

RUGA POLICY AND THE LIMITS OF THE POWERS AND/OR AUTHORITIES OF THE EXECUTIVE GOVERNORS OF STATES AND FEDERAL GOVERNMENT OF NIGERIA OVER LANDS UNDER THE LAND USE ACT



INTRODUCTION

FARMER/HERDER CRISIS IN NIGERIA

The advent of the new millennium has seen an escalation of the crisis between cattle herders (pastoralists) and farmers in Nigeria. The worst of this conflict has been in the North Central states, particularly Benue, Plateau and Nasarawa.[1] In recent times, there has been a peaking of the crisis, as the conflict has begun to spread rapidly, and many more cases of violence and killings are reported by the media. A report released by Amnesty international in 2018 reveals that since 2016, at least 3,641 people have been killed, and much more have been displaced. The human rights organization lays the blame at the feet of the government. In the words of Amnesty's Nigeria director, "little has been done by the authorities in terms of prevention, arrests and prosecutions, even when information about the suspected perpetrators was available." [2]

It must be stated that many within the country do not perceive the farmer-herder situation as a legitimate conflict. Rather, the general perception, especially in the Southern region is that the killings are the results of unilateral and unprovoked acts of terrorism by the herdsmen. Some others have taken it a step further, by putting a religious twist to it- they have characterized the conflict as a case of rampaging Fulani Muslim herdsmen killing innocent Christian farmers.

Meanwhile, numerous analysts and researchers conclude that the crisis is a major fall out of climate change and increasing population. They blame desertification and urbanization for the depletion of arable land. Some conclude that the conflict is inevitable in light of the circumstances as it is the nature of man to compete for scarce resources.[3]

GOVERNMENT RESPONSE/RUGA SOLUTION

In 2016, the House of Representatives introduced a National Grazing Reserve (Establishment) Bill.[4] The Bill sought to establish the National Grazing Reserve Commission with wide powers to identify and acquire lands in all the 36 states of the federation. The bill was abandoned because of wide opposition, arising from its inconsistency with the constitution and the Land Use Act. The bill has been restyled and reintroduced in

different forms since then but, like the original bill, none of the subsequent versions have survived legislative scrutiny.

In 2018 the Federal Government introduced the National Livestock Transformation Plan. The plan aimed to create ranches in all the 36 states of the federation with pilot states being Adamawa, Benue, Edo, Ebonyi, Kaduna, Nasarawa, Oyo, Plateau, Taraba and Zamfara. Again, this plan was roundly rejected by states on the ground they have no land to allocate for the project.[5]

The latest in the list of proposed solutions to the crisis is the controversial RUGA program, which is the subject of this write up. Any meaningful analysis of the RUGA scheme must proceed from an analysis of its scope and content.

WHAT EXACTLY IS RUGA?

It must be said at the outset that much of the confusion on meaning and scope of the RUGA scheme is due to the dearth of official information in terms of a policy document or proposal in the public domain. Commentators and analysts rely on statements (official and unofficial) made by government officials and agents.

It appears the RUGA programme was brought to public knowledge by the former Minister of Agriculture and Rural Development Mr. Audu Ogbe who has been widely quoted as saying that the President has approved the Ruga Settlement scheme. According to him, government plans to build settlements where herders will live, grow their cattle and produce milk.[6] The settlements are to be built throughout the thirty-six states of the federation.

Naturally, the source of the lands where these settlements would be located remains a big question. Already, many state governors have categorically said they would not provide land for the scheme. Many rely on the powers of the Governor of a State under the Land Use Act to argue that Governors can prevent the establishment of RUGA ranches in States even though the initiative is that of the Federal Government of Nigeria. This makes it imperative to examine the limits to the said powers of the Governor.



Photo: Aljazeera Nigeria

ANY LIMIT TO THE GOVERNORS POWERS UNDER THE LAND USE ACT?

Section 1 of the Land Use Act provides; “Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.”

While there has been a little debate in academic circles as to the exact interpretation of this section, case law is quite unanimous on the point that Section 1 of the Act vests ownership of all lands within the country on the State Governors. Kayode Eso JSC said this much in the celebrated case of *Nkwocha v. Governor of Anambra State*[7] where he said;

“The tenor of that Act as a single piece of legislation is the nationalization of all lands in the country by the vesting of its ownership in the state leaving the private individuals with an interest in land which is a mere right of occupancy.”

Commenting further, the Lord Justice held that the use of the word “vested” as used in section 1 of the Act should be interpreted as “having the effect of transferring to the Governor of a state the ownership of all land in the state.”

The question that flows from the above is whether the Governor’s control over land which is the necessary implication of Section 1 is absolute. To determine that, we must beam our search light beyond the first section of the Act.

Interestingly, the preamble to the Act appears to tell a more complete story. It says; “An Act to Vest all Land comprised in the territory

of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who would hold such Land in trust for the people...”

The phrase “except land vested in the Federal government or its agencies” obviously excludes the operation of the act, and by implication the powers of the Governor from the administration of Federal Government owned land.

Building on the foundation laid by the preamble, Section 49(1) provides further;

“nothing in this Act shall affect any title to land whether developed or undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act and, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.”

By implication, the Governor of a state has wide powers and control over lands within the territory of the state save for Federal Government lands. That is not to say however, that the Federal Government has absolute and unqualified powers over federal lands. The Supreme Court in *AG Lagos v AG Federation*[8] established this point when it held that the Federal Government lacks powers to enact urban and regional planning laws for the purpose of issuing permits and licenses for the development of federal lands within state jurisdiction. The Court held that regulation of urban and regional planning is a matter that is situated within the residual legislative list, over which the State has jurisdiction.

Hence, the federal government must comply with the state's urban and regional planning laws by obtaining all necessary permits in developing its lands.

IMPLICATIONS / OPTIONS OPEN TO THE FEDERAL GOVERNMENT

It is clear that a State Governor has wide powers over lands situated within the state. It is also clear that the Federal Government cannot acquire land for the purpose of RUGA without the need to obtain the consent of the governor.

Section 49(1) makes it possible for the Federal Government to use federal land situate within the territory of a state for whatever purpose it deems fit. However, the Federal Government must ensure that it complies with the urban and regional planning laws of the state by acquiring the relevant permits. This poses another challenge, as the states would be in their rights if they refuse grant of necessary development permits.



Contact Details

Please contact us by email at:

info@topeadebayollp.com

Or write to the following address:

The Practice Manager

Tope Adebayo LLP (TALLP)

25C, Ladoke Akintola Street

G.R.A, Ikeja

Lagos Nigeria

Or call us at: +234 906 523 3664

