lived on their occupied lands for a significant time without committing crimes, then they are deemed to have a bona fide title to such lands occupied by them under the law. The case of *Idundun & ors v Ikumagba & ors*<sup>61</sup>, reflects this legal position, as it states that one of the ways of proving title to land is by proving acts of ownership and possession over a sufficient length of time which are numerous and positive enough as to warrant the inference

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<sup>55</sup> section 44 of the CFRN, 1999.

<sup>56</sup> (2011) LPELR-9112(CA).

<sup>57</sup> (2000) LPELR-14 (SC).

<sup>58</sup> section 41 of the CFRN, 1999.

<sup>59</sup> section 42 of the CFRN, 1999.

<sup>60</sup> section 44 of the CFRN, 1999.

<sup>61</sup> (1976) 9-10 S.C. 227.

that the person is the true owner or by proving acts of long possession and enjoyment of land.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides the citizen's right to freedom of movement throughout Nigeria. He is also allowed to reside in any part thereof.<sup>62</sup> Citizens are thereby permitted to move about and across all corners, nooks and crannies within Nigeria, as was aptly held in the case of *Okafor v. Lagos State Government & anor*<sup>63</sup>. It is of no effect whether the citizens live where the land is located, or whether they are mere nomads. This position has been clearly reiterated by the apex court in *Ibrahim v Mohammed*<sup>64</sup>, where Lordship Kalgo, JSC, stated thus:

*The Land Use Act was promulgated as a whole with a view to making land available to all Nigerians irrespective of where they live.*<sup>65</sup>

Exceptions to this are where restrictions have been placed on the movement or residence of such a person, if he commits a crime, or is suspected to have committed a crime with a view to 'preventing him from leaving Nigeria'. Thus, applying the literal rule, the exception applies where the crime is committed, or is expected, or foreseen, as was Governor's Akeredolu's reasons for tackle the increasing spate of violent crimes perpetrated by herders in the forest reserve of Ondo State.

The Governor is legally correct and competent to demand that herders should register for proper identification. The herders would not want to do the registration because such registration would actually help the genuine herders to be separated from the violent and criminally-minded ones, such as kidnappers and armed bandits. This registration will determine how many herders are actually operating in the forest reserves and also separate the authentic herders from invading terrorists who spill in from neighbouring countries.

The imposition of 'movement permit' of cattle traders is provided for by the Trade Cattle Tax Law of Ondo State, 1969 (amended 2006).<sup>66</sup> The Law empowers the State Executive Council to make regulations for the purpose of enforcing the provisions of the law<sup>67</sup>. The Law criminalizes the act of failure to pay the trade cattle tax or failure

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<sup>62</sup> Section 41 (1) of the CFRN, 1999.

<sup>63</sup> (2016) LPELR-41066(CA).

<sup>64</sup> (2003) FWLR (PT. 156) 902.

<sup>65</sup> See also the case of *Arowolo v Akapo & ors* (2002) LPELR-7063(CA).

<sup>66</sup> Section 2 of the Trade Cattle Tax Law of Ondo State, 1969 (amended 2006).

<sup>67</sup> Section 9 of the Trade Cattle Tax Law of Ondo State, 1969 (amended 2006).

to take such trade cattle to the appropriate control post for inspection purposes.<sup>68</sup> In addition, the Ondo State Forestry Law provides against a person to occupy a forest reserve without obtaining permit from the State Government through the State Forestry Department.<sup>69</sup> Such a trespasser is capable of tampering with the forest produce and ecosystem. No person can invade forests and open lands that are not 'reserved' without lawful permit from the private owner, communal authorities or the government.

However, in order to legally eject the herders, Ondo state government should file an action at the Federal High Court, Akure, stating the grounds for his claim for injunction against the herders' occupancy of the Ondo forest reserves. In *Kalu v Federal Republic of Nigeria & ors*<sup>70</sup>, on the issue of determination of whether or not the rights to personal liberty and freedom of movement as guaranteed by the Constitution of the Federal Republic of Nigeria, are absolute. Eko, JCA (as he then was), held:

*The courts, including the Federal High Court, know the law and would not do things to whimsically undermine the rights of parties guaranteed by the Constitution. The rights to personal liberty and freedom of movement, guaranteed respectively by sections 35 and 41 of the 1999 Constitution, are not absolute. Section 41 (2) (a) of the Constitution says that the right to freedom of movement may be deprived under a law that is reasonably justifiable in a democratic society that imposes restrictions on the "movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria". An application for enforcement of a party's fundamental right presupposes the right has been, is being or is likely to be violated otherwise than in accordance with the procedure permitted by law. That argument will be defeated when it is apparent that the right has been deprived of in accordance with the procedure permitted by law.*

Consequently, the Court will held that the herders have violated the order of the Governor and breached peace and order of Ondo State. Not every Fulani herder living in Ondo state is a criminal. Some herders who have lived there for decades, do not fall into the category of the herders terrorizing citizens and states in Nigeria. Consequently, the categorization of every Fulani within the herdsmen is

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<sup>68</sup> Ibid.

<sup>69</sup> Forestry Law of Western State and National Forestry Policy, 2006.

<sup>70</sup> (2012) LPELR-9287(CA).

discriminatory and contrary to freedom from discrimination which is provided for by the 1999 Constitution<sup>71</sup>.

### **3.4 Retracing Grazing Routes in Nigeria Policy, 2018**

In 1950s, a large grazing reserve was established in the Northern Region of Nigeria.<sup>72</sup> During the First Republic of Nigeria (1963-1966), a Grazing Law of Northern Region of Nigeria of 1965<sup>73</sup> was enacted and applied only to the Northern Region in order to accommodate the herders and to prevent food shortage in the Region. Grazing routes were the pathways which linked the grazing reserves to each other. Herders moved and grazed on the routes to different locations.<sup>74</sup> Some of the routes were said to be gazetted.

In 2018, the Federal Government established a policy called the National Livestock Transformation Plan. In the policy, the Federal Government stated it would review 368 grazing routes across 25 states in Nigeria with a view to providing solution to the issue of the frequent farmers/herders clash. Moreover, in June, 2021, President Muhammadu Buhari expressed the federal government's decision to revitalize or retrace the 'grazing routes/reserves'.<sup>75</sup> There are a few legal issues arising from the policies.

The first issue is whether or not the National Grazing Reserve Law is a valid law at present. The law was enacted in 1965. There is no law called National Grazing Reserve Law/Act in the current laws of the Federation of Nigeria 2014 and thus the Law/Act, even if exists, cannot be applied to the whole Federation on the grounds that any existing law shall have effect with such modifications as bring it into conformity with the provisions of the 1999 Constitution.<sup>76</sup> The 1999 Constitution of the Federal Republic of Nigeria, as amended provides for the condition precedent for the survival of any pre-1999 existing Law/Act.<sup>77</sup> One of the conditions precedent is that the said law shall have been enacted or deemed to be enacted by the National Assembly. To determine whether the National Grazing Reserve Law/Act is an Act that could have

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<sup>71</sup> section 42 of the CFRN, 1999; see also *Minister of Internal Affairs v Shugaba Abdurrahman Darma (1982) 3 NCLR 915 at 1009*.

<sup>72</sup> Breaking News: The Existence of Grazing Routes in Nigeria: Fact of Fiction (Part I), *This Day*, <<https://www.thisdaylive.com/index.php/2021/09/07>> accessed 12 April 2023

<sup>73</sup> See 1999 Constitution, section 315(1) and Land Use Act 1978, section 4

<sup>74</sup> Breaking News: The Existence of Grazing Routes in Nigeria: Fact of Fiction (Part I), *This Day*

<sup>75</sup> B. Edokwe, 'Re-Examining the Constitutionality Of Retracing Of Grazing Routes In Nigeria by Theophilus Orumor', Barrister NG, 25 September 2021.

<sup>76</sup> Section 315(1) of the CFRN 1999.

<sup>77</sup> See section 315 of the CFRN, 1999.

been enacted or deemed to be enacted by the National Assembly, the Law/Act should be listed in the Exclusive Legislative List of the 1999 Constitution.

There is no any subject matter in the 68 items on the Exclusive Legislative List indicating specifically grazing or animal husbandry. The expressions 'grazing' and 'National Grazing Reserve Law' are absent in Items 17(c) (d) and 18 of the Concurrent Legislative List. Furthermore, the Land Use Act 1978 vests all lands comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who holds such land in trust for the people of the state and is responsible for the allocation of lands in all urban areas to people living in the State; and only the Governor or Local Governments, not the Federal Government, are vested with the powers to grant land for grazing purpose.<sup>78</sup>

The Act also provides that there shall be the consent of the Governor where the customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares granted for agricultural purposes, or 5,000 hectares granted for grazing purposes.<sup>79</sup> Thus, the Governors/Local Governments are vested with almost absolute powers on the land under their respective jurisdiction. In addition, the Act vests in the Governor of a state powers to revoke a right of occupancy by issuing a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes.<sup>80</sup>

The operative word used in section 28(4) of the Land Use Act is 'shall' which indicates imperative mandatory command. Retracing of grazing routes is not a matter of 'public purposes'<sup>81</sup> and thus it lacks the kind of interest which the federal government had on it. Therefore, the President or the Federal Government of Nigeria has no power or authority over the use, management or control of land anywhere in Nigeria. The Land Use Act is well protected by the Constitution.<sup>82</sup>

#### **4.0 Conclusion**

This study has found that some legal frameworks against the herders-farmers crisis<sup>83</sup> are biased, unfair and illegal. Another finding is that some states' laws on the crisis

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<sup>78</sup> Land Use Act 1978, Sections 1 & 2

<sup>79</sup> Section 6(2) of Land Use Act 1978.

<sup>80</sup> Section 28(4) of the Land Use Act, 1978.

<sup>81</sup> See Land Use Act 1978, Section 51

<sup>82</sup> See section 315 (5) of the CFRN, 1999.

<sup>83</sup> For example, destruction of farm produce, killing of cattle and killing of herders and farmers.

may be difficult to execute without having resultant adverse consequential approaches from the states in the Northern part of Nigeria. The best way to enforce a law is to bring everybody that is affected together so that nobody would say this is not what we agreed on and the law can then be enforced. There are people doing their legitimate business of herding cattle and producing meat, and there are criminals who want to destabilize the country and state. Those people using cattle herding to perpetrate crimes and insecurity in the states should be identified and dealt with.