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**CUSTOMARY LAND TENURE SYSTEM IN IBADAN**

**Introduction**

The customary land tenure system is a system of holding land that is peculiar only to the geographical zone called Nigeria. The evolution of this system and its various principles are a direct mirror of the historical culture and traditions of the different ethnocultural groupings that are in Nigeria.

This paper is written to specifically discuss the form of the customary land tenure system as practiced in the southwest of Nigeria, particularly Ibadan, Oyo state.

**Historical background**

Since the beginning of the colonial period, new ideas or concepts have been introduced to influence Yoruba land tenure. Largely as a result of the nexus' between new economic opportunities and new court-created rules, individualized land and family land tenure emerged. Berry's seminal works [[1]](#footnote-1) document changes in land tenure in southwest Nigeria. She demonstrates how cocoa cultivation in the early part of this century contributed to the commercialization of land and the partial privatization of land rights. She also shows how cocoa cultivation and colonial policy contributed to the development of family land tenure. From her work and that of others following her[[2]](#footnote-2), we now know that the' idile (lineage) is no longer the only important unit of land .ownership or control. Many households control land. Many Nigerians argue that it is the "family" that is now the major landowning unit in Yorubaland[[3]](#footnote-3). But the issue is muddied by the loose translation and use of the term "family," which may refer to the nuclear family, the household, or the lineage. Increasingly, whether the land is controlled by·the lineage or the household, the day-to-day management and use of land are vested in the individual farmer who farms a particular field. It is the farmer who decides how the land will be·used and how the crops will be disposed of. Although the lineage is identified as the important landholding unit, "families" and individuals have increasingly assumed rights and responsibilities previously enjoyed by the lineage. Today most men gain access to land through inheritance[[4]](#footnote-4) a man inherits the rights to his father's land, although the larger group (lineage or household) may claim ultimate authority over matters such as alienation (sales and sometimes leases) or the planting and cultivation of·trees.

**Creation of interest in land**

The primary means of creating interest in land in yoruba custom is usually through inheritance, a child receiveing property from his father. In yoruba land, the distribution of the property of a person who died intestate will be done according to stripe called “**idiigi**”. The property in question will initially be shared equally among the wives in the family then these shares given to the wives will be subdivided equally amonhg her children. This system may however breed dispute and contempt. This is because a wife who recieves an equal share of the property may have only one child while another wife may have four children and will have to divided her share into four.

Another way with which interest may be created in land is through the “O**riojori**” mode. This method of sharing prooperty is viewed as a fair and just way of sharing property. Here, each child of the deceases will enjoy an equal share of the property. It is noteworthy that in yoruba customs daughters also have a right to inherit property from their deceased parents.

**Ownership and management of ownership in land**

As a result of the close-knitted social structure of Yoruba society, it comes as no surprise that land is hardly owned by individuals but rather held corporately by the family or the community. In communal holding the oba is found to fill the role of a custodian or trustee For, the usual belief is that *“****Oba lo nile****[[5]](#footnote-5)”*, that is, the king owns the land or land belongs to the king. It is noteworthy that the term family is not used in the western sense when discussing the ownership of land by the family. rather, it can be discovered that the word family includes various uncles, aunts, cousins and such of varying grades. This doesn't refute the possibility that certain individuals may have sole possession of land through some means like buying out relatives. Moreover, while admitting that although "many lands are held in communal tenure by the community or family"16 Prof Olawoye argued that it was misleading in some respect to say that there was no individual ownership of land in Nigeria. He suggested that it would seem that the basis of the concept of family property was the recognition of individual ownership17 basing his opinion on the fact that an individual who acquired absolute ownership of land either through self-help or grant from traditional authority or by purchase would have the land devolved on his children as family property on his death unless the land was partitioned[[6]](#footnote-6)

**Determination of family land interests**

The determination of family land interests can be in the following ways:

1. Absolute conveyance of the family land

Before the advent of the land use act, an act of absolute transfer of family land using “fee simple absolute” generated controversy as the validity of such a transfer was debated. Where the totality of the interest of the family jointly owning land is conveyed by way of sale or gift, family property is determined[[7]](#footnote-7)

1. partition

This is a legal concept where land which bears joint possession between cotenants is disunited so that each former co-tenant becomes a separate owner of a specific portion of land[[8]](#footnote-8). Under customary law, partition concerning the family property is the process whereby property belonging to the family is divided among the constituent members/branches of the family and each member or branch is vested with and retains exclusive ownership of that portion conveyed by deed of partition[[9]](#footnote-9). For it to be a valid partition, the deed of partition would have to be executed by the head by the head of the family as well as principal members of the family[[10]](#footnote-10). Yoruba land maxim is found in the aphorism which states that “*Tojubadi Merin aala a to”* which when translated means when all parties (to a boundary dispute) are present demarcation will be proper

**Conclusion**

At the core of Yoruba culture is the family as a unit, and a sense of community. This unique system of land tenure is an attempt to ensure that all members/branches of the family are taken care of. the concept of family or communal ownership of land among the Yoruba might have arisen from the need for peaceful co-existence and harmony in the society, for Africans believe generally that the equilibrium of the societal set-up must not be ruptured or disorganized.

1. (1975, 1987) [↑](#footnote-ref-1)
2. See Francis 1985 [↑](#footnote-ref-2)
3. Udo 1985; Atteh 1985; Famoriyo 1977 [↑](#footnote-ref-3)
4. Famoriyo 1977; Fabiyi 13 1984 [↑](#footnote-ref-4)
5. Titiloye V. Olupo [↑](#footnote-ref-5)
6. Omolowun v. Olukude [↑](#footnote-ref-6)
7. Olowosago v Adebanjo [↑](#footnote-ref-7)
8. Abraham v Olorunfunmi (1991) 1 NWLR (Pt.165) esp Tobi JCA at 75 [↑](#footnote-ref-8)
9. Olofunfemi v Asho(2000) 2 NWLR (Pt.643) 143. [↑](#footnote-ref-9)
10. Fatusin v Akinwale Sc 46/1965 of 20/5/66 (unreported) [↑](#footnote-ref-10)