

RECENT DEVELOPMENTS

Transhumance, Climate Change and Conflicts: Reflections on the Legal Implications of Grazing Reserves and Ruga Settlements in Nigeria

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Abstract

In recent times, clash after clash has arisen between herdsmen and farmers in Nigeria. These conflicts were linked to the effects of climate change in northern Nigeria, but have been exacerbated by other factors including ethno-religious sentiments. Herdsmen forced to migrate southwards face intense competition for arable and grazing land with the farmers in Nigeria's middle belt. This invariably leads to conflicts, often resulting in gruesome murder and carnage. Thousands have died, many more have been maimed and millions displaced because of this crisis. As a solution, the Nigerian government proposes to set up grazing reserves and rural grazing area settlements in all states of the federation. The problem with this proposal is how and where to obtain the land. This article reflects on the legal implications of the proposal and argues in favour of grazing reserves and ranching on the basis of a private freehold / leasehold tenure arrangement, not through the compulsory acquisition of land by the government.

Keywords

Nigeria, climate change, transhumance, grazing reserves and ruga settlements, ranching, conflict, herdsmen and farmers

INTRODUCTION

This article focuses on the intense conflicts in recent times principally precipitated by competition between herdsmen and farmers in Nigeria over resources.¹ These have been exacerbated by other factors, including

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1 S Toromade "How FG wants to put a permanent end to crisis with N179bn plan" (7 January 2018) *Pulse Ng*, available at: <<https://www.pulse.ng/news/local/herders-farmers-conflict-how-fg-wants-to-put-a-permanent-end-to-crisis-with-n179bn/gpe1hr0>> (last accessed 21 January 2020).

ethno-religious sentiments as well as the incidence of climate change in northern Nigeria. The impacts of climate change include widespread drought and desertification, water scarcity and general ecological degradation. These conditions generally have a negative effect on the productive capacity of natural resources, such as land and fresh water supplies. In northern Nigeria,² climate change has progressively resulted in much reduction in precipitation and the shrinking of Lake Chad with consequent water shortages, scarcity of agricultural land³ and a decrease in vegetation for cattle grazing. This results in intense competition between the herdsmen and farmers for these resources. Over the years, this has contributed to forcing the cattle herders in the north to migrate southwards in search of grazing land for their livestock. This migration put pressure on arable and grazing land and, of course, brought constant clashes between the farmers and the Fulani herdsmen,⁴ mostly in Nigeria's "middle belt". Thousands have died, many more have lost their homes and millions of naira worth of property has been destroyed in the resulting clashes since 2011.⁵ In 2014, 1,229 people were allegedly massacred by "Fulani militants", leading the Global Terrorism Index to list the group as the fourth most deadly terror group in the world, behind Boko Haram, Isis and the Taliban.⁶ In January 2018, 73 men, women and children were killed in Benue state and later buried at a mass burial ceremony.⁷ By the end of that year more than 2,000 were reportedly killed in the middle belt as a result of the crisis.⁸ Terrorist groups such as Boko Haram have allegedly seized the opportunity offered by the diffused and chaotic situation caused by these clashes to advance their own agenda, thereby causing more

2 Nigeria is bordered to the south by the Atlantic Ocean and to the north by the Niger Republic and the encroaching Sahara Desert.

3 M Parry et al (eds) *Climate Change 2007: Impacts, Adaptation and Vulnerability* (working group II contribution to the fourth assessment report of the Intergovernmental Panel on Climate Change) (2007, Cambridge University Press).

4 Fulani herdsmen are the predominant nomadic ethnic group in Nigeria and the West African sub-region, mainly associated with livestock herding.

5 C Nugent "Land conflict has long been a problem in Nigeria. Here's how climate change is making it worse" (28 June 2018) *Time*, available at: <<http://time.com/5324712/climate-change-nigeria/>> (last accessed 21 January 2020).

6 R Troup Buchanan "Global terrorism index: Nigerian Fulani militants named as fourth deadliest terror group in world" (18 November 2015) *Independent*, available at: <<https://www.independent.co.uk/news/world/africa/global-terrorism-index-nigerian-fulani-militants-named-as-fourth-deadliest-terror-group-in-world-a6739851.html>> (last accessed 21 January 2020).

7 Toromade "How FG wants to put", above at note 1.

8 L Johnson-Salami "Nigeria's grazing crisis threatens the future of the nation" (July 2019) *Financial Times*, available at: <<https://www.ft.com/content/a56ccf22-a331-11e9-a282-2df48f366f7d>> (last accessed 21 January 2020).

incidences of clashes and killings.⁹ As a solution, the Nigerian government is proposing to establish grazing reserves and rural grazing area (ruga) settlements in all states of the federation for the settlement of ethnic Fulani nomadic herdsman, their cattle and families from different states.¹⁰ This has enormous implications under the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the 1999 Constitution) and the Land Use Act 1978 (LUA).¹¹ It is also largely viewed by other ethnic groups and stakeholders in Nigeria as a land-grabbing strategy by the government in favour of the Fulanis.¹² This article reflects on the legal implications of this proposal and argues in favour of grazing reserves and ranching on a private freehold / leasehold tenure basis and not through the compulsory acquisition of land by the government.

SHRINKING LAKE CHAD AND ITS CONSEQUENCES

At its fullest, Lake Chad could be described as a large inland lake in the north-eastern part of Nigeria. However, the lake is disappearing at an alarming rate under the onslaught of climate change, leading to decreasing levels of precipitation.¹³ Records show that, between 1963 and 2013, the lake shrank from 25,000km² to 2,500km², losing about 90 per cent of its water mass.¹⁴ This has drastically reduced available agricultural and grazing land in the Lake Chad basin and made vulnerable the lives of millions of residents in the area. This situation has resulted in famine and a scramble for scarce resources, as well as massive migration southwards in search of alternative livelihoods¹⁵ or green vegetation for cattle grazing. This movement puts pressure on land and water resources in Nigeria's middle belt.

As cattle herders migrate with their cattle, clashes ensue between them and the farmers, mostly in the middle belt, due to competition for arable and

9 A McGregor "Alleged connection between Boko Haram and Nigeria's Fulani herdsman could spark a Nigerian civil war" (16 May 2014) 12/10 *The Jamestown Foundation Terrorism Monitor*, available at: <<https://jamestown.org/program/alleged-connection-between-boko-haram-and-nigerias-fulani-herdsman-could-spark-a-nigerian-civil-war/>> (last accessed 21 January 2020).

10 Johnson-Salami "Nigeria's grazing crisis", above at note 8.

11 Laws of the Federation of Nigeria, 1990, cap 202.

12 Ibid. O Adeniyi "Nigeria: Buhari and the ruga malcontents" (11 July 2019) *This Day*, available at: <<https://allafrica.com/stories/201907110662.html>> (last accessed 21 January 2020).

13 F Onuoha "Climate change, population surge and resource overuse in the Lake Chad area: Implications for human security in the north-east zone of Nigeria" in D Mwiturubani, J van Wyk, R Mwebaza and T Kabanda (eds) *Climate Change and Natural Resources Conflicts in Africa* (2010, Institute for Security Studies) 23.

14 M Sow "Figure of the week: The shrinking Lake Chad" (9 February 2017) *Africa in Focus*, available at: <<https://www.brookings.edu/blog/africa-in-focus/2017/02/09/figure-of-the-week-the-shrinking-lake-chad/>> (last accessed 21 January 2020).

15 Ibid.

grazing land and because of the destruction of farmland by cattle. These clashes used to be rampant in Plateau State. However, they have now descended to Benue State (the “food basket” of Nigeria) and are gradually moving further south.¹⁶ There is a fear that the situation may degenerate to civil war if not controlled.¹⁷ The Nigerian government has responded to the conflicts with a proposal to recreate grazing routes that herders used across the country in the 1960s, as well as establishing grazing reserves and ruga settlements in all states of the federation. The grazing routes of the 1960s no longer exist today, having been taken over by population explosion and industrialization. Nigeria’s population at independence in 1960 was about 63 million, while in 2020 it is estimated to be over 200 million.¹⁸ This demographic change has significantly reduced the land available for farming and cattle grazing,¹⁹ resulting in intensive competition and conflicts between the herders and farmers over land resources.

HISTORY OF GRAZING RESERVES IN NIGERIA

In the early 1960s, just after Nigerian independence, agriculture was the mainstay of the Nigerian economy. Cattle herders controlled about 90 per cent of the livestock but were nomadic.²⁰ In 1965, because of the desire to settle the nomadic cattle herders, the Grazing Reserve Law was enacted by the then Northern Nigeria House of Assembly. Under this law, the states had the power to establish grazing reserves by acquiring native lands based on customary land tenure systems for livestock grazing. These reserves were established in some parts of northern Nigeria now within Bauchi, Bornu, Gongola and Kaduna States.²¹ Unfortunately, most of these reserves were not gazetted²² and are now difficult to trace. The land tenure system was significantly modified in 1978 with the enactment of the LUA.²³ This act vested state lands in the governor of the relevant state to hold in trust and manage for the people of the state.²⁴

16 Ibid.

17 McGregor “Alleged connection”, above at note 9.

18 “Nigeria population”, available at: <<http://www.worldometers.info/world-population/nigeria-population/>> (last accessed 21 January 2020).

19 AC Godwin “Anti-open grazing law behind Fulani herdersmen killings: Nigerian government” (25 January 2018) *Daily Post* (Nigeria), available at: <<http://dailypost.ng/2018/01/25/anti-open-grazing-law-behind-fulani-herdersmen-killings-nigerian-government/>> (last accessed 21 January 2020).

20 MO Awogbade “Grazing reserves in Nigeria” (1987) 23 *Nomadic Peoples* 19.

21 Ibid

22 I Hoffmann “Access to land and water in the Zamfara Reserve: A case study for the management of common property resources in pastoral areas of West Africa” (2004) 32/1 *Human Ecology* 77 at 86.

23 LUA, sec 48.

24 Id, sec 1.

During the period from 1975–85, the Nigerian government made specific policies aimed at settling the herdsmen in order to develop the livestock sector of the nation's economy.²⁵ The states in the northern part of Nigeria were encouraged and assisted by the government to acquire, gazette and develop grazing land for the exclusive use of the nomadic herders in northern Nigeria. This was also meant to encourage them to raise credit to improve livestock production, protect the land and the environment and, above all, prevent or minimize the clashes between herders and farmers that often result in bloodshed and loss of life.²⁶ This policy however, met with little success due to poor funding and ineffective implementation. As a result, most of the grazing reserves were not developed and so could not sustain the herds all year round.²⁷

In 1988, the Nigerian government introduced the National Agricultural Policy, which also encouraged the creation of grazing reserves in relevant states where cattle rearing is a predominant occupation.²⁸ However, this also was not enforced and the seeming inability of the herdsmen to shed their nomadic nature contributed to its failure, just like the policy before it. Most of these grazing reserves no longer exist and the government is proposing to recreate and re-establish them in *all* states of Nigeria.

THE GRAZING RESERVE BILL 2016 AND ITS LEGAL IMPLICATIONS IN NIGERIA

The current Nigerian government proposes to establish grazing reserves not just in the northern part of Nigeria but in all states of the federation. The main issue with this proposal is where and how to obtain the land. The establishment of grazing reserves relates to zoning, and zoning and planning laws are primarily state and local issues in the 1999 Constitution.²⁹ The same is applicable to livestock animals. For this reason, the Nigerian Senate declined to legislate on the Grazing Reserve Bills introduced on the Senate floor.³⁰

25 AS Olomola "Pastoral development and grazing resource management in Nigerian savannah areas" (Nigerian Institute of Social and Economic Research) at 3, available at: <https://www.researchgate.net/publication/42762730_Pastoral_Development_and_Grazing_Resource_Management_in_Nigerian_Savannah_Areas> (last accessed 21 January 2020).

26 Ibid.

27 Ibid.

28 "Federal Republic of Nigeria" *CBPR Database* (Centre for International Environmental Law), available at: <http://www.ciel.org/Publications/CBPR_Nigeria_9-18-06.pdf> (last accessed 21 January 2020).

29 Second sched, parts I and II.

30 O Ogunmade "Senate rejects Grazing Reserve Bill, says it's unconstitutional" (10 November 2016) *ThisDay*, available at: <<https://www.thisdaylive.com/index.php/2016/11/10/senate-rejects-grazing-reserve-bill-says-its-unconstitutional/>> (last accessed 21 January 2020). Although the Nigerian Senate declined to legislate on this matter, it nevertheless remains unsettled and debatable. In view of the escalating crisis, and the legal conundrum

The National Grazing Reserve (Establishment) Bill 2016 was introduced to the Nigerian National Assembly in 2016 to improve agricultural yield from livestock farming and curb incessant conflicts between livestock and crop farmers in Nigeria.³¹ There were earlier versions in 2015. On the face of it, the primary purpose of the 2016 bill was to establish the National Grazing Reserve Commission (the Commission) and its functions, but the bill actually has substantial implications for property rights that are guaranteed under the 1999 Constitution and the LUA.

Section 18 of the bill empowers the Commission to acquire land for grazing reserves in any part of the federation. The Commission, however, has to do this by liaising with the state governors who statutorily hold the state lands in trust and manage them in their respective territories for their state.³² The governors have the power under the LUA to “grant statutory rights of occupancy to any person for all purposes” in rural and urban areas³³ and to revoke the same. However, revocation under section 28 of the LUA can only be done in the “overriding public interest”. “Overriding public interest” as interpreted in section 51 of the LUA means that the land is required by the state or federal government for “public purposes”³⁴ within the state or the federation. Therefore, the president’s power or the power of the Commission to acquire land for grazing reserves is contingent upon the satisfaction of the “public purpose” requirement. Section 51 of the LUA has a list of items that could be considered to meet the “public purpose” requirement. This includes, for example, the use of land by the government for educational purposes, building roads and the provision of telecommunications and electricity. Zoning land for grazing reserves does not appear to be “of the same kind” as the items on that list and, therefore, cannot rightly be interpreted under the *ejusdem generis* [of the same kind] rule to belong to that class. “To revoke a statutory right of occupancy for public purposes, the letter and spirit of the law must be adhered to. Since revocation of a grant deprives the holder of his proprietary right, the terms must be strictly complied with and strict construction of the provisions made.”³⁵

The state governor is thus not bound under the law to acquiesce in the acquisition of state land for grazing reserves or ruga settlement unless the “public purpose” condition is strictly construed and met.³⁶ Additionally,

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surrounding the matter, the author views it as a critical issue in contemporary Nigeria, worthy of legal analysis.

31 National Grazing Reserve (Establishment) Bill 2016 (copy on file with the author).

32 LUA, secs 1 and 2.

33 *Id.*, sec 5(1).

34 Confirmed by the Supreme Court in *Osho v Foreign Finance Corporation* (1991) 4 NWLR (pt 184) 157.

35 *Id.*, per Obaseki JSC at 48, para A.

36 *Attorney General of Lagos State v NEPA* suit no LD/372/81 of 5 July 1982, High Court of Lagos State (unreported).

section 44(1) of the 1999 Constitution prohibits the compulsory acquisition of land except as permitted under the law. Therefore, section 28 of the LUA has constitutional backing and the governor or federal government can only acquire land for public purposes.

Section 6(1)(b) of the LUA gives the local government the powers to grant customary rights of occupancy for grazing and other purposes ancillary to agricultural purposes. Specifically, this grant could be in respect of an area of land up to 500 hectares for agricultural purposes and 5,000 hectares for grazing purposes.³⁷ Above these specifications, the governor's consent is required.³⁸ It should be noted, however, that titles and rights to possession of land acquired prior to the LUA survived the act and were retained.³⁹ So, if the granting of a customary right of occupancy under section 6(1)(2) will involve the revocation of an already subsisting right of occupancy over any portion of that land, then the local government is estopped from making that grant. This is because revocation of such a right of occupancy will deprive a citizen of his proprietary right only to bestow it on another citizen. This is not constitutional,⁴⁰ just or equitable. Therefore, it is unlikely that any government will succeed in using section 6(1)(2) of the LUA as an instrument for establishing grazing reserves in Nigeria, except perhaps under limited circumstances in northern Nigeria where the old grazing reserve law could be revived.

REACTIONS TO THE GRAZING RESERVES AND RUGA SETTLEMENTS PROPOSAL

The general sentiment among dissenting governors is that livestock rearing is a private business and the government should not establish ranches or manage it for the owners.⁴¹ Based on this, a number of southern states rejected the idea of grazing reserves even with their new names "cattle colonies"⁴² and "ruga settlements". Acquiring the large expanses of land that would be needed for the reserves or settlements would be very challenging, especially in southern Nigeria where land is in short supply. Any attempt to do this may lead to protests that might develop into civil war and the eventual disintegration of Nigeria if not carefully handled. It would also clash with some regional instruments and policies that provide protection for native lands in

37 LUA, sec 6(2).

38 Ibid.

39 *Nkwocha v Governor of Anambra State and Others* (1984) 6SC 362; *Ogunleye v Oni* (1990) 2 NWLR (pt 135) 745 at 784; *Ogunola v Eiyekole* (1990) 4 NWLR (pt 146) 632 at 653.

40 The 1999 Constitution, sec 43.

41 Toromade "How FG wants to put", above at note 1.

42 D Falade et al "Southern states tackle FG over cattle colonies" (13 January 2018) *Tribune Online Ng*, available at: <<https://tribuneonlineng.com/southern-states-tackle-fg-cattle-colonies/>> (last accessed 29 January 2020).

domestic legislation.⁴³ These include the African Charter,⁴⁴ section 14 of which guarantees the right to property, and the African Union's policy framework for pastoralism in Africa⁴⁵ (yet to be domesticated in Nigeria).

In response to the government's proposal to establish grazing reserves in all states of the federation, some states decided to enact and implement anti-open grazing laws.⁴⁶ These laws prohibit the open grazing of livestock and the herding of cattle from place to place. The intention was to encourage cattle owners to establish ranches. Although there are serious enforcement challenges in these states, as open grazing continues unabated, Nigeria's federal government viewed these laws and the absence of cattle routes as the present and past reasons for the wave of killings by Nigeria's Fulani herdsmen.⁴⁷ This, however, does not stand scrutiny, because the legitimate enactment of laws by lawfully elected representatives in any state of the federation will never be a legitimate reason, as construed by the federal government, for any segment of society to take the law into their own hands, or act in any way in breach of the peace.⁴⁸ Nevertheless, the government, apparently maintaining its position, introduced a series of programmes and policies over the last few years in an attempt to annex land for the Fulani herdsmen to settle and graze their cattle.⁴⁹ First was the grazing reserves initiative. This was followed by the cattle colonies and then came the ruga settlements and National Livestock Transformation Plan. All these have ignited protests and controversy throughout the federation, particularly in the middle belt and southern Nigeria because people are not willing to give up their land. As a result of intense pressure from communities and stakeholders, the government was forced to suspend the ruga settlement initiative on 3 July 2019.

In a bid to proffer an acceptable solution to the herdsmen / farmer conflict, it has been suggested that the 1965 Grazing Reserve Law be restored in

43 AO Jegede "The protection of indigenous peoples' lands by domestic legislation on climate change response measures: Exploring potentials in the regional human rights system of Africa" (2017) 24 *International Journal on Minority and Group Rights* 24 at 56.

44 African Charter on Human and Peoples' Rights, available at: <<https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>> (last accessed 21 January 2020).

45 African Union Department of Rural Economy and Agriculture "Policy framework for pastoralism in Africa: Securing, protecting and improving the lives, livelihoods and rights of pastoralist communities", available at: <https://au.int/sites/default/files/documents/30240-doc-policy_framework_for_pastoralism.pdf> (last accessed 21 January 2020).

46 S Daniel, E Ovuakporie, P Duru and R Ojomoyela "Nigeria: Anti-open grazing law: NASS, Benue, Kwara, Taraba tackle defence minister" (7 June 2018) *Vanguard*, available at: <<https://allafrica.com/stories/201806070118.html>> (last accessed 21 January 2020).

47 *Ibid.*, as per the statement of the minister of defence, Mansur Dan-Ali. See also Godwin "Anti-open grazing law", above at note 19.

48 Daniel et al "Nigeria", above at note 46.

49 "The problem with Ruga settlement" (4 July 2019) *This Day*, available at: <<https://www.thisdaylive.com/index.php/2019/07/04/the-problem-with-ruga-settlement/?amp>> (last accessed 21 January 2020).

Nigeria's 19 northern states.⁵⁰ This suggestion was based on section 315 of the 1999 Constitution and a clear policy of land grant to pastoralists developed and implemented by the northern state governments in 1965. This is not only a reasonable suggestion but is also achievable. Section 315(1) of the 1999 Constitution provides:

“Subject to the provisions of the Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be an Act of the National Assembly or law made by a House of Assembly to the extent that it is a law with respect to any matter on which the National Assembly or a House of Assembly is empowered by this Constitution to make laws.”

As the Grazing Reserve Law was enacted by the Northern House of Assembly and not by the Nigerian National Assembly, only the house of assembly of each of the 19 northern states can revive the law under section 315. Therefore, legal analysts and commentators support it as being only applicable to the 19 northern states.⁵¹ The idea would fail in respect of all the other states of the federation and would be struck down by the court as unconstitutional. Thankfully, most of the northern states have land in abundance.⁵² Niger State, covering a total of 76,363km², has more than the total land mass of ten states in the south (Abia, Akwa Ibom, Anambra, Bayelsa, Ebonyi, Ekiti, Enugu, Imo, Lagos and Osun).⁵³ Kebbi State at 36,800km² is larger than the entire southeast (Abia, Anambra, Ebonyi, Enugu and Imo States, amounting to 29,525km²).⁵⁴ Furthermore, Kebbi State is about half the size of Niger, half the size of Borno and much smaller than Adamawa, Bauchi, Kaduna, Taraba, Yobe and Zamfara States, all of which are wholly or partly in the north.⁵⁵ Therefore, the north can easily accommodate the revival of the 1965 law.

Crisis and drought in the West African Sahel⁵⁶ have forced herdsmen from the northern part of West Africa to move south. They enter Nigeria with their livestock, supposedly under the subsisting policy of the Economic Community

50 P Piak “Revive 1965 Grazing Reserve Law: Gambari recommends” (30 March 2018) *Sunnewsonline* available at: <<https://www.von.gov.ng/revive-1965-grazing-reserve-law-gambari-recommends/>> (last accessed 21 January 2020).

51 O Braithwaite “Nigeria: Taming the herdsmen” (14 November 2017) *This Day*, available at: <<https://allafrica.com/stories/201711140243.html>> (last accessed 21 January 2020).

52 BO Akinyemi “Bolaji Akinyemi exposes reasons why ruga settlements should be in the north” (21 July 2019) *The World News*, available at: <<https://theworldnews.net/ng-news/bolaji-akinyemi-exposes-reason-why-ruga-settlements-should-be-in-the-north-must-read>> (last accessed 21 January 2020).

53 Ibid.

54 Ibid.

55 Ibid.

56 R Muggah and JL Cabrera “The Sahel is engulfed by violence. Climate change, food insecurity and extremists are largely to blame” (23 January 2019) *World Economic Forum*,

of West African States (ECOWAS).⁵⁷ This article next considers this transhumance movement as the source of another problem that feeds into the herds-men / farmer crisis in Nigeria.

TRANSHUMANCE AND THE IMPACT OF THE ECOWAS ITC POLICY

The borders between West African countries have always been porous. The ECOWAS Treaty has not improved matters but rather reinforced the situation by encouraging the removal of obstacles to the free movement of persons, goods, services and capital among member states.⁵⁸ The International Transhumance Certificates (ITC) issued in accordance with the decision of ECOWAS member states in 1998 (ECOWAS Decision)⁵⁹ regulate cross-border cattle and livestock mobility in West Africa between ECOWAS member states.⁶⁰ Therefore, since 1998, the inter-country movement of livestock between West African countries has simply required an ITC and an understanding of the laws and regulations in force in the host country.

An ITC documents the departing transhumant from their home country and is used to control the number of animals in transit. It is also used to protect the health of the local herds by making sure the necessary immunizations have been administered to the incoming herds. It is also used in informing the receiving country in good time of the arrival of the transhumant herders. Relevant information is documented, including the population of the incoming herd, vaccination status, the route they intend to follow, point of departure from the home country and point of entry into the host country, as well as the length of stay.⁶¹ The law also provides that there should be at least one herder per 50 head of cattle.⁶² Clearly, these are all laudable provisions on paper but they are barely enforced.⁶³ As a result, nomadic cattle herders

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available at: <<https://www.weforum.org/agenda/2019/01/all-the-warning-signs-are-showing-in-the-sahel-we-must-act-now/>> (last accessed 21 January 2020).

57 Revised ECOWAS Treaty, art 3(2)(d)(iii).

58 Ibid.

59 ECOWAS decision A/DEC.5/10/98 Relating to the Regulations on Transhumance between ECOWAS Member States, Abuja, 31 October 1998, chap III, arts 5–9, available at: <<http://ecpf.ecowas.int/wp-content/uploads/2016/01/Decision-1998-English.pdf>> (last accessed 21 January 2020).

60 The ECOWAS member states are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

61 ECOWAS decision, above at note 59.

62 Id, art 11.

63 "Livestock sector policy brief: Burkina Faso" (July 2004), available at: <http://www.fao.org/tempref/AG/Reserved/PPLPF/Docs/ESC/Policy%20brief/UGO_040716_Burkina%20Faso.doc> (last accessed 21 January 2020).

moving between territories in search of pastures for their cattle have mostly been un-accosted.⁶⁴

It is generally difficult to differentiate the herdsmen from Nigeria from those from other West African countries, since they do not carry identity cards and nobody checks them at the “bush” borders. Host communities have been known to complain of herders destroying crops and farmlands, and moving on without any consequences. Part of the reason for this is because it is difficult to identify and punish the culprits. In fact, Nigerian President Muhammadu Buhari has said in the past that the herdsmen clashing with the farmers and perpetrating the killings in Nigeria are foreign herdsmen.⁶⁵ This situation is a serious threat to national and regional security and is a major concern for the ECOWAS Commission.⁶⁶ Some West African countries have resorted to bilateral transhumance agreements but these have fared no better in terms of enforcement and compliance.⁶⁷ However, whether under these bilateral transhumance agreements or under the 1998 ECOWAS Decision, there is a need to intensify advocacy, awareness and enforcement of the transhumance laws and policies in West Africa in order to stem the tide of illegal cross-border movement of cattle, as well as the farmer / herder conflicts that usually ensue from it. It may also be helpful to encourage ranching more seriously and learn from the practices and mistakes of other African countries, such as Kenya and Tanzania.

INTERIM SOLUTIONS FROM OTHER AFRICAN COUNTRIES

Kenya

The Kenyan government has embarked on a variety of policies to ensure that nomadic herdsmen settle and to modernize livestock production. Following Kenyan independence in 1963, the government introduced group ranches.⁶⁸ The Lawrence Report⁶⁹ recommended group registration of land, thus giving permanent land rights and title to groups because most land rights in the

64 N Dyer “Securing pastoralism in East and West Africa: Protecting and promoting livestock mobility: Review of the legislative and institutional environment governing livestock mobility in East and West Africa” (April 2008) *IIED Report*, available at: <<http://pubs.iied.org/pdfs/G03457.pdf>> (last accessed 21 January 2020).

65 “The problem with”, above at note 49.

66 “ECOWAS calls for increased coordination to address security and developmental challenges in Sahel region” (19 September 2018) *ECOWAS Int*, available at: <<http://www.ecowas.int/ecowas-calls-for-increased-coordination-to-address-security-and-developmental-challenges-in-sahel-region/>> (last accessed 21 January 2020).

67 Examples include the agreements on the transhumance between Burkina Faso and Mali (1988), between Mauritania and Mali (1989) and between Mali and Côte d’Ivoire (1994).

68 P Veit “Rise and fall of group ranches in Kenya” (March 2011) *Focus on Land in Africa*, available at: <<http://www.focusonland.com/fola/en/countries/brief-rise-and-fall-of-group-ranches-in-kenya/>> (last accessed 21 January 2020).

69 Id at 4.

Maasai region were communally owned. The Lawrence Report recommendation thus formed the official basis for the establishment of “group ranches” in Kenya, while the 1968 Land (Group Representative) Act passed by the government legalized it.⁷⁰

Selection of members for the group ranches in Kenya was based on kinship and traditional land rights.⁷¹ The concept of group ranching was principally accepted by the Maasai because it improved the security of the land tenure system. This is because land was still to be owned and maintained by the Maasai people, as non-Maasai would not be admitted into the group ranch. In addition, land sales became almost impossible because of group ownership.⁷² The group ranching policy was initially embraced by the Maasai because of the benefits it offered and because it aligns with their traditional system of communally held pastures with individually owned livestock.⁷³ However, the group ranches were not well managed or maintained, leading to conflict over scarce resources (pastures) and environmental degradation. In the end, many group ranches were subdivided into individual land holdings or ranches. In turn, this led to increased land sales and the ultimate breakdown of traditional pastoral societies.⁷⁴ Group ranches barely exist in Kenya today.

It is, however, important to note that the land for these group ranches was originally owned by the Maasai tribe and it was naturally demarcated along groups with cultural affinity. The failure of the group ranching concept in Kenya was not because it was a bad idea or because it was not well aligned to the culture of the Maasai nomadic tribe, but primarily due to poor management and maintenance. Climate change resulting in more extreme weather conditions was also a contributory factor⁷⁵ and tribal politics often make the resolution of issues difficult.

Lessons from this experience and attempts to salvage what remains of the old communal system of land-holding contributed to the inclusion of certain provisions in Kenya’s 2010 Constitution on group ranches and communal land. Article 63(5) specifically requires Parliament to pass legislation to implement the group ranch provisions. Nigeria should learn from and avoid the pitfalls of the Kenyan experience by properly legislating for group ranches among people with cultural affinity. This could easily be done in the northern states of Nigeria with the revival of the Grazing Reserve Law.⁷⁶ There would be

70 International Bank for Reconstruction and Development *Kenya Second Livestock Development Project* (World Bank report no 10, 1977).

71 Veit “Rise and fall”, above at note 68.

72 JG Galaty “The Masai group ranch: Politics and development in an African pastoral society” in P Salzman (ed) *When Nomad, Settle* (1980, Praeger) 157.

73 Ibid.

74 Ibid.

75 A Laithead “Are Kenya ranch invasions driven by drought or politics?” (4 February 2017) BBC News, available at: <<https://www.bbc.co.uk/news/world-africa-38866389>> (last accessed 21 January 2020).

76 See id at 6–7.

no need to look for communal lands similar to the Massai land for the project, because the northern state houses of assembly have powers under the 1999 Constitution to revive the Grazing Reserve Law. Based on this law, the northern state governors could then annex the land originally slated for grazing reserves either for such reserves or for ruga settlements: the nomenclature really does not matter. The cultural affinity required for the programme to work can be found more among the northerners. Transplanting this to the southern part of Nigeria would inevitably result in a clash of cultures in addition to the lack of legal backing and unavailability of land. However, if adopted in the north, the only outstanding issue would be a proper plan for implementation to initiate the project.

Tanzania

The Tanzanian Grazing Land and Animal Feed Resource Act 2010 provides that: grazing lands shall be demarcated or delineated in accordance with the provisions of the Village Land Act and the Land Use Planning Act;⁷⁷ the village council shall set aside part of the communal village land to be strategic grazing land in accordance with the provisions of the Land Use Planning Act;⁷⁸ and the grazing lands shall be communally or privately owned by livestock keepers.⁷⁹

Although the law already provides for the punishment for anyone convicted of contravening any provisions of the act,⁸⁰ the government plans to increase the regulation and severity of punishment for illegal grazing.⁸¹ It also plans to introduce a fee per head of livestock to help in the provision and maintenance of grazing ground for all licensed cattle.⁸² The provisions of the Grazing land and Animal Feed Resources Act align with ranching practices.⁸³ As with the Kenyan experience discussed above, the Tanzanian model could be adopted in the northern part of Nigeria with the revival of the Grazing Reserve Law. The land already delineated under that law would be annexed by the state for grazing reserves. In the event that the land is encroached on or taken over completely, the occupiers would not have good title to the land⁸⁴ and would have to vacate the land or provide an alternative. In other states of Nigeria where the Grazing Reserve Law was never enacted and, therefore, cannot be revived, cattle owners would have to acquire land for grazing reserves or ranching based on private freehold / leasehold tenure arrangements. As

77 The Grazing Land and Animal Feed Resources Act, 2010, sec 16(1).

78 *Id.*, sec 17(1).

79 *Id.*, sec 17(2).

80 *Id.*, sec 39.

81 S Domasa "Tanzania: 'Government cattle ranches not doing well at present'" (6 June 2018) *Tanzania Daily News*, available at: <<https://allafrica.com/stories/201806060304.html>> (last accessed 21 January 2020).

82 *Ibid.*

83 The Grazing Land and Animal Feed Resources Act, secs 16(1) and 17(1).

84 *G Abioye and Others v Sa'adu Yakubu and Others* (SC 169/1987) [1991] 1; (1991) All NLR 1.

already discussed, zoning land for grazing reserves does not satisfy the “public purpose” requirement under section 51 of the LUA.⁸⁵ As a result, state governors cannot designate state land for grazing reserve or ruga settlement based on the LUA.

CONCLUSION AND RECOMMENDATIONS

Conflict between cattle herdsmen and farmers is rampant in parts of Africa that have experienced and are still experiencing severe drought due to or exacerbated by climate change. Such conflicts have already killed tens of thousands in countries including the Central African Republic, Mali, South Sudan and Nigeria.⁸⁶ Millions more have also been displaced.⁸⁷

Ranching must be encouraged, and the Nigerian government must make a definite policy to that effect as a lasting solution to the incessant conflict between nomadic cattle herdsmen and farmers in Nigeria. A federal anti-open grazing law should be enacted, which will invariably make ranching the only option for livestock rearing. As in other African countries, like Kenya and Tanzania, these ranches should be established on a freehold or leasehold tenure arrangement. In these countries, individuals, groups or cooperatives own ranches and this has made it possible for ranchers to incorporate and secure loans for development.⁸⁸ Incidents of the sort of clashes and conflicts that occur in Nigeria rarely occur in these countries.

The Nigerian government must be committed to making short- and long-term plans to address this conflict, which is threatening to plunge the country into genocide. Short-term plans will involve ensuring that security personnel are deployed in large numbers to protect life and property in the middle belt, disarming all civilians with unregistered deadly weapons and clamping down on the illegal importing of such weapons.

The veil must be lifted to make public the real owners of the cattle and make them embark on ranching. Although the herdsmen bear some responsibility for the killings, the owners of the cattle will be held vicariously responsible for the offences of their employees committed in the course of their business. They should be made to pay heavy penalties and compensation whenever their cattle destroy farmlands and penalties for wrongful death when it occurs.

For longer-term planning, the government could make policies to encourage agriculture generally. Businesses already involved in importing poultry feed should be encouraged to expand to import cattle feed (alfalfa hay).⁸⁹

85 Id at 4–5.

86 Nugent “Land conflict”, above at note 5.

87 Ibid.

88 Awogbade “Grazing reserves”, above at note 20.

89 H Adobor “Solving the Fulani herdsmen and cattle grazing problem: Some business-based solutions” (10 January 2018) *Ghanaweb*, available at: <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Solving-the-Fulani-herdsmen-and-cattle-grazing-problem-some-business-based-solutions-615918>> (last accessed 29 January 2020).

Ranchers and other businesses should also be encouraged to go into the business of growing fodder plants or grasses and producing commercial silage, while the current herdsmen should be encouraged to stop herding cattle from place to place and train in silage production.⁹⁰ In America, ranchers go as far as purchasing and transporting grass from grass-growing areas for their livestock.⁹¹ There is no reason why this cannot be done in Nigeria if the business is well organized. Additionally, the influx of foreign nomadic herdsmen into the country must be checked through strict implementation of the ECOWAS Transhumance Regulations.⁹²

CONFLICTS OF INTEREST

None

90 Ibid.

91 Braithwaite "Nigeria", above at note 51.

92 ECOWAS decision, above at note 59.