

## **OPEN GRAZING PROHIBITION LEGISLATION IN NIGERIA: A PANACEA FOR CONFLICT AND INSECURITY\***

### **Abstract**

Nigeria has in recent times witnessed increased clashes and conflicts between the farmers and herdsmen in different states of the country, especially in the Middle Belt areas of Benue, Taraba, Nasarawa, Plateau and Kaduna. The violent killings, maiming, destruction of public and private properties which has always characterized this incessant crisis has led to the enactment of laws prohibiting open rearing and grazing of livestock and the provision of establishment of ranches and livestock administration in these states and several other states of the federation. Through the doctrinal research method, this paper has found that the principal cause of the farmers-herders imbroglio in Nigeria is the struggle for scarce resources, that is land and water which has always put the duo on a collision course. Another cause may be due to the insecurity arising from the activities of Boko Haram, Banditry and cattle rustlers in Northern Nigeria. It recommends a complete and strict implementation of the open grazing laws in Nigeria to eliminate the need for the violent competition between the farmers and herdsmen for the limited land and water resources in Nigeria.

**Keywords:** Conflict, Prohibition, Insecurity, Legislations, Farmers, Herdsmen.

### **1. Introduction**

The farmers-herders crisis remains one of the most challenging and devastating conflicts in the history of Nigeria. The conflict is responsible for one of the worst humanitarian and economic disasters since the Nigerian civil war of 1967. North Central States of Benue, Nassarawa and Plateau States have experienced the most violence and destruction from the conflict. A recent report by Amnesty International estimated that between January 2016 and October 2018, at least 3,641 lives were lost to the conflict between farmers and the herdsmen; of which Benue State alone accounted for 20 percent of the reported statistics by the International body. This figure excludes the over 6,500 lives reported to have been lost between 2010 and 2015 around the country from the conflict alone.<sup>1</sup> The conflict between the farmers and herdsmen has also been reported to have been responsible for the displacement of hundreds of thousands of Nigerians from their communities and livelihoods to internally displaced camps littered across the country. Over 62,000 persons were reported to have been displaced due to the conflict between 2010 and 2015.<sup>2</sup> This figure is expected to be a lot higher in the period from 2016 to early 2021, especially due to the increase in the number of attacks during the period in focus. With respect to Benue State, *Omeje* reports that between January and the first week of March 2018, no fewer than 176,070 internally displaced persons were registered at the six internally displaced camps located in Makurdi, Guma and Logo Local Government Areas of the state,<sup>3</sup> while hundreds of thousands of children have been forced out of schools due to their displacement from their homes and destruction to schools.

The economic effects of the conflict are also equally devastating with Nigeria, suffering from the hemorrhagic consequences of insecurity to the multi-billion-naira agricultural sector. More than 40 million naira worth of crops was lost in the North Central States and some Southern Nigeria States.<sup>4</sup> *Usman Ngelzarma*, National Secretary, *Miyetti Allah* Cattle Breeders Association of Nigeria, in 2017, claimed that the herdsmen lost about 2 million cattle to the activities of cattle rustlers in the last two years (2016-2017).<sup>5</sup> Additionally, Nigeria's former Head of State, *Gen. Abdusalami Abubakar* claimed that the conflict was

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<sup>1</sup>Oludayo Tade, 'Conflict between herdsmen and farmers: Nigeria needs to accept there are victims on both sides' (2020). <<https://www.google.com/amp/s/theconversation.com/amp/conflict-between-herdsmen-and-farmers-nigeria-needs-to-accept-there-are-victims-on-both-sides-141470>> accessed 6 June, 2021

<sup>2</sup> ibid

<sup>3</sup>C. Omeje, 'Investigation: Survivors of herdsmen attacks tormented by deaths, rape at Benue idp camps.' <<https://www.icimigeria.org/investigation-survivors-of-herdsmen-attacks-tormented-by-deaths-rape-at-benue-idp-Camps>> accessed 16 June, 2021

<sup>4</sup>Alao David, Shaibume Benjamin, Ogunwemimo Taiwo.o., Alao Monisola, 'Herdsmen/Native Farmers' violence in Benue State and Food Security in Nigeria,' <<file:///c:/user/downloads/10592-article%20text-41087-2-10-20191220.pdf>> accessed June 16, 2021

<sup>5</sup>'600 Herdsmen Killed, Two Million Cattle Rustled in Two Years – Miyetti Allah' | Premium Times Nigeria (25 April 2017) <<https://www.premiumtimesng.com/news/headlines/229604-600-herdsmen-killed-two-million-cattle-rustled-two-years-miyetti-allah.html>> accessed 24 July 2021.

costing the country a whopping 13.37 billion dollars yearly.<sup>6</sup> Food scarcity and bloated cost of food commodities are part of the resultant effects of the conflict since farmers are scared of engaging in their usual farming activities for fear of being attacked by the herdsmen. To underscore the severity of the threat posed by the crisis, the herdsmen were ranked the 4<sup>th</sup> deadliest terrorist group in the world, behind the likes of the deadly and ruthless *ISIS*, and *Al Qaeda*.<sup>7</sup> The inability of the Federal Government to guarantee the safety of Nigerians and the realization that urgent steps had to be taken to protect lives and property, were some of the basis upon which several state governments like Ekiti, Taraba, Edo, Ondo, Oyo, Bayelsa, Benue among others, decided to pass laws prohibiting the open rearing and grazing of cattle within the boundaries of their respective states.

## **2. Origin of the Farmers-Herders Conflict**

The Conflict between farmers and herdsmen is as old as the interaction between the two groups and has only varied in frequency and intensity based on economic, environmental and other social factors.<sup>8</sup> The primary cause of the farmers-herdsmen conflict in Nigeria is the struggle for scarce land and water resources which has perpetually put the farmers and herdsmen on a collision course. While the herdsmen; mostly of Fulani origin, engage in pastoral agriculture (open grazing and rearing of livestock) and require lands for the pasture it provides to their livestock and seek out water for themselves and their cattle, the farmers mostly use the land to cultivate crops for subsistence or commercial purposes and also use water for irrigation and personal use. These negating uses of land and water resources have in itself put the two parties at odds with each other. The conflict has however, become more frequent and increasingly violent in recent years due to the Fulani herdsmen pushing further inwards to the North Central and Southern States of Nigeria, while fleeing desertification, insecurity and other unfavorable conditions in the core North where they were originally more active and based, thereby increasing the competition for scarce land and water resources in those areas. Conflicts have arisen between the parties as a result of the herdsmen leading and allowing their livestock to graze and destroy cultivated farm lands. There have also been conflicts arising as a result of the herdsmen occupying lands owned by the communities without due process. Additionally, conflicts between the groups have arisen from the theft of livestock by cattle rustlers. The herdsmen have often avenged these losses by attacking farmers and farming communities; killing, raping and destroying farms and properties in the process.

## **3. Anti-Open Grazing Legislations in Nigeria and their Similarities**

At the initial, between 2016 and 2017, only four states (Ekiti, Benue, Edo and Taraba) had legislations restricting the open grazing and rearing of cattle within their borders.<sup>9</sup> Ekiti enacted the prohibition of cattle and other Ruminants Grazing Law, 2016. Taraba enacted the Anti-open Grazing Prohibition and Ranches Establishment Law, 2017, while Benue State has the Open Grazing Prohibition and Ranches Establishment Law, 2017. Edo State was titled, A Bill for a Law to Establish the Edo State Control of Nomadic Cattle Rearing/Grazing Law and for other Purposes, 2018. For Oyo State, the law is called the Open Rearing and Grazing Regulation Law, 2019. 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 State, there exists section 42 (e) and (g) of the Ondo State Forestry Law which prohibits Cattle trespassing and cattle pasturisation without the authority in writing of a prescribed government official. More states have enacted their own legislations or indicated interest in enacting their own laws restricting the pastoral activities of the herdsmen. Recently, seventeen Southern Governors resolved to place a ban on open grazing of cattle within the borders of their respective states.<sup>10</sup> The various legislations, commonly referred to as Anti-Open Grazing Laws, may differ in some areas from state to state. However, these legislations all share certain fundamental similarities with each other. Some of those similarities include:

1. All open grazing prohibition legislations place a ban on the open rearing and grazing of livestock.
2. All anti open grazing legislations require the establishment of ranches for the purpose of rearing and grazing livestock.

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<sup>6</sup>Nigeria Loses \$13.7 Bn Annually to Farmers, Herdsmen Conflicts, Says Abdulsalami' *The Guardian Newspaper* <<https://m.guardian.ng/news/nigeria-loses-13-7bn-annually-to-farmers-herdsmen-conflicts-says-abdulsalami/>> accessed 20 June 2021.

<sup>7</sup> *ibid* (n5)

<sup>8</sup>AS Aliyu, 'Causes and Resolution of Conflict between Cattle Herdsmen and Crop Farmers in Katsina State.' (M.sc, Ahmadu Bello University 2015).

<sup>9</sup>All Africa, Nigeria: Eight Southern States set to enact Anti-Open Grazing Law' <<https://allafrica.com/stories/202105170325.html>> accessed 16 June, 2021

<sup>10</sup> *ibid*

3. All open grazing prohibition laws require that ranches or lands used for the rearing and grazing of livestock be properly fenced.
4. The open grazing prohibition laws do not restrict movement of herders, the laws require that any movement of livestock be done using vehicles like trucks or vans to convey livestock within the state borders.
5. All open grazing prohibition laws provide for the establishment of enforcement agencies tasked with ensuring the full implementation of the law.
6. The open grazing prohibition laws go further to empower the ministries of Agriculture of the respective states to conduct studies and recommend programs to the state governments that can boost livestock farming in the states.
7. Ensure the protection of the rights of livestock farmers (herdsmen) from land related fraud and physical harm since ranchers are permitted to hire legitimate security firms to offer protection of the ranches from encroachment.
8. Ensure the protection of livestock from the illicit activities of cattle rustlers, even going further to recommend appropriate punishments for potential offenders.
9. Protect crop farmers from the destruction of their crops by grazing livestock.

Contrary to the belief and propaganda propagated by a few persons, the Open Grazing Prohibition Laws active in some states of the Federation as seen above offers protection and other benefits to all parties, including the herdsmen.

#### **4. Legal Interventions besides the Anti-Open Grazing Prohibition Legislations**

The Court has a long time ago in the year 1969, pronounced on the constitutionality of the ban on open grazing. Justice Adewale Thompson of the then *Abeokuta (Ogun State)* Division of the High Court in Suit No AB/26/66 delivered on the 17<sup>th</sup> of April, 1969, declared the practice of open grazing, unlawful and banned same in the following words:

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 wonder 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 a farmer without the corresponding obligation on the cattle owner to fence his cattle. Sequence to that, I ban 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.

On the 20<sup>th</sup> May, 2021, Justice Ijeoma Ojukwu of the Federal High Court, Abuja Division, upheld the validity of the anti-open grazing law enacted by Benue State in a judgment<sup>11</sup> in which it was sought to compel President Buhari to instruct the security agencies in the country to enforce the Benue State anti-open 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 as follows:

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. The implementation therefore, lies with the machinery of the state and law enforcement agencies, like the Police, whose duty is to maintain law and order and to secure lives and properties in accordance with section four of the Police Act. It behoves the people of Benue State and law enforcement agencies, task force, etcetera 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 that 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.

The Federal Government of Nigeria in a measure to address the farmers-herders conflict conceptualized the Rural Grazing Area (RUGA) policy, which allows the creation of settlements for herders in any part of the

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<sup>11</sup> (unreported) Suit No. FHC/ABJ/CS/1213/2018

country. The policy was later challenged by the Benue State Government at the Federal High Court, Makurdi in the case of Attorney General of Benue State & Ior v Attorney General of the Federation and 2 others,<sup>12</sup> where it was held as follows:

As stated by the plaintiffs' Counsel, Nigeria no longer has regions but states. Further, as at 1965 when the Regional Laws, referred to by the Defendants, were promulgated, some were assented to by the Governor of Northern Nigeria and not the President at the centre. This regional law is therefore an equivalent of state laws and same cannot override the open grazing law enacted by the Benue State House of Assembly. In addition, the purported regional law being relied upon has become obsolete as could be seen in its provisions. Before the Minister could constitute a land as a government grazing reserve under the law, the Minister shall publish a notice in the Northern Nigeria Gazette of the intention to create reserves. There is nothing like Northern Nigeria Gazette presently. Also, the Grazing Reserves Law of 1965 (Northern Nigeria. No 4) was incorporated into the Grazing Reserves Law of Benue State of 1976 and was further incorporated into Cap 72, Laws of Benue State 2004. See the section on modification of laws (Benue State) Order 1990 and the conversion tables as contained in Laws of Benue State of Nigeria 2004. Presently, pursuant to section 36 of the Open Grazing Law of 2017, the Grazing Reserves Law Cap 72 Laws of Benue State, 2004 has been repealed. All the laws made under the repealed law, affecting grazing of livestock, have been modified in the provisions of the Open Grazing Law of 2017. Even if the Grazing Reserve Law of 1965 were to still be operative, it was in existence before the 1999 Constitution and would come under existing law as defined under section 315(4) of the Constitution. By section 315 (1) of the Constitution existing laws are to be modified to be in conformity with the provisions of the Constitution. So, the Grazing Reserve Law of 1965 must conform with section 44 of the Constitution and Section 1 of the Land Use Act (LUA) duly recognized and confirmed by section 315 (5) of the 1999 Constitution.

From the foregoing holding of the Honourable Court, it is clear that the Open Grazing Prohibition and Ranches Establishment Law of Benue State, 2017 is the extant law on grazing and indeed livestock administration and by extension in all the states of the Federation that have enacted similar law. The proposed Federal Government's establishment of Rural Grazing Areas (RUGA) was by the above judgment declared null and void.

### **5. Open Grazing Prohibition Legislations as a Panacea for Conflict and Insecurity in Nigeria**

As earlier stated in this work, the principal cause of the farmers-herders conflict in Nigeria is the struggle for scarce resources (land and water), between the farmers and the herdsmen. It is this competition for land and water that has often put the farmers and herders on a collision course. Previously, the herdsmen, who are predominantly of Fulani extraction, were based in the far Northern States of Nigeria, and only made their way down south and to the North Central States, during the off season to graze their cattle and take advantage of the conducive atmosphere for livestock rearing. However due to factors which include; the loss of the over 415 grazing reserves, insecurity in the North East and North West, the desertification of Northern Nigeria, banditry and cattle rustling, the herdsmen made their way further south and did so during the planting season. This change in pattern led to the destruction of crops and farms which ultimately degenerated into full blown conflicts; although the greatest losses have been to the farmers who are powerless against the sophisticated weapons like Ak-47s being used by the herdsmen. The open grazing prohibition laws in Nigeria, fundamentally seek to end the frequent and unsupervised contact between the farmers and herdsmen. The laws hope to eliminate the need for the violent competition between the two important groups, by making use of fenced ranches to ensure that herdsmen safely conduct their livestock rearing activities within enclosed areas while also preventing livestock from grazing and damaging crops by farmers.

The use of ranches to rear and graze cattle is an effective strategy that will ensure that the limited land and water resources in Nigeria, are rationed or optimized to serve the needs of all parties (farmers and herders). Although some persons may argue that the open grazing prohibition laws have not substantially met their goals in the states where they are currently active, the failure to completely meet the set objectives is due to other factors that have no direct relation to the law. For instance, the unwillingness of the Federal

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<sup>12</sup> (unreported) Suit No. FHC/MKD/CS/56/19 (3 February 2020 per Olajuwon J.)

Government to lend its support and ultimately adopt the law at the Federal level has served to undermine the anti-open grazing laws at the various states. The inability of the Federal Government to fulfill its obligations to secure lives and properties of its citizens<sup>13</sup> is partly to be blamed for the stunted success of the open grazing prohibition laws in bringing peace to the country. The lack of cooperation from the police and other relevant security agencies has been singled out as limitations to the success of the anti-open grazing laws.

Additionally, the style of attacks by the Fulani herdsmen has indicated a more sinister plot than the mere struggle for scarce land, for legitimate agricultural purposes. The employ of guerilla style attacks and the unprovoked violent altercations with farmers and farming communities has reinforced the belief that the current spate of attacks, linked to the herdsmen, are nothing but a ploy to destabilize peaceful regions in the country and cause maximum destruction as possible. The recent press statement issued by the Fulani Socio-cultural organization known as Fulani Nationality Movement when it rose from a conference in Kano State, jointly signed by their National President, Badu Salisu Ahmadu and their National Secretary, Umar Amir Shehu confirms this sinister plot. The duo stated as follows;

The Fulani Nationality Movement (FUNAM) after extensive deliberations on the state of the nation in the context of the recent killings and national uproar, met today in Kano, the Capital of Kano State. Among other things, the FUNAM deliberated on attacks on cattles by rustlers, kidnap of Fulani men and women in some parts of Nigeria, displacement of Fulani traditional settlements in Northern Nigeria and some parts of Southern Nigeria, stealing of properties belonging to Fulani cattle owners amongst other issues. The group also deliberated on the political situation in Nigeria occasioned by the irresponsible calls for restructuring of Nigeria, the historic and vicious attacks on Fulani people by Southern nationalities and their cohorts in the Middle Belt, the plot to ensure Fulani are pushed to the back bench in the power equation in Nigeria, and above all, the vicious campaign against the God ordained place of Fulani as the leading star guide in Nigeria, and after extensive deliberations, we hereby make the following declarations;

- a) That the killings in Benue of Tiv are well deserved. It was a revenge attack on the series of onslaught on the Fulani which was most horrendous on November 17, 2017 when 30 fulani men and women were killed in Nassarawa State. We notice the recalcitrant culture of the Tiv people as demonstrated even during the 1804 jihad when they obstructed our ordained conquest of Nigeria.
- b) We condemn the media propaganda being waged against the Fulani and supported by Yoruba, Igbo and their bigotry allies in the Middle Belt.
- c) That we are aware of plots by the minority ethnic groups in the Middle Belt to attack Fulani settlements.
- d) That we have asked all Fulani across West Africa to raise money and arms to prosecute the incoming war. We call on all Fulani to prepare for this Holy War. There is no going back. All over the world, Nigeria is the only country given to the Fulani by God.
- e) We oppose the anti-grazing laws, which obstruct ability of Fulani to move freely and stay anywhere in Nigeria. The Fulani, if not for the British we would have actually conquered the entire Nigeria which God has ordained as our dominion.
- f) That the cattle colony is the only solution to the crisis. Whether the Federal Government or State Governments accept or not, we have asked all Fulani herdsmen all over West Africa to move to Nigeria and penetrate every corner for the upcoming jihad. We have asked them to be armed since it seems it is the only language Nigeria understands. The Nigerian Government has failed to protect us.
- g) We warn those who oppose the Fulani cattle trade to be cautious of the consequences. We are ready for the worse. We are prepared for war. There is hope for peace if and only if attacks on Fulani herdsmen stop and the Fulani is allowed to settle anywhere that the Fulani choose to settle in Nigeria. We are Nigerians and are free to settle anywhere we desire with our culture, our families, our commerce and our values to the glory of Almighty Allah. Any attempt(s) to reverse these demands will be met with Holy uprising never before seen in the history of Nigeria and in the scale

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<sup>13</sup> CFRN, 1999 (as amended) s 14(2) (b) which states that the security and welfare of the people shall be the primary purpose of government.

compared only with the 1804 Jihad. A word is enough for the wise. The Fulani is capable of defending itself.<sup>14</sup>

The truth remains that the anti-open grazing legislations have addressed the legitimate concerns of both crop and livestock farmers. Those adhering to the tenets of the law are so far reaping the benefits. This can be noticed in some small ranches in Benue State, where livestock farmers have cordoned off their ranches to avoid trespass and rear their livestock in a peaceful and safe environment. The success of the various anti-open grazing legislations will border on the ability of the various states to ensure the complete and strict implementation of all tenets of the law. Adherence to the open grazing prohibition laws is sure to provide lasting solutions to the farmers-herders conflict in Nigeria while also promoting peace in the country. Additionally, the legislations will create more jobs, boost livestock yields, boost crop output, and increase agricultural exports and address issues of climate change, amongst other crucial benefits.

## **6. Conclusion**

It is clear from the foregoing discussion that the open grazing prohibition laws are a step in the right direction in bringing an end to the incessant violent clashes between farmers and herdsmen. Some of the factors responsible for sustaining the conflict, such as climate change, rising insecurity and dwindling land resources, are issues that must be tackled now rather than later. The open grazing prohibitions laws have provided avenues to address these issues. The fact remains that the nomadic lifestyle of the herders will be unsustainable in the next few years, making it imperative to encourage a shift to more conventional or modern methods of livestock rearing, such as ranching that optimize space and boost yields. The Federal government participation and cooperation is also relevant in ensuring that the laws totally meet their set objectives. For this reason, the Federal government should ensure that the legislation on the prohibition of open grazing and rearing of livestock in Nigeria be completely implemented.

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<sup>14</sup> <https://ynaija.com/fg-should-not-ignore-this-new-fulani-group-threatening-to-cause-terror-in-nigeria/> accessed 27 October 2021