

COLLEGE OF LAW

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**MATRIC NUMBER: 16/LAW01/150**

**COURSE: LAND LAW II**

**COURSE CODE: LPB 402**

**STATE OF ORIGIN: DELTA STATE**

**TOWN: ONICHA-UGBO**

**LOCAL GOVERNMENT: ANIOCHA-NORTH LOCAL GOVERNMENT**

**QUESTION:** Prepare a paper on the customary land tenure system as practiced in your locality (state the locality, state, local government or community you are writing about). This should briefly cover the creation, ownership, management and determination of family or communal land in your locality.

**LECTURER: PROFESSOR E.A. TAIWO**

**INTRODUCTION**

Customary Law and the Land holding are not concepts alien to each other resulting from the main fact that each one is important to the discussion of the other. Customary law is attributed to be a conglomeration of acceptable practices within a given people which readily metamorphoses to become the rules by which the people in these communities are bound by. It was judicially defined in ***Oyewumi v. Ogunsesan*** by **Obaseki, J.S.C.** (as he then was) as "the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transaction of the community subject to it. It is said that custom is a mirror of the culture of the people.[[1]](#footnote-1) Customary Land System as a reflection of the acceptable land practices of a people with respect to land is indigenous to the various community where it is found and more so it varies from State to State and likewise from communities. The Land Tenure System obtainable in Nigeria is born out of what is obtainable under the Land Use Act and what is practiced within distinct communities in societies a valid consideration of the topic of customary land tenure system within communities is necessitated. This work shades examines the customary land tenure system in Onicha-ugbo.

**CUSTOMARY LAND TENURE SYSTEM**

Bronstein defines culture in the following way: “culture is a critical part of the lived reality of people’s lives. It gives meaning to all our lives and is fundamental to our identities”.[[2]](#footnote-2) Customs in communities are usually considered for this reason to be a by-product of the acceptable norms and practices found in such a society. Customary Land Tenure System refers pertains to indigenous form of land holding found relating to ownership of absolute rights with respect to land alongside also acquisition of legitimate usufructuary rights- usually concerned with the availability of land for one’s occupation and use which could also be inherited by one’s descendants[[3]](#footnote-3)- within such a particular community.[[4]](#footnote-4)

**OWNERSHIP WITHIN THE CUSTOMARY LAND TENURE SYSTEM**

Any land tenure system presupposes a distinct kind of ownership which is predominant and operative within such a system and well suited in the community where it is practiced. Generally ownership under customary land tenure system is vested in the family, being the most foremost social unit, and in communities being held for the overall benefit of every individuals within the community at large[[5]](#footnote-5). As a result of this individual ownership of land was generally not commonplace within several communities. Land is communally or family owned, then it is vested in the chief or family head respectively that holds as trustee. They cannot purport to alienate or otherwise deal with the land as their own property. Individual acquired land either by allotment, sale or partition[[6]](#footnote-6). An individual holds certain rights over the community land and this is the distinctive difference between a member of the community and a stranger who will not be entitled to such rights over the community land.

**CREATION OF OWNERSHIP IN ONICHA-UGBO**

An individual acquires land were such is transferred to him by the community at large acting through the heads of the communities or the family. The individual will be granted the exclusive use over a land for a distinctive period and after being in active occupation the individual’s right over land gradually become one which is of a permanent character over land he has been in active occupation of for a duration of time. Where a man acquires a permanent right over land they are not usually for the short term duration of his lifespan but usually he also acquires the right to also pass on this interest and resulting estate in land is passed on to his children and such successive claim over land by his heirs elevates the land to the position of a family land and will remain in the family for as long as there is no outright transferred to another.

**MANAGEMENT OF LAND**

With reference to communal land the underlying trait featured in present is the administration of control over such land by the communal heads of the community or family with respect to family land. The communal leader had administrative powers of management and control over land referred to as family land. This even leads to instances where the leader wants to lay claims to the land for his own benefits or purposes but this is usually frowned upon. What is to be obtained at all times is that the management of the land for the people is done with their consultation at all times to avoid highhandedness of the communal leader. In family land the family members are allowed portions of it for the sake of sustenance of their individual families but where there is a commercial transaction with respect to land, the member of the family deriving such profit from the family land is required to make a portion of it available to the family head who utilizes such by making it available to other members of the family who require assistance. This is a noble feature of family land management in my locality and peculiar to our community.

**DETERMINATION OF FAMILY/COMMUNAL LAND**

Family or communal land while it remains within the domain of the family and community in the case of communal land remains available to the members of the family according to their requirement or need but the control and claim over family or communal land can be decisively severed. This is usually by sale or lease of a communal or family land. In the case of a lease the land is temporarily separated from the family/community such that it cannot be freely accessed by the members of the family or community for their own purposes during the lease duration and subsequently where it reverts back to the family it again becomes freely accessible but where there is an outright sale there is complete alienation of the interests in land and such a land becomes repose in another individual and subsequently becomes subject of inheritance by his heirs.

**CONCLUSION**

Before the promulgation of the Act, Land tenure in Nigeria varied with region. The promulgation of the Act was an exercise to redirect the general philosophies of pre-existing land tenure system in our society[[7]](#footnote-7) through the application of a uniform statutory regulation of ownership and control of land. Regardless of the claims that the customary land tenure system was more than usual fraught with some many deficiencies, it was highly received and appreciated by many because it was one directly born out of the customs and practices of a people and thus reflected key values of society.

1. (1990) 3 N.W.L.R. (pt.137) 182 at 207. [↑](#footnote-ref-1)
2. Bronstein, V., “Reconceptualizing Customary Law Debate in South Africa” (1998) 14 SAHJR 388-410, 393. [↑](#footnote-ref-2)
3. Adewale Taiwo, The Nigerian Land Law, (Princeton Publishers 2016). [↑](#footnote-ref-3)
4. Nkiriuka Chidia,’ The Land Tenure System Under Customary Law’, <<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2813056>> accessed 22 April 2020 [↑](#footnote-ref-4)
5. Namnso Udoekanem David Odegwu Adoga2 and Victor Onyema Onwumere, Land Ownership in Nigeria: Historical Developments, Current Issues and Future Expectations, <<https://www.researchgate.net/publication/312303294_Land_Ownership_in_Nigeria_Historical_Development_Current_Issues_and_Future_Expectations>> accessed 23 April 2020 [↑](#footnote-ref-5)
6. Ajabor, Ifeanyi and Uwagboi Chuks, AN APPRAISAL OF THE LAND USE ACT, 1978 AND THE CUSTOMARY SYSTEM OF TENURE IN IKA SOUTH LOCAL GOVERNMENT AREA OF DELTA STATE, [2015], (7)(1) <https://www.wiloludjournal.com> [↑](#footnote-ref-6)
7. ibid [↑](#footnote-ref-7)