

Legal Impediments to the Proposed Cattle Colonies in Nigeria

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Abstract. In response to the frequent clashes between cattle herdsman and farmers in some parts of the country, the Federal Government of Nigeria has proposed the establishment of cattle colonies across the country. It is believed by the Federal Government that the establishment of the cattle colonies would solve the continued herdsman / farmers conflict in parts of the country. However, the above Federal Government proposal has been widely resented drawing heavy criticisms from major stakeholders particularly State Governors who are the chief custodian of Land in the territory of their respective States in the Country. This paper therefore examined the rationale and the expected benefits from the proposed cattle colonies. The paper particularly discussed the Legal Impediments to cattle proposal and recommended ranching as an alternative to the proposed colonies. Finally, the paper recognized that if the Federal Government would continue to pursue the said proposal on cattle colonies, there is the need for a radical amendment to the extant Laws on Land management and control in Nigeria.

1. Introduction

The Federal Government of Nigeria proposed to establish Cattle colonies across the country with a view of checking the incessant herdsman/farmers clashes in some parts of the country. The proposal which was announced by the Nigeria Minister of Agriculture, Chief Audu Ogbe early in January 2018 attracted reactions in

form of stiff opposition in some quarters, while other stake holders considered the proposal as a welcome development.

It was opined by the Government Minister that: *Cattle colonies are better for the breeding of cows because 30 or 40 ranches can share the same colony. A ranch is usually owned by an individual or a company with generally few cows. In a colony, you could find 30,000 cows owned by different owners. The reason why Government was designing the colonies is to be able to prepare on a large scale, on economy of scale, a place where many owners of cattle can co-exist, and where cows can be fed well, because Government can make their feeds. They can get good water to drink. Cows drink a lot of water. We can give them greater fodder.*

From the Minister's explanation, colonies will be larger and sit on land to be acquired by the Federal Government, unlike ranches where cattle breeders will acquire by themselves according to the extant laws and subject their operations to the norms and cultures of their host communities.

This paper therefore highlights the benefits of the establishment of cattle colonies by the Federal Government of Nigeria and the legal impediments to the proposed cattle colonies considering the extant laws relating to the proposal. The paper also makes appropriate recommendation by suggesting ranching among others as alternative to creation of colonies for cattle grazing in Nigeria.

1.1 Conceptual Clarification of Terms and Concepts:

(a) Cattle colony:

According to WIKIPEDIA, “Cattle colony is one of the neighborhoods of Bin Qasim Town in Karachi, Sindh, Pakistan. This neighborhood of Karachi is the centre of cattle and meat trade in Karachi. The cattle colony is the dairy products shopping and supply centre of Karachi. There are also many abattoirs and meat warehouses located in the cattle colony”.

Cattle colony is like a shopping complex where cattle and meat trade are carried out.

Cattle colony has nothing to do with rearing or grazing of cattle and other livestock.

According to Professor Ben Nwabueze, “the cattle colonies as proposed by the Federal Government are nothing other than “settlements” of Fulani herdsmen in all parts of the country. Nwabueze warned of the religious, political and legal implications of the plan”.

(b) Ranching:

According to Collins English Dictionary, ranching is the activity of running a large farm, especially one for raising cattle, horses or sheep. A ranch is an area of land, including various structures, given primarily to the practice of ranching, the practice of raising grazing livestock such as cattle or sheep for meat or wool.

(c) Land Use Act 1978:

The Land Use Act of Nigeria 1978 is an important enactment that changed the land tenure system in Nigeria and intended to remedy the disparities in relation to land between the landowner and the tenant. Under the Act, all land in Nigeria is vested in Government.

In response to a potential crisis in land distribution, the Federal Military Government of Nigeria promulgated the Land Use Act of March 1978 establishing a uniform tenure system for Nigeria. In Nigeria, before the enactment of the Land Use Act, there was no uniform land policy because the historical backgrounds of the land

tenure systems of the regions were not identical. In establishing a uniform tenure system therefore, the Act intended to address the problem of lack of uniformity in the laws governing Land Use and ownership, the issue of uncontrolled speculation in urban land, the question of access to land rights by Nigerians on equal legal basis and the issue of fragmentation of rural land, to stimulate investment in agriculture by enhancing land use security, to optimize land use, to ensure sustained land use, to ensure sustained improvements to land quality and to enlighten the people on the right to use land. The Act effectively nationalized all land by requiring land users to obtain statutory right of occupancy and customary right of occupancy from the state and Local Governments respectively. In this regard, the innovation introduced by the Land Use Act is that it divests any claimant of radical title and limits the claim to a right of occupancy. However, the Act stipulates that anyone in rural or urban area who normally occupied land and developed it before the commencement of the Act would continue to enjoy the right of occupancy and could assign his interest in the developed land.

1.2 Expected benefits of the proposed cattle colonies:

While explaining the rationale for the proposal, the Federal Government of Nigeria highlighted the expected benefits from the proposed cattle colonies as follow:

- It will ensure safety of lives and properties and a drastic reduction in farmers and herders clashes.
- It is believed that cattle produce healthier beef when they are kept in colonies, and also produce more milk.
- Farmers do not have to worry about the safety of their crops and thus more production is ensured for the masses, which means more economic activity in the agricultural sector.
- Cattle colonies would put a stop to cattle rustling by thieves and terrorists.
- It would be easy to identify criminals who either masquerade as herdsmen or herdsmen who commit murderous crimes and destruction.

1.3 Legal Impediments to the proposed Cattle Colonies:

The Minister's emphasis on the process of acquiring land for the colony is misdirected. The issue is not only about the process of acquiring the land but about the ownership of the land after it is acquired, more important about the right to the exclusive use, the management and control of the land so acquired.

As expected in a proposal of this nature, a lot of administrative, social, political and legal issues will be involved. The concern of this paper however, is limited to the legal issues relating to the proposed cattle colonies. In carrying out the legal analysis of some of the issues, certain questions are begging for answers. In this segment of the paper, the identified legal impediments are discussed and analyzed as follow:

(a) Who is vested with the land in the States across Nigeria upon which the Federal Government proposed to create cattle colonies?

By virtue of the Land Use Act, all land in the territory of a state are vested in the Governor of the state in trust for the use and benefit of all Nigerians.

Furthermore section 5(1) of the Act provides that:

It shall be lawful for the Governor in respect of the land, whether or not in an urban area:

- to grant statutory rights of occupancy to any person for all purposes
- to grant easements appurtenant to statutory rights of occupancy;
- to demand rental for any such land granted to any person;
- to revise the said rental

at such intervals as may be specified in the certificate of occupancy, or where no intervals are specified in the certificate of occupancy at any time during the term of the statutory right of occupancy; impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land, the subject of the certificate of occupancy and to revise such penal rent as provided in section 19 of this Act.

The Act also provide in section 6 as follow:

(1) It shall be lawful for a Local Government in respect of land not in an urban area:

- to grant customary rights of occupancy to any person or organisation for the use of land in Local Government Area for agricultural, residential and other purposes;
- to grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned.

No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor.

From the above provisions of the law therefore, there is no doubt that the land upon which the Federal Government proposed to establish cattle colonies have exclusively vested either in the Governor, or the Local Government depending on whether the land is situate in urban centre or at the Local Government areas for the benefit of all Nigerians. Having vested the land in the Governor or the Local Government, the Act also provides that the highest right that can be subsequently granted for an individual or organisation is the Right of occupancy. This right of occupancy can be an Express grant from the Governor or Local Government as the case may be or through a "deemed" grant as envisaged under section 34 & 36 of the Land use Act. It is therefore settled from the above provision of the Land Use Act that the Federal Government is not vested with the land in the territory of a State in Nigeria. The only available land vested in the Federal Government is the land at the Federal Capital Territory and other land specially designated as belonging to the Federal Government through its agencies in some parts of the country. Consequently, in order for the Federal Government of Nigeria to push ahead with its proposed cattle colonies, it will have to apply for allocation of land from the respective state Governors who are not in any way under any obligation to grant such request.

(b) The next legal issue associated with the proposed cattle colonies in Nigeria is how to deal with the existing rights on the land on which the Federal Government proposed to establish the cattle colonies.

It has been established above, that the Governor is invested with the land in the territory of a state and where such land fall within the rural area of a state, the Local Government is empowered to administer such land for the common benefit of all Nigerians. In enforcing the trust imposed on them in respect of the land, the Governor and the Local Government grant rights of occupancy (either express or deemed grant) to individuals and organizations for purposes recognized under the Act. With the proposed cattle colonies being envisaged by the Federal Government, the implication is that most of the land already allocated by state Governor and Local Government to other Nigerians may have to give way for the proposed cattle colonies.

Assuming the state Governors and the Local Government wish to support the Federal Government initiative on the proposed cattle colonies, there are legal impediments which many hinder the realization of the said proposal. For example, section 44 of the constitution of the Federal Republic of Nigeria provides “that:

- No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things- requires the prompt payment of compensation therefore; and
- gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Beyond the constitutional provision, section 28 of the Land Use Act makes provision for circumstances under which the Governor or the Local Government may revoke an already

existing right over the land. It has been held that such revocation must be for overriding public purpose. Where a right of occupancy is revoked under section 28 of the Act, the holder or occupier is entitled to compensation under section 29 of the Act.

It is therefore clear that where a purported revocation of land is not for overriding public purposes, such revocation will be set aside.

It should also not be construed that once the Governor exercises his power under section 5(2) of the Act, that all other subsisting right on the land are automatically distinguished.

Section 5 (2) of the Land Use Act provides as follow:

Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.

The Supreme Court of Nigeria has however taken very bold decisions in recent times on the effect of section 5(2) of the Act on existing rights. Existing rights in this case, include “deemed rights” under section 34(2) and section 36(2) of the Act respectively and rights created by the grant of a customary right of occupancy by the Local Government before the exercise of the power of the Governor under section 5(1) of the Act over the same land. Existing rights also arise where the Governor had earlier granted Right of occupancy over a particular parcel of land and subsequently in exercise of his power under section 5(1) of the Act purport to grant a right of occupancy to another person in respect of the same parcel of land. In all the above cases, the Supreme Court made it clear that whether a deemed right under S. 34(2) and S. 36(2) which is a vested right recognized by the Act itself or an earlier grant of a customary right of occupancy or statutory right of occupancy respectively cannot be extinguished by operation of the provision of section 5 (2) of the Act by the issue of a statutory right of occupancy over the same plot. The right can only be revoked as provided under section 28 of the Act.

It is therefore clear from the above provisions that existing rights on Land can only be revoked

for overriding public interest or purpose. The courts in Nigeria will have to be satisfied that the proposed cattle colonies will amount to overriding public interest to warrant the acquisition of land required for the said colonies to take priority over the already existing interest on the Land.

(c) The next related issue to be determined is whether the business of cattle rearing by individual herdsman can be regarded as public enterprise and as such warrant Government intervention like in the proposed cattle colonies?

In this regard, various commentators have wondered why the Government wishes to be involved in the process of acquiring land for individual private enterprise.

It is argued that the business of cattle rearing is just an aspect of agriculture business. The question is; will the government acquire similar colonies for cocoa farmers, rice farmers, poultry farmers etc. Legally, it is viewed that the proposed “cattle colonies” is an infraction to section 42(1)(b) of the 1999 constitution which provides:

(a) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person –

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any

(c) such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

Therefore, as long as the proposed cattle colonies will accord undue advantage to cattle herders who are essentially of Fulani ethnic nationalities, the Federal Government by the proposal would be infringing on the provision of the 1999 constitution as other ethnic nationalities would feel shortchanged, sidelined and cheated. This will elicit stiff opposition to the proposal by other ethnic nationalities who view the proposal as an expansionist policy of the Fulani ethnic nationalities more so that the current President of Nigeria is a Fulani man.

(d) Another problem envisaged in the proposed cattle colonies is the right to the exclusive use, management and control of the land in the colonies.

Does the right to exclusive use management and control of the land in the colonies belong to the Federal Government or the cattle owners? Ordinarily, where a Governor grants a right of occupancy under section 5 of the Act, he has the right to demand rental for any such land upon which a right of occupancy has been granted. The question that will arise here is; who will now collect rental from the herdsmen over the Federal Government acquired cattle colonies in the various States. Is it the Federal Government, the state Government or the communities whose communal and ancestral land have been colonized? What would happen, where for instance, the herdsmen give their allegiance to the Federal Government who established the cattle colonies or to their Umbrella Association “the Miyetti Allah” rather than the State and Local Governments upon whose land the cattle colonies have been established? There is palpable fear that if the allegiance of the Fulani herdsmen in the proposed colonies tilts towards their Umbrella Association rather than the host Governors, the situation may lead to “creation of States within States”. This and many others related issues may necessarily lead to an amendment to existing laws on land management and control before the proposed cattle colonies can be legally established.

(e) Whether there exist any previous Federal laws or policies to cater for cattle ranching in Nigeria?

The 1965 Grazing Reserve Law was enacted to give legal backing to the acquisition of grazing reserves. This gave the then regional government and native authorities powers to acquire native land and constitute it into grazing reserves. The 1978 Federal Land Use Decree further extended this law and specified the categories of land that could be used for grazing and agricultural purposes.

The National Agricultural Policy of 1988 indicated that a minimum of 10% of the national territory (about 9.83 million hectares, of which

20% was to be low lying fadama) would be acquired of the different levels of the government.

Although this represents a conscious effort by the central government to protect pastoralism, the policy has not been enforced. As a result, only about 313 grazing reserves covering a total of 2.82 million had been acquired. Of these, about 52 reserves were gazetted by 1998, mainly in the northern states.

Despite 'gazettement', almost all reserves have been encroached by crop farmers and other users. The responsible authorities have failed to reserve fadama lands for grazing purposes.

While the comprehensive legal provisions should provide an enabling environment for pastoral development, they have not been fully implemented. This can be attributed either or political motivation on part of the authorities or ineffective lobbying from pastoral group.

(f) What is the quantum of Land that can be granted for agricultural and grazing purposes in Nigeria?

Under the provision of the extant law in Nigeria which is the Land Use Act and by virtue of section 6 of the Act, the Local Government cannot grant a single customary right of occupancy in excess of 500 hectares of Land for agricultural purposes, or 5,000 hectares for grazing purposes except with the consent of the Governor. The limit set for the quantum of land permissible for grazing purpose is another serious impediment to the proposed cattle colonies which may be in excess of the 5,000 hectares limit.

2. Conclusion and Recommendation

There is no doubt that the proposal for the establishment of cattle colonies by the Federal Government of Nigeria has generated a lot of mixed reactions. This paper has analyzed some of the anticipated benefits of the proposal and the legal impediments to the proposal. The paper finds among other things that the extant Law in Nigeria cannot readily support the proposed cattle colonies as any attempt to force the proposal on the states of the Federation in Nigeria will lead to serious resistance by some

State Governors upon whom the entire land in the territory of each State are vested.

Consequently, this paper recommends that instead of the proposed cattle colonies, the Federal Government should appeal to the State Governments to readily make available adequate land for ranching to individual herdsmen to enable them graze their cattle. If however, the Federal Government must insist on the proposed cattle colonies, appropriate machinery must be put in place to effect necessary amendment to the Land Use Act 1978 that would entrust certain percentage of Land in the territory of each State of the Federation to the Federal Government.

Once, this is done, the Federal Government will find it easy not only to establish cattle colonies in the States but also any other commercial venture without being in conflict with the State Governors over land administration in the territory of each State of the Federation.

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