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**PREPARE A BRIEF PAPER ON THE CUSTOMARY LAND TENURE SYSTEM AS PRACTISED IN YOUR LOCALITY.**

**INTRODUCTION**

Land tenure is the system of landholding in a given society. According to Prof Mqeke, customary law is defined as the custom and usages traditionally observed amongst the indigenous African peoples and which form part of the culture of those people. In this context, I will be writing on the customary land tenure system in Esan land, Edo state. (specifically I am from Esan West local government, Ekpoma, Edo state).

Esan people are among the Edo people of Nigeria. They are situated within the Southern axis of Nigeria. In contemporary Nigeria, the people under discussion are commonly referred to as Ishan. Ishan is an adulterated or “corrupted” word of Esan by the British colonialists for administrative convenience.

**CREATION, OWNERSHIP AND DETERMINATION OF FAMILY OR COMMUNAL LAND IN ESAN TRADITION**.

**Who Owns Land in Esan Tradition?**

There are various forms of land tenure in Nigeria including the problematic and provocative Land Use Act which was promulgated as the Land Use Decree No. 6 of 1978, on 29th March, 1978 and it came into force immediately. Our immediate concern is about what might be called Customary Land Tenure or Traditional Land Ownership because of its seemingly overriding effect on other forms of land tenure in Nigeria and Esan land in particular. The validity of this contention is buttressed by the celebrated case of Amodu Tijani v Secretary, Southern Nigeria (1921) where Viscount Haldane, while delivering the judgment of the Privy Council, opined that: The next fact which is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, the village or the family have an equal right to the land, but in every case, the Chief or Headman of the community or village or the head of the family has charge of the land and in loose mode of speech, is sometimes called the owner. He is to some extent in the position of trustee and as such, holds the land for the use of the community or family. He has control of it any member who wants a piece of it to cultivate or build upon, goes to him for it. The consequence of the above means that the living, the dead and countless yet unborn owned the land in any cultural matrix or milieu, Esan land inclusive. Esan people are communal in nature. This means that their hopes, aspirations and relationships are perceived in communalistic terms. Following the above, land ownership in Esan has a communal foundation. According to Okogie (1994), Land in Esanland was strictly communal and held in trust by the Onogie (king) for his people. It could neither be sold nor bought. If there was a dispute over a piece of land in the village, the Edion looked into it and effected a settlement. If it was a dispute involving two villages, the onogie decided the matter.

 **Palace Grounds/Market Places**

In Esan land, there are places which are the exclusive preserve of the Onojie (chief or king).

These places are strictly, commonly and “constitutionally” understood by everyone to belong to the Onogie in office. For instance, such places are the palace grounds and the market place. It is this understanding which warrants “main markets” in Esanland being named “after their Onogies”. For instance, there are markets prefixed after the Onogie such as Eki Ojieuronmun, Eki Ojieugbegun, Eki Ojieuobiaza, etc. Literarily translated, the above means the markets of Uronmun king, Ugbegun king and Ubiaza king respectively.

**House Location**

Another important issue in land tenureship in Esanland is the question of the location of a building or house. The piece of land where a building is sited or located and the “cleaned” area around the building is a man’s possession. His children also have ownership claim to the building and the cleared portion around the house. What happened in a situation in which a man decides or relocates or live elsewhere outside his former abode? Strictly speaking, no one has the right to trespass the vacated piece of land and the building. The reason for this is that his former residence had become the man’s IJIE or ITEKEN or IJIOGBE (A man’s IJIE or ITEKEN or IJIOGBE, ITOLUWA or ICHUWA is where he lives and dies (it is his ancestral home). If the house had fallen down and the place had become bush, the old building site or ITOLUWA or ICHUWA was still his sacred possession (Okogie, 1994). On the other hand, if a man endorses or permits another person to build on his ITEKEN, he ceases to be the bonafide owner of the house and the land on which the house was built. An important issue associated with ITEKEN is that it cannot be sold to a non-member of the community or village. It would be considered adversarial or inimical to the community.

**Farmlands**

Regarding the important issue of ownership of farm lands, Esan custom and tradition provided adequate definition of the legal owner of such. In clearly defined terms, a farmland belongs to whoever deforested and farmed on a piece of land. In this case, where a “hitherto”, “virgin” and unclaimed forest was cleared by a person**, it becomes his possession**. This law remains in force even in contemporary times. As Okogie (1994) has rightly noted: The basic law over farmland was **that HE WHO FIRST FARMED A VIRGIN FOREST, A LAND HITHERTO UNCLAIMED, OWNED IT**. That means that in Esan custom the first man to clear a forest, cut down the trees for the purpose of farming, owned it OVER GENERATIONS. It is expressed as ONON GBE EGBO YAN EGBO (He who de-virgined a forest owned it). Once this law has been established and recognized in Esan land, the piece of land “which now becomes a man’s property immediately becomes his **family’s property**. It passes from generation to another by virtue of the fact that every man passes it to his son”. When a man decides to become an absentee farmer or landlord over his acquired piece of land, no one can trespass or farm on the land left by the owner who remained domiciled elsewhere. If any man so desires to utilize the piece of land, permission must be sought from the authentic owner of the land. Once the permission is granted, the land must be vacated after the farming season by the borrower of the land. There is also an understanding that no permanent economic or commercial trees such as orange trees, palm trees, rubber trees etc, should be planted by a borrower of a farmland. This act or order mitigates against the ambitious, selfish and futuristic intention of the borrower possessing the land he borrowed.

 **Land Leasing**

In Esan custom and tradition, the system of land leasing depended on a number of considerations or factors viz: (a) a lessor (b) a piece of land to be leased (c) an individual or group in need of land for specific purpose – lessee With specific reference to item (c), a lessee’s ability to secure a piece of land rests on his being introduced by a friend, an in-law or to become a rich man’s servant. Okojie (1994) reiterates that if a man upon being introduced, later wanted to build a house, the man he had come to live with, leased him a piece of land near his own house. If a number of people, say three to five came together from the same district and wanted to live in a village, they had to tell the Edion, who in this case, formed the lessor. Where there was a wholesale migration of a village to another district belonging to another Onojie, the matter was at a higher level and the Onojie had to be informed. He as the custodian of the communal land, had the authority to allocate a parcel of land on which the new arrival settled. Soon after the different lessees leave or vacate the land, it is immediately repossessed by the lessor. No Esan indigenes who relocate to another place in Esanland could secure “land rights”. To secure land rights, the qualification for this rests on their being integrated or absorbed into a linage – linage rights are strangers rights by “adoption” or absorption.

Land Boundaries

Land boundaries are significant features of land tenure in Esan tradition. The essence of boundary demarcation is to ensure peace and harmony among the people. Perhaps, this may have partly accounted for the relative peace which exist among Esan people. Boundaries were established or/and demarcated by the OKOVEN which is a “common oath”. The oath inaugurated a non-aggression pact between neighbouring villages or “adjacent villages”. The oath took place on the spot or the path connecting two villages. It is marked by “UKHINMIN TREE (Neubodia leavis)”. The spot constitutes Alu Okoven (a place where the oath was taken). Two villages could be said to own it given that it was a spot the covenant of peace was “signed, sealed and delivered”. Beyond the Alu Okoven, it “was no man’s land” or property.

**CONCLUSION**

C.G. Okogie pointed out that until modern times, when people ceased to believe strongly in the power of departed spirits and the sure destruction following unsavouring acts, gives the impression that the spiritually fixated Esan tradition is on the wane (Okogie, 1994). It could be true that cross-culturalism, globalisation and colonialism and its cognate-religion, may have ushered in some fundamental changes in Esan tradition, but the truth is that spirits and their activities remain sacrosanct in the life of traditional Esan people. To discuss Esan belief system in isolation of spiritual entities tantamounts to bifurcating a thing from its shape. Metaphysics deals with foundations. These foundations are profound principles of life. Principles are those ideas in the human mind which guide daily activities, as well as create harmony between people and things. Once an idea has been certified as the working or guiding principle of the day, it permeates the entire life system of the people in question (Ndubuisi, 2004). The ontological or metaphysical revolves around the idea that spirits rule the world in Esan tradition.