

ARRESTING THE NIGERIAN HERDERS-FARMERS
CONFLICT:
THE UNCONSTITUTIONALITY OF THE RUGA
POLICY

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Abstract

The Ruga policy which the Federal Government claims to be aimed at ending the herders-farmers conflict that has claimed thousands of lives and rendered thousands internally displaced is perceived in most segments of the Nigeria society as a policy that would exacerbate rather than end the conflict. It seeks to establish in the States of the Federation settlements for Fulani herders who are usually illegally armed with guns as against unarmed local farmers. Due to stiff opposition from mostly non-Fulani ethnic nationalities Government suspended the policy. Since the policy is only suspended and not jettisoned, it is possible that government can revisit it. A key step in assessing the germaneness of this policy is whether or not it is in tune with the extant Constitution of Nigeria, the 1999 Constitution, and this paper concludes that it is not.

Key Words: Nigeria, Ruga settlements, Herders-Farmers conflict, Constitution

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I. Introduction

Ruga is the acronym for “Rural Grazing Area.” It came first under the name of “grazing reserve,”¹ and when this was frontally opposed, the Federal Government rebaptized it “cattle colony” and presented it to Nigerians. This too was identified for what it truly was and was equally rejected. The Government then brought it back under the name Ruga, which was once more rejected. This necessitated the Government suspending the idea.² The news of the suspension of the proposed Ruga policy of the Presidency of Nigeria was a great relief across most ethnic nationalities in Nigeria due to the widespread belief that the policy, in truth, had nothing to do with ending the conflict between herders and farmers, but was rather a brazen subterfuge for eventual overrun, domination and colonization of the other ethnic nationalities in Nigeria by the Fulani ethnic nation. Opposition against it has been voiced out by many ethnic nationalities, civil societies and concerned citizens. Headlines like these give out this fact: “Folly and Falsities of Ruga Settlements,”³ “Buhari seeking to colonize Nigeria through establishment of Ruga settlement,”⁴ “Ruga settlements may set Nigeria on

¹ See National Grazing Reserve (Establishment) Bill 2016, <http://placbill-strack.org/view.php?getid=1666>. The bill was sponsored by Hon. Sadiq Ibrahim. The long title of the bill reads: “A Bill for an Act to establish grazing reserve in each of the States of the Federation of Nigeria to improve agriculture yield from livestock farming and curbing incessant conflicts between cattle farmers and crop farmers in Nigeria.” See further, Joseph Onele, *The Grazing Bill and the Right to Property in Nigeria: Lest We Are Deceived!*, (July 10, 2016), <https://ssrn.com/abstract=2807673>. Onele Joseph, *The Grazing Bill and the Right to Property in Nigeria: The Voice of Reason* (July 22, 2016 10:47), <https://www.thecable.ng/grazing-bill-right-property-nigeria-voice-reason>.

² *FG suspends Ruga*, PUNCH (July 3, 2019), available at <https://punchng.com/breaking-fg-suspends-ruga/>. Samson Toromade, *Buhari suspends Ruga settlement plan for herders after backlash*, PULSE (July 3, 2019), available at <https://www.pulse.ng/news/local/buhari-suspends-ruga-settlement-plan-for-herders-after-backlash/ft7cj12>.

³ Oseloka H. Obaze, *Folly and Falsities of Ruga Settlements*, BUS. DAY (July 9, 2019), <https://businessday.ng/opinion/article/folly-and-falsities-of-ruga-settlements/>.

⁴ Sahara Reporters, *Buhari Seeking To Colonize Nigeria Through Establishment Of Ruga Settlement – Southern and Middle Belt Leaders Forum*, SAHARA REP.

fire, says Soyinka,”⁵ “RUGA settlements and the impending nationwide chaos,”⁶ and “RUGA Settlements’ controversy pushing division in the country to near-breaking point.”⁷ From the backdrop of these headlines the suspension of this policy has pulled Nigeria back from the precipice of inevitable chaos and explosion. All the same, the relief by the suspension might be temporary given that the word “suspension” does not imply a definitive renunciation or cancellation of an idea or policy but rather a temporary stoppage. And the temporary stoppage could be in order to reformulate and fine-tune the policy or to buy time to do some political leg-work before re-launching it. In effect, suspending the Ruga policy does not mean the death of the policy. This perception is in reality supported by the fact that after the suspension the same Federal Government announced that it was continuing with it in States that voluntarily keyed into it. The plan to settle Fulani herdsmen in the 36 States of the federation did not begin with Ruga. From this background it can be said that the idea of settling Fulani herdsmen in the 36 States of the country by the Federal Government is still alive and active. It is not dead because the word “suspension” does not imply the death of the idea but a temporary cease. The strong emotions and sentiments expressed for and against the policy demand an interrogation of the constitutionality of the policy as the preface to responding to the question on whether or not it can achieve what it is planned to achieve. The paper is divided into five parts. Part I is the introduction and Part II deals with the explanation of the key terms: Ruga and Constitution. Part III elucidates the key elements of a constitution. Part IV is a critical interface of the Ruga program and the

(June 30, 2019), <http://saharareporters.com/2019/06/30/buhari-seeking-colonize-nigeria-through-establishment-ruga-settlement-%E2%80%93-southern-and>.

⁵ Paul Ukpabio, *Ruga settlements may set Nigeria on fire, says Soyinka*, THE NATION (July 2, 2019), <https://thenationonlineng.net/just-in-ruga-settlements-will-set-nigeria-on-fire-says-soyinka/>.

⁶ Edidiong Udobia, *RUGA Settlements And The Impending Nationwide Chaos*, FIRST REP. (July 3, 2019), <https://firstreportsonline.com/opinion-ruga-settlements-and-the-impending-nationwide-chaos-by-edidiong-udobia/>.

⁷ Ben Nwabueze, *RUGA Settlements’ controversy pushing division in the country to near-breaking point*, VANGUARD (Aug. 7, 2019 12:00 PM), <https://www.vanguardngr.com/2019/08/ruga-settlements-controversy-pushing-divisions-in-the-country-to-near-breaking-point/>.

1999 Constitution which on this matter embraces the 1978 Land Use Act (LUA), the Act that regulates how the Federal Government can acquire land in the territory of a State. Lastly, Part V is the conclusion and recommendations. The finding of the paper is that the Ruga policy is unconstitutional. Part of the recommendations is that it should not just be suspended but scraped off the policy table of the Federal Government.

II. Explanation of Key Concepts

A. The Ruga Policy

Under this policy, the Federal Government planned to settle the Fulani herdsmen in the 36 States of the Federation. It would acquire large swathes of land in each state and donate them exclusively to Fulani herders. In addition to reserving the settlements for Fulani herdsmen, Government would build in each settlement schools, mosques, markets, and industries associated with cattle rearing business such as dairy factories, tanneries, etc.

The Fulanis, usually referred to in association with the Hausas to constitute the Hausa-Fulani ethnic group, form one of the over 350 ethnic groups in the country with the three major ones being, besides the Hausa-Fulani, the Yorubas, and the Igbos. History has it that the Fulanis immigrated to the Hausa Kingdom of northwestern Nigeria in groups from territories outside of Nigeria at different times and at different geographical points before the Fulani conquest of the Hausa kingdom by Shehu Usman Dan Fodio in 1804.⁸ Islam was already practiced in the Hausa kingdom but it was a private affair and not a State religion.⁹ This provided an easy leverage for the Fulanis to assimilate into the life of the kingdom, and they gained administrative positions without however losing consciousness of their not being

⁸ Samuel N. Nwabara, *The Fulani Conquest and Rule of the Hausa Kingdom of Northern Nigeria (1804-1900)*, 33(2) JOURNAL DE LA SOCIÉTÉ DES AFRICANISTES 231-242 (1963).

⁹ See Johnson Olaosebikan Aremu, *The Fulani Jihad and its Implication for National Integration and Development in Nigeria*, 5(5) No. 22 AFR. RES. REV. 1-12 (2011).

Hausas. In 1804 Shehu Usman Dan Fodio, a Fulani Islamic scholar and leader waged a *jihad* that toppled Hausa kings and entrenched the governance of the majority Hausa people by the minority Fulanis.¹⁰ From this relationship, the two ethnic nationalities have been collectively referred to as Hausa-Fulani. The conquest of the Hausas by the Fulanis gives a background to the hybrid ethnic group, Hausa-Fulani. However, trends in contemporary socio-political discourse tend to show the Fulanis evolving into a stand-alone ethnic group and no longer part of the hyphenated Hausa-Fulani ethnic nationality. For instance, the grazing bill or the Ruga policy is only for Fulani herders. The so-called educational AM Radio established by the Buhari Administration is to broadcast only in Ffulde, the original language of the Fulanis which is not even spoken in Nigeria. Even the Hausa language that is more or less the *lingua franca* of Northern Nigeria is not to be covered by the Radio. According to the Encyclopaedia Britannica, the *Fulani*, also called *Peul* or *Fulbe*, a primarily Muslim people are scattered throughout many parts of West Africa, from Lake Chad, in the east, to the Atlantic coast, and they are concentrated principally in Nigeria, Mali, Guinea, Cameroon, Senegal, and Niger.¹¹ They are nomadic pastoralists.

A little bit of the geographical distribution of the ethnic nationalities in Nigeria is a good background for understanding the import of the Ruga policy. The Fulanis generally are found in the northern part of the country with greater concentration in the northwestern zone. Contemporary socio-political changes have resulted in the further classification of the North into the core North and Middle Belt with the Fulanis being mostly found in the core North while the Middle Belt is occupied by mainly the minority ethnic groups in the North. On the contrary, the Yorubas and Igbos live in the southern part of the country together with the minority ethnic groups in the South. While the Yoruba live in the Southwest, the Igbos live in the Southeast.

Ruga, according to the Federal Government, was aimed at curbing the herders-farmers conflict which has claimed many lives

¹⁰ Nwabara, *supra* note 8.

¹¹ *Fulani*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/Fulani> (last visited July 13, 2020).

with many villages burnt, resulting in large-scale displacement of people and insecurity in the country.¹² Government acknowledged that most of these armed Fulani herders are not Nigerians but people who migrated in from outside the country. They usually carried guns and other deadly weapons, would invade people's farms with their cattle, which cattle would eat up the crops and ravage the existing farms.¹³ Any resistance from farmers would result in them being killed and their villages set ablaze. In some cases, even without the farmers raising any opposition, they were killed. Women were raped and killed.¹⁴ The International Crisis Group identified the root causes of the conflict to be:

climate-induced degradation of pasture and increasing violence in the country's far north, which have forced herders south; the expansion of farms and settlements that swallow up grazing reserves and block traditional migration routes; and the damage to farmers' crops wrought by herders' indiscriminate grazing.¹⁵

It is humbly submitted that while climate change and its consequences may be real, it cannot be an excuse or justification for herders to visit innocent farmers with aggression when the farmers are not responsible for the change of the climate. In fact, some of them are also victims of climate change as their farms are swept off by flood when it rains. Neither is the closure of traditional grazing reserves and

¹² NAN, 'Ruga Settlement' to address farmers, herders conflicts – Presidency, THE GUARDIAN (June 30, 2019), <https://guardian.ng/news/ruga-settlement-to-address-farmers-herders-conflicts-presidency>. Vanguard Newspaper, 'Ruga settlement' to address farmers, herders conflicts – Presidency, VANGUARD (July 1, 2019), <https://www.vanguardngr.com/2019/07/ruga-settlement-to-address-farmers-herders-conflicts-presidency/>.

¹³ M. B. Ajibefun, *Social and Economic Effects of the Menace of Fulani Herdsmen Crises in Nigeria*, https://www.researchgate.net/publication/325255574_Social_and_Economic_Effects_of_the_Menace_of_Fulani_Herdsmen_Crises_in_Nigeria (last visited July 30, 2020).

¹⁴ *Id.*

¹⁵ *Stopping Nigeria's Spiraling Farmer-Herder Violence*, Report No 262/Africa, INT'L CRISIS GROUP (July 26, 2018), <https://www.crisisgroup.org/africa/west-africa/nigeria/262-stopping-nigerias-spiralling-farmer-herder-violence>.

routes an excuse. The traditional grazing reserves and routes might have been closed because they were found to be unsustainable. If there is violence in the far north of the country, it must not be visited on other parts of the country that have nothing to do with the causes of the violence in the far north.

Under the Buhari Administration, the idea of settling Fulani herders in the 36 States of the Federation has come under different names. First, in 2016, it came as the establishment of grazing reserves and when a bill to that effect was rejected in the National Assembly,¹⁶ the government turned to the idea of “cattle colony.”¹⁷ This concept too was rejected and a new garb was given the idea as Ruga, i.e. “rural grazing area.” After the suspension of the Ruga policy, the government launched the National Livestock Transformation Plan (NLTP), which is seen in some quarters as Ruga in another form. The *Daily Trust* newspaper, comparing the two programs wrote: “As it happened, the Federal Government has another, essentially similar program called the National Livestock Transformation Plan, NLTP, which was discussed and adopted by the National Economic Council [NEC] last week.”¹⁸

Be that as it may, it is seen in some other quarters to be different from Ruga.¹⁹ The NLTP, however, appears to be different from Ruga in the sense that, according to the Federal Government, it is the interested State government or private investor that provides the land and not the Federal Government.²⁰ But the information by the Bauchi

¹⁶ *Nigerians say ‘No’ to National Grazing Reserves Bill*, VANGUARD (April 30, 2016), <https://www.vanguardngr.com/2016/04/nigerians-say-no-national-grazing-reserves-bill/>.

¹⁷ Emmanuel Okogba, *Proposed Cattle Colonies and Inevitable Acquisition of Land: Legal Implications (2)*, VANGUARD (July 11, 2018), <https://www.vanguardngr.com/2018/07/proposed-cattle-colonies-and-inevitable-acquisition-of-land-legal-implications/>. *Nigerian Govt. Gives Reasons for Proposing Cattle Colonies*, PREMIUM TIMES (Jan. 11, 2018), <https://www.premiumtimesng.com/regional/north-central/255261-nigerian-govt-gives-reason-proposing-cattle-colonies.html>.

¹⁸ *From Ruga to NLTP*, DAILY TRUST (July 7, 2019), <https://www.daillytrust.com.ng/from-ruga-to-nltp.html>.

¹⁹ *Osinbajo Inaugurates National Livestock Transformation Plan*, PUNCH (Sept. 10, 2019), <https://punchng.com/osinbajo-flags-off-national-livestock-transformation-plan/>.

²⁰ *Id.*

State Governor, Bala Mohammed, a Fulani, to the effect that the plan would benefit Fulani herdsmen from foreign countries like Niger and Chad could readily raise the fears and suspicion that actually the plan is a subterfuge for Ruga.²¹

Ruga policy has pitted the Nigerian citizenry majorly into two opposing camps: the Fulani ethnic group on the one hand and the rest of the nationalities in the country on the other. While the former is pro government, the latter is against it. Opposition to the policy is grounded on the perception that it is a fulanization scheme preparatory to the eventual subjugation and domination of the various indigenous peoples of Nigeria. Reference is quickly made to a similar settlement in Zangon-Kataf in Southern Kaduna State, where the minority Hausa-Fulani community armed with superior political power and connections is always in conflict with the indigenous Kataf people.²² The fact that Ruga culturally means “cow settlement” in Hausa language emboldens the opposition in their distrust of the sincerity of the government.²³ All this forms the premise for considering the Ruga policy as a potent recipe for national disorder, explosion and possible disintegration.

In all this controversy, the validity of the Ruga policy, at least legally speaking, lies in its relationship with the Constitution. In other words, the primary test of the worthiness or otherwise of the policy is its consistency with the Constitution, the *Grundnorm* or basic law of the country. Every opposition to it would crumble if it is constitutional and conversely, if it is unconstitutional, it could not withstand judicial challenge.

²¹ Omotayo Yusuf, *Fulani Herdsmen from Chad, Niger Will Also Benefit from FG Livestock Plan - Bauchi Governor*, LEGIT, <https://www.legit.ng/1259799-fulani-herdsmen-chad-niger-benefit-fg-livestock-plan-bauchi-governor.html>, (last visited July 21, 2020).

²² Francis Duniya, *The Zangon Kataf Crisis in Respect of Minority Culture in Northern Nigeria*, 7(1-2) BULLETIN OF ECUMENICAL THEOLOGY 34-35(1995) Senator La'ah, *Political History of an Unending Crisis*, NIGERIAN TRIB. (Jan. 22, 2017), <https://tribuneonlineng.com/political-history-unending-crisis/>.

²³ *The True Meaning of Ruga*, VANGUARD (July 2, 2019), <https://www.vanguardngr.com/2019/07/the-true-meaning-of-ruga/>.

B. The Constitution

A “constitution” is a concept that is very pivotal in the life, activities and operations of serious-minded associations and organization, civil and otherwise, as it defines the association, stipulates the powers of the association, distributes the powers to the various offices of the association while stating how these offices can be acquired and lost. Furthermore, it states the rights and obligations of members of the association. It acquires a heightened relevance in the life of a country given the fact that a country is an association that is supposed to provide all that a person needs for a fulfilled life, and in which the wellbeing of a person in a country is heavily dependent on the exercise of governmental powers. Things needed for a fulfilled life include security, education, job, healthcare, etc. Given that this paper is looking at the Ruga policy of the government of Nigeria, this paper focuses on the constitution of a state as opposed to the constitution of non-state associations and organizations.

Forrest defines a state constitution as “the scheme or arrangement by which the various organs of the state are regulated; it deals with the distribution and exercise of the state’s power; and the rights and duties of the organs that exercise that power.”²⁴ For Hood Phillips, it is: “the system of laws, customs and conventions which define the composition and powers of organs of the state and regulate the relations of the various state organs to one another and to the private citizen.”²⁵

On the part of Oluyede it is “an expression, whether in documentary form or unwritten, of legal principles, rules, laws and in some cases conventions or customs in accordance with which a country is governed and by which its citizens are bound.”²⁶ These definitions, however, are manifestly silent on the maker or source of the constitution. The maker or source of a constitution is a determining factor for the form of government a state practises, whether an absolute monar-

²⁴ G. A FORREST, CONSTITUTIONAL LAW 4 (1950).

²⁵ OWEN HOOD PHILLIPS, THE CONSTITUTIONAL LAW OF GREAT BRITAIN AND THE COMMONWEALTH 4 (1952).

²⁶ P. A. O. OLUYEDE, CONSTITUTIONAL LAW IN NIGERIA 1 (1992).

chy or a popular democracy. The form of government a country operates determines to a great extent the rights and welfare of its citizens. In absolute monarchies, like Brunei, Saudi Arabia, Oman and Eswatini, the monarch is legally the sovereign whereas in a popular democracy, like the United States, Germany, Italy, Ghana and Nigeria, it is the people (*demos*) that are legally the sovereign. The Preamble of the Constitution of the U.S. unambiguously brings out the fact that the U.S. is a popular democracy by stating:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the Blessing of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Even though the preamble to the 1999 Constitution of Nigeria contains a similar “We the people...”, the Constitution cannot be said to be sincerely a popular democracy because it was not made by the *demos* of Nigeria but rather decreed by the military. The 1999 Constitution is the Schedule to the *Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24 of 1999*.

Another problem with these definitions is that the rights of individual citizens are not mentioned, and this leaves citizens unprotected from the often high-handedness of the state. Malemi gives a definition of a constitution that complements these definitions. The definition incorporates the source of a constitution and also recognizes the rights and obligations of citizens. A constitution, according to him, is: “an instrument of government made by the people, establishing the structure of a country, regulating the powers and functions of government, the rights and duties of the individual and providing remedies for unconstitutional act.”²⁷

His definition can be described as a definition of a popular democratic constitution that provides guarantees for the citizen against the powers exercised by government. It suits this paper as Nigeria is

²⁷ ESE MALEMI, *THE NIGERIAN CONSTITUTIONAL LAW* 2 (3d ed. 2012).

deemed a popular democratic country notwithstanding the military origin of its constitution.

III. Elements of a Popular Democratic Constitution

A. An Instrument of Government

As an instrument of government, a constitution is the primary legal code guiding the policies and action of government with the effect that any law, regulation or policy, contrary to it is void. Given that the constitution is the primary legal agreement between the people as citizens *inter se* on one hand and, on the other, between government and the people, on the formation and functioning of a polity or country, it is not just an instrument of government but rather *the* instrument of government. It is the mother law from which every other law or instrument of government derives its legitimacy, which fact is expressed in the Kelsenian term of *Grundnorm*. It is the supreme law of the land. Section 1(1) of the 1999 Constitution of Nigeria states: “This Constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.” Section 1(3) of the 1999 Constitution draws out the consequence of the supremacy of the Constitution as the instrument of government: “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.” The principle of the supremacy of the Constitution does not invalidate only unconstitutional laws but also unconstitutional acts.

B. Made by the People

The Hobbesian state of nature where life is brutish, nasty, poor, and short because man is a wolf to the other (*homo homini lupus*) is a metaphor of the social condition before people decided to bind themselves by law. The constitution, as made by the people, is an expression of the will of the people and a statement that sovereignty lies in

them,²⁸ thus underscoring popular democracy. In spite of particular peculiarities of different constitutions, people generally make constitutions for certain common purposes or reasons. These include to: have a clearly defined legal basis for coming together as a people from different backgrounds in order to form one united polity, state or country; establish and guarantee sovereignty in the people of the country as the source of the powers of government; prevent any person or group of persons from taking control of government by unconstitutional means; avoid military rule and other forms of dictatorial rule and the dangers of such an authoritarian or despotic rule; set forth the constitutional concepts and fundamental principles of the constitutional law of the country; and set forth the fundamental political, economic and social objectives of the people and the directive principles of State policy.²⁹ These also include to: have a law to form a government appropriate to a large, multi-ethnic, multi-lingual, and diverse nation; secure self-determination, autonomy and local government for the federating or constituent units of the country; to provide a constitutional basis for judicial remedies for unconstitutional acts and other breaches of rights and duties or law; and provide a constitutional basis for legal action, suits, and remedies against the government, its servants and agents and so forth.³⁰

By being made by the people, a constitution is a social contract between the people and government. This binds government to not do anything outside of the provisions of the constitution. Furthermore, it is also a contract between the people *inter se* binding them to uphold and promote the provisions of the constitution as the terms of the social contract. The constitution as a social contract is a legal statement of the equality of citizens.

C. Establishing the Structure of a Country

A constitution establishes the components parts and levels at which the governance of the country would take place. Government

²⁸ *Id.* at 15-16.

²⁹ *Id.*

³⁰ *Id.*

cannot arbitrarily create states or other tiers of government. In establishing the structure of the Nigerian State, sections 2(2) of the 1999 Constitution states that Nigeria shall be a Federation consisting of States and Federal Capital Territory. In section 3(1) it states that it shall be composed of 36 States and it goes further in Part I of the First Schedule to state the names of the States and the Local Government Areas constituting each State. Section 7 of the Constitution establishes the Local Governments as the third tier of government in the country.

D. Regulating the Powers and Functions of Government

As the instrument of government, a constitution specifies the functions and powers of government. The 1999 Constitution provides for the legislative powers of government in section 4, the executive powers in section 5, and the judicial powers in section 6. Government must not go beyond the functions and powers constitutionally assigned to it, or else the action in question would be declared unconstitutional and so void under judicial review.

E. Regulating the Rights and Duties of the Individual

One feature of every contract is the specification of the rights and duties of parties. As a fictional contract between citizens and government, a constitution specifies and regulates the rights and obligations of citizens. A constitution being law, these rights and duties are legal in nature. For Garrett a right is “an entitlement or justified claim to a certain kind of positive and negative treatment from others, to assistance from others or non-interference from others.”³¹ According to Raz, a person has a right when an aspect of his well-being is sufficient reason for holding some other person or persons to be under a duty.³² A duty therefore is the obligation on a person in satisfying the *claim-right* of another. A right or duty could be moral or legal. Since our focus is on rights and duties regulated by the Constitution, which is law, we are talking in this paper of legal rights and duties.

³¹ Jan Garrett, *The Concept of Rights* (Feb 19, 2004), <http://people.wku.edu/jan.garrett/ethics/rights.htm>.

³² J. RAZ, *THE MORALITY OF FREEDOM* 166 (1986).

Legal rights are usually conferred by the State and a species of them is referred to as human rights because often they are considered to inhere in human nature.³³ They are claims without which human existence would be essentially undermined. For this reason, the State cannot restrict their exercise or derogate from them without serious reasons. In Nigeria, these rights are enshrined in Chapter IV of the 1999 Constitution under the title *Fundamental Rights*. This chapter which runs from section 33 through 46 specifically provides for the right to life (s. 33), the right to dignity of human person (s. 34), and the right to personal liberty (s. 35). The chapter also provides for the right to a fair hearing (s.36); the right to private and family life (s. 37); the right to freedom of thought, conscience and religion (s. 38); the right to freedom of expression and the press (s. 39); the right to peaceful assembly and association (s. 40); the right to freedom of movement (s. 41); the right to freedom from discrimination (s. 42); and the right to acquire and own immovable property anywhere in Nigeria. Chapter IV of the Constitution also provides conditions for the compulsory acquisition of property (s. 44), conditions for restricting on or derogating from fundamental rights (s. 45) and original jurisdiction of the court on matters of fundamental rights (s. 46). Enshrining these rights in the Constitution underscores their pivotal importance in the existence of the state or country, such that a threat to them particularly by government is synonymous with a threat to the peaceful existence of the state because it threatens a citizen on a right that is fundamental to his or her existence. Social instability generated by a threat to these rights increases with the number of people affected. Inalienable as these rights are to the self-development and actualization of the persona of an individual citizen, they are inherently counterbalanced with the duties of the citizens to respect the human rights of one another. The duty of each individual to respect the human rights of others becomes a natural and legitimate limitation to an individual's exercise of his human rights. In fact, the duty of each individual to respect the rights of others can be reframed to mean that the exercise of one's rights over a thing begins where the right of the other person over the same subject ends.

³³ M.O. U. GASIOKWU, *HUMAN RIGHTS: HISTORY, IDEOLOGY AND LAW* (2003).

F. Providing Remedies for an Unconstitutional Act

Besides establishing the structure of government and specifying its functions, constitutional law sets limit to the powers of public authorities who exercise the functions of the agencies of government.³⁴ It provides remedies for the breach of its provisions. In this way, the supremacy of the constitution is reinforced and the general principle of law, *ubi jus ibi remedium*, which in this context means, “where there is a wrong, there is a remedy” is upheld. Remedies for unconstitutional acts are either judicial³⁵ or non-judicial.³⁶ Judicial remedies are those remedies obtained through the court in the exercise of its inherent power of review of the constitutionality of the acts of not only the other arms of government but also the acts of courts hierarchically under it.³⁷ For instance, section 46(1) of the 1999 Constitution provides:

Any person, who alleges that any of the provision of this Chapter (IV on Fundamental Rights) has been, is being or likely to be contravened in any State in relations to him may apply to a High Court in that State for redress.

In the Nigerian judicial system which reflects the Common law tradition these remedies include declaration, mandamus, certiorari, prohibition, injunction, writ of habeas corpus, award of damages, and offer of apology.³⁸ Non-judicial remedies, on the other hand, are those remedies obtained through the control mechanisms in the exercise of

³⁴ Aberham Yohannes & Desta G. Michael, *The Need for Controlling the Powers of Government*, ABYSSINIA LAW (Feb 1, 2012), <https://www.abyssini-alaw.com/online-resources/study-on-line/item/316-the-need-for-controlling-the-powers-of-government>. Charles N. Quigley, *Constitutional Democracy: An Outline of Essential Elements*, CTR. FOR CIVIC EDUC., <https://www.civiced.org/resources/publications/resource-materials/390-constitutional-democracy>. (last visited on July 27, 2020).

³⁵ Malemi, *supra* note 29, at 410.

³⁶ *Id.* at 522.

³⁷ CONSTITUTION OF NIGERIA (1999) s. 6(1) and 6(6)(a).

³⁸ Malemi, *supra* note 29, at 413.

government or administrative powers. Instances are safeguards against arbitrary delegated legislation and other government and administrative powers, acts and omissions.³⁹

IV. Ruga and the 1999 Constitution of Nigeria

A. Ruga and the Land Use Act (LUA)

The primary constitutional provision against which the Ruga program is to be assessed is the LUA which specifies how and the purpose for which the Federal Government can legally acquire land in a State. The LUA can be described as a Constitution Act because it is one of the few statutes that existed before the promulgation of the 1999 Constitution, which were incorporated into the 1999 Constitution as integral parts of it. Section 315(5) of the Constitution states:

Nothing in this Constitution shall invalidate the following enactments, that is to say -

- (a) the National Youth Service Corps Decree 1993;
- (b) the Public Complaints Commission Act;
- (c) the National Security Agencies Act;
- (d) 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 extent 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.

Consequently, conformity with the provision of the LUA redounds to conformity with the provisions of the 1999 Constitution. In regard to Ruga the Federal Government at one occasion said that it had gazetted land in all the 36 States of the Federation for the program,⁴⁰ and at

³⁹ *Id.* at 523.

⁴⁰ John Agbakwuru, *Ruga Settlements: It's True FG gazetted land in 36 States* – Presidency, VANGUARD (June 30, 2019), <https://www.vanguard->

another it said that it was not imposing the program on any State, but rather was carrying out the program in 12 States that had voluntarily keyed into the program and gave land for it.⁴¹ It is humbly submitted that these two statements are contradictory. The program cannot be only for the 12 States that have opted for it whereas the Federal Government has gazette land for it in the 36 States of the Federation. Gazetting land in the 36 States of the Federation means that besides the land in the willing 12 States, the Federal Government acquired land in the remaining 24 States without the consent of the respective Governors of these States. The LUA gives absolute and exclusive right over all land in the territory of a State to the State Governor. Section 1 of the LUA states:

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

From this provision three questions arise in relation to the Ruga program:

ngr.com/2019/06/ruga-settlement-its-true-fg-gazetted-land-in-36-states-presidency/. John Ameh et al, *Ruga settlements: South-East govs, Ortom tackle Presidency, Fayemi says no outsider can take Ekiti land*, PUNCH (July 2, 2019), <https://punchng.com/ruga-settlements-seast-govs-ortom-tackle-presidency-fayemi-says-no-outsider-can-take-ekiti-land/>. Shola Oyeyipo, *Make Ruga Gazette Public, Southern, Middle Belt Leaders Tell FG*, THIS DAY (July 1, 2019), <https://www.this-daylive.com/index.php/2019/07/01/make-ruga-gazette-public-southern-middle-belt-leaders-tell-fg/>.

⁴¹ Agbakwuru, *supra* note 41, (“It’s true FG gazette land...”). Omololu Ogunmade, Chuks Okocha, AdibeEmenyonu, George Okoh & Segun James, *Nigeria: Ruga Won’t Be Imposed on States – Presidency*, ALL AFRICA (July 1, 2019), <https://allafrica.com/stories/201907010417.html>.

1. Can the Federal Government acquire land in a State without the co-operation of the State Governor,
2. Can a Governor give out land to the Federal Government in his State for any purpose at all?, and
3. Is the Ruga program a public purpose? The third question flows from the second one.

1. Can the Federal Government acquire land in a State without the cooperation of the State Governor?

In vesting the territorial land of a State in the Governor of the State the LUA makes an exception of land already vested in the Federal Government and its agencies within the territory of a State prior to the commencement of the LUA. The long title of the LUA states: "An Act to vest all land comprised in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the State...." For such pieces of land, the Federal Government continues enjoying them without having to renew the acquisition through the Governor. But from after the commencement of the LUA when all land has been vested in the Governor of a State, the Federal Government can acquire land legally in a State only through compliance with the provisions of the LUA, and this requires the consent of the Governor. The LUA does not specifically deal with acquisition of land by the Federal Government. Instead, the Federal Government's acquisition of land is mentioned in the context of the powers of the Governor to revoke rights of occupancy, be they statutory⁴² or customary.⁴³ Pursuant to section 28(1) of the LUA such a revocation can only be made for an overriding public interest. Section 28(2)(b) and 28(3)(a) defines public interest in the revocation of statutory right

⁴² Land Use Act (1990), s.51 (Nigeria) (according to the LUA, a statutory right of occupancy means a right of occupancy granted by the Governor under the LUA).

⁴³ *Id.* (according to the LUA, the customary right of occupancy means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under this Act).

of occupancy and customary right of occupancy respectively to include where the Federal Government requires land for its public purposes. The manner in which the Federal Government can communicate its intention of acquiring a particular piece is detailed in the LUA. Section 28(4) provides that: “The Governor shall 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 purposes.” What this protocol means is that the Federal Government cannot acquire land in the territory of a State without the Governor consenting and cooperating. After the requisition notice is issued by the President personally or on his behalf by a delegated officer, the land in question cannot vest in the Federal Government until after the Governor has agreed to the request and made the necessary revocation of either the statutory or customary right of occupancy over the land. In other words, the Federal Government cannot *suo motu* (by its own motion) legally revoke a right of occupancy in a State and vest the land in itself. Doing this would amount to the Federal Government breaching the Constitution by undermining the powers and authority of the Governor, which is a potent recipe for disorder and political instability.

Be this as it may, section 6(1)(3)(c) of the LUA appears to suggest that the Government of the Federation can acquire land in the territory of a State without the consent or cooperation of the Governor. It enacts that it shall be lawful for a Local Government to enter upon, use, and occupy for public purposes any land within the area of its jurisdiction which is not “within any area compulsorily acquired by the Government of the Federation or of the State concerned.” According to the Collins English dictionary⁴⁴ and the Merriam Webster dictionary,⁴⁵ something is compulsory if it is required by law. Compulsory acquisition of land therefore occurs where a right of occupancy can be legally revoked for the sake of an overriding interest of either the Federal or State Government. However, for the Federal Govern-

⁴⁴ *Compulsory*, COLLINS DICTIONARY, <https://www.collinsdictionary.com/dictionary/english/compulsory> (last visited July 22, 2020).

⁴⁵ *Compulsory*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/compulsory> (last visited July 22, 2020).

ment, the State Governor must intervene by revoking the land in question and vesting same in it. Thus, compulsory acquisition of the land by the Federal Government does not mean direct acquisition of land without the intervention of the State Governor. It would seriously undermine the authority of the Governor and create administrative anarchy and confusion if the Federal Government can jump into a State and acquire land without the consent of the Governor. Consequently, it will be unconstitutional for the Federal Government to gazette land in a State for Ruga, which land was not given by the Governor.

By the fact that the LUA does not provide any protocol for a Local Government to revoke a customary right of occupancy in favor of the Federal Government it can be concluded that a Local Government has no such power. The power for such a revocation therefore lies only in the Governor.

2. Can the Governor give out land to the Federal Government in his State for any purpose at all?

The power given to the Governor over the qualified land in the State in section 1 of the LUA is a trustee power. He holds the land in trust and administers same for the use and common benefit of all Nigerians. As a trustee he only has legal title over the land and no beneficial title. He cannot ordinarily benefit from it or dispose of the trust property in a manner inconsistent with the good of the beneficiaries. This fact is highlighted by the LUA in section 28(1) where it states that the revocation of right of occupancy, whether statutory or customary, shall be lawful only if it is done for an overriding public interest. Otherwise, it is unlawful and unconstitutional. Specifying what “overriding public interest” means in regard of statutory and customary rights of occupancy, subsections 2(b) and 3(a) of section 28 state that it means:

the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes with the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation.

This provision brings out two classes of public purposes, namely the public purposes of the State and the public purposes of the Federation.

In regard to the public purposes of a State, a Local Government or a State can legally revoke rights of occupancy. In other words, a Local Government or State Governor cannot revoke a right of occupancy if not for public purposes of the State. What this boils down to is that a Local Government Chairman or State Governor cannot revoke a right of occupancy for his personal use or for what is not public purpose of the State. Similarly, the State Governor cannot legally revoke a right of occupancy in favor of the Federal Government if not for public purposes of the Federation. This places on the State Governor the responsibility of making sure that any land in respect of which a revocation of right of occupancy is made is for a public purpose of the Federation.

According to section 51(1) of the Act, “public purposes” includes:

- (a) for exclusive Government use or for general public use;
- (b) for use by anybody corporate directly established by law or by anybody corporate registered under the Companies and Allied Matters Act as respects which the Government owns shares, stocks or debentures;
- (c) for or in connection with sanitary improvements of any kind;
- (d) 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;
- (e) for obtaining control over land required for or in connection with development of telecommunications or provision of electricity;
- (f) for obtaining control over land required for or in connection with mining purposes;
- (g) for obtaining control over land required for or in connection with planned urban or rural development or settlement;

- (h) for obtaining control over land required for or in connection with economic, industrial or agricultural development;
- (i) for educational and other social services.

This meaning, however, is not exhaustive because the components of the public purposes are introduced with “includes.”⁴⁶ “Includes” implies that the components can be enlarged but cannot be narrowed.⁴⁷ This notwithstanding, what is clear from this is that the Governor cannot revoke a right of occupancy for any purpose at all. It must be for a public purpose. A necessary corollary question from the foregoing is, is Ruga a public purpose either for a State or for the Federation?

3. *Is the Ruga Program a Public Purpose?*

In responding to this question, we must first and foremost take out of the concept of cattle rearing the wielding of guns and other dangerous weapons. This is not part and parcel of the essence of cattle rearing. Fulani herdsmen carrying guns is a rather recent occurrence.⁴⁸

Pursuant to section 51(1), a public purpose for compulsory revocation of a right of occupancy includes in (g) “for obtaining control over land required for or in connection with planned urban or rural development or settlement.” In *Udoh & Ors v. Akwa Ibom State Government & Anor*⁴⁹(CA), the appellants had at the trial court asked the

⁴⁶*Per* Akpata, JSC, in *Okesuji v Lawal* (1991) 2 SCNJ 1, at 13; *Okesuji v Lawal* (1991) 1 NWLR (Pt 170) 664 (Nigeria).

⁴⁷*Per* Joseph Tine Tur, JCA, in *Udoh & Ors v Akwa Ibom State Government & Anor* (2013) LPELR 21121; *Udoh & Ors v Akwa Ibom State Government & Anor* (2013)LCN/6279(CA), <https://lawcarenigeria.com/eteidung-anietimfon-udoh-ors-v-akwa-ibom-state-government-anor-2013/> (last visited July 30, 2020).

⁴⁸Tope Shola Akinyetun., *Staff to Gun: Fulani Herdsmen in Nigeria*, 4 ASIAN J. MULTIDISCIPLINARY STUD. 38, 39 (July 2016), [https://www.researchgate.net/publication/318530332_\(Staff_to_Gun_Fulani_Herdsmen_in_Nigeria\)](https://www.researchgate.net/publication/318530332_(Staff_to_Gun_Fulani_Herdsmen_in_Nigeria)).

⁴⁹*Udoh & Ors v Akwa Ibom State Government & Anor* (2013)LCN/6279(CA) (Nigeria), <https://lawcarenigeria.com/eteidung-anietimfon-udoh-ors-v-akwa-ibom-state-government-anor-2013/>.

court to, *inter alia*, declare that since the first defendant (first respondent) failed to use the land compulsorily acquired for the original purpose of building a housing estate for its staff, that the land reverted to them. They also prayed the trial court to declare that the first defendant/first respondent should pay them compensation for giving the said land to the second plaintiff/second respondent for a purpose completely different from the original purpose for the initial acquisition of the land. After the trial court dismissed the suit for being statute barred, the appellants lodged an appeal at the Court of Appeal, Calabar Division. The second respondent, a State parastatal, Akwa Savings and Loans, after parceling out the land in dispute in plots, sold same to top government officials and highly placed members of the public instead of using it for the original purpose. Two of the issues for determination at appeal were: (1) whether the land should revert to the original owner since the first respondent failed to use the land for the purpose for which it was acquired, and (2) whether the use the second respondent made of the land amounted to public purpose pursuant to section 51 of the LUA as to validate the revocation of the right of occupancy of the appellants. The court held *per* Joseph Tine Tur, JCA, on the first issue, that the revocation extinguished the right of the appellants and it could not be revived; and on the second issue, that the acquisition was within the purview of public purpose because the plots sold to the public contributed to planned urban and rural development. In coming to this decision the court was mindful of the decision of the Supreme Court in *Ereku v Military Governor of Mid-Western State & Ors* where the apex court held that the acquisition whereby land is taken by government from one citizen and given to another citizen is not done for public purpose.⁵⁰ What can be deduced from this is that the ruling in *Udoh & Ors v Akwa Ibom State Government & Anor* was given based on the fact that the plots of land were sold to the public and the money generated therefrom did not go into private coffers but into the treasury of the State since the second respondent was a state parastatal. The plots of land sold yielded to urban or rural development or settlement.

⁵⁰ *Ereku v Military Governor of Mid-Western State & Ors* (1974)LCN/1867(SC) (Nigeria), <https://lawcarenigeria.com/chief-david-on-otsuoran-ereku-ors-v-military-governor-mid-western-state-of-nigeria-ors/>

From the immediate foregoing the Ruga program, *ceteris paribus*, is a mechanism by which the government dispossesses one citizen of his land and donates it to another. In Ruga, the Federal Government is dispossessing one ethnic nationality of its land and donating it to a preferred ethnic nationality, the Fulanis, for its private economic, socio-cultural development and enhancement. This preferred ethnic nationality is that of the President. Hence, there is nothing public about Ruga. The Cambridge English dictionary defines “public” as “relating to or involving people in general, rather than being limited to a particular group of people.”⁵¹ For the Merriam-Webster dictionary it means “of, relating to, or being in the service of the community or nation” or “of or relating to people in general” or “accessible to or shared by all members of the community.”⁵² The Ruga is exclusively for the Fulanis in spite of whatever the program may contribute to the overall rural, economic, industrial or agricultural development of the country. In other words, a purpose exclusively for the Fulani ethnic group cannot translate to a valid public purpose.

a. Ruga and the Right to Non-Discrimination

The Ruga program can also be interfaced with more direct provisions of the 1999 Constitution. It is a discriminatory program that singles out individuals of the Fulani ethnic group for special favors contrary to section 42(1) of the 1999 Constitution that guarantees for every citizen a right to freedom from discrimination. This is a right that is particularly germane for unity, peace and progress in Nigeria given its diverse indices of heterogeneity. The principle of non-discrimination promotes equality of citizens. This section of the Constitution provides:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political

⁵¹ *Public*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/public>. (last visited July 22, 2020).

⁵² *Public*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/public>. (last visited July 22, 2020).

opinion shall not, by reason only that he is such a person-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(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 citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Ruga is an ethnically motivated policy that seeks to expressly favor Fulani herdsmen in a way that no ethnic group is favored in Nigeria. Many ethnic nationalities in Nigeria have trade preferences or peculiarities and they have challenges in these trades or occupations. Yet the Federal Government has not so favored any of these other than the Fulanis. There are Igbo traders in practically all the nooks and crannies of the country and the Federal Government has never given them capital money as an ethnic group let alone building commercial parks with residences for them in any State. There are Ijaw fishermen in many coastal communities in the country and the Federal Government has not bought fishing boats for them as an ethnic group let alone building commercial/industrial facilities related to fishing. The Federal Government has not assisted Tiv and Idoma farmers as ethnic nationalities let alone building farmers' market for them with residences. Similar examples can go on. Related to the discriminatory nature of the Ruga is the AM Radio Station built by the Buhari Administration to transmit solely for the Fulanis all over the country and beyond, and in their language, Ffulde. Again, the Federal Government has not done this for any of the other ethnic groups in the country.

The discrimination has the potentiality of playing out in a rather more destabilizing manner when it is considered that the program

would plant Fulani people with their culture amongst the other different ethnic nationalities. Experiences from Zangon-Kataf in Kaduna State where a Ruga-kind of settlement was done decades ago have compelled people to conclude that the program is one destined for the subjugation and domination of the indigenous populations by the Fulanis.⁵³ This conclusion appears all the more compelling when it is remembered that the Government acknowledged that some of the herdsmen migrated in from outside the country.

b. Ruga and the Secularity of the Nigerian State

Nigeria is religiously diverse with Christianity and Islam struggling for majority in terms of adherents. The principle of secularity of the State rooted in section 10 of the Constitution prohibits the State from promoting any particular religion. Even though it is called the principle of separation of Church and State in places like the U.S., ideologically it connotes the separation of religion and State. It is evident that the framers of the Constitution enacted this provision drawing from the fact that history is replete with conflicts and even wars caused by mismanaged confessional differences and was determined to steer the country away from this kind of danger. This section states: "The Government of the Federation or of a State shall not adopt any religion as State Religion." Other Constitutional provisions that emphasize this principle include: the right to freedom of thought, conscience and religion (s. 38); the right to freedom from discrimination on the basis of religion (s. 42(1)); the directive on the government and people of Nigeria, which is, *inter alia*, that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice (s. 14); and the social objectives of the country, which is, *inter alia*, that the State social order is founded on the ideals of freedom, equality and justice (s. 17).

Mosques number among the structures to be put in place in the Ruga settlements by the Federal Government at the expense of taxpayers, many of whom are non-Muslims.⁵⁴ This unarguably implies

⁵³ Richard Maduku, *Ruga as reward for terrorism*, PUNCH (Aug. 2, 2019), <https://punchng.com/ruga-as-reward-for-terrorism/>.

⁵⁴ *Id.*

the Government of Nigeria promoting and supporting Islam thereby sweeping under the carpet the provisions of section 10 of the Constitution. This most probably may be part of the reason why Ruga has been dreaded and opposed in some quarters as not only a ploy for the fulanization of the country but also for its islamization.⁵⁵

c. Ruga and Key Constitutional Objectives of the Nigerian State

It cannot be pretended that Nigeria is a homogeneous country. In fact, the noun “homogeneity” should be “foreign” to Nigeria given the over 250 ethnic nationalities with different languages and cultures that inhabit the territorial space called Nigeria. The Nigerian civil war was fought and won by the Federal side with the mantra of keeping Nigeria undivided. Incidentally, President Muhammadu Buhari, as a soldier, fought the war on the Federal side. This value of indivisibility is so important that it is enshrined as section 2(1) of the 1999 Constitution like in the earlier constitutions since after the civil war,⁵⁶ coming second to only the supremacy clause, the very first provision of the Constitution. The prime value of indivisibility is projected in the political and social objectives of the 1999 Constitution. The political objectives which are contained in section 15 of the Constitution provides in subsection 1 the motto of the Federal Republic of Nigeria as “Unity and Faith, Peace and Progress.” Ruga cannot promote any of the elements of this motto. There can be no unity when the Federal Government plans to enrich, advance, support, and protect one ethnic nationality with the wealth of the entire nation. It is tantamount to saying that the only ethnic nationality that matters to the government is the Fulani ethnic group. Under this state of affairs other ethnic nation-

⁵⁵ Obi Nwakanma, *Ruga and Fulanization*, VANGUARD (July 7, 2019), <https://www.vanguardngr.com/2019/07/ruga-and-fulanization/>. MinabereIbelema, *Ruga: Agenda or Insensitivity?*, PUNCH (July 7, 2019), <https://punchng.com/ruga-agenda-or-insensitivity/>. Ifreke Inyang, *Bishop Okoroafor claims Ruga is 'Indirect Jihad'— warns Buhari over Islamization of Nigeria*, DAILY POST (July 17, 2019), <https://dailypost.ng/2019/07/17/bishop-okoroafor-claims-ruga-indirect-jihad-warns-buhari-islamization-nigeria/>.

⁵⁶ CONSTITUTION OF NIGERIA (1979), s. 2(1).

alities together with even some conscientious and well-meaning Fulanis would lose faith in the country. Of course, under this environment peace and progress would take a long flight out of the country.

The next key constitutional objective impacted by Ruga is the social objectives part of the Constitution. These are stated in section 17 of the Constitution, and subsection 1 states: "The state social order is founded on the ideals of Freedom, Equality and Justice." However, the Ruga program is looked at, it makes nonsense of these objectives. It is unjust and grossly so for the Federal Government to single out an ethnic group out of the many other ethnic nationalities in the country for such a favor. This is a good example of social injustice. Social injustice logically and automatically creates social inequality which yields to social conflicts and instability. With injustice and inequality, freedom would be a mirage.

V. Conclusion and Recommendations

The Land Use Act clearly provides that save for land already acquired in the territory of a State prior to its commencement, the Federal Government cannot legally acquire land in the territory of a State without the cooperation of the State Governor through the revocation of the existing statutory or customary right of occupancy in favor of the Federal Government. It is only after the Governor has done this that the Federal Government can legally and constitutionally gazette land situated in the territory of a State. Outside of this, the gazette of land by the Federal Government in the territory of a State is unconstitutional. Thus, it would be unconstitutional for the Federal Government to gazette land in the territory of a State for Ruga if the Governor did not vest the land in it in accordance with the laid-down conditions and protocol. The LUA does not place any obligation on the Governor to cooperate with the Federal Government. This means that if the Governor feels that the object of the request for land by the Federal Government is not really for a public purpose he can legally refuse to make the requested revocations.

It is, however, a different kettle of fish in a situation where the Federal Government applies a legally acquired land in the territory of a State to a cause that is not in the public interest. The LUA is silent as to whether the Governor can revoke the vesting and have the land

revert to him as the trustee of the land in the State. Applying analogically the decision of the Court of Appeal in *Udoh & Ors v Akwa Ibom State*, it appears that the land cannot revert to the State because the vesting in the Federal Government extinguishes the right of the Governor. It is the considered opinion of this author that this decision in *Udoh's* case would operate to create abuse in the revocation of a right of occupancy. Land should be able to revert to its original owners if a right of occupancy was compulsorily made by the Governor without complying with the laid-down conditions. This interpretation is more in tune with the principle established in *Erekus'* case to the effect that an acquisition whereby land is taken by government from one citizen and given to another citizen is not done for public purpose. If the use is not for a public purpose, then the condition precedent for the revocation was not met and therefore the revocation was invalid and no interest in the land passed. *Ipsso facto* the original right of occupancy remains intact. Thus, the land would revert to the original owners. This would act as good check on the enormous powers given to a Governor as the sole trustee of the land in the territory of his State. In regard to the Federal Government, a judicial decision that the acquired land was applied to a cause that is not public purpose should be a ground for the Governor to make a formal reversal of the vesting on the Federal Government.

Ruga is a sign and symbol of Fulani hegemony in a country of over 250 ethnic nationalities, a situation that strongly goes against the constitutional guarantee for equality of Nigerian citizens regardless of ethnicity, religion, etc. When equality of citizens is cast to the winds in this way the foundations of Nigeria's constitutional democracy are washed away. There would be discontentment, anger, conflict and instability. Inherent in the idea of democracy is the fact of the equality of the people (*demos*) who came together to bind themselves under a constitution by relinquishing a part of their natural freedom to a common leader whose duty it is to see and treat them all equally. From this perspective therefore, Ruga is a divisive program with high potentiality for explosive conflicts in the country.

The argument of the Federal Government that the Ruga policy is to curb the herders-farmers conflict is far from being convincing. Actually, the term "herders-farmers conflict" is a misnomer because

the herders attack not just farmers but communities, kidnapping people for ransom, raping and killing women, and burning down houses. Christian clergy men who were not in farms but in Churches have been killed together with their members.⁵⁷ Herdsmen attacks appear to be a political contrivance preparatory for the Ruga program. The plan appears to be the hope that with enduring attacks by the herdsmen, people would submit to any program that promises to stop the mayhem. Otherwise how can one explain that in a country where it is illegal for citizens to bear arms unless licensed by government, it is commonplace to see Fulani herdsmen, some of whom have been identified as non-Nigerians, move around with guns such as AK 47 and kill and maim people with the Federal Government claiming to be unaware of this situation. The involvement of Myetti Allah Cattle Breeders Association makes it difficult for one to believe that the atrocities committed by herdsmen are just for grazing fields. This association issues public threats and boasts about the killings by the herdsmen and the Federal Government is yet to publicly condemn them.⁵⁸ All this sustains the belief that government has ulterior motives with the bloody activities of herdsmen. Government's insistence on creating settlements for herdsmen all over the country after the idea has been repeatedly rejected means that the core interest in the settlement of herdsmen is not stopping herder-farmer conflicts. In fact, herdsmen can be stopped from wielding dangerous weapons without necessarily building settlements for them all over the country. Given that it is a recent thing to see herdsmen with assault weapons, one is wont to conclude that it is either militia men were made to accompany cattle as herdsmen or sincere herdsmen were turned into militiamen. To escape this

⁵⁷ Samuel Smith, *Nigerian Priest Killed by Suspected Fulani Gunmen; Clergy March to Protest Killings*, CHRISTIAN POST (Aug. 3, 2019), <https://www.christianpost.com/news/nigerian-priest-killed-suspected-fulani-gunmen-clergy-march-protest-killings.html>. Raphael Ede, *Catholic Church Confirms Attack on Priest by Herdsmen*, PUNCH (July 21, 2019), <https://punchng.com/catholic-church-confirms-attack-on-priest-by-herdsmen/>.

⁵⁸ Ramon Oladimeji, *Proscribe Myetti Allah, Benue Group Tells Buhari*, PUNCH (May 1, 2018), <https://punchng.com/proscribe-myetti-allah-benue-group-tells-buhari/>. Doris Ukaonu, *N100BN Promised to Myetti Allah; Lawyer sues FG over Frivolous Disbursement*, FOLIO (July 13, 2019), <https://folio.ng/n100bn-promised-to-myetti-allah-lawyer-sues-fg-over-frivolous-disbursement/>.

conclusion, government should abolish rather than suspend the idea of Ruga. This would save Nigeria from the avoidable conflicts and possible explosion that would trail any resurrection and implementation of the idea of Ruga in any form or shape. It is clear that the Ruga policy violates essential parts of the Constitution of Nigeria.

This paper recommends that:

- a. The Federal Government should strive to be guided by the provisions of the Constitution in all its policies, including the Ruga policy.
- b. The Federal Government should concern itself with policies that build up a virile, united and progressive country out of the diverse ethnic nationalities that compose Nigeria and not those that can divide and polarize the country.
- c. The Federal Government should follow the lead of States like Benue, Taraba, and Ekiti in making a legislation abolishing the open grazing of cattle in Nigeria.
- d. The Federal Government should make a policy for cattle ranching for those interested in cattle rearing. Already farmers raising pigs in the country are doing so. They do not rear pigs in people's farms and compounds.
- e. The Federal Government should make available loans for farmers at convenient rates to assist people in ranching and other agricultural endeavors.
- f. The Federal Government should endeavor to see and treat all Nigerians as equals regardless of ethnicity, religion, business, etc.