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QUESTION:
Prepare a brief paper on the customary land tenure system as practised in your locality (state, local government or community). This should cover the creation, ownership, management and determination of family or communal land in your locality.

**INTRODUCTION**
The importance of land to man cannot be overemphasized as it is in fact a vital aspect of man’s existence. Black’s Law Dictionary defines land as an immovable and indestructible three-dimensional area consisting of a portion of the earth’s surface, the space above and below the surface, and everything growing or permanently affixed to it[[1]](#footnote-1). This definition buttresses the essentiality of land to man as it is all around man. Through this instrument (land), man finds shelter and realises sustenance. Hence, the rules, regulations and legislation governing this fundamental part of man’s life is imperative in ensuring peaceful co-existence among the members of a community.
This brief paper seeks to examine landholding system under the customary law.

For the purpose of comprehension, it is imperative that the key terms “customary law” and “land tenure system” present in the topic at hand be explained.

Customary law has been defined by different scholars and judicial authorities across the country and the continent of Africa. According to the NIALS Dictionary of African Customary Laws[[2]](#footnote-2), customary law is “*a mirror of accepted usage; rules handed down orally from generation to generation, which the persons living in a particular locality have come to recognise as governing them in their relationships between one another and between themselves and things. They must be in current usage*.” Customary law must be an existing native law and custom not that of bygone days; its observance must be a binding obligation capable of being enforced, attaining the force of law due to prolong usage.[[3]](#footnote-3) Customary law is one of the sources of Nigerian law and it is predominantly unwritten.

Land Tenure System in simple terms refers to holding of land. It is also defined as “the set of rules that determine how land is used, possessed, leveraged, sold, or in other ways disposed within societies. The rules may be established by state or by custom, and rights may accrue to individuals, families, communities, or organisations.”[[4]](#footnote-4)

The major principle that is firmly established in customary land tenure system is that “land is ancestral trust which the living shares with the dead, hence land is inalienable.” The Judicial Committee of Privy Council in the case of *Amodu Tijanni v. Secretary of Southern Nigeria*[[5]](#footnote-5), affirmed this principle where it held that the notion of individual ownership was foreign to native ideas. However, this is not the case in recent times as the customary land tenure system has indeed changed in some parts of Nigeria.

**CUSTOMARY LAND TENURE SYSTEM IN IBENO LOCAL GOVERNMENT AREA IN AKWA IBOM STATE**
Ibeno indigenes are under the Ibibio tribe in Akwa Ibom State. It is a town located in the south south of Nigeria. It lies on the eastern side of the Kwa Ibo River about 3 kilometres from the river mouth and is one of the largest fishing settlements on the Nigeria coast. My research is targeted at the land tenure system practised in Ibeno Local Government which is my place of origin.

* Creation:

The creation of family land is subject to the native laws present in Ibeno and may be acquired through several means; by gift from the village council to a family on the ground that they were the first to settle on that land portion, where a land owner whose estate is governed by customary law dies intestate, such land devolves on his heirs as family land in a situation where the deceased had expressly stated in a Will. In a situation where there is no will, the family members (particularly the siblings) take the land as a family land. And any dispute that arises from such a situation is settled by the village council which is composed of family heads of all the families in the community along with the elders and kinsmen of Ibeno Local Government Area. Family land can be also created by a conveyance, where land is purchased with money belonging to the family.

* Ownership of Land:

Ownership of land in Ibeno is divided in three categories – community, family and individual. The community land is all land within the territory of the community. It is headed by the village head OBONG who is in charge of the lands owned by the community. He holds in trust for his people and the people of the community are seen as trustees to the land. Some of the lands are shared among the families of the community, while some parts of the land are reserved for scared rites and burial grounds. In regards to family land, it is owned collectively by the family and managed by the family heads. They are responsible for the allocation of the family lands. Where the family head cannot resolve a dispute that arises, it is taken before the village head. Individuals purchasing lands in communities was not a popular thing two decades ago in Akwa Ibom. However, now individuals (including non-indigenes) can purchase lands in communities. Nonetheless, it is imperative that such action be agreed on by the members of the family that the family land belongs to. Except in situations where the land in question is a partitioned land.

* Management:

The family heads and the village heads are responsible for the management of lands in the community. Where it is land owned by an individual, it is solely managed by the person. However, he/she can appoint someone to watch over and manage the land on their behalf.

* Determination of Land:

Family land can be partitioned among the members of the family. It may be voluntary; of mutual agreement among the members of the family. It could also be by an order from the court. However, it is important that the idea of partition and that of allocation of family and communal land be distinguished. In Ibeno, allocation of part or communal land to a member of the community neither divests the community of the title to the land in the member. Land that is left unshared to families as family lands are used to benefit the community through their proceeds.

In conclusion, this paper has sought to examine landholding under customary law. From the analysis carried out, the paper finds that customary land tenure system still exists under the present national land tenure system, albeit modified. The people of Ibeno have a system that is effective in regards to the distribution of land.

1. Black’s Law Dictionary. Tenth Edition. Pg 1008 [↑](#footnote-ref-1)
2. NIALS Dictionary of African Customary Laws. Epiphany, A and Azoro, O.N. (Eds). (Abuja: NIALS Press, 2013). P. 38,39 [↑](#footnote-ref-2)
3. Mukoro, A. (2011). The Interface between Customary Law and Local Government Legislation in Nigeria: A Retrospect and Prospect. [↑](#footnote-ref-3)
4. Garverlink, W.J. (2012). Land Tenure, Property Rights, and Rural Economic Development in Africa.
<http://csis.org/publication/land-tenure-property-rights-and-rural-economic-development-africa> [↑](#footnote-ref-4)
5. (1921) A.C. 399 at p. 405. [↑](#footnote-ref-5)