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The Sahel Migration Crisis, Fulani Transhumance and the Dilemma of Nation - State Sovereignty in West Africa: A Legal and Policy Analysis

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Abstract **Original Research Article**

The Sahel migration crisis exemplifies the tension between ecological necessity, cultural identity, and legal sovereignty in West Africa. Driven by desertification, climate change, violent extremism, and resource competition, pastoralist mobility (particularly Fulani transhumance) clashes with modern nation-state frameworks. While ECOWAS protocols of 1979 and 1998 guarantee free movement and transhumance rights, national constitutions, statutory laws, and judicial precedents often prioritize sovereignty and border control. This paradox undermines regional integration and exacerbates farmer-herder conflicts. Historically, Fulani transhumance was sustained through customary arbitration and communal land tenure, but colonial and postcolonial legal regimes entrenched fixed borders and statutory land ownership, marginalizing pastoral mobility. The paper argues that reconciling sovereignty with mobility requires innovative law-making that integrates customary practices, human rights obligations, and regional frameworks. Ultimately, the Sahel crisis reveals the need for adaptive legal pluralism to balance security, sovereignty, and cultural resilience in pastoralist livelihoods.

Keywords: Sahel migration crisis, Fulani transhumance, nation-state sovereignty, ECOWAS protocols, customary law.

PART I – INTRODUCTION AND CONTEXTUAL FRAMEWORK

1.1 Introduction

The Sahel region has generated numerous concerns regarding migration, sovereignty, and security. [1] There is no single geographic definition for the Sahel, which is a semi-arid region south of the Sahara. Countries commonly listed as part of the Sahel include Burkina Faso, Cameroon, Chad, the Gambia, Guinea, Mali, Mauritania, Niger, Nigeria, and Senegal. [2] The region has been described as

[1] AE Minko, 'On Shifting Sands in Africa's Sahel Region: Tensions between Security and Free Movement' (2025) Migration Policy Institute https://www.migrationpolicy.org/article/sahel-migration-trends accessed 1 April 2026.

[2] Ibid.

having a fragile ecosystem and home to some of the weakest and porous ecosystems and institutional structures in Africa.[3] In Nigeria, under this volatile framework, the Fulani pastoralists (who depend on seasonal transhumance as a means of livelihood) represent the conflict between modern territorial sovereignty and conventional mobility rights.[4]

The migration crisis in the Sahel is driven by desertification, climate change, violent extremism, and resource competition.[5] These factors creates inter-boundary conflicts between pastoralist herdsmen and sedentary farmers. In this regard, the legal dilemma is how to balance the regional obligations to legally protect movement as a right under the free movement provisions of the Economic Community of West African States (ECOWAS) Protocols of 1979 and 1998, and the protective border control and security within the ECOWAS member states.[6] This introduces a legal paradox with sovereignty, a principle recognised under the United Nations (UN) Charter 1945 which mandates member-states to protect their borders and maintain territorial integrity *vis-à-vis* the ECOWAS legal instruments promoting the free movement of people.[7]

This paradox is evident in judicial decisions. In *Attorney-General of the Federation v. Abubakar*,[8] the Supreme Court held that a treaty can only take effect if it has been domesticated, creating a legal paradox to ECOWAS obligations. Also, by virtue of section 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),[9] the freedom of movement is guarantees subject to derogation under section 45 on account of public safety,[10] forming a basis for anti-open grazing laws in states like Benue. The Land Use Act 1978 further entrenches statutory supremacy over customary grazing rights.[11]

Thus, the Sahel crisis demonstrates an irreconcilable contradiction between the necessity for states to enforce sovereignty and the need for pastoralists to move freely.[12] This will require innovative law-making, as well as the socio-historical context of Fulani transhumance. Given the foregoing, this paper presents a legal and policy analysis of the Sahel migration crisis, Fulani transhumance and the dilemma of nation - state sovereignty within West Africa.

1.2 Fulani Transhumance: Historical and Socio-Cultural Dimensions

Transhumance is the practice of moving livestock to different pastures, and for the Fulanis, it is an age-long practice.[13] Transhumance is part of customary

[3] Morten Bøås, 'The Sahel – Fragile States and Weak Political Orders' (2021) *Australian Outlook* https://www.internationalaffairs.org.au/australianoutlook/the-sahel-fragile-states-and-weak-political-orders/ accessed 1 April 2026.

[4] EC Timpong-Jones, MI Samuels, FO Sarkwa, K Oppong-Anane and A Majekodunmi, 'Transhumance Pastoralism in West Africa – Its Importance, Policies and Challenges' (2023) 40(1) *African Journal of Range and Forage Science* 114-128.

[5] Ibid 114

[6] C Nwangwu, 'Herders without Borders: Transhumance Securitisation and the Challenges of National Security in Ghana and Nigeria' (2025) 38(3) *Security Journal* https://doi.org/10.1057/s41284-024-00455-z

[7] UN Charter 1945, Article 2 (4)

[8] (2007) 10 N.W.L.R. PART 1041

[9] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 41

[10] Ibid, s 45

[11] **Section 1, Land Use Act 1978**: *"Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act."* See also *Oyewunmi v Ogunesan* (1990). 3 NWLR Pt 137, 182 [207] SC

[12] M Jobbins, A McDonnell and L Brottem, *Pastoralism and Conflict: Tools for Prevention and Response in the Sudano-Sahel* (2nd edn, Search for Common Ground 2021) https://documents.sfcg.org/wp-content/uploads/2021/08/Pastoralism-and-Conflict-Toolkit_v.2_Search-for-Common-Ground-2021.pdf accessed 1 April 2026.

[13] A Olayiwola, I Boas, AL Zhu and KN Bukari, 'Bordering, De-bordering, and Re-bordering: Fulani Mobility in West Africa's Changing Climates' (2026) *Journal of Ethnic and Migration Studies* https://doi.org/10.1080/1369183X.2026.2626208

law which, along with communal land tenure systems, has not posed a barrier to traversing legally defined borders.[14] Grazing routes were informally crossed, and inter-kingdom and inter-chiefdom grazing routes. Conflicts between herders and farmers were routinely settled through customary arbitration, and within a pluralistic system, maintaining the balance and integrating mobility.[15]

Across more than 15 countries between Senegal and Cameroon, the Fulani are one of the largest ethno-linguistic groups in West Africa.[16] Their identity is transnational, and so is their pastoral occupation. For centuries, Fulani herders moved seasonally along established grazing corridors, following the rains and foliage. Such movements were not viewed as migration in the modern sense but as a way of life.[17]

In the pre-colonial era, transhumance among Fulani was made easy by liberal political systems. Many of the kingdoms and chiefdoms recognized the pastoral economic systems, and would grant land and water access to pastoralists in lieu of tribute or cooperation.[18] Customary systems of law and dispute resolution between herders and farmers ensured balance between mobile and sedentary agriculture.[19] This illustrates a system of legal pluralism, where the law of mobile pastoral customs and the laws of local politics co-exist.

The introduction of standard land tenure systems and fixed borders by colonial governance disrupted these arrangements.[20] The imposition of colonial borders divided traditional routes of passage for livestock while the colonial regulatory systems emphasized sedentary farming and cash cropping.[21] The pastoral context is mostly alien to colonial legal orders as they view mobility as a threat to control. Today, the colonial legacy of fixed borders and statutory land tenure continues to inform the interface and disputes of herders and farmers.

Postcolonial states have further integrated these colonial systems and continue to marginalize pastoral mobility. Modern national systems have ignored transhumant systems and integrated pastoral policies. The grazing reserve policy in Nigeria of the 1960s was an attempt to control and manage pastoral mobility, though the policy was poorly implemented and most of the reserved lands have been captured by agricultural settlers.[22] The unregulated and unintegrated movement of pastoralists continues to challenge their mobility to be integrated into contemporary policies.

To the Fulanis, transhumance is socio-culturally a transcendent of economic activity and an expression of cultural identity. The pastoralist way of life is a language through which Fulani society is structured, and its values are expressed.[23] The pastoralist is integrated and mobile so as to instill resilience to the community especially in the face of a variable or scarce ecosystem and a system of resources. The

[14] J Ezirigwe, 'From Subsistence to Commercialisation: Legal Implications of "ECOWAS Regulations on Transhumance" on Livestock Investment Options' (2023) 10(1) *Journal of Comparative Law in Africa* https://hdl.handle.net/10520/ejc-jlc_jcla_v10_n1_a4 accessed 1 April 2026.

[15] Ibid

[16] CA Fortes-Lima, MY Diallo, V Janoušek, V Černý and CM Schlebusch, 'Population History and Admixture of the Fulani People from the Sahel' (2025) 112(2) *American Journal of Human Genetics* 261-275 https://doi.org/10.1016/j.ajhg.2024.12.015

[17] BOG Nwanolue, OO David and CA Obiora, 'Transboundary Migration and Herder-Farmer Conflicts in Nigeria' (2025) 10(6) *International Journal of Research and Innovation in Applied Science* 1546 https://doi.org/10.51584/IJRIAS.2025.100600116 accessed 1 April 2026.

[18] Ibid

[19] Ibid

[20] AB Shifa, 'Colonial Rule and the Power of Chiefs over Land Resources' (2025) 61(10) *The Journal of Development Studies* 1642–1659 https://doi.org/10.1080/00220388.2025.2489555 accessed 1 April 2026.

[21] Ibid 1642

[22] Ibid

[23] Adi Helen Wabuji and Oluyemi O. Fayomi, 'From Jihadist Roots to Contemporary Realities: A Historical and Socio-political Study of the Fulani Herders in Nigeria' (2025) 10(1) *Covenant University Journal of Politics & International Affairs (Special Edition)* 14 https://journals.covenantuniversity.edu.ng/index.php/cujpiase/article/view/5341 accessed 1 April 2026.

Fulani culture constitutes land, livestock, and the people, reflecting the integrated and surviving structure in the Sahel.[24]

The cultural value of transhumance influences the social system. Fulani pastoralists have developed kinship networks and cooperation which strengthens their identity as transnational. Through these systems, farmers cross borders, gain access to grazing and trade, ensuring the sustenance of the pastoral livelihood system. [25] The transnational nature of Fulani identity constructs challenges to the Westphalian model of fixed borders and invites consideration of whether and how sovereignty ought to respond to flexible identities and changing ecological conditions.

The history of Fulani transhumance shows the intersection of culture, ecology, and politics. The fluidity of the precolonial era, the disruptions of the colonial era, and the postcolonial era of marginalization illustrate the face of pastoral mobility within the overall legal and political transformations. [26] Resilient as it is, transhumance shows the pastoralists' ability to adapt to the political and ecological circumstances.

1.3 Conceptual Overview

1.3.1 Sahel Migration Crisis

Migration is the movement of people away from their usual place of residence to a new place of residence, either across an international border or within a State.[27] There is no universally agreed definition of "migration" or "migrant", but there are several widely accepted definitions that have been developed in different settings. For example, the United Nations Department of Economic and Social Affairs defines a long-term migrant as a person who lives outside their country of origin for at least 12 months. [28] The ECOWAS Protocol on Free Movement of Persons 1979 does not provide a standalone definition of migration. However, it states that**:** Citizens of member states have the right to enter another member state with valid travel documents and health certificates, and reside for up to 90 days.[29] This establishes the right of citizens of member states to cross borders and settle within other member states.

This paper describes the Sahel Migration Crisis as the movement of people within Sahelian states in disregard of laws, borders, and national policies. People move, most of the time, due to ecological pressures, violence, and the need to secure their livelihoods. These factors of migration are further complicated by the legal frameworks that support the free movement of people and the assertions of national sovereignty that contradict them.

1.3.2 Fulani Transhumance

Transhumance describes "the seasonal movement of livestock between mountain and lowland pastures".[30] The ECOWAS Transhumance Protocol 1998 attempts to create a legal framework, with a definition of transhumance as "the seasonal movement of cattle, sheep, goats, or other livestock through international borders, with the movement being regulated by the provision of International Transhumance Certificates."[31]

For the purposes of this paper, Fulani Transhumance is the long-standing, culturally significant, and ecologically driven, but legally and policy constrained, cross-border movement of Fulani

[24] Ibid
[25] Ibid
[26] Ibid
[27] International Organization for Migration, *Fundamentals of Migration* (IOM 2021) https://www.iom.int/fundamentals-migration accessed 1 April 2026.
[28] United Nations Statistics Division, *International Migration Statistics: Concepts, Definitions and Data Collection Methods* (Rev 1, UN 1998) https://unstats.un.org/unsd/publication/seriesm/seriesm_58rev1e.pdf accessed 1 April 2026.
[29] ECOWAS Protocol on Free Movement of Persons (1979), Article 2(1)
[30] UNESCO, *Transhumance: The Seasonal Droving of Livestock* (UNESCO 2019) https://ich.unesco.org/en/RL/transhumance-the-seasonal-droving-of-livestock-01964 accessed 1 April 2026.
[31] ECOWAS Transhumance Protocol (1998), Article 1

pastoralists and their animals over frontiers, in search of places with sufficient pastures and water.

1.3.3 Nation-State Sovereignty

Sovereignty is defined as the supreme, absolute, and uncontrollable power by which an independent state is governed and from which all specific political powers are derived.[32] This is also captured by the provisions of Article 2(1) of the UN Charter 1945, which asserts the sovereign equality of all member states,[33] and in Article 2(4) which outlines the legal and political prohibition against any state transgressing the borders or interfering with the domestic governance of another state.[34]

For this paper, the term Nation-State Sovereignty refers to the legal and political framework of West African states to manage their borders, control cross-border circulation, and apply territorial jurisdiction within the borders of their states, even when this jurisdiction is in contradiction to the regional obligations to consent to unrestricted movement and the customary practices of transhumance.

PART II – LEGAL FOUNDATIONS AND INTERNATIONAL NORMS

2.1 Sovereignty and Territorial Integrity under International Law

Sovereignty is the main principle of international law in contemporary organization of states. It is both a right and a claim. Under the UN Charter, Article 2(1) establishes the legal right to sovereignty,[35] while Article 2(4) discusses the legal claim to it by stating that no force may be used to violate a state's sovereignty, including its territorial and political sovereignty.[36]

Sovereignty, in the case of West Africa, is both a reality, and a contentious one. The states of Nigeria, Mali, and Burkina Faso, among other things, have to deal with the problem of asserting their sovereignty over the wide and communally-controlled (in a non-colonial sense) territory of the Sahel.[37] The challenge of controlling one's own sovereignty is further aggravated by the transitory nature of sovereignty-violating tribes, such as the Fulani.

Judicial authorities in Nigeria depict the more unpleasant side of the interpretation of sovereignty, as is evidenced in *Attorney-General of the Federation v. Abubakar*,[38] where the Supreme Court held that the movement of persons treaty, just like any other international treaty, is subordinate to the national sovereign law and can only be applicable if an Act of Parliament has been passed to domesticate it.[39] This case leaves no doubt that the regional international collaborative treaties that have been signed by a country have no legal effect within the country as long as there is no consistency with the country's sovereign laws.

The Nigerian Constitution continues to entrench sovereignty within its provisions. Section 12(1) states that no treaty between Nigeria and any other country can be enforced unless the National Assembly passes the treaty.[40] This in itself is a clear

[32] MN Shaw, *International Law* (5th ed, UK: Cambridge University Press, 2003) 811; NM Eribo, 'The Concept of Sovereignty in Political Philosophy' (2025) 2(2) *Zamfara Journal of Politics and Development* 1.
[33] UN Charter 1945, Article 2(1)
[34] Ibid, Article 2(4)
[35] Ibid, Article 2(1)
[36] Ibid, Article 2(4)
[37] OM Bamigboye, 'Is the Sahel Redefining Its Security? African Agency, Private Military Companies, and the Changing Face of Security Partnerships' (2026) *Critical Military Studies* 1–26
[38] (2007) 10 N.W.L.R. PART 1041
[39] EB Omoregie, Implementation of Treaties in Nigeria: Constitutional Provisions, Federal Imperative and the Subsidiarity Principle, p. 3, Being text of a paper delivered at the International Conference on Public Policy held 1-4 July, 2015 in Milan, Italy www.icpublicpolice.org/conference/file/response/1433585864.pdf> accessed 29 March, 2026.
[40] Section 12 of the 1999 Constitution provides as follows: 12 (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive

assertion of sovereignty since the country is in no way committed to the treaty. Hence, this has made the ECOWAS protocols on free movement and transhumance mere aspirations as some states, (Nigeria inclusive), are yet to domesticate them, thereby making them legally unenforceable.

The principle of sovereignty is also reflected in the judicial interpretations in fundamental rights enforcements. In *Modupe v. State*,[41] the Supreme Court held that rights provided for in the Constitution, including movement, can be legally restricted in order to ensure public safety and order. This demonstrates the sovereign power of the state to control and regulate movement within its borders, even when such control is inconsistent with regional obligations.

Therefore, legal sovereignty in the Sahel is both a right and a 'theoretical' practice. The legal porous borders, transnational identities, and weak institutions undermine the practice. The structure of laws, including constitutions and judicial precedents, from a general standpoint, emphasises sovereignty at the expense of regional integration, creating a paradox that characterises the Sahel migration crisis.

2.2 Human Rights Obligations in Migration and Mobility

Though states are obliged to protect their sovereignty, international human rights law provides that states have responsibilities to honor the rights of individuals, including migrants and pastoralists. The Universal Declaration of Human Rights 1948, while not binding, provides several guiding principles. Article 13 establishes one's right to leave any country and the right to return to one's country.[42] The article further elaborates that one has the right to move and settle freely in any country. These rights are echoed in the International Covenant on Civil and Political Rights (ICCPR, 1966), which guarantees the right to move freely and to settle in any place.[43]

In Africa, the African Charter on Human and Peoples' Rights (1981) provides the continent with a regional framework. Article 12 of the Charter guarantees the right to move freely and settle in any country within the African continent.[44] Article 17 acknowledges the right to participate in cultural practices.[45] These rights are particularly important to Fulani pastoralists, given their dual necessity to be culturally and economically mobile. The legitimacy of transhumance as a way of life is championed by the Charter, due to its recognition of cultural rights.

There have been varying interpretations of these rights by the courts, which highlights the interplay between human rights and sovereignty. The case of *Director of SSS v. Olisa Agbakoba*[46] illustrates the point that the Supreme Court of Nigeria considers the right to freedom of movement as including the right to travel abroad. In the interest of national security or public order, such rights may be subject to lawful restrictions.[47] The case illustrates the delicate balancing of individual rights versus state rights, which is particularly true for the movement or migration within the Sahel.

Statutory frameworks also reflect this tension. Section 41 of the Nigerian Constitution provides for the freedom of movement, but allows for such freedom to be restricted in the interest of the public's safety, order, or health. Such a justification has been used to justify anti-open grazing laws in states like Benue and Ekiti that make pastoral mobility a crime.[48] These laws, while asserting sovereignty and

Legislative List for the purpose of implementing a treaty. (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

[41] (1989) 4 NWLR (Pt. 114) 130

[42] Universal Declaration of Human Rights 1948, Article 13

[43] International Covenant on Civil and Political Rights (ICCPR, 1966), Article 12

[44] African Charter on Human and Peoples' Rights (1981), Article 12

[45] Ibid, Article 17

[46] (1999) 3 NWLR (Pt. Case No. 595) 314

[47] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 45

[48] Ekiti enacted the Prohibition of Cattle and Other Ruminants Grazing in Ekiti State Law, 2016 (No. 4 of

protecting sedentary farming communities, raise concerns about their compatibility with the human rights obligations set out in the African Charter and the ICCPR.

The 1979 ECOWAS Protocol on Free Movement of Persons further complicates the situation as it considers mobility a regional right.[49] The Protocol provides for the right of citizens to enter, reside, and establish themselves in other member states, thereby aligning with the human rights of freedom of movement in the case of such member states. However, such rights, due to a lack of incorporation in national laws, become a dead letter. The courts have, in a number of cases, declared the supremacy of national laws over regional obligations, thereby consolidating dominance of state sovereignty over human rights.[50]

The primary concern has been the balancing of state sovereignty with human rights obligations. National laws and judicial decisions have, for the most part, eroded the grant of state sovereignty and security which has further compounded the Sahel migration crisis. The state's obligation to exercise self-determination through the regulation of mobility must be balanced with individual rights.

2.3 ECOWAS Protocol on Free Movement of Persons

The ECOWAS Protocol on Free Movement of Persons, Residence and Establishment 1979, is one of the most ambitious attempts in the world. It allows citizens of ECOWAS member states to travel, reside, and stay in any other member state without the requirement of a visa, but with the possession of travel documents.[51] The Protocol aims to enhance regional integration, strengthen economic ties, and reinforce social relationships by removing mobility restrictions.

The Protocol has a legal basis in international human rights law, specifically the ICCPR[52] and the African Charter on Human and Peoples' Rights,[53] both of which guarantee free movement. As such, ECOWAS is incorporating a pre-existing human right to movement, and in this case, also creating an exclusive regional right. However, the protective nature of the Protocol loses its value due to member states' claims of national sovereignty which undermine the protective nature of the protocol. The Protocol by its nature, protects the movement of people, however, it also aims to protect the aspirations of countries that deliberately avoid legislation on the subject.

Additional national laws create more hurdles in the implementation process. Under the Nigeria Immigration Act 2015, an entry and residence permit are required for any foreign nationals, including ECOWAS citizens, who would otherwise be able to travel without any documents required but would be subject to national laws of the country.[54] A legal paradox is created: while free movement is guaranteed by regional law, a restriction is imposed by national law.

The ECOWAS Transhumance Protocol 1998 attempted to address the issue of pastoral mobility by creating the International Transhumance Certificate which enables herders to cross international borders with their livestock.[55] However, border crossing enforcement remains inconsistent. Countries like Ghana and Nigeria have justifiable border crossing restrictions due to security issues regarding farmer-herder conflicts and insurgent infiltration.[56] Such

2016), while Benue passed the Open Grazing Prohibition and Ranches Establishment Law, 2017. Both laws criminalize open grazing and mandate ranching as the lawful alternative.

[49] ECOWAS Protocol on Free Movement of Persons 1979, Article 4, 27

[50] *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 (SC); *Attorney-General of Lagos State v. Attorney-General of the Federation* (2003) 12 NWLR (Pt. 833) 1 (SC)

[51] ECOWAS Protocol on Free Movement of Persons 1979, Articles 2-4

[52] ICCPR, Article 12

[53] African Charter, Article 12

[54] Immigration Act 2015, s 37

[55] ECOWAS Transhumance Protocol 1998

[56] BOG Nwanolue, OO David and CA Obiora, 'Transboundary Migration and Herder-Farmer Conflicts in Nigeria' (2025) 10(6) *International Journal of Research and Innovation in Applied Science* 1546–1560

restrictions demonstrate the national border security issues and concerns versus the regional border open commitments.

An area of concern is the regional vision and the national reality. ECOWAS regards a borderless region of free movement and integration of people with no national security concerns, however it has not been able to implement this. National courts favour national law, protecting national sovereignty, and neglecting regional integration.[57] This is the reason for the gap in legal protection of the ECOWAS protocols. Farmers and Migrants mobility is compromised with little legal protection with endless possibilities of being without legal protection within the EU borders.

2.4 Tensions between Customary Practices and State Legal Orders

For a long time in West Africa, the legal system that governed the movement of pastoralists in that region was customary law.[58] The Fulani practiced transhumance and moved freely across divides guided by their own system of dispute resolution and prevention based on informal, customary arbitration. They moved and integrated with the sedentary farming communities.[59]

Statutory laws have disrupted and unsettled this system. The Land Use Act of 1978 places ownership of land in the hands of the state, and under this law, the state prioritizes sedentary farming and formal systems of land tenure.[60] This legally enshrined marginalization of customary land grazing rights resulted in increasing grievances (clashes) between pastoralists and agriculturalists. The courts have always ruled in favour of legal positivism, upholding that statutory laws prevail over custom. In *Oyewumi v. Ogunesan*,[61] the Supreme Court ruled that although there is a place for customary law in land disputes, there are other competing statutes, therefore, custom must give way. This is how the dominant and prevailing legal system views the traditions of transhumance.

States like Benue and Ekiti have laws that further illustrate this contradictory situation in relation to barriers to open grazing.[62] These laws do not take account of transhumance practices, which are inextricably linked to the Fulani's pastoral way of life, while also legally legitimizing the construction of barriers which increases conflict. Under the Nigerian Constitution, the right to movement is recognised.[63] However, such right is qualified to allow restrictions in the interest of public safety.[64] This qualification has been upheld by the court, reinforcing the sovereign power of states to regulate movement.[65]

Traditions and land tenure laws also come into conflict. Although customary law acknowledges the communal use of land and grazing right, statutory law focuses on the individual ownership and formal title.[66] This conflict brings about confusion in legal matters as pastoralists do not have well-documented land rights and are subject to eviction. In an attempt to work through this conflict, the Grazing Reserve Law of 1965 (Northern Nigeria) was enacted, which

[57] H Sibiri, 'Regional Integration through Common Policies: A Case Study of the Free Movement Policy in the EU and the ECOWAS' (2016) 4(2) *Covenant University Journal of Politics & International Affairs* 51–73.

[58] EC Timpong-Jones, I Samuels, FO Sarkwa, K Oppong-Anane, AO Majekodunmi and HT Wario, 'Transhumance Pastoralism in West Africa – Its Importance, Policies and Challenges' (2023) 40(1) *African Journal of Range & Forage Science 1*

[59] N Cinjel and W Oboromeni, 'The Fulani in Nigeria and Their Herding System: Is It an Agro-Business or a Culture?' (2024) 15(1) *Journal of Policy and Development Studies* https://www.ajol.info/index.php/jpds accessed 1 April 2026.

[60] Land Use Act 1978, s 1

[61] (1990). 3 NWLR Pt 137, 182 [207] SC

[62] Ekiti state Anti-Open Grazing Law 2016 and Benue state Open Grazing Prohibition and Ranches Establishment Law 2017

[63] CFRN 1999 (as amended), s 41

[64] Ibid, s 45

[65] *Minister of Internal Affairs v. Shugaba Abdulrahaman Darman* (1982) 3 NCLR 915 (CA)

[66] MI Nwogu, 'Ownership and Possession of Land under the Nigerian Customary Land Tenure System: A Legal Appraisal' (2023) 19(2) *UNIZIK Law Journal* 86–96.

attempted to create grazing areas, although this has been inconsistent and most reserves have been encroached on by farming communities.

The conflict between the customary practices and legislation can be viewed as a reflection of a larger issue, which is the need to incorporate traditional mobility in the contemporary legal frameworks.[67] Statutory law promotes sovereignty and settled farming at the expense of transhumance, which is legitimized by customary law as a cultural practice. Judicial decisions encourage the dominance of statutory law at the expense of the customary practices.[68] Such contradiction of the law intensifies disagreements, destabilizes social unity, and is a factor in the Sahel migration crisis.

PART III – POLICY RESPONSES AND NATIONAL DILEMMAS

3.1 National Security Concerns and Border Control Measures

The degree of severity of protective measures in response to the Sahel migration crisis is a direct consequence of concerns for national security. The Western African states view pastoralist mobility as a potential threat to national security.[69] The increased farmer-herder conflicts and the rise of extremist actors among pastoralists have compelled governments to regard mobility as a problem, thereby legitimizing the control of pastoral movements.

Examples of this phenomenon are evident in Nigeria. The anti-open grazing legislation that is being enacted in states like Benue and Ekiti is an expression of how far the state will go in exercising control over pastoralists' mobility.[70] These laws penalizing pastoralists and criminalizing the practice of open grazing are justified in terms of the protection of the general public. Section 41 of the Nigerian Constitution guarantees the freedom of movement of all persons, but is also restrictive on the protection of the public and the maintenance of public order.[71] This has been the position of the courts and has been sustained over time, thereby reaffirming the sovereign powers that states have in exercising control over the movement of people. *Modupe v. State*,[72] the Supreme Court stated that the enforcement of public order laws applies to the limitations of judicial protection to the right of movement. This justifies the control of pastoral movement.

Control of borders facilitates the understanding of the paradox of state control and regional collaboration. While the 1979 ECOWAS Free Movement of Persons Protocol grants citizens free movement, immigration laws of states still apply. For instance, the Nigeria Immigration Act 2015, which requires permits for non-Nigerians, is often enforced on citizens of ECOWAS.[73] This illustrates the overriding of regional integration by national legislation. This position was reaffirmed by the Nigerian Supreme Court in *Attorney-General of the Federation v. Abubakar*,[74] where the court held that a treaty that has not been incorporated into national legislation is a dead letter.

The consequences of the securitization of mobility as a phenomenon are noteworthy. When states address pastoralists as security risks, there is an impending danger of heightening ethnic conflict and stigmatization of the Fulani community.[75]

[67] Ibid, 86

[68] *Oyewunmi v. Ogunesan* (1990) 3 NWLR (Pt. 137) 182 (SC); *Agbai v. Okogbue* (1991) 7 NWLR (Pt. 204) 391 (SC); *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283 (CA)

[69] A Higazi and S Abubakar Ali, *Pastoralism and Security in West Africa and the Sahel: Towards Peaceful Coexistence* (UNOWAS 2018) https://unowas.unmissions.org/pastoralism-andsecurity-west-africa-and-sahel accessed 1 April 2026.

[70] Ekiti state Anti-Open Grazing Law 2016 and Benue state Open Grazing Prohibition and Ranches Establishment Law 2017

[71] CFRN 1999 (as amended), s 41

[72] (1989) 4 NWLR (Pt. 114) 130

[73] Nigeria Immigration Act 2015, s 1

[74] [2007] 10 N.W.L.R. PART 1041

[75] M Moritz and M Mbacke, 'The Danger of a Single Story about Fulani Pastoralists' (2022) 12(1) *Pastoralism: Research, Policy and Practice*

Additionally, this phenomenon is a breach of the humanitarian considerations that are part of the international legal order, particularly the African Charter on Human and Peoples' Rights, [76] which upholds cultural rights. Balancing the exercise of sovereignty and security, and a concomitant respect for human rights is a difficult balance to strike.

3.2 Agricultural Policy, Land Use, and Resource Conflicts

The frameworks of agricultural policy and land use have been instrumental in escalating the conflicts that exist between pastoralists and farmers. [77] The emphasis of statutory land tenure systems on sedentary agriculture, in particular, leaves pastoral mobility out of consideration and heightens the conflicts around resources. An example of this is the Land Use Act of Nigeria 1978, which vests land ownership in the state.[78] The Act prioritizes land use planning and sedentary agriculture, which, in turn, weakens the legitimacy of grazing rights and heightens access to land conflicts.

Judicial decisions have reinforced the supremacy of statutory law over customary practices. In *Oyewumi v. Ogunesan*,[79] the Supreme Court acknowledged the relevance of customary law in land disputes but emphasized that statutory law prevails where conflicts arise. This judicial stance reflects the broader marginalization of transhumance traditions in modern legal systems. Pastoralists, lacking formal land rights, are vulnerable to eviction and conflict, while farmers, backed by statutory frameworks, assert ownership and control over land.

The establishment of grazing reserves has been one of the policy response attempts to address the problem. The Grazing Reserve Law of 1965 (Northern Nigeria) aimed at allocating areas for pastoralists which would in turn help in minimizing conflicts with farmers. Although the intention of the law is well-grounded, the implementation has been patchy, with numerous reserves being encroached upon by farming communities.[80] The unsuccessful implementation of grazing reserve policies illustrates the difficulties of incorporating pastoral mobility within contemporary mixed farming systems.

Resource conflicts are further exacerbated by ecological pressures. Desertification and climate change have reduced the availability of grazing land and water, intensifying competition between pastoralists and farmers.[81] This ecological stress has transformed resource disputes into violent conflicts, undermining social cohesion and stability. Policy responses have often focused on protecting sedentary agriculture, neglecting the needs of pastoralists and exacerbating tensions.

The main issue is the structural bias that exists in agricultural policies and the frameworks of land use. These policies ignore the importance of pastoral mobility and fuel conflict by favoring sedentary agriculture.[82] Court decisions that uphold this bias by prioritizing statutory law over customary law add to the problem. [83] The focus must be on conflict

https://doi.org/10.1186/s13570-021-00227-z accessed 1 April 2026.

[76] African Charter on Human and Peoples' Rights, Arts 12, 17

[77] HM Sulieman and S Momale, *Land Use Dynamics and Farmer–Herder Conflicts: A Spatial Analysis of Case Studies from Sudan and Nigeria* (SPARC Knowledge, Technical Report, London 2025) https://doi.org/10.61755/OSWO5255 accessed 1 April 2026.

[78] Land Use Act, s 1

[79] (1990) 3 NWLR (Pt. 137) 182

[80] R Blench and U Hassan, with additional research by A Umar Eggi, A Sa'ad and Y Muhammed, and editorial contributions by A Higazi, *Grazing Reserves, Stock Routes, and Pastoral Resources in Nigeria* (SPRiNG 2025) https://www.spring-nigeria.com/wp-content/uploads/2025/11/8-Study-on-Grazing-Reserves-and-Stock-Routes_Full-Report_final_EE-1.pdf accessed 1 April 2026.

[81] Ibid

[82] GE Odinka, T Asongo, JE Igbe, JA Ogar and PD Okon, 'Land Conflict in Nigeria: The Political Intrigues of the Open Grazing Prohibition and the Ranches Establishment Law in Benue State' (2025) 6(4) *African Journal of Religion, Philosophy and Culture* https://hdl.handle.net/10520/ejc-aa_ajrpc_v6_n4_a9

[83] *Oyewunmi v. Ogunesan* (1990) 3 NWLR (Pt. 137) 182 (SC); *Agbai v. Okogbue* (1991) 7 NWLR (Pt. 204) 391

resolution by way of integrating pastoralism and addressing the needs of both farmers and pastoralists in construction policies that streamline resource use.

3.3 Case Studies: Nigeria, Mali, Burkina Faso

3.3.1 Nigeria

Sovereignty, security, and pastoral mobility intertwine in complex ways in Nigeria. Severe violence in farmer-herder clashes has been recorded in the Middle Belt of Nigeria which is in the Sahel.[84] Policy responses have been the criminalization of pastoral mobility through anti-open grazing policies in states like Ekiti and Benue.[85] These policies are justified as protective of the public, a peculiar instance of constitutional freedom of movement being limited under Section 41 of the 1999 Constitution.[86] In *Oyewumi v. Ogunesan*,[87] courts have been seen to prioritize statutory law, further entrenching the diminishing of transhumance customs.

At the federal level, the implementation of the Grazing Reserve Law of 1965 (Northern Nigeria) has been a failure, with grazing reserves being overrun by farming communities. More recently, the proposals for "Ruga settlements" from the Federal Government of Nigeria faced criticism in opposition, indicating the sensitivity of the politics of pastoral mobility.[88] Nigeria's policy responses thus illustrate the tension between sovereignty, statutory frameworks, and cultural practices, a tension exacerbated by weak enforcement and political contestation.

3.3.2 Mali

The situation in Mali exemplifies the multi-layered nature of the crisis in pastoral mobility and violent extremism. The involvement of jihadist actors in the pastoralist movement has resulted in the state being positioned to securitize mobility, viewing transhumance as a threat to the state.[89] There is now increased border control, and pastoralists are monitored and controlled. These attempts, however, have destroyed established grazing routes and increased the conflict with settled agriculturalists.[90]

While Mali's national security concerns are legitimate and the constitutional framework allows for such a restriction, the balance has been one of increasing instability, and the state of disintegration is a poor reflection of the state's security. The failure of the state to incorporate pastoral mobility into national policy has been a clear state of disintegration, as well as a lack of the desired cohesion in civil society.

3.3.3 Burkina Faso

Burkina Faso shows how the crisis manifests at the regional level. Being landlocked and having large pastoral populations, Burkina Faso has been reliant on the ECOWAS processes for mobility.[91] The

(SC); *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283 (CA)

[84] DA Ioryue, 'Farmer–Herder Conflict and National Security in Nigeria: The Benue State in Perspective' (2024) 2(2) *Kashere Journal of Politics and International Relations* 245.

[85] Ekiti state Anti-Open Grazing Law 2016 and Benue state Open Grazing Prohibition and Ranches Establishment Law 2017

[86] CFRN 1999 (as amended), s 41

[87] (1990) 3 NWLR (Pt. 137) 182 (SC)

[88] JS Ojo, 'Migratory Pastoralism, Herders–Farmers Conflicts, and the Ruga Settlement Policy in North Central Nigeria' (2023) 13(2) *African Conflict and Peacebuilding Review* 32–59 https://doi.org/10.2979/africonfpeacrevi.13.2.02 accessed 1 April 2026.

[89] SM Cold-Ravnkilde and B Ba, 'Jihadist Ideological Conflict and Local Governance in Mali' (2022) *Studies in Conflict & Terrorism* https://doi.org/10.1080/1057610X.2022.2058360 accessed 1 April 2026.

[90] Centre for Humanitarian Dialogue, *Agro-pastoral Mediation in the Sahel Region of Mali, Niger and Burkina Faso* (HD 2019) https://www.hdcentre.org/wp-content/uploads/2019/01/HD-Agro-pastoral-mediation-in-the-Sahel.pdf accessed 1 April 2026.

[91] International Organization for Migration, *Burkina Faso Crisis Response Plan 2025* (IOM 2025) https://crisisresponse.iom.int/response/burkina-faso-crisis-response-plan-2025 accessed 1 April 2026.

ECOWAS Transhumance Protocol 1998, which introduced the International Transhumance Certificate, offers a legal framework for cross-border mobility for pastoralists. However, the border openings and closures have not been regulated according to these frameworks, and national border closures have been implemented for security reasons.

Burkina Faso's cultivation policies focus primarily on sedentary agriculture and, therefore, neglect the mobility of pastoralists. Resource-based conflicts have increased and desertification has contributed to this.[92] The mobility of pastoralists has been restricted through judicial means, which has been more effective than customary laws. The inability to reconcile sovereign control and regional law has simply intensified the frustration of pastoralists with the ECOWAS protocols.[93]

3.4 The Role of Regional Institutions and International Partners

The role of regional institutions and international partners in the development of policy responses to the Sahel migration crisis has been significant. In relation to the promotion of regional integration, human rights, and stability, there has been a tendency to disregard the operational implications of national sovereignty and the lack of enforcement.[94] This has been evident in the case of the UN, AU, and ECOWAS.

The ECOWAS protocols on free movement and transhumance are attempts to provide some form of regional regulation on mobility. Presently, the ECOWAS Protocol on Free Movement of Persons 1979 and the Transhumance Protocol of 1998 are the only legal instruments accessible to nationals of member states. These protocols, like other regional instruments, are couched within global [95] and regional[96] human rights instruments. Their efficacy has been limited, however, due to lack of enforcement and compliance in national jurisdictions.

The African Union has experienced challenges of a similar nature. Initiatives such as the African Union Policy Framework on Pastoralism 2010 which acknowledges pastoral mobility as an important source of livelihood, and advocates for the integration of pastoralism into national development plans has been poorly implemented.[97] This has been attributed to the prevailing influence of sovereignty and legalism. Unilateral efforts to achieve stability have been supported by international partners such as the United Nations and donor agencies to curb resource conflicts.[98] In an attempt to alleviate the tensions between the pastoralists and the farmers, programs on climate adaptation, conflict resolution and livelihood have been pursued.[99] Nevertheless, such initiatives are frequently limited in their effects by national sovereignty.

The issue is that there is a discrepancy between the regional and international engagements and the national realities. Whereas mobility is viewed as a right and valid livelihood mechanism within regional and international instruments, national laws and judicial decisions place emphasis on sovereignty and statutory systems.[100] This contradiction negatively

[92] K Ouédraogo, A Zaré, G Korbéogo, A Linstädter and others, 'Resilience Strategies of West African Pastoralists in Response to Scarce Forage Resources' (2021) 11(1) *Pastoralism: Research, Policy and Practice* https://doi.org/10.1186/s13570-021-00210-8 accessed 1 April 2026.

[93] Ibid

[94] NM Ndah, LA Edet, ND Nkwati, N Julius and MA Nso, 'The Sahel Crisis and Its Ramifications on International Relations' (2025) *World Wide Journal of Multidisciplinary Research and Development* 23.

[95] e.g. ICCPR, Article 12

[96] e.g. African Charter, Article 12

[97] African Union, *Guidelines to Secure Pastoralism and Prevent Conflicts in Africa: A Secure, Peaceful and Sustainable Pastoralism* (AU-SAFGRAD 2022) https://au.int/sites/default/files/documents/42433-doc-GUIDELINES_TO_SECURE_PASTORALISM_AND_PREVENT_CONFLICTS_IN_AFRICA_FINAL.pdf accessed 1 April 2026.

[98] Ibid

[99] Ibid

[100] F Garba and T Yeboah, 'Free Movement and Regional Integration in the ECOWAS Sub-Region' in JK Teye (ed), *Migration in West Africa* (IMISCOE Research Series, Springer Cham 2022) https://doi.org/10.1007/978-3-030-97322-3_2 accessed 1 April 2026.

affects the efficacy of regional and international action, placing pastoralists in the state of powerlessness to restrictive policies and legal insecurity.

PART IV – CRITICAL ANALYSIS AND LEGAL-POLICY CONTRADICTIONS

4.1 The Paradox of Free Movement vs. State Sovereignty

The Sahel migration's crisis exposes a contradiction between free movement and state sovereignty. While states have international and regional legal frameworks that permit and promote free movement, they also have a right to exercise their state sovereignty by controlling who enters, stays, and uses their land.[101] For many Fulani pastoralists and migrants in West Africa, this contradiction is a daily reality.

The ECOWAS Protocol on Free Movement of Persons 1979 states that Member States' nationals are free to enter, reside, and establish themselves in other Member States.[102] This is also in line with the provision of the ICCPR (1966) that guarantees every person the right to move and reside anywhere in the world, and other provisions that are in the same breath as the charter (1981) which guarantees every person the right to move and settle anywhere in a state's territory, as long as it is not illegal.[103] Collectively, these several international and regional treaties position mobility as a fundamental right.

Sovereignty is the opposing virtue to free movement. It first appeared in the UN Charter where states are considered equal. It is fortified in several national constitutions. For instance, in the Nigerian Constitution, it is provided that no treaty shall have the force of law unless that treaty is enacted by the National Assembly.[104] This was the position of the Supreme Court in the case of *Gani Fawehinmi v Abacha*,[105] where it was stated that no international treaty can be applied in Nigeria unless it was domesticated into law. This judicial position prioritizes the region's sovereignty, effectively negating the ECOWAS guarantees of free movement.

A sharper paradox relates to legal structures. The Immigration Act 2015 compels Nigeria's Immigration officials to demand permits from foreigners, including ECOWAS nationals.[106] This shows the preference of national legislation over regional obligations. Equally, anti-open grazing laws in Benue and Ekiti justify the criminalization of movement by herders on the basis of Section 41 of the Constitution, which provides for freedom of movement but permits regulation in the interest of public order.[107] In *Modupe v. State*,[108] the Supreme Court held that the exercise of constitutional rights is subject to legal restrictions that are geared towards the maintenance of public order and safety.

Therefore, the paradox is of a structural nature. While regional and international treaties espouse and protect the right to movement, the principle of national sovereignty and the interpretation of laws by the courts from a consequentialist perspective undermine this to a paradoxical degree. This contradiction not only adds to the existing challenges of regional integration, but also leaves herders and migrants exposed to the ever-growing restrictive measures. The paradox is a lot more than a legal principle. It is a reality that deepens the already existing friction and instability in the Sahel.

[101] S Joshua, OE Ochoga and IA Yahaya, 'The Alliance of Sahel States (Alliance des États du Sahel, AES) and Its Implications for ECOWAS Protocol on Free Movement of Persons' (2025) 9(3) *Wukari International Studies Journal* 1–14.

[102] ECOWAS Protocol on Free Movement of Persons, Residence and Establishment, adopted on 29 May 1979, Arts 2-4

[103] ICCPR (1966), Article 12; African Charter (1981), Article 12; ECOWAS Protocol (1979), Articles 2–4

[104] CFRN 1999 (as amended), s 12

[105] (1996) 9 NWLR (Pt. 475) 710 at 747

[106] Immigration Act 2015, s 1

[107] Ekiti state Anti-Open Grazing Law 2016 and Benue state Open Grazing Prohibition and Ranches Establishment Law 2017

[108] (1989) 4 NWLR (Pt. 114) 130

4.2 Legal Gaps in Addressing Transhumance and Migration

The legal frameworks for transhumance and migration in West Africa are ineffective. When it comes to the intersection of international law and its regional, national, and customary counterparts, there are numerous legal gaps in the fragmented structures concerning the mobility of pastoralists.

The gaps mentioned above exist, despite the existence of international legal instruments that protect the right to freedom of movement, such as the ICCPR and the African Charter. While such instruments establish legal frameworks for the right to movement, they are not specific to the mobility of pastoralists. Moreover, the absence of international law pertaining to transhumance means that regional international laws must attempt to fill the gaps.

The ECOWAS Transhumance Protocol of 1998, for example, manages pastoral mobility through the issuance of International Transhumance Certificates enabling pastoralists to move legally across several international borders. However, violations of the Protocol remain commonplace, with many ECOWAS member countries opting not to implement it.

Additional national laws on the subject matter only aggravate the aforementioned gaps. The Land Use Act of Nigeria 1978 is an example of such legislation, as it legally consolidates land ownership with the state, thereby promoting sedentary forms of agriculture and formalized systems of land tenure. In doing so, the Act legally eradicates customary rights of grazing, and therefore, openly instigates the conflict between herders and farmers. Furthermore, statutory law is present in all of the above situations. The Supreme Court, in *Oyewumi v. Ogunesan,*[109] accepted the relevance of custom but noted that where there are conflicts, statute shall prevail. This position also mirrors the general sidelining of transhumance practices.

The absence of open grazing laws exemplifies yet another gap. Though the laws might be grounded in public safety, they ignore the cultural grounding of transhumance and contradict the regional commitments to the free movement of people. Section 41 of the Nigerian constitution guarantees freedom of movement, but this is subject to restriction. [110] The courts have reinforced this, upholding the supremacy of the state's borders over the mobility rights of individuals.

The absence of legal frameworks is also as a result of the nature of the customary practice. Although transhumance is generally recognized by practice, this is not the same in law. The law, particularly the administered law, is more formal and pastoralists are more used to the law being administered, and the most common form of dispute settlement in customary systems is arbitration.[111] This creates a gap between operational legal and jurisdictional frameworks leaving pastoralists open to eviction and other legal conflicts.

The result of all these gaps is the absence of a fully developed legal framework to regulate pastoral mobility. International law is too vague, regional laws are not enforced, national legislation leans towards sedentary agriculture, and customary law is not recognized. The courts have reinforced the sovereignty of the state and supremacy of the statutes thereby widening the gaps.[112] The social cohesion is also undermined by the legal conflict that is created by the absence of law, this is also added to the already existing gaps of the Sahel migration crisis.

4.3 Policy Failures and the Escalation of Communal Violence

The Sahel region experiences escalating communal violence due to policy failures regarding

[109] (1990) 3 NWLR (Pt. 137) 182 (SC)

[110] CFRN 1999 (as amended), s 41

[111] MA Martin Lopez, 'The Rights of Pastoralist Peoples: A Framework for Their Recognition in International Law' (2016) *The Age of Human Rights Journal* https://doi.org/10.17561/tahrj.v0i6.2931 accessed 1 April 2026.

[112] *Oyewunmi v. Ogunesan* (1990) 3 NWLR (Pt. 137) 182 (SC); *Agbai v. Okogbue* (1991) 7 NWLR (Pt. 204) 391 (SC); *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283 (CA)

transhumance and migration. Instead of adopting proactive and integrative policies, governments have taken defensive and reactively violence-focused policies.[113] This reinforces the deep-seated mistrust of pastoralists and sedentary farmers and increases violence in already violence-fueled ethnic conflicts.

Nigeria illustrates this best. The new anti-open grazing legislation in the states of Benue and Ekiti, for example, makes pastoralists criminal subjects and punishable by fine or imprisonment for crossing the criminalized line of pastoral mobility, which is the grazing line.[114] Although the law is seen as just by the courts in Nigeria in line with Section 41 of the 1999 Constitution which justifies the restriction of movement for the sake of public safety, the law does not take into consideration the cultural importance of transhumance. This has been the case since *Sunday Modupe v. State*,[115] and the courts continue to reinforce the criminalization of movement by the State, which has been seen as stigmatizing Fulani pastoralists and increased ethnic tensions.

Closures of grazing reserves also illustrate policy failures. The Grazing Reserve Law of 1965 (Northern Nigeria) aimed to direct pastoralists to specific areas, but due to insufficient implementation and subsequent encroachment by farming communities, the reserves were ineffective.[116] The political sensitivity of pastoral transhumance has also been evident in the large opposition to the federal government's most recent proposal of "Ruga settlements".

In Mali and Burkina Faso, policy failures have aggravated insecurity. Extremist group infiltration among pastoralists is forcing governments to regulate movement and close traditional grazing routes. These policies create new grazing-farming community conflicts. The inability to differentiate insurgents from pastoralists has created stigma against them, further dividing communities. There are international laws that protect the engrained right to move freely. The African Charter of Human Rights protects these rights.[117] However, domestic laws put national interests and security over these rights. The paradox of domestic and international laws leaves room for violence.

The direct result of policy failures is the escalation of intercommunal violence. Ethnic violence and the disintegration of social cohesion are the result of the criminalization of pastoral movement, neglect of grazing reserves, and the imposition of control on cross-border movements.[118] Jurisprudence streamlining border control and state supremacy renders pastoralists subject to control. The proper approach is to incorporate pastoral movement into national policies to reduce violence and enhance stability.

4.4 Critique of Current Regional and National Approaches

There are serious issues with both regional and national strategies when it comes to the Sahel migration crisis. Starting with the regional perspective, the national level attempts of the ECOWAS transhumance and free movement protocols are very commendable, but given the existing weak national level enforcement of the singular rule of national sovereignty, the protocols become ineffective.[119] At the national level, attempts

[113] USIP, 'Amid Rising Sahel Violence, Burkina Faso Builds a Response' (ReliefWeb, 16 May 2019) https://reliefweb.int/report/burkina-faso/amid-rising-sahel-violence-burkina-faso-builds-response accessed 1 April 2026.

[114] OC Odey, C Udeh and JN Aondongu, 'The Anti-Open Grazing Policy and Farmers–Herders' Conflicts in Benue State, Nigeria' (2024) 7(2) *African Journal of Social Sciences and Humanities Research* 224–243 https://doi.org/10.52589/AJSSHR-CXQBRYY2 accessed 1 April 2026.

[115] (1988) NWLR (Pt. 87) 130.

[116] SA Ingawa, C Tarawali and R von Kaufmann, *Grazing Reserves in Nigeria: Problems, Prospects and Policy Implications* (ILCA Network Paper No. 22, 1989) https://files01.core.ac.uk/download/pdf/132634659.pdf accessed 1 April 2026.

[117] The African Charter of Human Rights 1981, Arts 12 and 17

[118] I Saminu, 'Identity and "Fulanization" of Banditry in Nigeria: The Fulani as a "Criminal Tribe"' (2025) 3(1) *Zamfara Journal of Politics and Development* 1–9.

[119] TS Joshua and MF Chuks, 'Social Protection and Border Communities: A Critical Analysis of Policy

where national sovereignty and sedentary farming are given priority, when attempts are made to recognize pastoral mobility, they exacerbate the existing problems.

The ECOWAS protocols do not express the totality of applicable rights of mobility, as they only identify some of the rights contained in the International Covenant on Civil and Political Rights (ICCPR)[120] and the African Charter.[121] The protocols are in fact not applicable in Nigeria, as there has been no national law to domesticate the protocols. The case of *Attorney-General of the Federation v. Abubakar*[122] highlights the supremacy of national law and therefore regional law is not enforceable, and in effect national law is the only law. This summarizes the existing structural failure of regional integration; the focus has been on protocols, with no emphasis or consideration of the enforcement mechanisms.

National level strategies only add to the existing problems. The existing statutes, including the Land Use Act 1978 emphasize sedentary farming and further disregard pastoral mobility. The statutes that define anti-open grazing laws are transhumance laws, where the justification has been the protection of the constitution and has disregarded the culture, while from the other end, the courts have ruled that there is no other law other than the one made by the legislature, and therefore custom stands to be divorced from practice.[123] This is the existing structure of the total contempt and disregard for pastoralism, and has been the cause of the escalation of conflicts while further obfuscating social cohesion.

While international partners have tried to help externally, the efforts have been almost completely constrained by claims of sovereignty. Support for climate adaptation, conflict resolution, and livelihoods are often trapped by the national framework and as a result, are usually ineffective. The lack of attention to pastoralism and its mobility shows a lack of cultural legitimacy.

The critiques in this approach are threefold. First, there are claims of sovereignty that are present in the enforcement of regional policies and protocols. Second, the national policies and frameworks are also in favour of sedentary, more agricultural practices, and security, which pushes pastoralism and mobility to the margins. Third, internationally funded and supported policies are within the boundaries of state sovereignty, and also fail to address cultural legitimacy. All of these issues worsen the migratory movements and crises in the Sahel and adds conflict and instability.

PART V – TOWARDS A BALANCED FRAMEWORK

5.1 Reconciling Sovereignty with Humanitarian Obligations

The most significant aspect of the Sahel migration crisis involves balancing the humanitarian duties of states under both international and regional laws and the sovereign rights of states. The UN Charter's Article 2(1) provides that all States have Sovereign Equality, while Article 2(4) provides that no one may interfere with the territorial integrity of a state. From a national perspective, Nigeria's Constitution, Section 12(1) states that a treaty may not be relied upon unless the treaty has been enacted. This principle has been upheld by Nigerian Courts, including the *Attorney General of the Federation v. Abubakar*,[124] where the supremacy of national sovereignty was adjudicated over continental regional obligations or commitments.

National Sovereignty cannot be considered in

Responses to Cross-Border Vulnerabilities in the Sahel Region' (2025) 17(2) *African Journal of Stability and Development* 1181–1199

[120] ICCPR, Article 12

[121] African Charter 1981, Article 12

[122] (SC 31/2007) [2007] NGSC 9

[123] KE Nnamani, DC Ononogbu, NI Okafor, J Ohabuenyi and OJ Anichebe, 'Open Grazing Prohibition Law, Political Economy of Centralized Law Enforcement Mechanism, and Nomadic Pastoralist–Sedentary Farmer Relations in Nigeria' (2024) 10(1) *Cogent Social Sciences* https://doi.org/10.1080/23311886.2024.2414869 accessed 1 April 2026.

[124] 2007 10 NWLR (Pt. 1041) 1

isolation. There are limits to the exercise of sovereignty that are imposed by legal humanitarian obligations. The 1948 Universal Declaration of Human Rights (not a binding legal instrument) along with other international legal frameworks, including the legally binding ICCPR (1966) and the African Charter on Human and Peoples' Rights (1981) outline and stipulate parameters that member states must legally enable, respect, and protect mobility, including the rights of people to move, and the right to freely exercise one's citizenship.

More importantly, in reference to humanitarian law, sovereignty should be redefined. The doctrine of responsibility to protect (R2P) is not an easy concept to agree with, yet it is an indicator of the changing perception of sovereignty as responsibility, rather than control. States cannot use the concept of sovereignty to legitimize their cultural practices-criminalizing policies or display ethnic animosity. Sovereignty and humanitarian imperative cannot go hand in hand unless there is legal creativity, judicial reinterpretation and policy change. In the absence of such reconciliation, sovereignty will serve as an umbrella to restrictive policies that lead to the subversion of human rights and the promotion of conflict.

5.2 Legal Innovations for Managing Transhumance

Legal innovations are necessary in order to deal with inconsistency in existing structures. The current tools are either too broad (international human rights law), idealistic (regional protocols) or partial (national statutes). Law has to fill these loopholes, and pastoral movement should become a part of the law yet without breaching the sovereignty and humanitarian duty.

Regional protocol domestication is just one of the avenues. Mobility is well developed by the ECOWAS Protocol on Free Movement of Persons 1979 and Transhumance Protocol 1998. However, they are undermined by the deficiency of domestication. Another avenue is the reformation of legal structures. The Nigerian Land Use Act of 1978 favors sedentary agriculture neglecting pastoral mobility. Transhumance should be incorporated in the statutory law through reforming the Act to appreciate grazing rights, which will lessen conflicts and ensure stability.

Constitutional provision limitations must be incorporated into legal innovation. Section 41 of the Nigerian Constitution provides for freedom of movement but allows for public safety-related restrictions. This limitation has been enforced by judicial dominion, such as in *Modupe v. State*.[125] Judicial interpretation places public safety, sovereignty, & security over mobility. Constitutional amendments to focus the right to freedom of movement would be an improvement to public accountability.

Most importantly, legal innovation must include the consideration of custom. Customary law allows transhumance, despite its long historical vilification in Western legal systems. The integration of statutory rights of customary grazing would recognize the customary law on grazing, decrease discontent, and increase social solidarity.

The definitions of legal innovation are political and not simply technological. Sovereignty must be differently classified, judicial dominion interpreted, progressive, and statutory law frameworks modified. Without such changes, legal contradictions will remain driving rights to freedom of movement and fighting. The challenge is on the legal order to come up with a balance of safety from the aggressive Integration of custom, and legitimising pastoral mobility with the exercising of human rights.

5.3 Policy Recommendations for Sustainable Migration Governance

Legal and policy frameworks have gaps which require bold and critical reforms. Governance of migration in the Sahel needs to go beyond reactive enforcement and sovereignty-driven approaches, and

[125] (1989) 4 NWLR (Pt. 114) 130

develop constructive ways to combine sovereignty, human rights, and legislation.

First, there is a need for the domestication of regional protocols. The ECOWAS Protocol on Free Movement of Persons 1979 and the Transhumance Protocol 1998 have elaborate and comprehensive frameworks on mobility, but their effectiveness is undermined by the lack of domestication. Once domestication occurs, these regional instruments become law, mobility rights can be enforceable, and the gap between the aspirations of the region and the realities of the nation will be bridged.

Second, there is a need for statutory reform. The Nigerian Land Use Act 1978 for example, emphasizes sedentary agriculture to the detriment of pastoralism. Amending the Act to accommodate grazing rights will then integrate transhumance into the law, thus, both reducing conflicts and promoting peace.

Third, Constitutional provisions should be solidified. Section 41 of the Nigerian Constitution states the 'right to freedom of movement' is guaranteed. However, movement can be restricted for reasons around 'public safety' concerns. There is need to strengthen constitutional reforms to defend mobility rights by prioritizing humanitarian concerns.

In addition, customary practices need to be incorporated. While the Customary Law of Transhumance is recognised in customary practice, the courts have, for the most part, been silent on this issue. By including the Customary Grazing Rights into the Statutes, it will be possible to connect the cultural aspect of the issue to the statutory aspect. This will strengthen statute and promote social cohesion.

Finally, International partners have to go for Integrative approaches to solve cross-cutting issues. Climate change adaptation, conflict resolution, and livelihood support must address pastoral mobility by respecting humanitarian and cultural concerns. International partners must go beyond the sovereignty-bound approaches and support the integration of the sovereignty and the mobility rights.

5.4 Conclusion

Nation-state sovereignty dilemma in West Africa, Sahel migration crisis, Fulani transhumance, and structural tension between sovereignty and mobility demonstrate a tension of structure between sovereignty and mobility. The instruments of the international and regional level ensure freedom of movement as a right, whereas the domestic legislation and judicial rulings put sovereignty and security in the forefront. Laws set discriminatory boundaries on pastoral movement, informal ways are not taken into consideration, and a lack of policy leads to more conflict.

More importantly, sovereignty has been used as a defense mechanism to oppose policies that are restrictive in the sense that they criminalize cultural practices and aggravate ethnic tensions. The law courts have strengthened sovereignty and statutory supremacy, so that regional commitments are not enforceable. Claims of sovereignty and weak enforcement of international and regional instruments have compromised them. The educated resultant legal and policy environment that contributes to conflict and erodes the social glue and increases the Sahel migration crisis.

The difficulty is to shift towards an integrative approach to sovereignty and humanitarian duties by going beyond the reactive policies of sovereignty. Legal creativity is necessary: localization of local protocols, legal revamping, and constitutional reinforcement, and the merging of customized practices. It is also important to reform in terms of policy: enhancing regional cooperation, enhancing integrative agricultural policy, and assisting pastoral mobility. These reforms should be assisted by international partners who have to go beyond sovereignty-based models and adopt integrative models.

Finally, the Sahel migration crisis is not a humanitarian or environmental problem, but a legal and policy dilemma, which must be radically reformed. Sovereignty has to be redefined as a duty, rather than domination. Mobility should not be seen as a menace, but a privilege. It is important that traditional practices be incorporated within the statutory frameworks as opposed to being relegated.

The lack of such reforms will lead to the continuation of the crisis and the aggravation of violence and destabilization. The Sahel can pursue a harmonizing position between sovereignty and humanitarian responsibilities, incorporate pastoral mobility into the national development agenda, and facilitate sustainable migration governance with them.