

## ***Migration of Pastoralists in Africa: Reflections on Practical and Policy Implications***

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### ***Abstract***

*In recent years, there has been increased migration of pastoralists from countries in Central and West Africa into Nigeria. Such movements are supported by the ECOWAS Transhumance Protocol and the Nigerian Constitution respectively. The movement of pastoralists has been associated with multi-dimensional practical and policy implications. This paper reflects on the policy implications of the migration of pastoralists across and within the borders of Nigeria and presents pointers to the areas for future policy intervention and research. The paper relied on existing policies like the ECOWAS Transhumance Protocol, the Nigerian Constitution and the Open Grazing Prohibition Law enacted by the Benue State government to draw inferences about the relevance and effectiveness of such laws in Nigeria. Interviews with farmers and pastoralists were conducted in 2017 to augment the policy analysis. The paper reports that the provisions of the ECOWAS Transhumance Protocol, like the possession of the International Transhumance Certificate as a mandatory entry requirement, have not been implemented in Nigeria. In addition, the ECOWAS Transhumance Protocol acknowledges the primacy of national and local laws, which means that the validity of the Transhumance Protocol does not transcend borders. In Nigeria, the absence of specific federal laws that address pastoralism have created a vacuum that is currently being filled by the introduction of anti-open grazing laws in states like Benue. This paper calls for an increased focus on research to remove contradictions in existing laws and to identify alternative policies in addressing the migration of pastoralists in West Africa and beyond.*

***Keywords*** Cross-border transhumance, ECOWAS protocols, migration, pastoralism, pastoral conflict, pastoral policies, transhumance.

### ***Introduction***

In recent years, the rate of migration of pastoralists within and across borders has been on the increase. This massive influx of pastoralists from other countries in Africa into Nigeria and the drift of pastoralists from northern towards southern Nigeria have been associated with multi-dimensional and

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long-term practical and policy implications. Whereas the practical implications which are often visible and shape lived experiences have received significant attention in the extant literature, commensurate attention has not been accorded the policy implications of such movements. This paper therefore reflects on the policy implications of the migration of pastoralists across and within the borders of Nigeria and presents pointers to the areas for future policy intervention and research.

Migration among West African countries was originally viewed as an integrating factor capable of promoting interactions between populations within the region. Consequently, in 1978, the ECOWAS Protocol on Free Movement of Persons, Residence and Establishment was ratified by member states in advancement of the goal of regional integration. Article 2 of the Protocol on Free Movement states that “citizens of member states have the right to enter, reside and establish in the territory of other member states”. However, Article 3 (numbers 1 and 2) requires such citizens to possess valid travel documents, an international health certificate and to enter the territory of a member state through official entry points (ECOWAS, 1979). It is evident that the emphasis of this Protocol is on the movement of people. This raises a challenge concerning the regulation of other forms of mobility across the West African sub-region.

Consequently, legislation governing pastoralism began to emerge in many countries in West Africa. Dyer (2008) noted that over time, governments have sought to manage international transhumance primarily through bilateral accords, sub-regional compacts and regional agreements. Velasco-Gil and Maru (2018) further classified types of legal arrangements for trans-boundary pastoralism to include bilateral treaties, regional agreements and protocol, national legislation, local arrangements and non-binding arrangements like Memoranda of Understanding (MoUs). These policies were initiated to facilitate trans-border mobility by specifying guidelines and processes for obtaining permits for border crossings, conditions for cross-border transhumance and institutional structures governing livestock mobility. Within Africa, West Africa has the most developed set of agreements. Dyer (2008) identified some bilateral agreements reached between Mali and countries like Burkina Faso, Mauritania, Niger, Senegal and Cote d’Ivoire from 1988 to 1994. Other regional agreements also exist between Cameroon, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea and Gabon on the one hand, and Benin, Burkina Faso, Cote d’Ivoire and Niger on the other.

In 1998, the regional agreements were consolidated with the introduction of the Protocol on Transhumance which was ratified by the 15 member states of the Economic Community of West African States (ECOWAS). The Protocol on Transhumance was introduced in recognition of the importance of pastoralism as a key source of animal products like meat and milk and was designed to regulate transhumance between the ECOWAS member states. The introduction of this protocol was hinged on the premise that “the development of livestock breeding is an integral part of any food security policy” (ECOWAS, 1998). Thus, it was imperative for ECOWAS to foster cooperation between member states to ensure agricultural development and to achieve food security. This goal was based on the conviction of member states that “transhumant livestock breeding was essential for safeguarding and increasing agricultural production”. Interestingly, the Protocol duly acknowledged that “transhumance is a source of health, social, environmental, economic and political problems”. One of such problems has been the incessant conflicts between itinerant pastoralists and sedentary farmers across countries in West Africa. While the Protocol makes provision for the resolution of disputes between farmers and nomadic herders through an arbitration commission or the law courts, the conflicts have continued unabated with devastating consequences across the sub-region.

With the persistent conflicts between farmers and pastoralists across West Africa, the achievement of the goal of boosting agricultural production and food security is increasingly becoming an illusion. In Nigeria, Amnesty International (2018) reports that the number of casualties in the conflicts between farmers and pastoralists has increased over time due to the government’s inability to keep the peace and arrest and prosecute the perpetrators of violence. This perceived ineptitude of the federal (central) government has led to the introduction of laws that criminalize open grazing of livestock by some states in Nigeria like Ekiti, Benue and Taraba. These ‘anti-open grazing’ laws, as they are popularly called, are perceived by some groups, especially sedentary farmers as the only panacea to the lingering conflicts between farmers and pastoralists. The nomadic herders on the other hand view these laws as a violation of their fundamental human rights as enshrined in the ECOWAS Protocol on Free Movement of Persons, Residence and Establishment, the Protocol on Transhumance and the Nigerian Constitution (Kwaja and Ademola-Adelehin, 2017; Nasir, 2018).

There have been fierce debates about the legitimacy of such laws and the implications of enforcing the laws. As researchers and policy-makers chart the

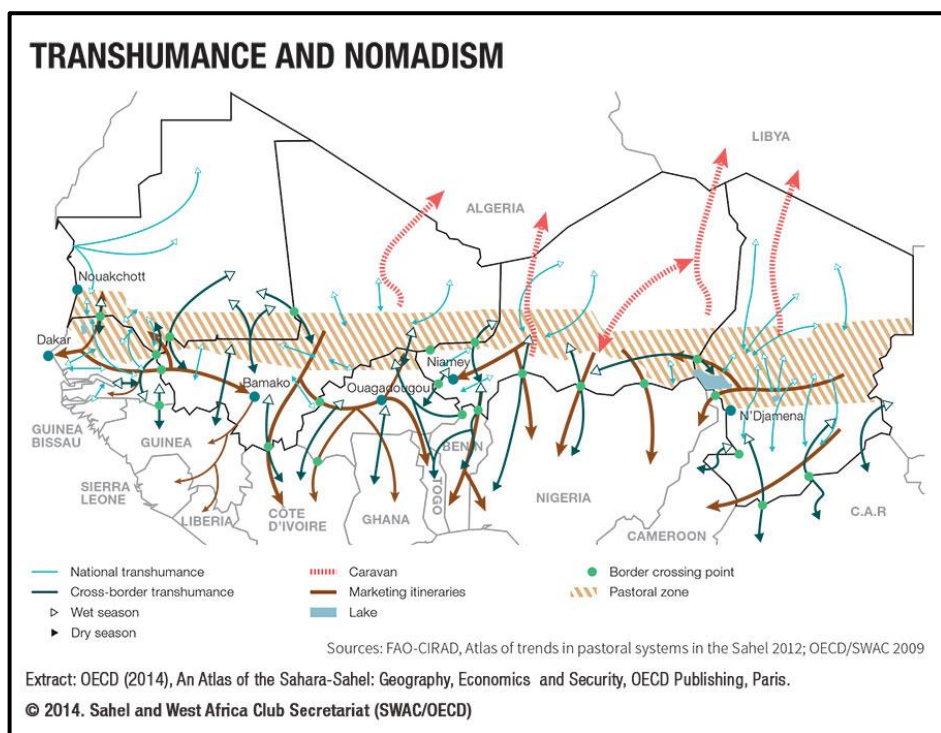
course for the future of mobility research and pastoralism in West Africa, it is imperative to examine the ways in which the available policies have shaped the migration of pastoralists and pastoralism in general and the implications going forward. Drawing on case studies from parts of Nigeria and provisions of some existing policies, this paper briefly highlights the practical implications of transhumant activities and further reviews the seemingly unintended effects of the existing policies and the alternative policies that have emerged in response to the perceived failures of extant laws in Nigeria. Specifically, the paper examines the provisions of the ECOWAS Transhumance Protocol, the Nigerian Constitution and the open grazing prohibition laws and the suitability and effectiveness of the laws. It further explores available policy response options (amend, replace, remove or add a policy) to address issues associated with the migration of pastoralists in West Africa and Nigeria in particular. This knowledge is fundamental for policy formulation and review as the Nigerian government and its regional partners grapple with the conflicts arising from the migration of pastoralists across local and international borders.

### ***Background/Contextualization***

Transhumance as an adaptation measure entails the movement of pastoralists across agro-ecological zones at various seasons in search of pasture for their livestock. It has a long history as an important source of livelihood in the Sahel and the Sudanese regions of Africa. The depletion of arable land for farming and rapid urbanization have caused the amount of land available for crop production and grazing to shrink. In addition, Tall (2018) noted that livestock density per hectare of grazing land has increased by 41% between 2006 to 2016 while forage and fodder production has significantly reduced, leading to increased cross-border transhumance. Generally, the increased rate of migration which is largely in search of pasture for livestock has been attributed to the ravaging effects of climate change. Climate change across the globe has resulted in longer periods of droughts, changes in precipitation patterns, increased heat waves and by implication, changes in plant and animal ranges. In addition to climate variability, environmental degradation and socio-political upheavals have also altered the migratory patterns of pastoralists (Aremu and Abraham, 2018; Bonneau, 2012; Burrows and Kinney, 2016; Chatty and Sternberg, 2015; Djekić, 2014; Hartmann et al, 2010). The historical migratory patterns (routes, destinations and season of movement) of pastoralists have been greatly affected by the variations in climatic conditions, increase in population, settlement expansion/urbanization and

intensity of crop production. Thus, areas that were once designated as grazing routes have been taken over by farms and settlements. Hitherto attractive destinations for pastoralists are currently experiencing adverse climatic conditions, causing the pastoralists to deflect to more favourable environments. Relatedly, seasonal migration of pastoralists which once recorded massive movements southwards during the dry season and northwards at the onset of the rains have been altered as a result of the changing climatic conditions and abrupt displacements from increased conflicts across the continent. These movements which were once temporary have become semi-permanent or even permanent in recent times (Tonah, 2006). Figure 1 below shows the migratory patterns of cross-border pastoralists within West Africa.

**Figure 1: Map showing migratory patterns of cross-border pastoralists**



Source: Sahel and West Africa Club (SWAC, 2018).

The resultant effect of these movements in the transit or host countries is an increase in the competition for available land resources between farmers and pastoralists, often leading to violent confrontations and conflicts. Thus, the age-long cross-border transhumance practice has come under threat of extinction since it is perceived as the source of many major conflicts in the West African sub-region. In fact, the United Nations Economic Commission for Africa (UNECA, 2017) reported that the majority of the ongoing conflicts in Central African Republic, Chad, Mali, northeast Kenya, Somalia and Sudan involve pastoralists. From Mali to South Sudan, Democratic Republic of the Congo, Burkina Faso, Ghana to Nigeria, the magnitude and intensity of violence between farmers and herders has increased significantly. In Burkina Faso, a report presented by the New Humanitarian (2012) indicated that from 2008-2012, about 55 people were killed in 4,000 recorded clashes between farmers and pastoralists. The report further showed that an estimated 600 incidences of conflicts occur each year and the number has been rising with each passing year. Similarly, Gaye (2018) reported high incidences of violent conflicts between sedentary farmers and pastoralists in Mali and Burkina Faso.

In Nigeria, historical accounts suggest that the relationship between farmers and herders was relatively cordial and mutually beneficial. This coexistence was not without low-scale skirmishes which were usually caused by the destruction of crops or the killing of cattle. In recent times, such confrontations have become more violent, involving massive casualties, destruction of settlements, infrastructure and properties, including large-scale forceful displacement of people. It also involves the use of sophisticated weapons like machine guns and AK-47 rifles. These new dimensions of the conflicts have raised questions about the origins of the 'new breed' of itinerant herders on the one hand and the support-base or criminal networks of the 'indigenous' herders on the other. The current surge in conflicts between farmers and pastoralists across West Africa is contrary to the tenets and expectations of the ECOWAS Protocols on free movement of persons and transhumance. Thus, there has been an enhanced and intentional focus on the development and improvement of policies by local, national and regional actors across West Africa to address the protracted conflicts between farmers and pastoralists.

### ***Literature Review: overview of Interactions between Farmers and Pastoralists in Africa***

While the Transhumance Protocol acknowledges the benefits of pastoralism, it is also not oblivious of the potential conflicts that may arise when two

divergent agricultural livelihoods – farming and pastoralism cross paths. However, in recent times, the negative consequences of the escalated conflicts between farmers and pastoralists seem to have inundated the benefits of pastoralism. The limited information and statistics available suggest that pastoralism contributes about 30-38% of the gross value of the agricultural commodities in Africa (UNECA, 2017). Avis, (2018) note that in 2014, a World Bank report indicated that livestock rearing contributed about 38% to the agricultural Gross Domestic Product (GDP) in 16 African countries. Among these African countries covered in the report, Djibouti had the highest contribution (90%) of livestock to agricultural GDP while in Nigeria livestock contributed about 10% to the agricultural GDP. Generally, pastoralists supply about 90% of the meat consumed in East Africa and about 60% of the meat and milk products consumed in West Africa (Avis, 2018).

On the other hand, several studies have reported on the conflicts between pastoralists and farmers or local communities in different parts of Africa and the attendant consequences. Olaniyan (2015) reported violent clashes between *Fulani* pastoralists and the Konkomba farming community, in which human lives were lost, cattle were rustled, houses were burnt and large-scale displacement of people occurred. The study also reported that some of the herders affected in the conflicts were citizens of Burkina Faso. This points to the possibility of cross-border herders being victims of the conflicts. The finding also deflates the skewed impression created by the dominant narratives that cross-border pastoralists are the sole perpetrators of conflicts in their host communities. In Tanzania, Mwamfupe (2015) observed that conflicts between farmers and pastoralists have increased in magnitude and spread. He noted further that the areas affected were historically crop producing areas; but the migration of pastoralists triggered conflicts within such areas.

These persistent conflicts between farmers and pastoralists across Africa have given rise to a number of issues including food insecurity. A report presented by the Internal Displacement Monitoring Centre (IDMC) suggests that in 2018, there were about 541,000 new displacements as a result of conflict and violence in parts of Nigeria (IDMC, 2018). Out of this number, about 200,000 persons were displaced in the middle belt region of Nigeria where the conflicts between farmers and pastoralists are rife. These conflict-induced displacements have had a significant effect on the economy, agriculture and development efforts as a whole.

Research suggests that conflicts are the main drivers of food insecurity across the world. In 2017, findings obtained from 18 countries across the world including South Sudan, Somalia, Yemen and Nigeria indicate that famine driven by conflict has given rise to increased hunger and malnutrition which has affected over 20 million people (United Nations World Food Programme, 2018). In Ghana, Antwi (2018) found that loss of access to arable farmlands, reduced crop production, labour shortages and crop destruction all had an adverse effect on food security. Similarly, Azad and Kaila (2018) conducted surveys among households in conflict regions of Nigeria including north central, north east and south-south and found that a significant percentage of the households are highly 'food insecure'. This study found that there was a link between food prices and food insecurity in all three Nigerian regions. The high cost of food in the areas affected by conflicts may not be unconnected to decreased crop production, high cost of labour and costs involved in transporting food to regions affected by conflicts. Consequently, the research concluded that armed conflicts have a detrimental effect on food security as they reduce production, increase food prices and reduce access to food.

In response to the conflicts between farmers and pastoralists, governments in African countries have individually and collectively introduced measures including the promulgation of laws. For instance, the Ghanaian state adopted a policy of expulsion which entailed the evacuation of *Fulani* herders from Ghana and the introduction of measures that prevented them from entering and conducting any business in the country (Olaniyan et al, 2015). The policy was introduced as a measure to put an end to the recurrent conflicts between farmers and pastoralists and it was applied in Agogo town in northern Ghana. These expulsions were premised on the perceived status of *Fulani* herders as 'strangers' and not originally from Ghana. The policy of expulsion contravenes the provisions of the Ghanaian Constitution which recognizes people born in the country and those who have acquired citizenship as legitimate citizens of the country (Olaniyan et al, 2015). Similarly, as a member state of ECOWAS and a signatory to the regional treaties, the policy of expulsion introduced in Ghana violated the Protocols on free movement of persons, residence and establishment and transhumance. This example highlights the contradictions in local, national and regional pacts which are capable of threatening the free movement of pastoralists within and across countries in West Africa.

The situation in East Africa is not different either. In Tanzania, the government employed strategies like the eviction of livestock and their owners from certain areas and split villages, designating specific areas for crop cultivation



and others for grazing to deal with the conflicts between farmers and pastoralists. However, Mwamfupe (2015) still identifies policy deficiencies and contradictions as a major factor contributing to the protracted conflicts. This is in line with the observations by UNOWAS (2018) that the conflicts between farmers and pastoralists are aggravated by the weak enforcement of the rule of law.

In a comprehensive analysis of the regulations governing pastoralism in Africa, Leonhardt (2017) assesses the extent to which free movement policies, legislation and practices are being applied to transhumant pastoralism in the ECOWAS region, particularly in Mali, Niger and Nigeria and the resultant effect thereof. Leonhardt (2017:13) finds that contradictory public policies are currently affecting the mobility of pastoralists. For instance, he noted that,

*[...] in contrast to the Transhumance Protocol of 1998, the ECOWAS Regulation on the implementation of the Transhumance Protocol (2003) regards pastoralist transhumance not so much as a valuable economic activity but more as a relic of the past that will soon be replaced by more intensive forms of animal husbandry.*

The analysis further identifies limited domestication of the ECOWAS Transhumance Protocol in member states and uneven development of the institutional structures and operational guidelines required for the implementation of the Protocols as some of the challenges faced in the regulation of cross-border transhumance. Consistent with this view, a study by the Food and Agricultural Organization (FAO) and ECOWAS (2012) outlined key challenges encountered by practitioners of cross-border transhumance to include the existence of land policies that do not take into account pastoral mobility and limited promulgation and implementation of policies, institutions, legal and regulatory frameworks regarding pastoralism. Alidou (2016) also observed that various countries have formulated and passed legislation but these have not been put into operation.

Opanike and Aduloju (2015) presented a more radical view when they asserted that the ECOWAS Protocol on Free Movement of Persons is contributing to insecurity in the West Africa sub-region. They further alleged that ECOWAS does not have adequate instituted mechanisms for monitoring cross-border movements. Thus, people who carry out nefarious activities have exploited the opportunities to their advantage. This has led to increased crime and criminality, thus abusing the privileges of the ECOWAS protocol on free movement of persons and goods. In April 2018, a high-level meeting of

Ministers in charge of Security and Agriculture/Livestock or Transhumance in West African countries and representatives of regional and international organizations held in Abuja deliberated on some of the challenges of transhumance. The challenges identified were the lack of implementation of existing pastoral and transhumance laws, political manipulation and the proliferation of weapons in the region. The meeting therefore proffered some recommendations which include: the audit of the non-implementation of the existing regulatory framework relating to transhumance; the control of the proliferation of small arms; the review and update of the existing regional regulatory frameworks relating to transhumance and the international transhumance certificate considering current realities; the harmonization and implementation of national legislation in compliance with ECOWAS laws on transhumance and small arms control; and the review of the existing transhumance routes. It is too early at this point to ascertain the progress made by the participating countries on the implementation of the aforementioned recommendations.

The meeting further agreed that herder-farmer conflicts are a regional issue that requires a regional approach as it affects human, economic, national and regional security. The preceding discussions and the recommendations proffered by the high-level panel suggest that the non-implementation of policy frameworks and the contradictions in the regional, national and local laws are major impediments to the regulation of pastoralism and its attendant consequences. Thus, adequate attention needs to be given to the policies that regulate pastoralism within and across countries, to harness the benefits of the practice and mitigate its adverse effects.

### ***Methodology***

This study adopted a combination of policy analysis and fieldwork in selected states in Nigeria. Existing policies like the ECOWAS Protocol on Transhumance (1998), the Constitution of the Federal Republic of Nigeria (1999) and other local laws were examined. This was necessary because these laws stipulate the conditions for the migration of pastoralists and are at the centre of the quest for a lasting solution to the conflicts between farmers and pastoralists in Nigeria. Information from the fieldwork was used to complement the policy analysis. The fieldwork covered three states in Nigeria namely Benue, Plateau and Adamawa, where the conflicts between farmers and pastoralists were prevalent. Benue and Plateau states are located in the central part of Nigeria while Adamawa State is situated in north-east Nigeria.

Semi-structured interviews with farmers and pastoralists were used. Interviews were conducted between August and November 2017. The interviews sought to elicit information on the nature of the conflicts, the drivers of the conflicts from the perspective of those directly affected and the efficacy of existing policies in dousing the tensions between the two groups. The views of farmers and pastoralists were important to confirm or dispute the claims relating to the emergence and role of new actors in the conflicts between farmers and pastoralists. The qualitative data generated through the interviews was analyzed according to dominant themes. The provisions of the ECOWAS Transhumance Protocol were outlined and examined to address pertinent issues and questions relating to effectiveness (how well a policy works), evaluation of alternatives (how good the policy is compared to other approaches) and the establishment of recommendations for positive change (is it better to amend, replace, remove or add a policy?) In addition, the provisions of related legal instruments like the Nigerian Constitution and the Anti-open grazing laws were reviewed.

### ***Discussion***

While the ECOWAS Protocol on Free Movement of Persons and Goods and the Protocol on Transhumance aim to promote regional integration and boost agricultural production respectively, the policies have contributed to trans-border crime and insecurity in Nigeria, thereby producing counter-productive results. The situation is worsened by the uncontrolled and porous borders across Nigeria. Cross-border transhumance has been associated with exacerbated conflicts between farmers and pastoralists, the emergence of new actors and the proliferation of small arms and ammunition. These have compounded and changed the dynamics of farmer-herder conflicts across West Africa. The widespread displacement of people, destruction of homes and infrastructure, loss of lives, disruption of livelihoods and diminishing labour force are currently affecting the socio-economic development of states like Benue, Plateau and Adamawa. The conflicts have long-term effects on food security, access to education and other aspects of development. The International Crisis Group (2018) found that the disruption caused by conflicts between farmers and herders in Benue, Nasarawa and Taraba states in Nigeria have led to an estimated 33-65% reduction in farming activities and food production. Relatedly, officials of Benue and Plateau states reported that about 60% of displaced persons were children of school-going age. This implies that such children have been deprived of access to formal and non-formal basic education. The cumulative effect is an increase in poverty, inequality and

underdevelopment in the affected states. These negative effects of the migration of pastoralists across and within borders have elicited debates on the place of itinerant herders in contemporary African society.

***Policy Implications: Provisions of the ECOWAS Transhumance Protocol***

Several aspects of the Transhumance Protocol are of particular interest in this paper. Article 3 allows for free movement across the borders of all member states upon the satisfaction of stipulated conditions. These conditions include the possession of the ECOWAS International Transhumance Certificate (ITC). The reason for the introduction of the transhumance certificate was to document the movement of cross-border pastoralists. This documentation enables the tracking of pastoral movements and provides information to the host communities on the arrival of transhumant animals. The certificate basically contains the itinerary of the herders, the border posts to be crossed and the final destination of the pastoralists. Article 7 stipulates that transhumance herds shall follow the routes defined by member states in accordance with the itinerary indicated on the ECOWAS ITC. In the event of any contraventions, Article 13 makes provision for the apprehension of stray animals by the relevant authorities without prejudice to the application of sanctions against their owner or herdsmen as provided for by laws applicable in cases of stray animals in the member states concerned. Articles 14 and 15 address issues relating to the period during which migrating livestock may enter into and depart from host territories and the responsibility of states in defining the areas where transhumant animals may be stocked and the maximum capacity of each holding zone. The Protocol further demands that accompanying herdsmen must pen up their herd in the zone assigned by officials at the point of entry. While it appears that the proponents of the transhumance Protocol foresaw the likelihood of conflicts between pastoralists and host communities and laid down seemingly adequate measures to prevent the occurrences of such, persistent conflicts between the two groups suggest that either the Protocol is inefficient or enforcement and adherence have been lacking.

Article 16 requires herders to observe all laws and regulations of the host country, particularly those concerning the conservation of forest reserves, forest resources and the management of watering points and pastoral land. Interestingly, the transhumance Protocol in both Articles 13 and 16 acknowledges the extant laws in member states and does not in any way assume overarching authority in the regulation of transhumant activities in

the member states. However, the attempts by some state governments in Nigeria to introduce and enforce laws to abate the conflicts have often met stiff resistance, with the majority of those opposing such laws making reference to the contradictions between local laws and the ECOWAS Transhumance Protocol. Even though the Nigerian government was a signatory to the ECOWAS Transhumance Protocol, little or no effort has been made in domesticating and implementing the provisions of the Protocol. For instance, cross-border pastoralists migrate into the country unchecked and without the required International Transhumance Certificate which is supposed to show their itinerary and certify their livestock fit for passage. Another contradictory dimension could be the relevance of the ECOWAS Transhumance Protocol in the member states. If the provisions of the Protocol suggest that national and local laws of member states supersede the Protocol, then of what use is the Protocol in regulating cross-border transhumance besides the issuance of the International Transhumance Certificate?

***Policy implications: Perspectives of Farmers and Pastoralists in Nigeria***

Through semi-structured interviews with farmers and pastoralists in parts of Nigeria, it was gathered that there is a link between the escalation of conflicts and the emergence of new actors. The farmers and pastoralists interviewed referred to these new conflict actors as ‘a new breed’ of pastoralists originating from other countries in Africa. Some of the respondents traced the origin of the pastoralists to Central African Republic and Libya. They alleged that these pastoralists who had been displaced by conflicts in their original areas of habitation brought along sophisticated weapons which are used in the conflicts between farmers and pastoralists in Nigeria. According to the members of farming communities in Benue, Plateau and Adamawa states, the major differences between the new and old pastoralists are that the former carry weapons such as guns as they move with their livestock and they are unable speak the Hausa language while the latter carry sticks and often communicate in other Nigerian languages such as Hausa. Some excerpts from the interviews show the views of respondents on the migration of pastoralists in Nigeria:

*The new herders with guns from Mali, Libya and Central African Republic where there are ongoing conflicts move freely into Nigeria. They are received by the indigenous herders residing in northern Nigeria. As unfavourable conditions such as drought and desert encroachment worsen in northern Nigeria, they drift southwards*

*towards central Nigeria. Conflicts arise when their cattle destroy farmers' crops or when the farmers steal or kill their cattle (interview with a community leader, Plateau State).*

Similarly, interviews with community leaders and the *Fulani ardos* in Adamawa state revealed that the conflicts between farmers and pastoralists are driven by the influx of a 'new breed' of herders. These 'new breeds of herders' were referred to as *Fulani daji* (literally translated as 'bush *Fulani*') in a bid to distinguish 'legitimate' herders (*Fulani gida*), who are inhabitants of the local communities, from the unrecognized itinerant herders who are new entrants. These itinerant herders allegedly migrated from countries such as Mali, Niger and Chad. In Adamawa State, a traditional ruler in Yola South Local Government gave a brief historical account thus:

*The Fulani gida pastoralists lived with the Bachama ethnic group peacefully before the arrival of the foreign itinerant herders (Fulani daji). The Fulani daji caused the conflicts from the beginning. They killed members of the other ethnic groups in the state. After igniting the violence, they moved on, leaving behind tensions between the other ethnic groups and the Fulani gida. The other ethnic groups then turned on the Fulani gida claiming that they were co-conspirators of the Fulani daji. This led to the escalation of the conflicts between the other ethnic groups which are predominantly farmers and the Fulani gida who are pastoralists. Though the government was aware that the initial perpetrators of the violence were migrant herders, no action was taken to address the issue (interview with a traditional ruler in Yola South, Adamawa State).*

The views on the influx of a supposedly different group of herders were corroborated by respondents in Benue state. In providing the distinction between the 'old' and 'new' types of pastoralists, a traditional ruler said:

*In those days, Fulani herders sought permission from local traditional rulers before settling temporarily in a community. That way, it was easy to hold the herders accountable in the event of crop destruction by cattle. Recently, the 'new type' of herders arrive in our communities without prior notice, thus violating the mutual arrangements we had with the old Fulani herders (interview with a traditional ruler in Benue state).*

In Benue, Adamawa and Plateau states, it was reported that the emergence of these foreign itinerant herders has led to more violent and brutal killings, the

use of sophisticated weapons such as AK-47 guns and midnight attacks that leave no trace of the attackers by daybreak. Besides the identification of the new or foreign pastoralists by their inability to communicate in an indigenous Nigerian language, there exists little or no substantial evidence to prove the actual identities of these invaders. Despite the protracted nature of the conflicts, no foreign itinerant pastoralist has been arrested or prosecuted. However, these narratives of the identities of the invaders have also been propagated by the Nigerian President and the Military Security Chiefs who alleged that the violence between farmers and pastoralists is perpetrated by 'mercenaries' who have received training in Libya. In spite of these allegations and subtle admission of a possible security breach, little or nothing has been done to control the entrance of pastoralists into Nigeria. In addition, no effort has been made to enforce the pre-conditions for admission into ECOWAS member states as stipulated by the Transhumance Protocol. Failure to enforce the terms and conditions outlined in the Transhumance Protocol like the issuance of International Transhumance Certificates endorsed by competent authorities in pastoralists' countries of origin, has resulted in the uncontrolled influx of pastoralists from different parts of Africa into Nigeria.

The traditional ruler in Yola South, Adamawa State opined that the Nigerian government must be held accountable for the unregulated movements of pastoralists within and across local and international borders. He stated:

*The government needs to address these questions: how did the pastoralists come here? Where did they come from? What is their reason for moving? How do they manage to traverse the country without the intervention of law enforcement agencies? Why are permits not issued by government agencies at the border crossing? ...The nomads come in as if there are no rules or laws governing their movements. Why won't the government enforce the laws which relate to migration of pastoralists and if there is none, why can't the government enact such laws? (Interview with a traditional ruler in Yola South, Adamawa State).*

Adamawa state is on the Nigerian border with Cameroon. The traditional ruler compared the experiences of pastoralists attempting to cross over to Cameroon with what is obtainable in Nigeria:

*I have five different shepherds nurturing five different herds of cattle. If any of my shepherds intend crossing the border into Cameroon, there is always a border security personnel who will first ask questions like, where are you from? Where are you going to? Are your cows healthy? In*

*fact, there are veterinarians stationed at the border to check the health condition of the cows before livestock are granted entry into Cameroon. You also have to tell them your name, present your passport to them or any Nigerian identity card which bears your name. After all the security checks, the security personnel leads the pastoralist to the village head for proper introduction. The village head then allocates a space for the pastoralist and his livestock. That way, they are able to monitor incoming pastoralists effectively. The Nigerian government needs to enforce the issuance of resident permits to all itinerant pastoralists who come into the country through the borders and even for those traversing internal borders. The permits can serve as evidence that the holder is moving under the authority of the government. They can achieve that by manning the borders with credible security personnel. If these measures are implemented, the conflicts between farmers and pastoralists will be reduced if not eradicated (interview with a traditional ruler in Yola South, Adamawa State).*

Two key issues can be identified from the preceding discussion. First, it is evident that the provisions of the ECOWAS Transhumance Protocol have not been implemented in Nigeria. Thus, pastoralists have unfettered access into the country. Secondly, the ECOWAS Transhumance Protocol acknowledges the primacy of national and local laws, which means that the validity of the Transhumance Protocol does not transcend borders. This further implies that the guidelines of the ECOWAS Transhumance Protocol can be adhered to at the international boundary crossing points but whatever happens after the pastoralists get into the transit or host territory, is to be determined by the laws of that country. So, what do the national and local laws say about the movement of pastoralists within internal borders?

### ***Provisions of National and Local Laws in Nigeria***

The major legal documents within Nigeria that are referenced in the discourse relating to pastoralism are the Constitution of the Federal Republic of Nigeria (1999) and the laws prohibiting open grazing of livestock (as is applicable in Ekiti, Benue and Taraba states) or criminalizing cattle rustling (as is the case in Katsina state).

#### ***The Nigerian Constitution (1999)***

Chapter 4 of the Nigerian Constitution (1999) as amended describes components of fundamental rights to include the right to freedom of



movement. Specifically, section 41 states that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom. The Nigerian Constitution of 1999 as amended does not specifically address pastoral mobility but permits the free movement and settlement of people wherever they choose to. Even though the freedom of movement and residence is accorded to human beings, livestock are an integral part of the people's livelihoods and therefore share in the privileges accorded their owners. This freedom to reside wherever one desires has been classified as a fundamental human right of all citizens and rightly so. However, such laws do not define the boundaries of one's freedom of movement and residence and are silent on issues that may arise when one's freedom of movement and residence impinges on another's right to life and sustenance. These lapses in the Constitution and the absence of specific federal laws that address pastoralism have created a vacuum that is currently being filled by the introduction of laws in some states across Nigeria.

#### *The Open-grazing Prohibition Law*

The recent trend in Nigeria is the enactment of the Open-grazing Prohibition and Ranches Establishment Act in some of the states plagued by violent conflicts between farmers and pastoralists. According to the Governors of the states where laws have been introduced to criminalize open-grazing of animals including cattle, the laws became necessary to minimize the conflicts between the two groups. This became imperative especially in the face of perceived inaction from the Federal Government of Nigeria. However, the introduction of the laws have been faced by stiff resistance from various stakeholders including the President of Nigeria, the Chief of Defence Staff, the former Inspector-General of Police and members of the socio-cultural group representing all *Fulani* pastoralists in the country, the Miyetti Allah Cattle Breeders' Association of Nigeria (MACBAN).

In Nigeria, states determine what is permissible on the land within their territory/borders. Similarly, the states also have the legal mandate to enact laws that prohibit certain practices and spell out punitive measures for the offenders. These powers have been vested in state governors by the Land Use Act of 1978 (Federal Republic of Nigeria, 1978). According to the Land use Act of 1978, all lands within the boundaries of a state are under the control of the state and are administered under the authority of the State Governor. Consequently, Nigerian states are at liberty to make laws on how land will be

used within their areas of jurisdiction. Even the federal government has to acquire land from state governments for the execution of projects in states under the terms and conditions stipulated by the state. It is safe to say that the local laws governing the administration and access or use of land supersede any federal or regional law.

Acting within its legal authority, the Benue State government promulgated the Open Grazing Prohibition and Ranches Establishment Law in May 2017 (Benue State government, 2017). However, the implementation of the law was delayed for about six months. The law sets the conditions under which livestock rearing can be done within the state. The law, which is popularly called the Anti-open Grazing Law, came into effect in November 2017. The law aims to abolish the current practice of pastoralism by prohibiting the free movement of animals within the state except by road or rail. The law further advocates for ranching as the 'best practice' for livestock rearing. According to the law, pastoralists and other interested parties are to lease land from the government for the establishment of ranches. The lease permit issued for such land is to be renewed annually. The law further stipulates penalties for defaulters including a jail term of a minimum of five years, or a fine of one million Naira (equivalent of \$3,000).

It is pertinent to note that proposing changes to the lifestyle of a group of people should be a long-term measure: to allow the pastoralists who wish to conform to the government's proposal to adjust mentally to the sedentary lifestyle; to enable the pastoralists to do away with the local breeds and acquire breeds of cattle that are suitable for ranching; and to enable the government to set in place mechanisms for the successful establishment of ranches. In Benue state, the implementation of the law commenced about 5 months after it was signed by the governor – a very short period for interested pastoralists to establish ranches and take the steps towards a sedentary lifestyle. Figure 2 below shows a billboard erected by the Benue State government providing information on the Anti-open Grazing Law.



Figure 2: A billboard providing information on the Anti-open Grazing Law in Benue State, Nigeria

*Photo Credit: Linus Unah (2018).*

The introduction of the Anti-open Grazing Law has consequently stirred up debates about its legitimacy on the one hand, and on the other hand, highlights deviations from the ECOWAS Protocols on Free Movement and Transhumance and the Nigerian Constitution. The representatives of pastoralists in Nigeria operating as the Miyetti Allah Cattle Breeders' Association (MACBAN) have argued that the provisions of the law trample on their fundamental constitutional rights to free movement and residence in any part of Nigeria. In a bid to seek justice, the Miyetti Allah Kautal Hore instituted a law suit against the Benue State government, pointing out the contradictions between the Anti-open Grazing Law and the provisions of the Constitution of Nigeria as the major issue of contention. The suit was dismissed by the Federal High Court, Abuja. On the other hand, the Benue State government has defended its Anti-open Grazing Law, claiming that the constitutional rights to freedom of movement and residence apply only to humans and not to animals. Another line of argument has been on the issue of whose rights are more legitimate,

especially in a state like Benue where a significant percentage of the population are rural crop farmers. Thus, members of farming communities have argued that freedom of movement and residence is not an exclusive right for pastoralists, but that such freedom of residence ought to be enjoyed by farmers as they engage in their livelihood practices.

Shortly after the commencement of the implementation of the law in Benue State, more than 70 people lost their lives in attacks by suspected *Fulani* militia on 1 January 2018. Nigeria's security chiefs attributed the violent attacks to the introduction of the Anti-open Grazing Law in the state. The arguments presented for the attacks were that the aggrieved pastoralists reacted against an oppressive law. This narrative seemed to suggest that the killings were justifiable. However, it can be argued that local laws such as the Anti-open Grazing Law are filling a void created by the non-implementation of the stipulated conditions for legitimate transhumant activities or the absence of deliberate policies on pastoralism in the country. In addition, states like Benue could be responding to the conflicts in the face of daunting frustration by the non-commitment of the Federal Government of Nigeria to deploy strategies to effectively manage the conflicts.

### ***Conclusion and Recommendation***

The Economic Community of West African States (ECOWAS) Protocol on Transhumance enacted in 1998, though borne out of good intentions, has limited applicability in the transit and host countries because national and local laws supersede the regional Protocol. The preceding discussions show that there is weak enforcement of the provisions of the Transhumance Protocol especially along Nigerian borders. In addition, the regional, national and local laws are not aligned to provide a harmonized policy for the migration of pastoralists in West Africa. This legal imbroglio that has arisen from the existence of contradictory policies and inherent ambiguities in the national laws, needs to be addressed for pastoralism to thrive. Policy-related issues that require attention include, the undocumented movement of pastoralists across internal and international borders; unpacking the notion and implications of 'free movement' across internal and international borders to ensure fairness to all; and the development of institutions and mechanisms to specifically address issues associated with the migration of pastoralists. There is also a need to find a compromise between national laws and local laws to address the contradictory issues. Focus should be placed on research to find ways of reaching this compromise and to identify the alternative policies that

may be useful in addressing the migration of pastoralists in West Africa and beyond.

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