**THE LEGAL, SOCIAL, AND POLITICAL IMPLICATIONS FOR THE ESTABLISHMENT OF CATTLE COLONY IN NIGERIA.**

**BY**

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**BEING A RESEARCH PROJECT SUBMITTED TO THE DEPARTMENT OF JURISPRUDNCE AND INTERNATIONAL LAW, UNIVERSITY OF LAGOS, AKOKA, LAGOS STATE, NIGERIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW**

**[L.L.B HONS.] BY THE FACULTY OF LAW**

**AUGUST, 2018.**

**CERTIFICATION**

This is to certify that this research project “the legal, social, and political implications for the establishment of cattle colony in Nigeria” was carried out under my guidance and supervision.

Professor H.A Olaniyan DATE

(Supervisor)

**ACKNOWLEGDEMENT**

One cannot adequately express gratitude for all the intellectual aid which goes into the research and writing of this project. Certain debts however, are large to be ignored. Hence I wish to express my profound gratitude to my able supervisor Professor H.A, Olaniyan who inspite of his tight schedule still found time to guide and monitor this project from the evolution to conclusion. His friendliness and kind gesture is worthy of emulation. The Dean of Faculty of Law Professor Ayo Astenuwa will not be left out for her effort in seeing that I attain qualitative university education in Law. Thank you.

I am equally indebted to the­­­ entire lecturers in the faculty who deposited in me numerous virtues that cannot but be useful for life. May God bless and rewards all of you for your labour and love.

To my amiable, resilient and assiduous wife Mrs. Faith Oghenekevwe Bashorun and my son Emmanuel Ejirooghene Bashorun for their love, care, unending support, endurance, tolerance and understanding which without, I would not have been able to complete this project. Thanks to my other children who have had to endure my long absence from home along the path of my five-year sojourn in the citadel of legal academics.

Above all I thank the Almighty God for his protection, blessing and mercies over me, my family and for counting me worthy of being able to complete my university education.

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The Federation Treaty of Russia

Value Added Tax Decree

**LIST OF ABBREVIATION**

AG – Attorney General

ANLR – Annual Nigeria Law Report

AP – Appeal Court

CAMA – Companies and Allied Matters Act

CFRN – Constitution of the Federal Republic of Nigeria

FRN – Federal Republic of Nigeria

LUA – Land Use Act

NCLR – Nigerian Commercial Law Report

NGRC – Nigerian Grazing Reserve Commission

NWLR – Nigerian Weekly Law Report

Ors – and Others

SC – Supreme Court

SCTP – State Creation and Transitional Provision Decree

WRN – Weekly Report of Nigeria

**TABLE OF CONTENTS**

Title Page i

Certification Page ii

Acknowledgments iii

Table of Case iv

Table of Statutes v

List of Abbreviations vi

Table of Contents vii - viii

Abstract ix

**CHAPTER 1**

1.1 Introduction and Background Study 1 - 5

1.2 Statement of Research 5

1.3 Research Objectives 5

1.4 Research Questions 6

1.5 Significant to Studies 6

1.6 Definition of Terms 7

**CHAPTER 2**

2.1 Federalism and National Grazing

Route Reserve Commission Bill (Cattle Colony) 8 - 15

2.2 Federal and State Legislative Competence 15 - 18

2.3 Test for Legislative Competence 18

2.3.1 Division of Powers 18 - 24

2.4 State Legislative Activism - Anti Grazing

Policy and Conflict Resolution of Ekiti State. 24 - 25

2.4.1 Policy 25 - 27

**CHAPTER 3**

3.1 Comparative analysis of the provision of

Land Use Act of 1978 and the Grazing Reserve 28 - 23

3.2 Land Use Act as a Constitutional Provision 34 - 35

3.1.2 Impediments of Grazing Route Reserve Bill 35

3.1.2.1 Legal, Political and Social Lapses of the

Grazing RouteReserve Bill 35 - 36

3.1.2.2 Legal Impediments to the proposed Cattle Colonies 37 - 42

**CHAPTER 4**

4.1 Is Cattle Colony A Breach To Property Right? 43 - 47

4.2 Procedure for Valid Revocation 48 - 50

**CHAPTER 5**

5.1 Conclusion and Recommendations 51 - 54

BIBLIOGRAPHY

**ABSTRACT**

*The duty of every responsible Government is to ensure and preserve the safety of lives and properties of its citizens through the creation of a viable and legitimate legal instrument for its accomplishment. The introduction of the Bill for an Act to establish the National Grazing Route and Reserve Commission in the management and control of grazing routes and the creation of a Federal controlled Reserve in every state of the federation can therefore be seen as a step in that direction. But the massive agitations against the Bill by ordinary citizens and including a majority of the intellectuals and elites have necessitated a need to critically analyse the bill. This critique will be done taking into consideration the constitutionality of the bill, the power of the Federal legislature to pass the bill into an Act, the conflicting nature of the bill coupled with the Land Use Act 1978, the deficiency and the extent to which the bill provides for, or derogatory to the property right of the citizens and the prerogative power of the States as provided for in the 1999 Nigerian Federal Constitution. All the aforementioned shall be analysed through the use of literature review, journals, statues, case laws, available relevant materials and other tools in order to determine the Legal validity, motive, consequence and the necessity of the Grazing bill as may be allowed by Law.*

**CHAPTER 1**

* 1. **INTRODUCTION AND BACKGROUND STUDY**

In Nigeria, the practice of reserving land for extensive use by livestock existed prior to the colonial times. Allocation of grazing ground to pastoralist around towns and village for use, particularly during the dry season were socially and institutionally allowed[[1]](#footnote-1).

However, since there was no legal and institutional instrument to prevent the encroachment by crop farmers, such reserved areas were soon encroached upon or subsumed by the inexhaustible land requirements by the community due to an increase in population and cropping intensity.

The above phenomenon was mostly visible in the sub-humid zone of Northern Nigeria where pastoralists from semi-arid zone traditionally moved their herds down south during the dry season to feed on the abundant flora and water resources in the middle belt region of Northern Nigeria.

The intensity of migration from the semi-arid zone was further aggravated by yearly detrimental change in weather and reduction in available feeding resources in the area, coupled with an increase in production of herds due to improved veterinary services that control the destructive and debilitative activities of tsetse fly, resulting in increasing multiplication of herds, without resources to feed them[[2]](#footnote-2).

The cultivators, among whom pastoralist then abode with, were traditionally subsistence farmers with extensive agricultural practice. They kept little or few livestock, mostly small trypano-tolerant breeds of goats and sheep. The unfortunate consequence of this situation is that most of the fertile land in the zone had been conceded to the agrarian family that which then limits the exclusive traditional reserved land for the use of the new and foreign pastoralist.

Consequently, over a period of time the pastoralist had to resolve into borrowing or traditional leasing of land from local farmers; an arrangement usually unsustainable.

These range from zero payment to the situation where bookings are made by pastoralist with farmers well in advance of harvest and payment of cash or kind deposit to ensure access[[3]](#footnote-3).

Whether on or off the grazing reserve, the pastoralist do not generate enough crop residues to feed their cattle. Nevertheless, after the advent intervention of the European Nations and in particular the British colonialist in the 17th and 18th century within the political affairs of West Africa and Nigeria to be specific; the policy towards the cattle industry, influenced by the French inclusive policy of assimilation in francophone colonies were mainly economic in considerations rather than developmental oriented goals.

The differential association of the French and British influence over cultures and law which governed people of same language, culture and pre-colonial law were seen as having made the ever-migrating Nomadic pastoral tribe trapped between two different economic and administrative set up.

The British colonialist regime only interest was in the immediate income tax on cattle and thereby embarked on a compulsory tax on each head of cattle[[4]](#footnote-4) in exchange for better security against cattle rustling and provision of veterinary services to all nooks and crannies of Northern Nigeria, while encouraging the movement of cattle from the Northern protectorate to the Southern protectorate between the years 1900-1902 of which over 15,000 heads of cattle passed through Ilesha and Shaki route to Lagos[[5]](#footnote-5).

In November 1906, Thomas Baker, Secretary of the Liverpool chamber of commerce wrote a letter to the then Governor of Northern Nigeria noting the promising future of cattle trade in the emirate and the intention of their African Trade section to collaboratively develop the trade if the protectorate Government will facilitate with information and guidance.

In furtherance to the above, the annual report of Sokoto province from 1908-1909 showed a high proceed would be made from the sale of cattle if a properly developed industry is actualized. But the report was down played perhaps because the trade within the emirate does not seem to have excited the elites in government or a ploy to truncate the industry[[6]](#footnote-6).

The general picture of the colonial attitude on cattle culture was precluded by serious innovation for expansion of cattle trade with efforts made towards settling the large nomadic group of herders tribe dominated by the Fulani on well carved out and managed grazing reserves, statutory regulated ranching industry, subjecting drovers with Southern (Lagos) destined cattle trekking fifty to sixty days due to long distance and local travel challenges before they arrive Lagos after attendant imminent conflicts of economic and social nature throughout the path of the drovers. This situation continued until 1965 when the then Northern Region government gave a legal status for the establishment in the region, a grazing reserve, supported by funding facility from the World Bank through the National livestock project department (NLPD) which oversees a total of 115,000 hectares of Grazing Reserve at Kachia, Gujba, Udobo and Garkia across the state of Kaduna, Borno, Bauchi and Adamawa respectively[[7]](#footnote-7).

The Federal and State Government over time were handling the issue of grazing reserve with less seriousness till the mid 1990’s when the federal government through the Petroleum Tax Fund (PTF) made selected interventions to improve some grazing reserves across Northern states. This was in order to eliminate open cattle grazing culture which by then had obtained notoriety in causing conflict between pastoralist and farmers for a period consistently more than two decades.

The prevailing culture of open grazing of cattle can be inferred from the social and cultural nature of the pastoralist, mostly the Fulani’s who had started the culture of migration from the Futa Jalon empire of the current Republic of Guinea to Northern Nigeria in the 15th century.

This culminated into the overthrow of the traditional Hausa authority starting from Funtai (King) of Sokoto by the Othman Dan Fodio Jihadist of early 16th Century.

This paved the way for a sort of legitimate claim by the new Fulani Lords and Serfs over the land in most part of Northern Nigeria and Upper Yoruba towns of Ilorin and environs. This legitimized their herds grazing over native land to be superior to the rights of the natives.

This idiosyncrasy and perception coupled with an increase in pressure on grazing resources caused by the ever changing weather, drought, depreciating soil quality, large human population and poor interpersonal and communal understanding led to serious destruction of lives and property in the quest for personal gratification.

In the words of Mafindi Damburam, chairman of North East Zone of Miyetti Allah Cattle Breeders Association of Nigeria (MACBAN):

Open grazing is our culture and you cannot wake-up one day and stop me from practicing my culture. Cattle colony is not our culture. We have our culture and tradition and we want to maintain it.[[8]](#footnote-8)

The seemingly hopelessness can further be revealed by the report of the international panel on climate change (IPCC) and other regional bodies which stated that:

climate change represents a major threat to sustainable growth and development in Africa. The declining fertility of soil affects agriculture in Sahel region in Africa, reducing cereal production of 80%.

While the World Bank stated that between 2010 and 2011 alone, pastoralist in the region lost over two million heads of cattle (2m) while over 20 million migrated from the Sahel to the Southern part of the region.

Coordinated military style attacks ravaged 15 communities in some local government areas of Plateau state from 23rd - 24th June, 2018, which resulted to the death of 233 persons with many others injured and several properties destroyed while thousands of villagers were displaced.

This unfortunate state of existence led to the proposal in some governmental quarters for the introduction of a bill for an act to establish the National Cattle Reserve Commission for the

facilitation of the creation of a federally controlled cattle colony in all the States of the Federation[[9]](#footnote-9).

The question of law in this regard is the constitutionality of the act stemming from the extant law that governs the relationship of power between the state and federal government, and the obvious implication of the nature of power to be exercised on the property right of the citizen. The issue of the possibility of ensuring such right as limited by the law of Tort in general.

This and some other questions have been a recurring decimal which requires answers.

* 1. **STATEMENT OF RESEARCH**

It is not a formal fallacy to adjudge the practice of open grazing of cattle as a great disaster to the Nation by the antecedent loss of lives and properties, excluding the psychological effect it has had on the citizen’s psyche as regard the role the Nation, Government and neighbours play in their survival[[10]](#footnote-10).

The introduction of the unified law to create an institutional legal framework in eliminating the open grazing of cattle is surely a contentious adventure as opposed to the constitutionality, the issue of Federalism and separation of power, rule of law, private property rights.[[11]](#footnote-11)

The introduction of the Bill is reasonably seen by many to be a ploy to galvanize and enthrone ethnic, religious and clannish occupation of ancestral land of minorities by acts of expropriation from the majority[[12]](#footnote-12).

The introduction of the cattle colony as a modified ranching manner executed and established by law in conformance under the relevant laws and in consultation with the people may nevertheless be appropriate.

* 1. **RESEARCH OBJECTIVE**

The Research Objectives are as follows:

1. To contribute to the development of the knowledge in jurisprudence of law as it relates to distribution of power between the Federal and State Government.
2. Recommend a viable and valid legal framework for the creation of cattle colony.
3. Enumerate and identify the statutory provisions that are relevant in an attempt to create a national grazing reserve and how it will affect the constitutional right of the states.
4. Identify the extent to which the establishment of grazing reserve may affect the right of the citizen to properties.
5. Expose the extent of socio economic loss which open grazing of cattle has caused the Nation

**1.4. RESEARCH QUESTIONS**

1. Is the creation of cattle colony consistent with our Law in Nigeria?
2. Does the Constitution allow the Federal Government to create a federally controlled cattle grazing reserve in Nigeria?
3. Is there an alternative provision in law that can be utilized to accommodate a federally controlled grazing reserve in Nigeria?
4. Will the establishment of a grazing reserve infringe on property rights of the citizens?
5. What is the difference between cattle ranching and cattle colony as provided in Land Use Act?
6. What are the legal implications of cattle colony (coined ranching) on the rights and privileges of the citizens in a state?
7. Does cattle colony constitute a breach to property rights of non-herders?

**1.5. SIGNIFICANCE OF STUDY**

It is very important at this age and stage of Nigeria, when compared to other countries of the same status to have evolved a traditional culture of conflict resolution by way of rightful application of the laws rather than aggravating crisis by wrongful application of law due to poor analytical or logical approach to its purpose.

This study is significant at this time when great lives and properties have been lost due to herdsmen violent incursion into farmer’s territory with absolute impunity, breaking down law and order, with the Government seemingly dumbfounded or hypnotized; not having a grain of idea on how to tackle the problem.

The project will provide open and fair recommendations based on the analysis of law in conjunction with public policy in an effort to procure a durable solution to the recurring problems.

Finally, the project is significant because it is probably the first and only assessment of the subject matter at this level and in this particular time and it will be a reference source of information to future research.

**1.6. Definition of Terms**

**Constitution**: the basic principles and laws of a nation, state, or social group thatdetermine the powers and duties of the government and guarantee certain rights to the people in it[[13]](#footnote-13).

**Cattle ranch**: farm consisting of a large tract of land along with facilities needed to raise livestock (especially cattle)[[14]](#footnote-14)

**Legislative Competence**: The skill, knowledge, qualification, capacity or authority to make,

give or enact rules with binding force upon a population or jurisdiction[[15]](#footnote-15).

**Policy**: A plan or course of action, especially one of an organization or government[[16]](#footnote-16).

**Land right** : right or obligation connected with occupation of or property in land[[17]](#footnote-17).

**Federalism:** the distribution of power in an organization (such as a government) between a

central authority and the constituent[[18]](#footnote-18).

**Covering the field**: The doctrine of covering the field, is essentially that where the main, principal or superior law has covered a given field or area, any other subsidiary law made in that area or field, cannot operate side by side with the main, principal or superior law. If the inferior law is inconsistent with the principal law, it has to be declared void to the extent of its inconsistency[[19]](#footnote-19).

**Legitimacy**: the quality of being legal the fact of being allowed by law or done according to the rules of an organization or activity[[20]](#footnote-20).

**Simpliciter:** Lat. Simply; without ceremony; in a summary manner. Directly; immediately; as distinguished from inferentially or indirectly. By itself; by its own force; per se.[[21]](#footnote-21)

**Chapter 2**

**2.1. Federalism and National Grazing Route Reserve Bill**

A federalism or federal principle denotes the division of law making authorities in a federal setup between the central authority of the federation and the authority of the components or units of government and the vesting of autonomy to each of these different governmental authority in such a way that none can interfere with the legislative authority of the other.

The term federation originated from a Latin expression pronounced “*faedus*” which refers to a covenant[[22]](#footnote-22). Federation as a concept is traceable to the ancient twelve tribes of Israel and League of Greek city-states[[23]](#footnote-23).

Federation as a political arrangement has faced serious crisis of conceptualization. This is because in the words of Elazar[[24]](#footnote-24), there have been several varieties of political arrangement to which the term has been applied. Among the inherent challenges of conceptualization of federalism are the different connotations of the word. The initial definition of the word has experienced dramatic changes contextually.

Therefore, a word that was initially ascribed to the definition of institutions with an explicit emphasis on self-rule has now metamorphosed in definition to a gigantic interpersonal concentration of force.

However, most scholars of federalism have accepted Wheare’s[[25]](#footnote-25) conceptualization of the subject matter as a point of convergence. Wheare’s definition[[26]](#footnote-26) of the federal concept emphasized an explicit division of powers and function between a central government and some decentralized unit of government in such a manner that no government can encroach on the power and functions of the other. This governmental division must be exercised by means of a rigid and written constitution that provides for an independent arbiter as well as financial autonomy for the respective governments. Thus, a comprehensive postulate of federalism is predicated on the existence of a constitutional division of powers of the federation between the central government and the unit’s government as well as a provision in the constitution for an independent arbiter for the purpose of settling constitutional disputes that might arise between the various governmental components of the federation; such a constitution being supreme providing and guaranteeing autonomy of the units and binding among all the members of the federation.

According to the Committee of experts on public administration concerned with the distribution of powers between central governments and sub-national governments, it was said that the distribution of responsibilities between national and sub-national government has been a subject of enduring debate among practitioners and scholars alike in the world of public administration and beyond.

United States of America

The Constitution of the United State of America makes provisions that the federal government has certain enumerated powers, which are spelled out in the Constitution, including the right to levy taxes, declare war, and regulate interstate and foreign commerce. In addition, the Constitution gives the federal government the implied power to pass any law "necessary and proper" for the execution of its express powers. The powers delegated to the federal government were significantly expanded by the Supreme Court decision in ***McCulloch v. Maryland (1819)***, amendments to the Constitution following the Civil War, and by some later amendments—as well as the overall claim of the Civil War, that the states were legally subject to the final dictates of the federal government.

The state government is responsible for property law, education, estate and inheritance law, commerce laws of ownership and exchange, banking and credit laws, labour law and professional licensure, insurance laws, family laws, public health and quarantine laws, public works laws, including eminent domain, building codes, corporations law, land use laws, water and mineral resource laws, judiciary and criminal procedure laws, electoral laws, including parties, civil service laws.

The local government is responsible for the adaptation and implementation of state law to local conditions, public works, contracts for public works, licensing of public accommodations, assessable improvements, and basic public services.

Russia

The Russian Federation is one of the most quickly developed federations in the world. For rather a short period of time since 1990`s, the world has witnessed several models of the Russian federalism. The Russian federal relations model, originally based on the practice of other countries, evolved over the past two decades. It has experienced some difficulties during this transitional period. The Russian Constitution of December 12, 1993, states that the distribution of federal and regional powers is governed by

"this Constitution, the Federation Treaty, and other treaties (dogovory) that delineate objects of jurisdiction and powers."

The Constitution provides that the federation has jurisdiction over the following: foreign

policy and international relations of the Russian Federation, international treaties and agreements of the Russian Federation, issues of war and peace. The federation government and local government share jurisdiction over 14 items ranging from use and disposal of land, subsoil, water and other natural resources to measures against catastrophes, natural calamities, epidemics, elimination. Russian regional jurisdictions are allocated powers not specifically reserved to the federal government or exercised jointly. Those powers include managing municipal: property, establishing and executing regional budgets, establishing and collecting

regional taxes, and maintaining law and order.

Today in Russia, the federal presence exerts profound impact on the political life of Russia: the organization and the work of the institutions of legislative, executive, and judicial power; the state’s legal space; its social policy; and the practice of generating and managing public funds. This prompts claims that can be heard frequently about Russia losing its typical federal characteristics and turning instead into a unitary state.

Brazil

Brazil has been a federal country for more than a century. Federalism was incorporated into the 1891 Constitution. Brazil is a three-tiered federation, as the municipalities are not the creation of a state. The Constitution has detailed provisions governing the sub-national jurisdiction, and revenue, and the c­onstitution maintained its tradition to straighten the municipal government vis-à-vis the state government.

In terms of the division of power, the federal government holds the largest number of exclusive powers. Many believe that the constitution favours the federal government. The federal Supreme Court systematically requires the state constitutions and laws to reflect the federal constitution imposing a hierarchical interpretation of constitutional norms.

Power conflicts between the three orders of the government and their legislatures are resolved by the federal Supreme Court through judicial reviews provided for in the constitution.

The state enjoys little constitutional power, but they collect the highest tax, are responsible for determining the tax rate, and have greater administrative freedom. According to the constitution, the autonomy of municipalities is preserved[[27]](#footnote-27).

It will be entirely in-appropriate to review the universal concept of federation without specific attention to the version of the peculiar nature of the Nigerian Federation as an evolution from colonial and military heritage. It is a well-known fact that the contemporary limitations and contradictions inherent within the Nigerian Federation have been heavily and directly moulded by her colonial antecedents and further impact of military dictatorship. The negative impact according to Dudley [[28]](#footnote-28) was comparable to military autocracy.

It’s therefore logical to conclude that the Nigerian Federation was created and nurtured under the influence of dictatorship and autocratic government. These therefore perfectly explain the stunted and regressive nature of the federal cultures and practices.

Federalism was introduced in Nigeria to forcibly unite the diverse ethnicities and nationalities that were previously arbitrarily amalgamated into a unitary colony and protectorate of the British Empire. The consequence of this amalgamation is the forceful creation of a federal state among people who never bargained to be a federation.

The implications and features of “*holding together*” federations like Nigeria is that they tend to be more structurally and institutionally centralized but less politically integrated and structurally coherent than “*coming together*” federations. This is because the centrifuged forces are compulsive rather than voluntary. Larry Diamond, thereafter, said the British colonial legacy in Nigeria was promoted on statehood and yet that of nations-destroying[[29]](#footnote-29) .

The British policy of divide and rule system introduced in Nigeria operates to inflame division, suspicion, chaos and recrimination among the diverse ethnic nationality that were flagrantly assembled into an unsuitably and superficial single artifice called The Nigerian Federation.

It is of wide knowledge that the British colonial government through its system of divide and rule orchestrated by her indirect rule policy, promoted and encouraged ethnic loyalty and consciousness.

Regionalism as introduced by the colonial government helps tribal containment, exacerbated minority exploitation and domination, nurtured mutual suspicion, unhealthy battle, fight over federal power on ethnic, tribal and religious basis.

The constitutional sharing or division of the governmental powers between different levels of government and among component units distinctly differentiates federations from other forms of governmental organizations. The existence of different level of government therefore demands that power is shared among them to prevent one level from encroaching on the powers of the other thereby checking undo rivalry[[30]](#footnote-30).

Some scholars favoured reposing predominant powers and functions on the central government while others advocated granting equal powers and functions to all its member components of the federal union[[31]](#footnote-31).

Constitutional division of powers and functions is aimed at preventing abuse of governmental powers. The rationale behind the idea of division of power in a federal state is that, matters of common interest and concern to the country as a whole should be allocated to the component state[[32]](#footnote-32).

The constitution in this manner is to make provision for some degree of autonomy among the different component members of the federation, without, though ignoring the need for independence, coordination and harmonious existence.

Under the 1999 constitution, powers are classified as exclusive and concurrent legislative powers[[33]](#footnote-33). The exclusive legislative list has 68 items[[34]](#footnote-34) such as aviation, banks, bills of exchange, census, citizenship, currency, custom and defence, diplomatic relation, foreign policy, immigration and emigration, incorporation of business association, insurance, labour, shipping, armed forces, communication, prisons, railways, taxation, trade and commerce, weight and measures, wireless broadcasting and so forth. While the concurrent legislative list has 12 items[[35]](#footnote-35).

The authority to legislate on the exclusive legislative list is exclusively vested on the Federal government and the state may legislate on items specialized on the list only to the extent allowed by the federal Law.

It is however to be observed that the exclusive legislative list is unnecessarily numerous and contains matters which ordinarily should be placed under the jurisdiction of the federating units. Example of these items is land. Land is under the exclusive legislative list even though by virtue of the Land Use Act[[36]](#footnote-36) the control of land is vested on the State government.

The Federal Government and State Government both have powers to legislate on matters specified in the concurrent list. However, if any law made by the State conflicts with the one made by the Federal, the law made by the State is null and void to the extent of its inconsistency to the law made by the Federal Government[[37]](#footnote-37).

Also, the Federal Government still possesses an overriding power over the state government by virtue of the overriding clause[[38]](#footnote-38).

The question now arose as to the determination of the constitutionality of the establishment of cattle colony in Nigeria.

It is worthy of note that an attempt has been made over years for the establishment of a grazing reserve by different government. But these attempts were wholly the act of a regional government of Northern Nigeria. It is also worthy of note that these attempts were made before the enactment of the Land Use Act.

The first grazing reserve in Nigeria was established in 1965 by the then Northern Regional Government giving a legal status for the establishment in Northern locations such as Kachia, Gujba, Uchebo and Garkia across present Kaduna, Borno, Bauchi and Adamawa States respectively[[39]](#footnote-39).

In the contemporary era and with the existence of powers and authorities as prescribed by the constitution; cattle colony is not new to Nigeria. Land ownership is governed by the constitution of the Federal Republic of Nigeria 1999 as amended and the Land Use Act. Land is not listed as an item under the exclusive legislative list in part II of the second schedule to the constitution where it was included in **incidental and supplementary provisions** under the second schedule.

Therefore, the National Assembly have the powers to make law thereon following her law making power in item 1 to 67 of same list.

Having an apparent sight of these provisions, one can conveniently dictate that the government of Nigeria through the institutionalism of constitution as regard Section 315(5)(6) can legitimately establish that cattle colony is not new to a Federal constituent like Nigeria so far as it conforms with the essence and spirit of the law.

**2.2. Federal and State Legislative Competence**

The competence of the Federal Government against that of the State Government to legislate on land issues as well as the utilization and control of natural resources are constitutionally provided for.

Section one subsection one of the 1999 Constitution states:

"ThisConstitution is supreme and its provisions shall have binding forces on all authorities and persons throughout the Federal Republic of Nigeria[[40]](#footnote-40)"*.*

S­­­ection four subsection one – “The Legislative power of the Federal Republic of Nigeria shall be vested in a National Assembly for the federation which shall consist of a Senate and a House of Representative[[41]](#footnote-41)”.

Subsection three provides that the power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter in the exclusive legislative list shall save as otherwise provided in this constitution, be to the exclusion of the House of Assembly of State[[42]](#footnote-42).

Section 7 item (a)(b) and (c)[[43]](#footnote-43) - the House of Assembly of a state shall have power to make law for the peace, order and good government of the State or matter any part thereof with respect to the following, that is to say

1. Any matter not included in the exclusive legislative list set out in part i of the second schedule to this constitution.
2. Any matter included in concurrent legislative list set out in the first column of part ii of the second schedule to this constitution to the extent prescribed in the second column opposite
3. Any other matter with respect to which it is empowered to make laws in accordance with the provision to this Constitution.

In consideration of the extant provisions mentioned earlier, its worthy of note that land is not listed as an item under exclusive legislative list, or under concurrent list. It’s a supplementary matter under part II of second schedule and the legislative competence lie with the Federal House of Assembly. Item 68 of dictates the Federal House of Assembly competency with reference to the listed matters from item one to item sixty-seven of same list.

However, it’s the provision of section 315(5) and (6) that actually made land (with clear provision in Land Use Act[[44]](#footnote-44)) an item under the exclusive legislative list. For purpose of clarity here unto is a reproduction of the provisions of the subsections of the constitution.

(5) Nothing in this constitution shall invalidate the following enactment that is to say:

1. The Land Use Act; and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extant as any other provisions forming part of this constitution and shall not be altered or repealed except in accordance with the provision of section 9(2) of this constitution.
2. Without prejudice to subsection (5) of this section, the enactments mentioned in the civil subsection shall hereafter continue to have effect as Federal enactments and as if they relate to matters in the exclusive legislative list set out in part I of the second schedule to this constitution.

The Land Use Act referred to by the constitution is an Act of the National Assembly; a Federal Legislation. The said Act vested on the Governor of each State of the territory of the State. Section I of the 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 the State and such land shall be held in trust of all Nigerians in accordance with the provision of the Act.

However, its noteworthy that the importance of sub-section (5) and (6) of section 315 of the constitution are not to cloth the Land Use Act with the status of the constitution but rather preserve it from being invalidated by regular or ordinary legislative processes and provide a special method for the amendment or modification of its provision.

The Land Use Act may therefore be amended following the procedure in section 9(2) of the CFRN 1999 as in the case of ***Nkwocha v Governor of Anambra State****[[45]](#footnote-45)* and ***Adisa v Oyiwola****[[46]](#footnote-46).*

Following the provision of the Land Use Act, the entire ownership of land in each state of the Federation is vested in the Governor of the state.

The implication of this provision is that the Land Use Act notwithstanding that it’s an enactment by the Federal Parliament of Nigeria has vested the management and distribution of land on the Governor of the state to however manage same on behalf of all the people of Nigeria. The Act further stipulated the manner in which the Governor may carry out the functions and obligations imposed on them by Federal Legislation.

The Constitutional vesting of land in the States of the Federation is no doubt in conformity with the Federal principle. However, the pertinent question is whether the Land Use Act, being a Federal Parliament Act does not encroach on the States power and autonomy in respect to land matters. In other words, does the constitutional vesting of Legislative powers in land on the Federal Government conform to the cardinal principle of Federalism of which the constitution of Nigeria confesses?[[47]](#footnote-47) This question is important because it’s a cardinal principle of Federalism and items such as Land is most conveniently administered by local authorities rather than a centre based administration which is mostly likely to be remotely connected to the locals[[48]](#footnote-48).

The other question is; can the Land Use Act being a Federal enactment in absence of constitutional conferment of power empower and oblige the State Government to execute its provision and confer powers and duties of states contrary to the fundamental principles of Federalism? This questions are absolutely pertinent for the very essence of federalism which is the autonomy tier of government within a Federal arrangement[[49]](#footnote-49) abhors such insubordination of one government to another which cannot be reconciled with as its predicated on the principle of mutual non-interference. In fact, section 5(1) of the constitution seems to buttress this point when in consonance with the principle of federalism is vested the execution of all federal legislations (Land Use Act inclusive) on the Executive President of Nigeria. It would have been a different case if land was vested on each state of the federation by the constitution itself.

**2.3. Test for Legislative Competence Section 4(5) 1999 Constitution**

At the heart of every federation is the concept of voluntary submission of authority from various federating unit that were hitherto independent of the Federation.

In Nations like the United States of America and Switzerland where federation has thrived for centuries, its primarily because such is based on voluntary submission of powers to the central government[[50]](#footnote-50). Where this is absent at the beginning as the basis of federation, there would be need for a sovereign National Conference for the purpose of negotiating such arrangement[[51]](#footnote-51). In the absence of such pre federal negotiation, coupled with the political ineptitude of the legislation to create such, the only option is to determine the ratio and instrumentality of such arrangement vis-a-vis the legislative competence test between the federal centre and the federating units through insight into the provision of the constitution and of case law as was observed by Jain Mp[[52]](#footnote-52).

They came in contact with each other as many points their areas of operation and functioning cross and intersect in several respects thus creating a variety of governmental relationship between the centre and region intersect. The patterns of inter-governmental relations in a federal country are not static; it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces operating in the country[[53]](#footnote-53).

**2.3.1 Division of Powers**

1. Legislative Power

There is no doubt that the manner of dividing legislative powers among the various component units in a federation is the greatest mirror or test of the extent to which they are autonomously competent to legislate.

Section 4 (1) of 1999 Constitution[[54]](#footnote-54) vest the legislative powers of the Federal or Central Government on the National Assembly. It has the power to make laws for the peace, order and good government of the federation or any part thereof; with respect to the exclusion of the State Legislative[[55]](#footnote-55). In ***Akwule v Queen****[[56]](#footnote-56)* the court adopted the views of Lord Atkin in ***Gallagher v Lynn***[[57]](#footnote-57)concluded that the provision of this subsection shall have powers to legislate on matters included in the exclusive legislative list to the exclusion of the House of Assembly of States does not mean that a State legislator cannot touch on these matters no matter how slightly. The test is to look at the true nature and character of the substance of the legislation. If the in view of the Statue as a whole, the substance of the legislation is within the express powers, then it is not invalidated if it incidentally affects matters outside the authorized field.

In ***Oil Palm Company Limited v Attorney General Bendel State****[[58]](#footnote-58)*, the court held that the Bendel State House of Assembly could not investigate the affairs of a limited liability company under the investigative power granted to it by virtue of section 120 of the 1979 Constitution. This was because matters relating to such company were on the exclusive legislative list and could be dealt with by the National Assembly. As per Ikomi J. in that case:

The point must be emphasized that the fact that the Chairman and Members of the plaintiff/company are appointees of the Bendel Statement Government (as claimed in Paragraph 6 of the Statement of Defence) does not in any was change the character of the plaintiff company which still remains a limited liability company subject to federal as oppose to state law.

The question of the extent to which the National Assembly can legislate for the ‘peace order and good governance’ of federation under Section 4(2) came up for discussion in ***Attorney General of Ondo State v Attorney General of the Federation and Others****[[59]](#footnote-59)*. The question was whether the National Assembly had the power to validly enact the corrupt practices and other related offences Act 2000 by virtue of its general powers under section 4(2), bearing in mind the fact that corruption is not an item under exclusive or concurrent legislative list and was only mentioned under section 15(5) of Chapter 2 of the constitution which under section 6(6) c is stated to be non-justiciable. The extent which section 6(6) c can be said to be effective in the light of item 60(a) of the exclusive legislative list was also contended. As a result, the question was whether the Attorney General of the federation could enforce such law in Ondo State. Several senior advocates were invited by the courts as *amicus curiae* and gave their submissions on the various issues raised before the court. On contention by Ben Nwabueze that the issues of corruption are residual not being expressly provided for by the constitution, except under section 15(5) which was not justiciable, the court held that the National Assembly had the authority to enact the law under section 4(2) of the constitution and item 60(a) gives it power to make law for:

1. To promote and enforce the observance of the fundamental objective and direct principle of state policy as contained in this constitution.

The court regards corruption to be under item 60 as incidental to the National Assembly power relying on Indian case of ***Mangu v Commissoner of Budge Municipality***[[60]](#footnote-60) where it was held, *inter alia*, that the direct principle can be made justiciable through legislation. This however is a questionable interpretation of section 6(6)(c) of the constitution. Item 60 of the exclusive legislative list cannot annul the effect of section 6(6)(c). But when logical interpretation is literarily made, section 4(2) of constitution empowers the National Assembly to legislate on item 60(a) of part 1 of the second schedule.

Section 6(6)(c) not justiciable content is limited to when an individual intent to enforce such against the government or against the non-existence of a valid Act of National Assembly under the instrument of section 4(2) of the constitution.

Therefore, it should be agreed upon that the judge decision was the right one against the seemingly one side submission of the respected Senior Advocate of Nigeria, Professor Ben Nwabueze. In any case if the argument of Professor Nwabueze is to be given a further though, Secction 4(4)(a) and 4(5) of 1999 constitution settles the issue of test for competency.

Section 4(4)(a)

*Any matter in the concurrent legislative list set out in the first column of Part II of the second schedule to this constitution to the extent prescribed in the second column opposite there to:*

Section 4(5)

*If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the Natural Assembly shall prevail, and that other law shall to the extent of the inconsistency by void.*

Nwabueze further contended that incidental was not justifiable by proximity. He argued that for item 60 to be qualified with creation of offences it must have been legislated upon as in ***Balewa v Doherty****[[61]](#footnote-61).* Taking clue from the definition of incidental by the Black’s Law Dictionary[[62]](#footnote-62) that

“it is a power that, although not expressly granted, must exist because it’s necessary to accomplish the express power”.

He eventually called for the legality of the establishment of such a body, but leaving the creation of offences to the National Assembly and the State Assembly on a concurrent ground.

The element of the test for competency of legislative power as substantiated under section 4(5) of 1999 constitution stand on an almighty and unshakable pillar of "covering the field".

In the event of matter in concurrent list of the constitution the National Assembly has superior authority in priority to legislate on such matters. The courts have made several pronouncements on this matter. For example, according to Fatayi William JSC in ***Attorney General Ogun State v Attorney General of the Federation***[[63]](#footnote-63).

It is of course, settled law, based on the doctrine of covering the field, that if parliament enacts a law in respect of any matter in which both parliament and a regional legislature are empowered to make law, and a regional legislature enacts an identical law on same subject matter, the law made by the parliament shall prevail. And that made by the regional legislature shall become irrelevant and therefore impliedly repealed.

The key to the above mentioned section is VALIDLY MADE LAW - The law made by the parliament must be validly made. In ***Ogun State v Aberuagba****[[64]](#footnote-64)*, the supreme court held the both Federal and State Government had legislative competence to promulgate laws on sales tax. The federal government authority was however limited to interstate trade and commerce, whilst that of the State Government was residual and limited to intra state commerce.

Thus, in ***Nigerian******Soft Drink Company v Attorney General, Lagos State***[[65]](#footnote-65). The same court held that Lagos State sale tax law which deals with intra-state trade commerce was constitutional and not inconsistent. It stated further that Value Added Tax Decree No. 102 which purported to cover the whole field including intra-state trade and commerce usurped residual powers of the state under item 9 of the concurrent legislative list, was inconsistence, and can only exist to the extent of non-regulation of intra state trade and commerce.

The word ‘inconsistent’ has been stated to mean as follows:

“Inconsistency in this context arises when a law and the federal law are incapable of standing together either because they are incompatible or contradictory or conflicting*[[66]](#footnote-66).*

The word inconsistence means repugnant or contradictory, contrary the one to the other, so that both cannot stand, but acceptance of one implies abrogation of the other. ***Berry v City of Forthwith[[67]](#footnote-67)***.

In the opinion of Justice Kayode Eso in ***Attorney General of Ogun* *State v Attorney General of the Federation****[[68]](#footnote-68).*

I respectively take the view that the State legislation is an abeyance, and becomes inoperative for the period the federal legislation is in force. I will not say it is void. If for any reason the federal legislation is repealed, it is my humble view that the state legislation which is abeyance is revived and becomes operative until there is another federal legislation that covers the field.

Thus when the federal legislation does not completely "cover the field" the State legislation will be operative. In the United State, this doctrine is called the doctrine of pre-emption[[69]](#footnote-69).

In ***Attorney General of Abia State v Attorney General of Federation****[[70]](#footnote-70),* the court observed that some provision of electoral law contained a long list of the provisions that are either in *pari* *materia* with the provisions of the constitution relating to qualification and disqualification of candidates for the various elective offices or either add to or modify those provisions, and that the National Assembly is not competent to do this according to Uwais JSC[[71]](#footnote-71). The doctrine of "covering the field" can conveniently be extended to apply to a situation where the constitution has "covered the field" vis-à-vis a federal or state legislation is not void *simpliciter*  but will not be operative in view of the provision of the constitution.

The modern approach in Canada recognizes the fact that both levels of government can sometimes legislate on the same matter, provided the law made by the authorized level of government has dealt substantially with the matter. A spill over on incidental matters outside its authority will be overlooked[[72]](#footnote-72).

Thus, Dickson J.in ***Multiple Access Ltd v McCutcheon****[[73]](#footnote-73)*stated that:

duplication is the ultimate in harmony. The resulting “untidiness” or diseconomy of duplication is the price we pay for a federal system in which economy often has to be subordinated to provincial autonomy.

“Mere duplication without actual conflict or contradiction is not sufficient to invoke the doctrine of paramountcy and render otherwise valid provincial legislation in operative.”

Thus, the doctrine of exclusivity or paramountcy is only invoked where there is conflict or inconsistency. This approach has however been subjected to criticism becomes the classical approach is often seen as promoting provincial autonomy. As a result, both subject matter being dealt with.

There is no doubt that the text for legislative competence is anchored on the constitutional provision which provides for the distribution of power between the federal and state legislative authority as regard exclusiveness, concurrency or residual nature of such provision and where there is legitimate conflict. The test is section 4(5) of the 1999 Constitution.

**2.4. State Legislative Activism - Anti Grazing Policy and Conflict Resolution of Ekiti State.**

During the past eight years, the Nigeria watch database has recorded 615 violent death related to cattle grazing, out of a total to 61, 314 violent fatalities in Nigeria. The analysis that follows was reported by the press across the 36 states of Nigeria from June 2006 in March 2014. It seeks to understand the frequency, the intensity, the patterns and the geography of such violent, based on a study of seven incidents in 2006, nine in 2007, six in 2008, thirteen in 2009, nine in 2010, 15 in 2011, 17 in 2012, 27 in 2013, and 8 in May 2014[[74]](#footnote-74).

The most frequent cause of such conflict is the destruction of crops by cattle. These cattle enter into the farm to feed on the foliage of crop even in the presence of the herdsmen who pretended not to notice such destruction[[75]](#footnote-75). Similarly, several unreported case of fatalities and arson took place in Ekiti State leading the general state of insecurity and uncertainty.

The Ikole attacks led to the killing of two persons on 20th May[[76]](#footnote-76) and several killings in other parts of Ekiti State in the year 2016 alone. It is against this background that Ekiti and two other States in Nigeria decided to pass into law an anti-grazing law against all odds limiting the occupational freedom of movement of some citizens in exchange for safety of lives and protection of property of the majority on the ground of public policy.

The Ekiti State law known as Grazing Prohibition Law 2016 is the prohibition of cattle and other ruminants grazing in Ekiti State.

The law states in part, that:

No person shall cause or permit any cattle or other ruminants belonging to him or under his control to graze on any land in which the Governor has not designated as ranches. No cattle or other ruminants shall by any means move or graze at night and that cattle movement and grazing are restricted to the hours between 7:00am and 6:00am.

Anyone caught grazing on portions of land or any farmland not allotted by government shall be apprehended and made to face the law. Any herdsman caught with firearm and any weapon whatsoever during the grazing shall be charged with terrorism. Any cattle confiscated shall be taken to government cattle ranch.

*"*Any farm crop destroyed by the activities of any apprehended herdsman shall be estimated by agricultural officers and take expenses of the estimate shall be borne by the culprit".

**2.4.1 Policy**

Policy is a familiar concept used in a daily basis by virtually everybody. There are however diversity of circumstances in which the term is applied, and human beings by nature vary in their perceptions of things, therefore, there is a variety of meanings attached to the concept. Nonetheless, there is still a common reference point by all users of the concept from various disciplines. It is used mainly in reference to what government does in order to meet the yearning of the people.

Public policy is meant to solve people’s problems. This may be referred to as policy problem.

A policy problem is a situation which many people consider adverse or intolerable in its effect on a large number of people over a long period of time. Therefore people consider such situation to need a constructive change[[77]](#footnote-77).

According to David[[78]](#footnote-78),

"A policy problem is a human need, deprivation or dissatisfaction, self-identified or identified by others for which relief is sought*.*"

In other for a situation or social situation to become a public policy problem, some of the following conditions must apply occur:

1. Large numbers of people are in unfortunate conditions, suffer deprivation and are dissatisfied with an undesirable situation.
2. These adverse conditions are recognized by many people
3. In addition to those who suffer the unsatisfactory situation, the decision makers are unaware of the situation as they have responsibilities for coping with it.
4. People outside the immediate social problem (i.e. third parties) must show concern.
5. A large number of people think something must be done about the situation apart from merely recognizing the undesirable situation[[79]](#footnote-79). By extensions Ekiti State Anti-Grazing law was a policy enacted to solve the conflict between Fulani herdsmen and farmers in Ekiti State[[80]](#footnote-80).

The new anti-grazing law in Ekiti is enforced by Ekiti Grazing Enforcement Marshal (EGEM) who teamed up with the Police Force. The Fulani herdsmen respondents revealed they were given an opportunity to be members of the marshal. MACBAN members were subsequently recruited as members of the marshal.

To a large extent, the grazing policy of Ekiti is a success and this prompted may latter States like Taraba and Benue States to replicate such a policy.

The fundamental differences between the proposed federally established cattle colony or ranch and that of Ekiti State Government option is that of control.

Ekiti State policy also favoured the establishment of grazing zones or ranches, but such must be under the control and management of the State or Local Government.

From another point of view, policies are not restricted to make the occupational lives of people unbearable. Government is in a position to make the objective of policy achievable by providing economic, social, and environmental inducements in facilitating the objectives. The argument that government should not carve out state land for cattle herders to curtail incessant violence between the parties is a path to policy failure.

Section 49(1) of the Land Use Act should be taken into cognizance in reconciling State created policies against the constitutional empowerment of the federal government to control, own and assign properties vested in it by law.

**Chapter 3**

**3.1. Comparative analysis of the provision of Land Use Act of 1978 and the Grazing Reserve**

**Bill (Establishment) 2016.**

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[[81]](#footnote-81).

Seven of the more important provisions of that Act are indicated below:

1. All land situated in the territory of each state in the country is vested in the Governor of

the state.  For southern Nigeria in particular, this means state appropriation of land

from families and communities without any compensation except for economic crops

and other betterment on the land with exception of section 49 of Land Use Act

1. All land control and management, including land allocation in urban areas come under

the Governor of each state while land located in rural areas becomes the responsibility

of the various local governments.  Only the Governor can declare parts of the state

territory governed by him as an urban area by an order published in the state gazette;

1. All land in urban areas is to be administered by a body know as the Land Use and

Allocation Committee which has the responsibility of advising the Governor on the

management of urban land; similarly, a Land Allocation Advisory Committee is provided

to advise local governments in like manner;

1. All land which has already been developed remained the possession of the person in

whom it was vested before the Act became effective;

1. The Governor is empowered to grant statutory certificate of occupancy (C of O) which

would be for a definite term to any person for all purposes and rights of access to land

under his control;

1. The maximum area of undeveloped land that any person could hold in any one urban

area in a state is one half of an hectare; in the rural areas this must not exceed 500

hectares except with the permission of the governor;

1. The consent of the Governor must be secured for the transfer of a statutory right of

occupancy  through  either  mortgage  or  assignment.  The consent  of  the  Local

government or that of the Governor in appropriate cases must also be obtained for the

transfer of customary right of occupancy[[82]](#footnote-82).

Contrasting the major provisions of the Land Use Act in relationship with the proposed grazing reserve bill in facilitating the establishment of what may be erroneously called "cattle colony" in Nigeria as against the well-known ranching.

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According to WIKIPEDIA, “Cattle colony is one of the neighbourhoods of Bin Qasim Town in Karachi, Sindh, Pakistan. This neighbourhood 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”[[83]](#footnote-83).

The definition and the submission of Prof. Nwabueze as given above negates the concept of cattle colony as understood by Femi Falana and Chief Audu Ogbe. Both see cattle colony and cattle ranching as the same.

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[[84]](#footnote-84).

A Bill for an act to establish Grazing Reserve in each of the state of the Federation to improve agriculture yield from livestock farming and curb incessant conflicts between cattle farmers and crop farmers in Nigeria was introduced and sponsored by Honourable Sadiq Ibrahim in year 2016. This could be said to have some similarity with the Land Use Act passed into Law on 29th March 1978[[85]](#footnote-85).

**Part I:** The Bill is to be superintended by a commission which shall be a commission which shall be a body corporate with perpetual succession and a common seal.

The membership and compensation of the Grazing Reserve Commission[[86]](#footnote-86) shall include a Chairman to be appointed by the President, a Representative of the Land Use committee of each State and Federal Capital Territory. A member of Natural Boundary Commission, Federal Ministry of Agriculture, Border Committee, a legal practitioner, land surveyor or other knowledgeable person.

This provision to a large extent is an extension of the provision of the LUA 1978 in section two of part one.

The Grazing Bill does not provide for the removal of control and ownership of land from the Governor, but only requires the Governor to transfer control of such land to the grazing reserve commission.

**Part II** of the bill provides for the functions of the grazing reserve commission. Section 12 states that the commission is hereby empowered to undertake and make regulations for all or any of the following matters in respect of Government Grazing Reserve.

1. Establish of least one cattle reserve in each state of the federation.
2. Manage, control and maintain the cattle reserve in consonance with the mandate of the commission and the object of this bill.
3. Prescribe the person who may be licensed to use the grazing reserve and determine the type and number of stock permitted therein.
4. Prescribe then manner in which the Grazing Reserve may be put to use;
5. Fix charges for the grazing reserves
6. Monitor and ensure the co-operation with the Nigerian Police Force in the security of lives and properties within the reserve
7. Provides for, and issue grazing permits to persons grazing within the reserve;
8. Develop infrastructure and basic amenities such as clinic, school etc. within the reserves
9. Demarcate, publish in official gazette and make known in the manner it thinks best the land boundaries of the grazing reserves.
10. Fostering peace and unity within the reserve
11. Improve land use and management
12. Impose penalties for breach of its regulations under this section
13. Prosecute persons who graze outside the grazing reserves and other offenders of the regulations of this Commission.

Comparing this section to the section six of part II of the Land Use Act[[87]](#footnote-87).

Subsection one provides that it shall be lawful for a local government in respect of land not in an urban area:

1. To grant customary right to occupancy to any person or organization for use of land on the local government area for agricultural residential and other purposes.
2. To grant customary right of occupancy to any person or organization for use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned.

Subsection four of section six provides that the local government shall have exclusive rights to the lands so occupied against all persons except the Governor.

From the summation of part II of the Grazing Bill and the section six of Land Use Act connotes a situation where the work of the commission seems administrative in the management of a land designated for a specific purpose after it must have been ceded to it by the Local Government or the Governor as the case may be.

Part IV of the proposed bill provides for procedure for acquisition of land for Grazing Reserves.

Section 18 empowered the commission to acquire land in any part of the Federation for establishing Grazing Reserve, but such empowerment is subject to section 19 which demanded the commission to liaise with the Governor (or Minister of F.C.T in the case of land in the Federal Capital Territory) of the State in acquiring land for the purpose of grazing in the state concerned.

The questions here are:

1. Is it within the discretion of the State Government to approve or decline such requisition?
2. Can the commission forcibly take or possess the land in the situation when the Governor refuses?

To answer the questions, one may have to define the word “Liaise”[[88]](#footnote-88). As defined by the Oxford Advanced Dictionary

* To work closely with somebody and exchange information with them
* To act as a link between two or more people or group.

“Exchanging information and working closely” does create a situation of mutual interest on an equal footage. This means that the Governor may be obliged to provide such land as may be requested by the Commission

To act as a link between two or more people or group could simply be interpreted that the Commission will serve as a bridge between the pastoral farmers and the State Governor. And if further analysed connotes that the Commission will be a trustee to the herders which gives the Governor a prerogative right to reject or approve such recognition.

As regards compensation section 21 of the Bill provides that the Commission shall pay compensation to the original owners of land in consonance with the Land Use Act of 1978 or Land Legislation for the time being in force. But Section 28 of Land Use Act in subsection(one) provides that the Governor may lawfully revoke a right of occupancy for overriding public interest. Subsection (three) stated that overriding public interests in the case of a customary right of occupancy means-The requirement of land by the Government of the State

1. The requirement of land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or by the requirement of the land by the Government within the federation for public purposes of the Federation.
2. Subsection (four) mandates the Governor to revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President. If such notice declares such land to be required by the Government for public purpose.

Section 19 of Land Use Act (1978)[[89]](#footnote-89) nevertheless provides for compensation in some cases to be paid by the Governor.

From all the above; the issue of who to pay the compensation between the Commission and the Governor is not certainly clear. In subsection four of section 28, the Governor is mandated to provide land upon request from the President.

Does it mean that the Governor will pay the compensation on behalf of the Federal Government or it’s a statutory duty placed upon him without qualification. But in practice the federal government upon acquisition of land for public purposes is obliged to pay compensation as stated in section 44 of the 1999 constitution.

Section 22 of the bill provides for a proclamation by the Governor transferring the land, size and all interest to the Commission. Section 23 mandates the Federal Government to publish an official gazette, specifying the limit to such reserve, privileges conceded in respect of the land and the special conditions that shall govern the reserve land from the numerous sections of the Bill and Land Use Act. One can visibly imply that the bill’s provisions are catered for in the Land Use Act, and that the Governors would have been in a better state to provide such facilities vis-a-vis management and control.

**3.1.1 Land Use Act as a Constitutional Provision**

Land ownership in Nigeria is governed by the constitutions of the Federal Republic of Nigeria 1999 as amended and the Land Use Act. The Land Use Act was, by virtue of section 315(5)(d), entrenched in the constitution of the Federal Republic of Nigeria, 1999.

The provision reads:

315 (5) (Nothing in this constitution shall) invalidate the following enactment. That is to say:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. The Land Use Act and the provisions of those enactments shall continue to apply and have full effect in accordance to the tenor and to the like extent as any other provision forming part of this constitution and shall not be altered or repealed except in accordance with the provisions of section 9(2) of this constitution.

The effect of this provision is not to make the Land Use Act a part of the constitution, but to give it leverage in terms of amendment equal to the requirement for amendment of the constitution. This made it an extra-ordinary legislation enjoying the dual nature of a Federal Parliamentary enactment and as the same time a Constitutional enactment. The consequence of this is the Land Use Act is superior to any other bill which may be conflicting with its object (grazing bill inclusive) as Land Use Act can be termed a “quasi constitutional provision”. Eso JSC remarked in ***Nkwocha v Governor of Anambra State****[[90]](#footnote-90)*

“It is an ordinary statue which became extraordinary by virtue of its entrenchment (section 274(5)) in the Constitution, for if the Act has been made a part of the constitution, it would not have been necessary to insert in subsection five of section 274 the phrase “*nothing in this constitution shall invalidate*” as the draftsmen of the constitution cannot make the constitution to invalidate part of itself, nor would it be necessarily to have in subsection six of section(274) that the Act shall continue to have the effect as a “*federal enactment*”. That is a law made by the National Assembly, the constitution itself not being a “federal enactment”.

A crucial issue which requires clarification is that, since land as a legislative item is not normally a matter within the legislative competence of the federal government, but a residual matter within the exclusive legislative competence as the state. It could have been said that Land Use act is a void and unconstitutional provision if not for section 315(6) of the 1999 constitution which provides that

*“*without prejudice to subsection (5) of this section, the enactment mentioned in the said subsection (in this case, the Land Use Act) shall hereafter continue to have effect as Federal enactments and as if they related to matters included in the Exclusive Legislative list set out in part I of the Second Schedule of this Constitution”.

**3.1.2 Impediments to Grazing Route Reserve Bill**

A critical assessment of the Grazing Route and Reserve Bill does not show itself as an elegant drafting of legislative work as it derogates from the basic tenets of federalism, constitutionalism and political rationalism.

**3.1.2.1 Legal, Political and Social Lapses of the Grazing Route Reserve Bill**

1. Does not reflect federalism

Control of land is in the residual list of the constitution saves for section 315(5) and (6). The intention of the drafters of the constitution is not to allow the Federal Government to intermittently legislate on behalf of the State without taking into consideration the overall intention of the Constitution rather it is to make the state be a trustee through the Governor of the land for the people.

1. Section 13 of the bill provides that no person other than an official of the grazing reserve or some security personnel on duty shall enter the grazing routes unless he is authorised to do so by law or Regulations here under.

This section obviously denies even the Government of the State, the agencies such as public health department, State ministry of agriculture and the Police access to such territory unless a regulation provides for that intervention.

1. Section 15 provides that the reserve will become the property of the Federal Government and the President can alienate part of the land for overriding public interest. This provision leaves the state out of any subsequent acts on the territory, and leaves the issue and right to subsequent dealings over the territory to the discretion of the President in an undefined standard of 'public interest' usually motivated by ethnicity, religion and corruption.

Nevertheless, the Land Use Act (LUA) having vested all land in a state in the Governor of the State, who may grant rights of occupancy to ‘any person for all purposes’. A prospective land investor/buyer may therefore apply to the Governor of a state where a target property is located for the grant of a Right of Occupancy. (Rights of Occupancy so granted by state Governors are framed Statutory Rights of Occupancy).

Also by virtue of the provisions of the LUA, the Federal Government of Nigeria also has the power to grant Rights of Occupancy in respect of lands comprised in the Federal Capital Territory (i.e. Abuja and its designated environs), or vested in the Federal Government but located in state territories.

Section 5 (1) (a) and (b) of the 1999 Constitution provides that the executive powers of the federation shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the federation. It is therefore in pursuance of the above constitutional authority that the Federal Government set up the presidential implementation committee.

The controversy between the Lagos State Government and the Federal Government on title to Federal Lands in Lagos State is worthy of been given some attention.

The crisis originated from the insistence of the Lagos State Government in asking leaseholders of Federal Government properties to obtain fresh Certificates of Occupancy issued by the State Government on the properties irrespective of whatever title documents were given by the Federal Government.

This position was clearly inconsistent with the spirit and intent of section 49 (1) of the LUA which provides as follows:

“Nothing in this Act shall affect any title to land whether developed or underdeveloped 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”.

In the case between ***A.G Lagos State* v *A.G Federation & 35 Ors[[91]](#footnote-91)*** the court established that the state government had control over the physical planning and developmental control within their territory. The apex court further ruled that all development permits issued by the Federal Government to the buyers of its properties in Lagos from 1999 to that date subsisted, but henceforth, owners of such properties must obtain relevant permits from the state government.

The importance of this is that the federal government can sell and alienate the land under its control and transferring goods title to the purchaser taking into consideration the provision of the extant law.

1. Section 17 provides for a Minister's entitlement to close a right of way or watercourse where he is of opinion that there already exists an equally convenient right of way or water-course.

This is purely a denigrating provision. It gives the minister an unfettered capacity to deny a person, group of persons, institutions and communities access to basic socio-economic and environmental rights.

1. Section 28 empowers the commission to determine the eligibility of the persons who shall be allowed to enter the reserve. This may not be far fetch from a discriminatory standpoint. The commission may decide to limit or restrict some persons based on what may not be for ethical reasons. This is scarier when the level of religion and ethnic distrust in Nigeria is taken into consideration.
2. Section 30 made it unlawful for any non-Nigerian or foreigner to enter into the reserve for purpose of Grazing Animals unless he has met the term and conditions that the commission may from time to time set. The question is how to identify foreigners especially those from the immediate border of Nigeria in Northern and Western sides that are similar in culture and religion coupled with an uncontrollable activity of trans-border movement. Such restriction may not be workable unless the reserve is controlled by locals who identify themselves.
3. Section 21 of the Bill provides that whosoever the commission acquires land for Grazing as stipulated above. The commission shall pay adequate compensation to the original owners of land in consonance with the Land Use Act 1978 or the land legislation for the time being in force. This provision is not certain in subjecting its obligation to the limitation as provided in the Land Use Act of 1978 with the implication that the commission is not bound to pay compensation, as the Land Use Act provides that only the Local Government or the Government pay such compensation in Section 29.

**3.1.2.2 Legal** **Impediments to the proposed Cattle Colonies**

As expected in a proposal of this nature, a lot of administrative, social, political and legal issues will be involved. The concern of this project however, is not limited to the legal issues but emphasis on legal issues is of priority. In carrying out the legal analysis of some of the issues, certain questions are begging for answers. In this segment of the project, the identified legal impediments which may also have socio-political angles are analysed as followed:

1. **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 six 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 form 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.

1. **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.

1. **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 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 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 not accord undue advantage to cattle herders who are essentially of Fulani ethnic nationalities, the Federal Government by the proposal would not be infringing on the provision of the 1999 constitution.

1. **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 and 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 expropriated? This and many other related issues may necessarily lead to an amendment to existing laws on land management and control before the proposed cattle colonies can be successfully established.

1. **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 pastoralist, 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.

1. **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.

**CHAPTER 4**

**4.1 IS CATTLE COLONY A BREACH TO PROPERTY RIGHT?**

In 1861, King Dosunmu of Lagos (the 13th in succession) signed a Treaty dated 6 August 1861, purportedly in behalf of himself and the Chiefs, ceding to the British Crown “the port and Island of Lagos with all the rights, profits and territories and appurtenances whatsoever there into belonging[[92]](#footnote-92)”. This marked the beginning of the Governmental Control of land right and ownership in Nigeria. Before then, land was held by individual family, community and stool.

Similarly, at the beginning of the 20th century conquest of the Northern Nigeria by the British resulted in a proclamation of Northern protectorate, and the takeover of the “ultimate rights in land held by the Fulani dynasty as conquerors.”

The Islamic concept of conquered land was relied upon by the British to argue that “the right of the conqueror to unrestricted ownership of land is recognised” thus bolstering up their claims after conquest[[93]](#footnote-93).

Several hybrid of law and order in council were introduced over a period of time until the Nigerian states was created as a Federal System by order - in - council 1954 (“the constitution”) Section 3(1) provides:

*The Northern Region of Nigeria, the Western Region of Nigeria, the Eastern Region of Nigeria, the Southern Cameroon and the Federal Territory of Lagos shall form a Federation which shall be styled the Federation of Nigeria.*

By a combination of the provisions of the Apportionments of Assets and Liabilities Regulation 1954[[94]](#footnote-94) and the relevant provision of the 1954 constitution itself; title to all crown lands in each region was vested in the Government of the region except those lands and buildings “held for Federal Government purposes with the exception of the Federal Territory of Lagos over which the Federal Government remained vested with residual functions. And the concurrent list, including land and housing and the management thereof, except for those lands and buildings, “held for Federal Government purposes”.

Upon subsequent creation of State[[95]](#footnote-95), any crown land (state land) which immediately before the commencement of the State creation Decree was vested in the government of a region or state from which the new State was carved out, become vested in the government of the new State. Consequently, all such lands become the subject matter of the various State land laws and administrative rules in accordance with their provisions to date.

From the forgoing discussions, two important points need to be adumbrated and established to avoid the misconceptions in recent times[[96]](#footnote-96).

The first is that since 1954, land has always been a residual matter in recent time which only the state can legislate; the second which actually flows from the first, is that except for land and buildings held by Federal Government purposes, all land within the territory of a state cannot be appropriated by the Federal Government.

The constitution of the Federal Republic of Nigeria, 1999 Section 315(3) provides that nothing in this constitution shall be construed as affecting the power of a court or Tribunal established by law to declare invalid any provision of an existing law which is inconsistent with the provision of the constitution itself, among others[[97]](#footnote-97). Since land is a residual matter under the same constitution, an Act of National Assembly or a Decree of Federal Government (military) vesting such land in the Federal Government is invalid on the ground of being inconsistent with the provision of the constitution[[98]](#footnote-98).

***HRH Oba Yekini Adeniyi Elegushi and 5 Ors v Attorney General of the Federation & Minister for Justice & 2 Ors***. The Federal High Court declared invalid, the provisions of a piece of legislation known as the Land (title vesting etc) Decree No. 52 1993 which vested the land within the 1967 shoreline of Nigeria and any other land reclaimed from the lagoon, sea, or ocean in the Federal Government of Nigeria “without any further assurance than this Decree”; for the reasons given above.

A right is a claim or entitlement to a thing, tangible or intangible. It may be personal, proprietary or possessory[[99]](#footnote-99).

Land rights are creations of Law. They are not known to exist outside law and may be extinguished only by law or in a manner prescribed by law.

The constitution of the Federal Republic of Nigeria 1999 has expanded land rights to include right of access to law anywhere in Nigeria. Section 43 provides:

"Subjects to the provisions of this provision of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".

Similarly, Section 44(1) of the 1999 constitution provides:

*"No movable property or any interest in an immoveable property shall be taken into possession of compulsorily and no right over the right over or interest in any given properly shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law that among other things.*

1. *Requires the prompt payment of compensation therefore and;*
2. *Gives 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."*

From the above Section of the 1999 constitution, one may infer that:

1. Every citizen of Nigeria has a constitutional right to own property anywhere in Nigeria without hindrance in accordance to the law.
2. No immoveable property right can be taken away without due compensation.
3. For the property right to be taken away, it has to be for an overriding public interest and not for the use of governmental apparatus to deny others of such right for the benefit of private right and interest.
4. It’s within the jurisdiction of the judiciary to determine any matter as its related to expropriation or appropriation of land right.

The Governor may revoke a right of occupancy under section 28 of the Land Use Act 1978 on the ground of:

Overriding Public Interest:

Section 28(2) defines overriding public interest in the case of a statutory right of occupancy to mean in law alienation, requirement of land by the Local, State or Federal Government for public purpose or the requirement of land for mining purpose or oil pipeline, or any purpose connected there-with. In the case of a customary right to occupancy, overriding public interest is defined in Section 28(3) almost the same way as in the case of a Statutory right of occupancy; only different being the addition of the requirement of the land for extraction of building materials.

Where the purpose of revocation is for Local State or Federal use, any of such purposes stated in Section 51 of the Land Use Act 1978 as amended is implied namely:

1. For exclusive Government use or general public use.
2. For use by any corporate body directly established by law or by any corporate body registered under The Companies Decree 1968 (now Company and Allied Matters Act Cap 20 laws of the Federation of Nigeria, 2004) as respects which the Government owns share, stock or debentures;
3. For, or in connection with sanitary improvements of any kind;
4. For obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government;
5. For obtaining control over land required for, or in connection with development of telecommunications or provision of electricity;
6. For obtaining control over land required for, or in connection with mining purposes;
7. For obtaining control over land required for, or in connection with planned urban or rural development or settlement;
8. For obtaining control over land required for, or in connection with economic, industrial, or agricultural development;
9. For educational and other social services.

If the purpose for the establishment of cattle colony adhered to this requirement as in section 51 or does not violate the “*ejusdem generis*” rule of the construction, then it could be said not to infringe on the property right of individual on the note that the court has the discretion to determine the extent of the public purpose as interpreted by the Supreme Court in ***Osho v Foreign Finance Corporation****[[100]](#footnote-100)* is a contrast. In construing the definition of ‘public purpose’, the court held that any other purpose for revocation of a right a of occupancy not specified for a public purpose cannot be a lawful purpose under the Act[[101]](#footnote-101).

The attitude of the court was informed by the reasoning that:

To revoke a Statutory right of occupancy for public purpose, the letter and spirit of the laws must be adhered to. Since revocation of a grant deprives the holder of his proprietary right. The term must be strictly complied with and strict constitutions of the provisions made*[[102]](#footnote-102).*

Subject to section 27 of the Grazing Bill, the President may alienate the land for superior overriding interest in any manner whatsoever. This is a licence for the President to deal on a subsequent note with the land at his discretion. If such land is allocated subsequently to private interest, the court of law may be able to declare it as a breach to property right and then declare its acquisition and transfer void.

The power of revocation granted to the Local Government is restricted to use of land for public purpose where customary right of occupancy is to be revoked for overriding public interest, only the Governor is vested with the power to so revoke and the Local Government has no such power[[103]](#footnote-103).

However, where the overriding public interest also amounts to public purpose, it would appear, from the provision of section 28(3)(a) of the Land Use Act 1978 as amended, that the Governor equally has the power to revoke a customary right of occupancy.

The acquisition of land for the establishment of cattle colony could therefore be said not to constitute a breach to property rights of individuals or group subject to the constitutional requirement for the payment of compensation; that being an exception to property rights.

**4.2 Procedure for Valid Revocation**

The conditions for valid revocation are contained in section 28(6) and (7) of the Land Use Act as follows:

1. Revocation must be by a person who has the power to revoke i.e. a public officer duly authorised by the Governor.
2. Notice shall be issued stating the purpose of revocation as prescribed by the Act. Any revocation for purposes outside those prescribed cannot be a lawful purpose and can be declared invalid and void by a court of competent jurisdiction. Where the revocation is for public purposes, it is not enough to state just that, there is the need to spell out the particular public[[104]](#footnote-104) purpose as stated in section 51 of the Act[[105]](#footnote-105).
3. Notice shall be served on the holder by virtue of section 44 of the Act.

The following constitute good service:

1. Delivery of Notice to the person to whom it is to be served; or
2. By leaving it at the usual or last known place of abode of that person; or
3. By sending it in a prepared registered letter addressed to that person at his usual or last known place or abode; or
4. In the case of an incorporated company or body, by delivering it to the Secretary or Clerk of the Company or body as its registered or principal office or sending it in a prepaid letter addressed to the Secretary or Clerk of the Company or body at that office; or
5. If it is not practicable after reasonable enquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of “holder” or “occupier” of the premises, or if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.
6. Notice must be proved to have come to the knowledge of the person concerned i.e. there must be receipt of such notice[[106]](#footnote-106).

Upon the receipt of such notice issued on the holder of a right of occupancy, his title shall be extinguished forthwith or on such a date as may be stated in the Notice[[107]](#footnote-107).

An acquisition of land by the Governor for the private need of a private company as it was in the case of ***Ereku v Military Governor of Mid-Western State****[[108]](#footnote-108)* does not fulfil any public purpose of the state.

But nothing precludes the Governor from revoking a right of occupancy for the purpose of granting it to a company in which the government owns shares stocks or debentures, in order to execute a defined public purpose of the State as provided in the Act.

Where a right of occupancy is revoked for public purpose and the right subsequently granted to a private company for the fulfilment of the said public purpose on behalf of the State, such revocation cannot be impugned.

In the case of ***Lawson & Anor v Ajibulu****[[109]](#footnote-109)*, the respondent in 1975 purchased a parcel of land at Agbara Village, Egbado, Ogun State measuring about 15 acres from Aina Ala Adeniyi family for which he got a Deed of Conveyance duly registered.

When he started clearing the land for the purpose of development, the 1st and 2nd appellants entered the said land and destroyed the signboards.

Efforts made to settle did not yield any fruitful result. While settlement moves were on, the Ogun State Government acquired an acre of land which included the respondents land. The Notice of acquisition did not disclose the purpose for which the land was compulsorily acquired. By a Deed of Lease dated 12th June 1978 but which commenced from January 1978, the Ogun State Government granted lease to the 2nd appellant, a private company.

The area of land covered by the lease included the respondent land. The respondent then brought an action against the 1st and 2nd appellant and also the Ogun State Government represented by the 3rd and 4th appellants claiming declaration of Title to the land in dispute, damages for trespasses and injunction. The learned trial judge, following decision in ***Ereku v Military Gorvernor of Mid-Western State****[[110]](#footnote-110)* entered judgement for the respondent holding that the purported compulsory acquisition of the respondents land which was later leased to the 1st and 2ndappellants was not for a public purpose as defined by section 20 of the Public Lands Acquisition Law Cap 105 of Ogun State (which is in *pari* *materia* with section 51(1)(b) of the Land Use Act) notwithstanding that the 1st and 2nd appellants used the Land in carrying out “economic, industrial and agricultural development”. That decision was affirmed by the Court of Appeal.

On appeal to the Supreme Court, the position of the lower court was reversed and it was held that granting right over the acquired land to a private company to carry out a public purpose on behalf of the State was legitimate. The court distinguished this case from Eruku’s case on the ground that whereas the latter case was an example of naked display of power outside the public purpose contemplated by the law which the court depreciated in that case.

It would appear that the gist of an enduring valid revocation lies in the fulfilment by the State (or through an agent appointed by the State) of public purpose as defined by the Land Use Act. The non-compliance has the effect to the extent it retrospectively renders the revocation invalid and returning[[111]](#footnote-111) the title to the original owner.

**CHAPTER 5**

**5.1 CONCLUSION AND RECOMMENDATION**

**CONCLUSION**

Reading from the preamble of the 1989 Constitution and section two, four, five and six of the constitution, it is obvious that Nigeria is a federal state but the true practice of federalism was not provided for in the constitution when critically assessed.

The Nigerian supreme court in the case of ***Attorney General of Lagos v Attorney General of the Federation***[[112]](#footnote-112)emphasised that in a federal system the division of powers under section four of the constitution[[113]](#footnote-113) is to be jealously guarded as the National Assembly cannot be allowed to stray into the law making powers of the State House of Assembly and vice-versa. The independent and autonomous nature of the layers of government is therefore embedded in the constitution.

The provisions in the constitution were eventually circumvented in section 315(5) (6) which made the Land Use Act as a federal enactment overriding the autonomous nature of federating unit in a country. Land should also be moved away from miscellaneous and incidental matters to the residual list of the constitution to enable the State to effectively deal with it. Section 44(3) of the 1999 Constitution should also be amended as it run foul to federal principle as well as the common law position of “*quic quid plantatur solo solo cedit”.* The amendment should aim at bequeathing the ownership and control of land and the resources on the state and its communities.

From the angle of state activism general against open grazing of cattle, one may suggest that the States are competent to make such laws if it is for the good and safety of the citizen to the extent that section 45 of the constitution may permit as regards the national interest and security.

This recommendation if adopted will settle most of the confusion which has risen as a result of the unpopular call for the creation of a national grazing reserve.

The confusion was caused by the lack of adequate “local content” in the bill and the pseudo-military nature of our federalism. The establishment of the grazing reserve has a laudable intention. It must be pursued vigorously but under the constitutional control of the State taking into consideration the peculiar nature of the human environment.

This must be in tandem with the adage that says “you do not throw away the baby with the birth water simply because the birth water is dirty”.

**RECOMMENDATION**

Despite the obvious shortcomings surrounding the practice of federation in Nigeria, there seems to be a general acceptance of the fact that strict adherence to the best practice of federation lies the same way and path to the successful administration of how to guide and propel the objective for the establishment of a sustainable, equitable and lawful creation of cattle grazing reserve.

The all surpassing need for constitutional changes cannot be overemphasized. The conflicting nature of the provision of Nigeria’s constitution which is more unitary in essence as regards the distribution of power between the different levels of government is the lacuna that mitigates the successful passage of the bill to introduce national cattle grazing reserves in all the state of the federation. It is equally worth noting that the socio-cultural and religious diversity in Nigeria which hitherto has caused different and monumental injury to the psyche of the Nation taking away lives and resources of the nation through disastrous conflicts between people of different orientation lobed together by the colonial masters can only be stopped or limited by strict adherence to constitutional provision that epitomises universal nature of federalism taking into reference the constitution of many other nations of similar and geographical complexities as in Nigeria.

I have therefore proposed the following constitutional changes; these suggested constitutional changes are supposed to address both directly and otherwise, the challenges associated with Nigerian Federalism.

The changes include:

1. Control of Land: Land ownership shall be fully vested in the states governments and the communities and not literarily on the state government. Let every community have a fair say over the way and manner the land and the resources within the geographical area is to be used, assigned ad managed. These will be determined by the applicable culture and tradition in the areas. Issue of land tenure and use should be left to the state which will require the Land Use Act to be amended to limit or eliminate the provision of the constitution in section four subsection three which when read together with chapter two of the constitution empowers the federal government to legislate on part II of the exclusive economic legislative list (land) incidental and supplementary matters of section 315 subsection five and six which cloth the Land Use Act as a federal provision and of constitutional portfolio should be abrogated.
2. Fiscal Federation: This involves constitutional amendment providing for state control of natural resources. Tax over the resources can be levied to be paid to the federations account and to be accessed by an independent agency established by law. This provision or amendment will pave the way for fiscal federalism and therefore control the constant conflicts between the state and federal government.
3. State Constitution: Every state should be allowed to have their own constitution that will contain and define how and what they want to be given priority. A state may choose to have second generation rights in chapter II of the constitution justiciable. These phenomenon will empower the citizen to be more participatory in the way and manner the resources within the state are distributed. The approach will also deflate tension which arises due to distrust among the stakeholders in the state.
4. Developing a comprehensive policy framework: The repugnant nature of Nigeria’s constitutional content limits the political will to address the issue of socio-cultural related contents in conflicts that arises between livestock farmers and crop famers.

Livestock production in Nigeria is in existential crisis and the country lacks a cohesive and comprehensive policy framework for livestock development. The defunct Northern Grazing Reserve Law, the dysfunctional Land Use Act of 1978 the ECOWAS transhumance protocol and other international instrument have to be updated ad streamlined to eliminate the conflicts between the agents that makeup the agricultural sector.

1. Breakdown of traditional conflict resolution mechanism: The most important defence against crisis is not to allow it to emerge. “A stitch in time saves nine”. The conflicts between pastoralists and farmers were caused by breakdown of traditional conflict resolution mechanisms.

In the past, conflicts between the Fulani’s and farmers were settled by the ardos and the village head. Fulani community leaders often paid compensation for damages done to others by their cattle’s to people’s farm. Therefore, the constitution should be amended to empower some designated village head and ardos to exercise legitimate judicial power through local committees that can be used to settle conflicts between neighbours at logger heads.

1. Enforcement of the legislative provision: The existence of some state anti-grazing law has the tendency to limit or derogate from the constitutional right to free movement of the citizen in any part of the federation. Such state law must not be excessively harsh on the right to freedom of movement, while taking into consideration that the state and national security to be the only basis for its limitation.
2. Establishment of Grazing Reserve: Most nations of the world with peculiar natural and human resources as Nigeria have introduced ranching or a grazing reserves that will be established by law and adequately equipped.

Nigeria has a total of 417 grazing reserves all over the country, out of which only about 113 have been gazetted. The 1965 grazing reserve law by the Northern government was made redundant by the former military regimes. The state governments have not been diligent in sustaining previous policies.

Whether we support or oppose pastoralism, it is clear that at least in short and medium term, many herds must continue to practice seasonal grazing. This is an important point to make at this point when many political actors feel it is possible to abruptly stop open grazing of cattle. Efforts should be made to monitor herders while fast tracking settlement policy that will ultimately allow herder to settle down.

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