

LEGAL ISSUE BRIEF

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Legal Framework to Tackle Perennial Conflicts between Herders and Farmers

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CONTEXT/NATURE OF PROBLEM

Clashes between herders and farmers have assumed a frightening dimension with national security implications. For many years thousands of people have lost their lives due to these clashes. Properties worth millions of naira have been lost, while several people have fled their communities and have been displaced as a result. Accusing fingers are being pointed in several directions on the issue thereby creating avoidable suspicions, and jeopardizing the already fragile national unity and national security situation of the country. Efforts made to address this menace both at federal and state levels through policy and legislative actions appear not to be yielding decisive results. At the federal executive level, several policy initiatives designed to tackle the problem seem not to have received expected broad national support to bring them to fruition. At level of the Legislature, in the current dispensation alone, three separate bills have been sponsored in the Senate of the National Assembly to tackle the problem. Unfortunately, all such legislative efforts have failed due to oppositions raised by

Senators regarding the net implications of those bills for state powers over land use administration and other potential conflicts of state/federal legislative competences.

In the past two years, Benue, Taraba and Ekiti States have passed laws limiting and regulating movement/grazing of cattle and other ruminants as a direct response to these incessant clashes. Such clashes are known to have occurred across all the states, although the frequency of the conflicts seems to have increased in the middle-belt and in some states in the south. Despite the insinuations, suspicions and conspiratorial theories provoked by such clashes, available studies show that the clashes are attributable to several factors which may be classified as immediate and remote triggers all of which are ultimately linked to land use disputes/claims between nomadic herders and sedentary farmers on the one hand; and on the other, due to many years of (state) government failure to implement existing policy/legislative measures aimed at striking a balance between these two apparently legitimate competing claims.

STRATEGIC RESPONSE TO THE CHALLENGE

In order to effectively tackle this national menace, the National Assembly may wish to consider the possible legislative intervention in form of passing necessary *resolution* for enforcement of extant law, *inviting* the relevant agencies of government to account for their actions or inactions or pass fresh *legislations* to deal with the situation, whichever is considered appropriate, using the under-listed strategic initiatives:

Securing Life and Property

The federal government has the requisite constitutional power to secure life and property in the country. Such measure can include deployment of the armed forces to maintain peace in any conflict area and to provide essential supply and services to secure life and property in addition to the power to legislate exclusively for policing across the country. This is the net implications of section 11 (1), section 14 (2) (b), sections 214-216 and section 217 (2) (c) (d) of the 1999 Constitution. Section 14 (2) (b) provides the policy context for legislative actions for maintaining security of lives and property in the country. Section 11 (1) broadly empowers the National Assembly to “make laws for the Federation or any part therefore with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly”. Sections 214-216 deal with the power of administration and control of the Nigeria Police Force, which body is specially declared as the only

police organization in Nigeria under the overriding control of the federal government. With specific reference to section 217 (2) (c), the National Assembly is empowered to enact an Act for the Federation to, among other things, “equip and maintain the armed forces” for purposes of “suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such condition as may be prescribed by the National Assembly”. Pursuant to section 217 (2) (d), the armed forces can also be empowered to “perform such other functions as may be prescribed by an Act of the National Assembly.” Therefore the National Assembly may wish to pass necessary *resolution* calling on the President to exercise his powers in this regard. However, this is more of a reactive approach which can only deal with the immediate threat to national security if such resolution is expectedly complied with. On the other hand, since the Nigeria Police is conferred sole police power in the country, the National Assembly may wish to invite the Inspector General of Police to explain strategic response by the force to the tackle the menace and secure order across the country.

Fresh Legislations

There are conclusive empirical studies showing that these clashes are mainly triggered by conflicting land use claims between herders and farmers. While herders are in dire need of pastures and fresh water for their herds especially during dry season, sedentary farmers are unwilling to yield their land for such pastoral needs albeit temporarily. The result is the frequent clashes

which have frequently erupted over the years. What is clear from studies is that the clashes now seem to occur more in the south-ward part of the country which has abundance of pasture and fresh water available even beyond the dry season. With increasing unfavourable climate in the savannah belt and the Sahel, in addition to land use policy and acquisitions which have made previously unoccupied grazing land unavailable for pasture, herders are forced to move their herd south-ward to seek pastures.

Previous attempts by the National Assembly to ameliorate dire conditions of herders through legislation have been resisted by some members raising issues of state land use constitutional legislative competence. However, despite this opposition and in view of the far-reaching implications of incessant clashes between herders and farmers, there is urgent need for the National Assembly to intervene through legislation using its existing powers within the constitutions, without provoking any conflict of federal/state legislative competence. In particular, the National Assembly may wish to take the following legislative steps:

Regulation of Interstate Livestock Commerce

Herding activities have obvious interstate commerce implications. Therefore, to regulate herding of cattle across states and minimize clashes between herders and farmers, the National Assembly may wish to enact an Act pursuant to its powers in item 62 (a) of the Exclusive Legislative List contained in the Second Schedule Part I of the Constitution which empowers the National Assembly to make law in respect of “Trade and commerce, and in particular trade and

commerce between Nigeria and other countries including import of commodities into and export of commodities from Nigeria, and trade and commerce between states.” The National Assembly can also justify such regulation as part of security measures within its competence pursuant to its in section 11 (1) of the Constitution. Such an Act can prescribe regulations with regards to movement of cattle across states; regulation for branding of cattle to identify owners involved in such activities; registration of owners involved in such activities with their brand names and all such measures to prevent anonymity of cattle owners and herders, among other regulations. All relevant ministries and department and the security forces should be availed data generated through this means. Appropriate sanctions should be included in the law to punish those who fail to supply the required data or fail to share them.

Creation of Special Unit of the Nigeria Police Force

Given the enormous national security implications of interstate livestock commerce, a special unit or marshal of the Nigeria Police Force should be created through an amendment of the Nigeria Police Force Act with specific mandate to monitor interstate movement/transportation of cattle and ensure compliance with any legislation which regulates such movement or transportation. In view of the fact that cattle-rustling is a phenomenon identified as a major trigger of the clashes, the special unit or marshal of the Nigeria Police Force should also forestall such criminal activities and apprehend perpetrators for prosecution under

the relevant criminal laws of the various states or federal legislations.

Federal Grant to States

Conclusive studies show that pastoralism or herding of cattle is not a matter of choice but a survival measure forced upon the herder by his instinctive quest to ensure the survival of his cattle on which he depends for his own survival as well, having been displaced from access to uncultivated grazing lands by many factors relating to land use, land administration, urbanization and the impact of desertification caused by climate change. Under the current condition of the herder and the state of national development, the herder has no alternative than to continue to herd his cattle to any location where he can find pastures and fresh water. Therefore, given the year-long abundance of pasture and fresh water in the southern and middle-belt part of the country, these locations would remain attractive for the herder.

Hitherto, in recognition of the challenges faced by the herder while seeking pasture, the government of the defunct Northern Region had passed the Grazing Reserve Law of 1964 to provide strategic response to forestall clashes now being recorded, including development of public grazing fields/reserves. This was in recognition of the vertical constitutional responsibility placed on the regions/states to handle such matters. Unfortunately, most states in the north where this law is still applicable have not taken enough proactive actions to sustain the initiatives contained in the Grazing Reserve Law of 1964.

Nevertheless, federal support for such initiative is unavoidable given the urgent

national security implications of continuous clashes between herders and farmers. It is in this context that the federal government should consider providing financial support to states by way of conditional grants to enable them develop the necessary infrastructure for grazing within their various domains. This will reduce further herding activities across states and the clashes resulting from them. Such grants, which should be preceded by an Act of the National Assembly (possibly in the Appropriation Act), can be made to all states (as cattle can be raised in any state) and can be justified by virtue of item 1 (b) of the Concurrent Legislative List contained in the Second Schedule Part II to the 1999 Constitution which confers power on the federal government to, by an Act, make provisions for “grant or loan from the imposition of charges upon the Consolidated Revenue Fund or any other public funds of the Federation or for the imposition of charges upon the revenue and assets of the Federation for any purpose notwithstanding that it relates to a matter with respect to which the National Assembly is not empowered to make laws.”

This fiscal transfer may be tagged as a loan to the states (which desire it) to resuscitate the model initiated under the Games Reserve Law of the Northern Region or any other viable model; or to such states (as grantees/guarantors of the loan) to disburse to interested livestock farmers who are willing to give up pastoralism for modern and more sustainable approach to cattle-rearing. Through such states, the loan can also be available to local business people in any part of the country who, though not pastoralists

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themselves, are now known to be involved in the business of cattle-rearing using herders as labourers.