

THE CONSTITUTIONALITY OF THE PROHIBITION OF OPEN GRAZING BY SOME STATES IN NIGERIA: A VIOLATION OF HUMAN RIGHTS?

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PREAMBLE

Human rights are commonly known as basic, inalienable and fundamental rights that belong to every person in the world simply because we are human. These rights are inherent in us from birth even till death regardless of religion, ethnicity, race, nationality, gender, origin or status. It is a well-known fact that human rights are regularly protected in municipal and International laws. Nigeria as a country is not side-lined in upholding and preserving the human rights of her citizens. These rights are entrenched in Sections 33 to 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). This paper won't delve into the history of human rights and exposition of these rights in totality. This presentation in a nutshell would be premised on whether the prohibition of open grazing in Nigeria by some states is a violation of human rights of the citizens as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria, as amended?

INTRODUCTION

The numerous violent clashes between the cattle herdsman and arable farmers in Nigeria have birthed several Anti-Grazing laws of some states in Nigeria in an attempt to halt these clashes. It is pertinent to bring to fore that though not all cattle herdsman are lawless and criminals, however several reports have linked them to wanton killings, kidnapping, murder, arson, rape, destruction of lives and properties including farmlands. One of the many notable reports of these unruly behaviors of the cattle herdsman can be seen in the popular Ibarapa North, Igangan incident of Oyo State, which led Sunday Adeniyi Adeyemo, also known as "Sunday Igboho" to issue a seven days ultimatum to the Fulani herdsman in Ibarapa to vacate the land after the killing of one Dr. Aborode sometimes in January, 2021. Another issue at stake in recent time is the report of the conversion of the State's forest reserves into a criminal space by herdsman who violate the integrity of the reserves and use it as a hide-out for kidnapping, extortion and killings. This led the Ondo State Governor, Rotimi Akeredolu who equally holds the office of the Chief Security Officer of the State to issue a seven days ultimatum to the herdsman in the forest reserves to vacate the place immediately.

It is pertinent to bring to fore that the security of the people is sacrosanct to any state and a country is as good as dead if lives are in-secured. The primary purpose and the first most paramount duty of government is the national security and well-being of citizenry, which includes both their lives and properties. This primary duty

is constitutionally recognized in Chapter 2 of the 1999 CFRN (as amended), particularly Section 14 (2)(b) which provide thus: **“the security and welfare of the people shall be the primary purpose of government”**

Even though in plethora of cases the status of Chapter 2 of the 1999 Constitution of Federal Republic of Nigeria (as amended) has been judicially confirmed as non-justiciable and a mere declaration. See the case of **Attorney General Ondo State .vs. Attorney General of the Federation (2002) 9 NWLR (Part. 722) P.22**. Hence, Chapter 4 is often times used to enforce chapter 2 of the 1999 CFRN. These Sections 33 to 44 of the 1999 CFRN (as amended) provides for the fundamental Human rights

It is an unarguable fact as entrenched in Section 42 of the 1999 CFRN (as amended) that **“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..”**.

Section 41 (1) equally state that **“every citizen of Nigeria is entitled to move freely throughout Nigeria to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from”** as provided for in Section 41(1) of the 1999 CFRN (as amended). However, attention need to be called to the fact that these provision of Section 41(1) of the 1999 CFRN (as amended) is not absolute and this is contained in paragraph 41(2)(a)&(b) and Section 45 of the 1999 CFRN.

Cattle herdsman also often times known as Fulani herdsman travel hundreds of miles from their original place of settlement which is in the Northern part of Nigeria in large numbers with their cattle in search of essential resource such as farmland, grazing areas, water et cetera, and it cannot be denied that in most cases they are armed with weapons such as guns, cutlass, machete, bow and arrows, which they claim is for the protection of their live stocks and in the course of their grazing they destroy crops, farmlands, clash with farmers, steal crops and there are several reports of them killing and kidnapping too; for instance there was a time that Pa. Olu Falae was kidnaped in his farm by the herders.

When the government fails in its primary duty to protect lives and properties the people often times resort to self-help and adopt the common law principle called **“Castle Doctrine”** or defence of habitation law which legally permits a person to protect his abode or properties and equally grants immunities from actions lawfully done in the course of exercising such defence. It is important to state vividly that our Criminal Code Act recognize this **“Castle Doctrine”** with similar provisions in **Sections 23;**

“A person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud”.

See also the case of **Braid vs. the State (1997)5 NWLR (pt.5041) 14 @149**. In the case of **Amala vs. State (2004) 18 NSCQR 834**, the court held thus:

“if a man attacks me, I am entitled to defend myself, and the difficulty arises in drawing the line between mere self defence and fighting. The test is this: a man defending himself does not want to fight, and defends himself solely to avoid fighting. Then supposing a man attacks, and I defend myself, not intending or desiring to fight but still fighting- in- one- sense to defend myself, and I knock him down, and thereby unintentionally kill him, that killing is accidental”.

The provisions of **Sections 282, 286, 289, 290,291, 292,293 of the Criminal Code Act L.F.N 2004** are instructive though there is an exception contained in section 287 of the Criminal Code Act on self defence against provoked assault.

In other to prevent the citizens from resorting to self-help born out of insecurity, clash between cattle herdsmen and farmers and so on which if left un-manned, unchecked and un-controlled could lead to anarchy, total breakdown of law, order and peace in the society and most likely lead to civil war. Several states have enacted the Anti-open grazing law. The establishment of these laws by some states in Nigeria is not to violate any citizen’s fundamental human rights, but is done in line with the provisions of Section 45 of the 1999 CFRN as amended. Section 45 (1)(a)&(b) of the 1999 CFRN (as amended) provide thus:

Section 45(1) 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 purpose of protecting the rights and freedom of other persons.

Taraba State Anti-open Grazing law which bans open rearing and grazing of livestock and also provided for the establishment of ranches and other related matters has the following main objectives inter alia:

- i. Preventing conflicts between farmers and herders
- ii. The promotion of modern techniques of animal husbandry
- iii. The promotion of job and investment opportunities in livestock farming et cetera.

The law also provided punishment to anyone who openly grazes livestock or

moves livestock by means other than in a motor vehicle or moves without permit commits an offence and shall be liable upon conviction to (a) for any first offender, a fine not exceeding N500,000:00 or imprisonment of 1 year, (b) for any subsequent offences, a fine of not less than N1,000,000.00 or imprisonment not exceeding two years.

Other states with similar laws prohibiting open grazing are **The Ekiti State Anti-Open Grazing Law passed into law in 2016 and same was accented to** by Governor Ayo Fayose. **The Oyo State Anti-Open Grazing Law of 2019** which prohibit open-rearing or grazing of livestock with a punishment of 5 years imprisonment for anyone found guilty or a fine of N500,000.00 or both and subsequent offender shall upon conviction be liable to 10 years imprisonment or a fine of N2,000,000.00 or both. We also have Benue State Open Grazing Prohibition and Ranches Establishment Law 2017. Similarly the Governors of the 17 Southern states of Nigeria under the chairmanship of the Governor of Ondo State, Rotimi Akeredolu recently in Asaba the Delta State capital met and resolved to ban open grazing in the Southern part of the Country.

Although Ondo State livestock Rearing and Grazing of Livestock Bill is yet to be passed into law, the Ondo State Government have taken considerable steps in curbing the menace and havoc caused by cattle herdsmen in the state. Upon Governor Rotimi Akeredolu's directive banning open-grazing pending the passage of the Ondo State Anti-Open Grazing law, the Amotekun Corps, a security agency of the state as reported by the Nation Newspaper on the 19th of April, 2021 arrested over 250 cows following a distress call and petitions by farmers in Ipogun, Ilara and Owena Axis in Ifedore Local Government of Ondo State. An agreement that herders found guilty of open grazing and destruction of properties should be arrested, prosecuted and the cows would be confiscated as government property and such herders found guilty would not be allowed window of opportunity for negotiation for payment of compensation was signed by the Chairman of Miyetti Allah Cattle Breeders Association, Alhaji Garba Bello on behalf of the Ondo State Cattle herders, while one Mr. Odeyemi Joseph and 3 other signed on behalf of the farmers of the Ifedore L.G.A.

Conclusion

To this end, it would be safe to say that right to freedom of movement, right to freedom from discrimination and other rights of humans entrenched in the constitution has not being violated by banning open grazing. What the government has simply done while discharging its primary duty which is protection of lives and properties and ensuring the well-being of her citizens is purely to invoke the provisions of Section 45 of the 1999 CFRN as amended. It is also recommended

that to further give strength to the acts taken by some states to ban open-grazing, the President should invoke Sections 35 of the Firearms Act L.F.N, 2004 which gives the President power to prohibit possession or dealing of firearms or ammunitions throughout the Federation in the hands of persons other than the security agencies if done, anyone found with firearms or ammunitions aside the security agents like the Police, Military personnel or other constitutionally recognized security outfits should be arrested and prosecuted immediately. In a nutshell licence to guns to citizens should be revoked. With the president invoking provisions of Section 35 of Firearms Act, L.F.N 2004, the issue of kidnapping and insecurity would reduce to a minimal; if possible become a thing of the past.