

**A CRITIQUE OF THE BENUE STATE OPEN GRAZING  
PROHIBITION LAW AS A LEGAL RESPONSE TO CONFLICT  
CAUSED BY OPEN GRAZING IN NIGERIA\***

**Abstract**

Attacks and reprisal attacks between Fulani nomads and sedentary farmers have become rife in Nigeria. The conflict resulted to several hostilities, claimed many lives, destroyed farm crops, properties and entire communities in most occasions have been sacked or razed down by these attacks. The conflicts are prominent in some states of the federation like Benue state, Taraba State, Kwara State, Adamawa State, Abia State, Imo State, Anambra State, Kogi State, Ekiti State, Enugu State and many others. The crisis situation has made some states of the federation which include Benue state, Ekiti state, Taraba State, amongst others to resort to bold legislative interventions by passing into law the Anti-Open Grazing Bills. The passage of the Anti-Open Grazing Bills into law by some states appear to have escalated the attacks and distrusts making it imperative to make a critique of the anti-open grazing laws using the Benue State Open Grazing Prohibition and Ranches Establishment Law as a case study. This paper probed into the legality and justification or otherwise of the anti-open grazing law of Benue State which its foremost implication is prohibition and criminalization of open grazing in the state and the provision of ranching as an alternative to open grazing. This paper in underscoring the jurisprudential underpinnings of the law, identified the inherent lacunas of the law and makes a case for amendment and improvement of the law.

**1.0 Introduction**

The increasing clashes between farmers and pastoralists in Nigeria have in recent time led several groups and individuals to demand ranching.

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The attitude of the Federal Government in the face of security threats posed by criminal and unregulated activities of Fulani herdsmen has been a docile one and lip service. Olugbenga<sup>1</sup> attributed the docile approach of the federal government to politics and ethnic interest of President Mohammed Buhari, who is a Fulani man. Several states in Nigeria have responded by enacting a law on open grazing as a solution to the problem in line with international best practices on livestock management. Among these State is Benue State<sup>2</sup>. A careful perusal of these laws made by some states show that the laws are similar with same aim and objectives of prohibition of open grazing and provision of ranching as an alternative to open grazing. Hence, this paper critiques the Benue State Open Grazing Prohibition Law as a case study.

### **Anti-Open grazing law of Benue State**

The Benue State Anti-Open Grazing Bill was signed into law by the Executive Governor of Benue State, Samuel Ortom on 22<sup>nd</sup> May, 2017 to ban open rearing and grazing of livestock in Benue state, the law came into effect on November 1, 2017. The law has 36 sections and it is officially known and cited as “Open Grazing Prohibition and Ranches Establishment Law, 2017”<sup>3</sup>.

The law has key provisions which include statement of the objectives of the law, provision for Livestock Department of the Ministry of Agriculture and Natural Resources as the regulatory body,

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<sup>1</sup> EO Olugbenga, “Peace By Pieces: The Politics Of Herdsmen's Attacks, Grazing Policy And The Ekiti State Grazing Regulation Law, 2016” (2017) *Advances in Social Sciences Research Journal*, 4(5) 72-89

<sup>2</sup> A law to prohibit to prohibit open rearing and grazing of livestock and provide for the establishment of ranches and livestock administration, regulation and control and for other matters connected therewith published in Benue State of Nigeria Gazette No.21, Vol. 42. 25th May, 2017. Ekiti State House of Assembly passed the foremost open grazing prohibition bill into law known as 'Prohibition of Cattle and other Ruminants Grazing in Ekiti State Law, No. 4 of 2016 and signed into law by the State Governor, Ayo Fayose on 30th October, 2016.

<sup>3</sup> Open Grazing Prohibition and Ranches Establishment Law 2017, Section 1

Commissioner to liaise with the Governor, provision for issuance of ranching permit and its procedure, payment of leasehold by the rancher, exemption of indigenes from obtaining ranching permit and paying leasehold, status and revocation of lease and ranching permit, prohibition of sale of leased land, prohibition of unauthorized entry into ranches, liability of owner of trespassing livestock, functions of the department, prohibition of open nomadic livestock rearing and grazing in the state, offences and penalties, prohibition of movement of livestock on foot, prohibition of animal rustling, impoundment of livestock, release of impounded livestock, sale of impounded livestock, establishment of livestock special task force, enforcement of the law by the special task force, composition of the task force and their powers, the court of jurisdictions<sup>4</sup>

The law was meant to see to the establishment of ranches and also see to other matters relating to Open Grazing of animals<sup>5</sup>.

### **Objectives of the Law**

The major objectives of the law are as follows:

- To prevent the destruction of farm crops, Community ponds, settlements and property by open rearing and grazing of Livestock.
- To bring to an imminent end clashes between farmers and herders.
- Protect the environment from degradation and pollution caused by open rearing and overgrazing of livestock.
- To optimize the use of land resources in the face of overstretched land and increasing population.

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<sup>4</sup> Open Grazing Prohibition and Ranches Establishment Law, 2017, Sections 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 29, 35 respectively.

<sup>5</sup> The Preamble to the Open Grazing Prohibition and Ranches Establishment Law, 2017

- To prevent, control, and manage the spread of diseases. As well as ease the implementation of policies that enhance the production of high quality and healthy livestock for local and international markets.
- To create a conducive environment for large scale crop production<sup>6</sup>.

These objectives are laudable and encompassing and will go a long way towards brokering peace between the conflicting herders and farmers, if realized.

### **Administration of the Law**

On administrating the law, the livestock department of the Ministry of Agriculture and Natural Resources has been given the authority to administer, regulate, and control livestock in the State<sup>7</sup>. The Department is also given power to issue permit for ranching to citizens subject to the Governor's approval. The ranching permit shall be issued only to citizens of Nigeria who are authorized to conduct business under the laws of Nigeria. Preferences shall however be given to those within who are landowners interested in livestock business<sup>8</sup>.

Also, for the duration, the permit must not be more than one year with renewal subject to the discretion of the Department. However, the law failed to provide factors for the exercise of the discretion by the department. Such unfettered discretion is susceptible to abuse<sup>9</sup>. The law further provides that the department shall however reduce, refund in whole or part, or postpone payment of ranching permit fees in cases of natural emergencies such as drought, flood or epidemics<sup>10</sup>.

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<sup>6</sup> Open Grazing Prohibition and Ranches Establishment Law, 2017, Section 3

<sup>7</sup> *Ibid*, Section 4 & 5

<sup>8</sup> *Ibid*, Section 5(a)

<sup>9</sup> *Ibid*, Section 5(b)

<sup>10</sup> *Ibid*, Section 5(c)

This provision is a commendable one. This provision will provide reliefs to ranchers in event of emergencies due to natural disasters.

### **Procedure for Acquisition of Ranching Permit**

On procedure for acquisition of ranching permit, the law stated that an intending rancher is to send an application to the ministry with written consent from the owner or family head of the land where he intends to set up the ranch<sup>11</sup>. The land owner must also get a go ahead from community leaders before a one year lease can be granted to an intending rancher. The process and procedure for obtaining ranch permit is rigorous and capable of working hardship. The implication is that where the owner and family head refuses consent, or the Kindred head and the Chairman of the relevant Local Government Traditional Council refuses endorsement, the prospective rancher may not get a lease.

Further, the procedure extends to environmental impact assessment by professionals and the report being forwarded to the department, the family head and the Kindred head for consideration and they shall make their views known in a joint meeting within 90 days<sup>12</sup>. Where the report is found suitable, the owner of the land, the family head and the kindred head and the community shall recommend to the Department to issue ranching permit to the rancher. The Department shall if satisfied that the best interest of the state will be served, forward a report to the Governor for approval. The procedure is onerous and should be urgently re-visited. Although, it appears the various stakeholders involved in the approval and grant of the permit is to ensure that all the parties are represented but suffice it to say the cost and time involved in consultations will be such that an average rancher may be dissuaded from seeking such permit.

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<sup>11</sup> *Ibid*, Section 6(1) & (2)

<sup>12</sup> *Ibid*., Section 6(4) & (5)

The process of obtaining the ranching permit is also contrary to the letters and spirits of the Land Use Act 1978 on land acquisition. Under the Land Use Act, a person may acquire land by purchasing same from the allodial owners with the consent of the governor with respect to lands in urban area or the local government with respect to lands in the rural area<sup>13</sup>. Thus, under the Land Use Act, provided the Sublease, mortgage, Sale or any other transaction is done with the requisite consent as required by the Act by the allodial owners having either customary or statutory right of occupancy the lease or sale is valid. It should be noted that the Land Use Act divests any Claimant of radical title and limits its claim to a right of occupancy<sup>14</sup> and although the Act takes away the freehold title vested in individuals or communities, the customary right of use and control of the land have not been swept away<sup>15</sup>.

### **Payment of Lease by the Rancher**

Upon approval, the rancher is to pay for lease to the owner of the land, the family head and the kindred head and the Community whose interest in the land has been affected<sup>16</sup>. This provision may be lauded attempting to recognize and carry all stakeholders along, however it lacks specificity as to who to pay the lease. Payment of lease to the land owner, family head, kindred head as well as to the community will no doubt will be cumbersome on the rancher and create room for exploitation of the rancher by every person in the community who may assert interest on the land. The financial implication may be way too heavy for the non-indigene rancher to bear. This provision is ambiguous and should be amended with specificity befitting of a legal provision and the amount to be paid should be fixed or how to assess it should be provided.

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<sup>13</sup> Section 21 & 22 Land Use Act, Cap L5 LFN 2004.; See also *Savannah Bank (Nig) Ltd v. Ajilo* (1989) 1 NWLR (Pt. 97) 305.

<sup>14</sup> *Salami v. Oke* (1987) 4 NWLR (Pt. 63) 1;

<sup>15</sup> *Onwuka v. Ediala* (1989) 1 NWLR (Pt. 96) 182

<sup>16</sup> Section 8

The Law further provides that the Department shall cause notice of the issued permit to be published in the official gazette of the state, specifying the limits granted, the privileges conceded and special conditions to govern the ranch<sup>17</sup>.

**Exemption of Indigenes from Ranching Permit:**

The law exempts any indigene of the state from the rigorous process of applying and securing ranching permit as provided under Sections 5, 6, 7, 8 and 9<sup>18</sup>. The implication of this section is that any indigene of the state can set up a ranch without seeking and obtaining permit. This provision is discriminatory against the non-indigenes and may undermine the objectives of the law especially in creating conducive environment for large scale livestock production. Setting up ranching by indigenes should be made to come under professional impact assessment of the Department.

**Status and Revocation of Lease and Ranching Permit**

The law granted only a privilege and does not create absolute interest over the land. Absolute interest over the land still inheres in the Governor pursuant to the Land Use Act<sup>19</sup>. The grounds upon which the permit may be revoked without payment of compensation by the Department subject to the Governor's approval includes:

- a. breach of state security
- b. interest of peace
- c. breach of any term or condition of the leasehold; or
- d. overriding public interest as stipulated by the Land Use Act<sup>20</sup>.

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<sup>17</sup> Section 9(1) & (2)

<sup>18</sup> Section 10

<sup>19</sup> Land Use Act, 1978, Section 1

<sup>20</sup> Section 28 & 29.

This section brings to the fore for the umpteenth time the discriminatory nature of the law against non-indigenes. It is noteworthy that revocation of permit applies to ranch owned by non-indigenes<sup>21</sup>. Paragraph (a) and (c) of the law accords with the letters and spirits of the Land Use Act on grounds of revocation of right of occupancy without payment of compensation while paragraph (b) and particularly paragraph (d) is a total deviation from the letters and spirits of the Land Use Act. Pursuant to Section 28 and 29 of the Land Use Act, revocation of right of occupancy on ground of public interest attracts compensation by the Governor. The right to compensation is one that flows from the constitution under section 44, subject to certain exceptions<sup>22</sup>.

It is worthy of note that section 29 of the Land Use Act as to compensation for revocation only apply where revocation of a right of occupancy is not penal. For example, it will not apply where revocation is on the grounds of unlawful alienation, or breach of express or implied covenants in a Certificate of Occupancy<sup>23</sup>. Where a right of Occupancy is revoked on the ground of public interest either that the land is required by the Local, State or Federal Government for public purpose<sup>24</sup>, or that is required for the extraction of building materials<sup>25</sup>, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements. Where revocation of customary right of occupancy was done by the Local Government by virtue of section 6(5) of the Act, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements according to their respective interests<sup>26</sup>.

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<sup>21</sup> See Section 10 of the Open Grazing Prohibition and Ranches Establishment Law, 2017

<sup>22</sup> 1999 Constitution of the Federal Republic of Nigeria (As Amended), Section 44(1) & (2)

<sup>23</sup> Covenants implied in Certificates of Occupancy are stipulated in Section 10 of the Land Use Act.

<sup>24</sup> Section 28(2)(b) of the Land Use Act

<sup>25</sup> *Ibid*, S. 28 (3) (c)

<sup>26</sup> *Ibid*, S. 6(5)

The Act defined “Unexhausted Improvements” as:

anything of any quantity permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long lived crops of trees, fencing, wells, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce.

The definition of unexhausted improvements is clear and wide enough to include permanent grazing structures that could be put in place by herders for grazing. Again, the definition of an Occupier as “any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-under-lessee of the holder<sup>27</sup>” clearly encapsulates herders who acquired their possession and use of the land from the holders of right of Occupancy. It then suffices that a herder whose grazing land is being revoked for public purpose should be entitled to compensation as an occupier of such land.

On another breathe, the Land Use Act provides for resettlement in lieu of payment of compensation<sup>28</sup>. The Governor is empowered to offer resettlement in a any other place in the event of revocation of a right of occupancy in respect of developed land on which a residential building has been erected. Where the land in respect of which customary right of

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<sup>27</sup> *Ibid*, S. 51

<sup>28</sup> *Ibid*, S. 33(1) & (2)

occupancy is revoked was used for agricultural purposes by the holder, the Local Government shall allocate to such holder alternative land for use for the same purposes<sup>29</sup>. From the express omission of the word “Occupier”, it would be taken that the Act did not contemplate an occupier for resettlement purposes in lieu of compensation. However, Smith observed that the word “holder” as used in this provision is an misnomer as it does not cover circumstances where the farmer (herder in this context) is an occupier probably under customary tenancy in which case, he may not be the holder. He stated that giving the provision a purposive interpretation, courts are to construe the word “holder<sup>30</sup>” as meaning “Occupier” in this context in line with Section 51 of the Act<sup>31</sup>.

From the foregoing, it suffices that the right of the rancher is contemplated by the Constitution as well as the Land Use Act and in any event where the ranch or grazing land is revoked on grounds of overriding public interests; the rancher should either be resettled or paid compensation as an occupier.

### **Prohibition of Sale of Leased Land:**

It is against the letters and spirits of the law to sale land leased for ranching, residential or related purposes<sup>32</sup>. This accord with the dictates of the law that what the rancher acquires is possessory interest and does not acquire absolute interest. It is a trite law, that *nemo dat quod non habet*- one cannot give what one does not have<sup>33</sup>.

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<sup>29</sup> *Ibid*, S. 6(5).

<sup>30</sup> IO Smith, Practical Approach to Law of Real Property in Nigeria (Rev. Ed., Ecovatch Publications (Nigeria) Limited, Lagos, 2013), p. 534

<sup>31</sup> *Ibid*

<sup>32</sup> Section 12

<sup>33</sup> *Tiredom (Nig) Ltd v Camp Lavet (Nig) Ltd & Ors.* (2018) LPELR-43893(CA). See also *Mogaji & Ors. v Cadbury Fry (Export) Ltd* (1985) 2 NWLR (Pt.7) 393

It is the correct position of the law that a lessee cannot sale leased land and the lease subsists only for the exclusive possessory rights of the lease for a definite period<sup>34</sup>. A leasehold relationship or interest exist between two or more parties where one party gives out or lets out his property to another person to use for a period and usually, though not always, in consideration of payment of rent<sup>35</sup>. It is a contract for the exclusive possession and profit of land for some definite period<sup>36</sup>. Under lease, title to the land is not conveyed, only the use and occupation of the property is in issue; the property reverts back to the Lessor after the expiration of the term<sup>37</sup>. This feature is significant for it distinguishes a lease from a freehold which is characterized by uncertainty of term; it is essential in leases that the term is certain<sup>38</sup>. Since the grant is a lease, it then suffices that the rancher cannot validly sale the land.

The Department shall from time to time determine the eligibility of persons to be allowed to enter the ranches<sup>39</sup>. Also, every ranch shall have a fence as shall be prescribed by the Department<sup>40</sup>. This latter provision if implemented will serve the purpose of preventing the wandering away and wreaking havocs by cattle.

In legal amplification of the exclusive possessory right of the rancher under the leasehold, the Anti-open grazing law clearly prohibits any other person apart from the rancher and his staff and Government official on duty of inspection to enter the ranch unless the person is authorized to do so by the law<sup>41</sup>.

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<sup>34</sup> *Buraimoh v Bamgbose* (1989) 3 NWLR (Pt. 109) 352 at 366-367;

<sup>35</sup> YY Dadem, *Property Law Practice in Nigeria* (3rd Edn, Jos Plateau, Jos University Press Limited, 2015) p. 91

<sup>36</sup> *Prudential Assurance Co. Ltd v London Residuary Body* (1992) 2 AC 286

<sup>37</sup> YY Dadem, *Op Cit*, p.92

<sup>38</sup> IO Smith, *Op cit.*, p. 258.

<sup>39</sup> *Open Grazing Prohibition and Ranches Establishment Law, 2017*, Section 13

<sup>40</sup> Section 14

<sup>41</sup> Section

This provision is commendable as it clearly intends to prevent trespassers and intruders from cattle rustling. It is recommended that any such trespass should be criminalized.

Also, the interest of the rancher is protected under Section 15(2) of the Law to the effect that no person shall alienate any right affecting land in a ranch unless in accordance with the provisions of the Land Use Act requiring the prior consent of the Governor<sup>42</sup>.

### **Liability of Owner of Trespassing Livestock:**

The law also stipulates that in cases where livestock wander into someone else's farmland and destroys crops/plants, the owner of the livestock would have to pay damages or pay some sort of compensation to the land owner<sup>43</sup>. The amount to be paid as compensation is to be determined by a proper valuation ordered to be done by the Department.

### **Functions of the Department:**

The law enumerated in Section 18, sixteen functions of the Department to include the Following;

1. The Department is expected to develop an integrated modern livestock and a production strategy for Benue State accompanied with guidelines for its implementation.
2. They are also to monitor programs which are expected to integrate and boost livestock production/rearing in the state.
3. They are to work together with ranchers from the rural areas and from neighbouring states bordering them.
4. Encourage the promotion of livestock holding in every household in the State;

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<sup>42</sup> Section 15(2)

<sup>43</sup> Section 16.

5. After consultation with the Commissioner, make regulations regarding any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation and administration of this Law subject to the approval of the Governor<sup>44</sup>. Etc.

#### Prohibition of Open Nomadic Livestock Rearing and Grazing in the State:

One of the most important provisions of the Law is Section 19 which prohibits open grazing under penal sanctions. The section creates strict liability offences. By the section, no individual or group shall after the commencement of the Law, engage in open nomadic livestock herding or grazing in the state outside the permitted ranches and any person or group who contravenes this provision shall be liable on conviction to five years imprisonment or one million naira fine or both<sup>45</sup>.

Also, where the contravention causes damage to farm, crops or property, the owner or manager of the livestock shall after evaluation by the Department pay the prevailing value of compensation. Where it caused injury to any person, the owner or manager of the livestock shall on conviction be liable to 2 years imprisonment in addition to footing the medical bill of the victim as well as compensation as the Court may determine and where such contravention causes the death of any person within the state, the owner or manager of the livestock shall be guilty of culpable homicide punishable under the penal code<sup>46</sup>.

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<sup>44</sup> Section 18(a)-(p).

<sup>45</sup> Section 19(1) & (2).

<sup>46</sup> Section 19(3) (a) - ( c )

It is also interesting to note that Ranchers are strictly responsible for any injury, loss of life or any accident that might occur and they are strictly disallowed from carrying both licensed and unlicensed gun but they can hire registered security guards; defaulters shall be prosecuted under the Robbery and firearm provision Act<sup>47</sup>.

Movement of livestock on foot from one destination to another in the state is prohibited and any person found defaulting is liable to five hundred thousand naira fine or one year imprisonment or both for first offender and for second offender, one million naira fine or three years imprisonment or both<sup>48</sup>. Livestock can only be moved in Benue State through Truck and wagons and livestock wandering the street shall be impounded and can only claimed by the owner after paying fine which will be sent into the Revenue account of the state.

The Law provides that Any livestock found grazing, wandering, or herding in a place not designated as ranch shall be impounded by the ministry and where such impounded cattle is not claimed within seven days, it will be sold on auction to the public and the proceeds deposited to the government's purse<sup>49</sup>.

Further, the Law prohibits land grabbing for the purposes of residence, grazing or ranching or other related purposes and any land grabber shall be guilty of offence<sup>50</sup>. The Law defines 'Land Grabbing' as any illegal, forceful and violent takeover of traditional or state land in the urban or rural area by an individual, group or associations<sup>51</sup>.

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<sup>47</sup> Section 19(6) & (7).

<sup>48</sup> Section 19(4) &(5)(a) &(b)

<sup>49</sup> Sections 19, 21, 22 & 23.

<sup>50</sup> Section 19(8)

<sup>51</sup> Section 2

This provision is highly commendable as it will go a long way if implemented to protect the interest of sedentary farmers whose farms are usually invaded by herdsmen and their crops destroyed without their consent. Under these provisions, some of the root causes of conflicts and clashes between Fulani herdsmen and farmers such as cattle rustling, land grabbing, open grazing, amongst others were captured and criminalized.

### **Prohibition of Animal Rustling.**

'Rustling' is defined by the law as the act of stealing or moving away farm animals without the consent of the owner<sup>52</sup>. The Law provides in Section 20, that any person that rustles cattle or other animals from ranch shall be liable on conviction for a term of not less than three years or N100,000 per animal or both. If a castle rustler causes injuries or maims anybody while carrying out the activity, he shall be liable on conviction for a term of five years or N500,000 per animal or both. Where the rustler causes death, he shall be guilty of an offence of culpable homicide punishable under the provision of the Penal code. A person convicted of cattle rustling may also pay compensation to the victims as the court may direct<sup>53</sup>. By this provision, the law tries to address one of the root causes of conflict. It is a common complaint of the herdsmen that they are being incessantly attacked and their cattle stolen by the indigenes of local communities and reprisal attacks, they invade such communities and wreak mayhem. This provision is commendable and is worthy of giving life through enforcement.

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<sup>52</sup> *Ibid*

<sup>53</sup> Section 20(1), (2) & (3)

### **Enforcement of the Law:**

On the Enforcement of the provisions of this Law, the law establishes a Special Livestock Open Grazing Prohibition Task Force which shall enforce the provisions, regulations, and guidelines of the law<sup>54</sup>. And all offenders will be prosecuted and tried at the Upper Area Courts or magistrate or the high court depending the court that has jurisdiction as per the offence the offender is being charged<sup>55</sup>. All appeals from the Magistrate and Upper Area Courts shall lie to the High Court as of right.

### **Implications of Enforcing the Anti-open Grazing Law of Benue State.**

Implication refers to an inference drawn from something said or observed. The implementation of the Law on Open Grazing Prohibition may have Economic, Socio-cultural, Legal, identity and Security Implications in the State.

### **Legal Implication**

According to Kwaja and Adelehin, 'the legal implications of the Open Grazing Prohibition Law are twofold – enforcement of the legal specifications and challenges to the constitutionality of the Law<sup>56</sup>'. Since the Benue State Law on Open Grazing Prohibition and Ranch Establishment law came into force in November 2017, there has been an inconsistent enforcement of the law outside of Makurdi, the Benue State capital. There has been reports of total failure to prosecute the few herders that were arrested engaging in open grazing and herders in LGAs outside the capital have reportedly continued to graze their cattle with little or no restriction.

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<sup>54</sup> Sections 24 to 30

<sup>55</sup> Section 35(1) & (2)

<sup>56</sup>Kwaja, Chris M.A. and Bukola I. Ademola-Adelehin. (2017). *The Implications of the Open Grazing Prohibition and Ranches Establishment Law on Farmer-Herder Relations in the Middle Belt of Nigeria*, 1<sup>st</sup> ed. Washington DC: Search for Common Ground.

Another Legal implication is the challenge on the constitutionality of the Law. The cattle breeders association, the Miyetti Allah Kautal Hore instituted an action against the Benue State Government on the grounds that it contradicts the Constitution of the Federal Republic of Nigeria 1999 as Amended. However, the Federal High Court in Abuja, presided over by Justice Okon Abang has dismissed the suit filed by the Miyetti Allah Kautal Hore. There exists the likelihood of similar lawsuits arising in the future. For instance, the Benue Trough lies within the recognized international grazing route, which implies that the implementation of the Open Grazing Prohibition Law will be at odds with the ECOWAS Transhumance policy that provides for freedom of transhumance in member states<sup>57</sup>. As the law continues in its implementation, the justice system will need to adapt and respond to the demands of implementation.

The law proposes ranching as an alternative to open grazing and this is in conformity with international best practices in livestock rearing. The implication is that unrestricted movement of herders with their livestock is now prohibited under penal sanctions. It is noteworthy that what is restricted is the movement of animals and not humans. Thus, the law does not derogate from the hallowed provisions of the constitution that enshrined freedom of movement and its enforcement has become necessary as a panacea to the incessant violent conflicts between farmers and herders. Freedom in itself is not absolute. It is gauged with laws and where ones right ends that of another begin. Law came as an instrument of social engineering and the enforcement of the law prohibiting open grazing will no doubt achieve lasting peace.

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<sup>57</sup> *Ibid*

### **Economic Implications:**

The prohibition of open grazing and the continued transfer of the herders out of Benue State will have economic consequences for the state economy. For instance, many people in Benue rely on livestock for food and industrial uses. As a result of the increase in the number of herders leaving the state, the prices of livestock will continue to increase.

Another Economic implication is that herders who decide to ranch their herds, will have to overcome certain economic hurdle such as capital to acquire land for the ranch, payment of necessary leasing fees, establishment of the necessary structures needed to run the ranch as a profitable and sustainable enterprise. This financial capital is beyond the economic means for most herders. The Benue State Government has proposed to fill the economic gap through the development of a new agricultural value chain that produces grass for ranchers that will offer employment and revenue opportunities in the state. So far, this benefit has yet to be realized<sup>58</sup>.

Another Economic implication is that farming activities will be disrupted in states with Laws on Open grazing Prohibition. This is evident from the negative effect of the law on the symbiotic relationship of farmers and herders in which cattle feed on farming residue and then manure the farm with dropping and therefore affect the capacity of farmers to cultivate and harvest crops in the long run<sup>59</sup>.

### **3.1.2(c) Socio-Cultural Implication**

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<sup>58</sup> T Akase, "As Benue open grazing prohibition law goes into effect", (2017, Daily Post), Available at <http://dailypost.ng/2017/11/01/terver-akase%E2%80%8B-benue-open-grazing-prohibition-law-goes-effect/> <accessed 23rd April, 2017>

<sup>59</sup> CMA Kwaja & BIA Adelehin, "The Implications of the Open Grazing Prohibition and Ranches Establishment Law on Farmer-Herder Relations in the Middle Belt of Nigeria" (2017) 1st ed. Washington DC: Search for Common Ground.

The Law on open Grazing prohibition created a shift in the worldview of a traditional herder's social relations and lifestyle. Such a herder sees open grazing as part of his culture and heritage and wants it to remain a part of their daily lives<sup>60</sup>. The Federal Government in previous attempts to entice herders to ranching, had instituted nomadic education initiatives to socialize sedentary cattle rearing, but lack of progress, largely due to inadequate funding by the governments at all levels, have limited the herders' ability to fully accept and integrate into a ranching or sedentary livelihood on a large scale. However, on the part of The Benue State Government, the Government has failed to develop incentive structures to entice herders into ranching or provide the veterinary and feed distribution facilities needed to help herders transition from open grazing to running a ranch.

### **Security Implication**

In the first place, the Benue Trough is a popular destination for both transhumant and Nigerian herders migrating within the country. As the Open Grazing Prohibition Law is implemented, it proposes that migratory access for these herders along this corridor will be denied. When enforcement of the law prevents movement of herders to the Benue Trough, there is a risk for violence if measures to prevent confrontation are not put in place.

Secondly, the increasing price of cattle, from high demand coupled with outflux of livestock from Benue, is a potential source of increased conflict and criminal activity. Skyrocketing prices for livestock over the past two decades have increased the profitability on vast stolen cattle

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<sup>60</sup> *Ibid*

syndicates across Nigeria and the Sahel<sup>61</sup>. While legislation can be a useful tool to address drivers of conflict, it should be used as a panacea to address farmer-herder conflict across the country with every sense of sensitivity. As other states consider legislation to address farmer-herder tensions, they should be conflict-sensitive in the development and implementation of legislation and prioritize the incorporation of citizen-perspectives into the development, implementation, and enforcement of farmer- herder laws in the country. Legislation should be complemented, and often preceded by, a holistic approach that directly addresses the drivers of violence and puts citizens at the center of their security.

### **Reactions and Disagreement on the Appropriateness of the Law**

The Benue State Anti-open grazing law came into force with both support and stiff oppositions. Those that support the legislation have gone so far as to label it the best antidote for farmer-herder conflict in the state<sup>62</sup>. Whereas, those that oppose it claim that the law is discriminatory against herders, does not provide or support the production of alternative livelihoods, and effectively evicts herders from the state<sup>63</sup>.

Those that opposed the legislation, primarily argued on three lines: (i) it was a deliberate attempt to evict and ostracize a portion of the population from Benue State; (ii) it contradicts the constitutional provision of the freedom of movement; and (iii) the process lacked effective consultation and input of herders before the passage of the bill into law. Many of the comments opposing the legislation were concerned with the economic

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<sup>61</sup> CMA Kwaja & BIA Adelehin, Op cit, p. 19

<sup>62</sup> C Ochayi & J Erunke, 'Anti-open Grazing Law: Inter-religious Body Lauds Gov Ortom', Vanguard News October 30, 2017). <https://www.vanguardngr.com/2017/10/anti-open-grazing-law-inter-religious-body-lauds-gov-ortom/><Accessed on 19th Oct, 2017 at 4:10am>

<sup>63</sup>Anti-open Grazing Law: Herders Appeal for FG's Intervention', (Vanguard News October, 2017). <https://www.vanguardngr.com/2017/10/anti-open-grazing-law-herders-appeal-fgs-intervention/><accessed on 9th October, 2017 at 4:11am>

inability of most herders to establish their own ranch, which is beyond the economic means of most herders in the state<sup>64</sup>. While the law proposed ranches as an alternative to open grazing, the time frame between passage and implementation did not leave enough time for the state government to make provisions for the herders to overcome the social and economic barriers<sup>65</sup>.

In the first month of the implementation of the Benue State Anti-open grazing law, the Pro-herder groups as the indigenous sedentary farmers differed on their acceptance of the Law. A prominent Fulani and Herder socio-cultural association, The Miyetti Allah Cattle Breeders Association of Nigeria (MACBAN) expressed its willingness to obey the law, but requested that the implementation date be shifted to allow sufficient time for sensitization of herders on alternatives to open grazing<sup>66</sup>.

On the other hand, the Miyetti Allah Kautal Hore openly opposed the law and threatened to prevent its implementation on the grounds that it contradicts the constitutional provision for freedom of movement<sup>67</sup>.

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<sup>64</sup> CMA Kwaja & BIA Adelehin, *Op cit*, p. 15.

<sup>65</sup> *Ibid*

<sup>66</sup> Anti Open Grazing Law: Herders Appeal for FG's Intervention. (2017, October 29). Vanguard News. [www.vanguardngr.com/2017/10/anti-open-grazing-law-herders-appeal-fgs-intervention/](http://www.vanguardngr.com/2017/10/anti-open-grazing-law-herders-appeal-fgs-intervention/)<accessed on 15th July, 2017 at 10:20pm>

<sup>67</sup> D Silas, 'Herdsman in Benue are comfortable with anti-open grazing law - Attorney General, Gusa' (Daily Post, November 8, 2017).<http://dailypost.ng/2017/11/08/herdsman-benue-comfortable-anti-open-grazing-law-attorneygeneral-gusa/><accessed on 15th July, 2017 at 10:30pm>

The group views the law as discriminatory and counterproductive to peaceful coexistence of the herders with the other citizens and called it “obnoxious and a recipe for anarchy<sup>68</sup>”.

The disagreement of those who oppose the appropriateness of the Law can be recapitulated as follows:

- i. It was a deliberate attempt to evict and ostracize a portion of the population from Benue State;
- ii. It appeared to contradict the constitutional provision of the freedom of movement;
- iii. The process lacked effective consultation and input of herders before the passage of the bill into law.
- iv. Many of the comments opposing the legislation were concerned with the economic inability for most herders to establish their own ranch, which is beyond the economic means of most herders in the state.
- v. While the law proposed ranches as an alternative to open grazing, the time frame between passage and implementation did not leave enough time for the state government to make provisions for the herders to overcome the social and economic barriers.
- vi. The law appeared to be discriminatory against non-indigenes of Benue State as the provisions of the law was made only applicable to non-indigenes and not applicable to indigenes<sup>69</sup>.

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<sup>68</sup> A Jimoh, 'Benue Anti-Open Grazing Law recipe for anarchy- Miyetti Allah', (Daily Trust, May 30, 2017). <http://www.dailytrust.com.ng/news/general/benue-anti-grazing-law-recipe-for-anarchy-miyetti-allah/199866.htm> B Agande, 'Anti-open grazing law, a time bomb- Miyetti Allah', (Vanguard News, November 14, 2017). <https://www.google.co.uk/amp/s/www.vanguardngr.com/2017/11/anti-open-grazing-law-time-bomb-miyetti-allah/amp/><accessed on 15th July, 2017 at 10:32>

<sup>69</sup> *Ibid*

### Potential Conflicts with Federal Legislations

The discriminatory application of the law based on who is an indigene and non-indigene has raised potential conflicts of interest with federal legislation. For instance, some provisions of the Law may compromise or contradict the Constitution of Nigeria as it relates to the right of citizens to move, settle, and own property wherever they desire within the country based on their indigeneity status<sup>70</sup>. The Nigerian Constitution provides that “every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof<sup>71</sup>”. Also, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria<sup>72</sup>.

It is worthy of note that all provisions relating to grant of ranching permit to non-indigenes conflicts with the right to freedom of discrimination especially on the ground of place of origin<sup>73</sup>. As stated earlier, The Miyetti Allah Kautal Hore, a Fulani socio-cultural association, has initiated a lawsuit against the Benue State Government on these grounds that the Open Grazing Prohibition Law contradicts the constitutional provision for freedom of movement<sup>74</sup>. The Attorney General of Benue State had countered that the Law did not violate the Constitution because it only restricts the movement of livestock and not human beings<sup>75</sup>.

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<sup>70</sup> The Constitution of the Federal Republic of Nigeria, 1999 as Amended Chapter IV

<sup>71</sup> *Ibid*, Section 41

<sup>72</sup> *Ibid*, Section 43

<sup>73</sup> *Ibid*, Section 42

<sup>74</sup> It is worthy of note that the lawsuit was struck out on technical grounds on 4th July, 2019 for failure of the plaintiffs to comply with the order of the court to amend their originating summons as there was no valid one before the court

<sup>75</sup> D Silas, Herdsmen in Benue are comfortable with anti-open grazing law - Attorney General, Gusa, (November 8, 2017, Daily Post). Available at <http://dailypost.ng/2017/11/08/herdsmen-benue-comfortable-anti-open-grazing-law-attorneygeneral-gusa/>< accessed on 21st April, 2017>

Moreso, the constitutional provisions on right to freedom of movement and discrimination and acquisition and ownership of immovable property are not absolute. Section 45 of the Constitution qualifying the above rights provides '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 purposes of protecting the rights and freedom of other persons.

The Open Grazing Prohibition and Ranches Establishment Law also is closely linked to Nigeria's Land Use Act of 1978, which vested authority of land administration within the state governors<sup>76</sup>. The authorities, structure and the legal precedence of this legislation has served as the legal precedence for the Open Grazing Prohibition Law and for similar potential legislation elsewhere in Nigeria.

While the Land Use Act of 1978 provided the legal precedence for state governors to establish laws dictating how land is distributed within their states, it also provides that there must be means of recourse for the revocation of land rights by the state<sup>77</sup>. However, according to the Open Grazing Prohibition Law the ranching lease and permissions granted may be revoked without the payment of compensation to the leasee<sup>78</sup>. The revocation of the rights of the rancher without payment of compensation negatives the letters and spirits of the Land Use Act and the constitution to the effect that compensation shall be paid in event of revocation of rights over land for public interest<sup>79</sup>.

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<sup>76</sup> Open Grazing Prohibition and Ranches Establishment Law 2017. s.11

<sup>77</sup> Land Use Act of 1978. Section 29(1)-(6), & Section 30(1)

<sup>78</sup> Open Grazing Prohibition and Ranches Establishment Law 2017, section 11(2).

<sup>79</sup> The Land Use Act 1978, Sections 28 & 29. See also Section 44 of the Constitution of Federal Republic of Nigeria as Amended

Furthermore, while the Livestock Department is responsible for issuing and approving ranching permits, the State Governor has the ability to withdraw ranching rights for a variety of reasons, including “overriding public interest<sup>80</sup>”. Ambiguity in the definition of what “overriding Public interest” means and what it entails in practice coupled with lack of restitution could be a source of conflict during implementation.

### **Recommendations for Amendment and Improvement of the Benue State Anti-open Grazing Law**

The Benue State Anti-open Grazing Law is one without pitfalls or shortcomings though laudable as a bold intervention in addressing the conflicts between Fulani herdsmen and farmers. The law is generally foisted with discriminatory clauses and as such may negate the certain hallowed provisions of the constitution as well as the Land Use Act. It is the need to have a broad based legislation that will address the multiplicity of interests of all the parties that this paper recommends the following for the Benue State Anti-open Grazing Law:

1. *There should be a review of the Open Grazing Prohibition Law to amend any actual or potential discriminatory provisions. A re-visit of the law becomes pertinent in the light of clear discriminatory distinctions between indigenes and non-indigenes of Benue when it comes to the procedure and mechanism for land acquisition, ranching leases, restitution and payment of compensation.*
2. *There should wide consultations of all stakeholders and inputs in the review and amendment process. This will give rise to all inclusive legislations where every stakeholder will have a sense of belonging and participation. The multi-stakeholder engagements*

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<sup>80</sup> *Ibid*

should also be platforms for the parties to highlight aspects of the law that they regard as discriminatory and recommend amendments to those aspects.

3. The Benue State Government should provide support mechanisms and incentives put in place for herders to access land for ranching and to obtain grazing permits within the state. The Benue State Government should engage investors to invest in industrial ranching and can develop incentives to stimulate ordinary herders to establish subsistence and community-based ranches in the short, medium, and long term.
4. The Benue State Government should carry out an intensive sensitization involving all stakeholders on the purpose and intentions of the law.
5. There should be provision for payment of compensation or resettlement rancher where ranching permit is revoked on grounds of public purpose.
6. Finally, ranching as the proposed alternative to open grazing should be one capable of being realized with ease.

### **Conclusion**

The Benue State Open Grazing Prohibition and Ranches Establishment Law is a bold legislative intervention in addressing the wide spreading conflicts between Fulani herdsmen and farmers. Although there are inherent lacunas begging for amendment, however, the provisions of the law in general are laudable especially in the face of docile attitude of the Federal Government led by President Mohammed Buhari. There is need for the Federal Government to rise to the demands of the time and proscribe the criminal activities of Fulani herdsmen who now wander about alongside their cattles with AK47 rifles and other dangerous weapons. It becomes imperative that other states that are yet to enact the open grazing laws should borrow a leaf from the Benue, Ekiti, and Oyo States enact one as a matter of urgency.