



# Community/ tribal economic development and land rights in Africa: A survey

**Authors** Robert A. Simons<sup>1</sup>

**Abstract** Indigenous/tribal land issues are important in a post-colonial environment especially with respect to land use control, economic development, tribal governance and the various attempts to recover land previously controlled by the tribe. Inside the broader tribal context of land ownership, demographics, tribal governance, and housing and economic development, this study also addresses some community land claims made against other tribes or outside entities. This research employed an online survey, with a non-random sample of 136 Afro-centric real estate scholars in 2010. After reporting background information on tribal demographics, respondents stated that 28% had no knowledge of the formal land registration process. A similar percentage could not get a mortgage loan on a house, in part due to the lack of developed mortgage markets. Despite a preponderance of tribal court systems, planning and development review controls were typically held by municipal rather than tribal governance entities. The economics of tribal locations showed only half have reasonable access to basic utility services and/or employment. Also, respondents indicated that tribal or household-level land claims were fairly rare: only 22% of respondents were aware of them and only 30% of claimants got all of their land back.

**Keywords** Africa, economic development, housing land claims, property registration, tribe.

1. Levin College of Urban Affairs, Cleveland State University UR223 Cleveland Ohio 44115 USA, r.simons@csuohio.edu



## INTRODUCTION

Indigenous/ tribal land issues are of keen importance in a post-colonial environment, especially with respect to land use control, tribal governance and attempts to recover land previously controlled by the tribe. Land use control typically means land registration and town planning controls, while economic development includes access to jobs and programs to encourage construction and financing of housing. Land registration and reform can affect the value, the development potential and the use of land (Mattingly, 1991). Ownership and control issues are also important as land use reverts to earlier ownership or compensation is awarded (Weissner, 1999, United Nations, 2006). Community land claims, some of which may be at the national level if tribes are fairly large, may be made against other tribes, the government, outsiders with possession, or a combination. On a more micro-level, household-level land claims are often resolved in tribal courts, rather than municipal ones. The focus of this research is both the economic development factors, broadly defined to include land registration, town planning control, housing programs, access to employment, as well as the tribal land claims.

This research reports the results of an on-line survey of 136 Afro-centric real estate scholars in 2010. Over 80% of these scholars are based in Africa, with the remainder mostly from the UK and US. Initial questions address background information on tribal demographics such as tribal size, extent of tribal town planning control and land registration, housing mortgage and building programs, as well as location relative to economic development. Next, respondents address tribal or household-level land claims, which were found to be fairly rare: only 30 respondents could provide any examples and many of these were actually property or inheritance disputes handled by tribal courts. Of the reported claims, only 30% got all their land back.

This paper is organized as follows: After addressing the literature on African land rights and land claims, with a brief acknowledgement of land claim processes in other lands (Canada, Israel, New Zealand and Australia), the survey sampling plan and research methodology is described. Next, survey results are reported, starting with tribal demographics, prevalence of tribal courts, town planning controls, housing programs, and tribal economics (including competitive advantage of tribal lands and access to economic development/employment); land claim results and evidence are presented last. After a discussion, conclusions and future research suggestions are presented.



## LITERATURE REVIEW

This literature review covers land reform, economic development and property rights research in Africa in some detail, as well as land claims elsewhere in summary form.

### African Land Claims and Property Rights

Mattingly (1991) looked broadly at land reform issues relating to urban planning, land policy and ownership rights in developing nations, including Africa. He also addressed land reform legislation, recognizing the powerful transformative role of formal land registration, and its potential effect on land use and development and land prices. Grossman (1994) also recognizes the potential effect of redistribution of land to productive outcomes, such as economic development.

Iwarere and Megbolugbe (2008) tested a model for the transfer of economic property rights to existing owners via the “right of occupancy” in Nigeria. This involved a change from informal to formal land markets. Focusing on the Nigerian Land Use Act, the authors describe an evolutionary theory of property rights assignment that recognizes the role of cultural and political forces, while emphasizing economic considerations. The authors find that the behavior of Nigerian landowners in response to the Land Use Act is consistent with rational economic outcomes. It is, however, inconsistent with the expectations of the confiscatory (taken in the general sense) legislation. This research focuses on individual behavior, with no tribal dimensions.

With respect to land distribution programs, Walker (2008) describes the near-complete outcomes of the South African land restitution program, designed to correct equity issues experienced under apartheid. Walker was a regional administrator of the program for a substantial length of time. The national commission, representing the funder, the Republic of South Africa (RSA), processed over 73,000 claims in 15 years, some of which were community-based, although most were individual. Some land claims were rejected, often because of lack of documentation or corroboration that the individual actually resided on the land during the claims period. As a result, 26% of claimants got their land or a similar land back, and 74% got money instead, often at their own request due largely to the passage of time and the level of comfort in their new locations. After the lapse of several decades between the loss of tenure and the option to accept payment, it is not surprising

that many applicants accepted monetary compensation. A few claims resulted in economic development funds being set up for the benefit of a displaced community. The research approach of this work included case studies and summary tabulation of outcomes, which are public record.

Ghyoot (2008) describes the legal foundation and implementation of property valuation for the South African land restitution process. His work builds on that of earlier South African land restitution work by Terbanche (1996). Ghyoot notes that one main basis of the program is to “right a wrong” (affirmative action). The South African government relied upon the ‘willing buyer, willing seller’ principle and market appraisals (Ghyoot 2008). No property owners were forced off their land, although political persuasion, accompanied by a market price for the property (typically a farm) was applied in some cases. Ghyoot uses a case study technique to provide several examples of valuation examples.

Manirakiza (2010) analyzed the Burundi refugee land claims process. In 1972 and 1993 Burundi experienced a massive outflow of refugees due to unrest and civil wars. When peace was re-established in 2002, people started to repatriate voluntarily but faced land related ownership/occupation issues and problems finding suitable evidence to document their former ownership, since their lands had been “illegally” occupied and redistributed. In 2006, Burundi established the National Commission for Land and other Properties (CNTB). Using 110 completed questionnaires of several stakeholder groups and analysis of archival data to document the land claims process, Manirakiza (2010) found that despite the number of claims resolved, the CNTB process was too slow and many refugees did not get their land back but were instead resettled in “peace villages” on smaller, less productive plots.

Simons and Viruly (2008) interviewed tribal elders when researching tribal property rights in Southern Africa, and contrasted the results to western models of property ownership. Six tribes in South Africa, Botswana, Lesotho, and Swaziland, as well as three overlapping/melded cultures in the region were included. The study concludes that the western concept of bundle of rights applies in parts, but communal rights (which are often not consistent with the private bundle of rights) play a dominant and important role in property decisions and relationships. Communal arrangements implemented and managed by tribal Chiefs in Southern Africa are typically present outside urban areas, often in a dual system, with the tribal systems placing substantial limits on control



and disposition, without offering the potential for conventional financing, and often not offering formal ownership.

Aluko, Omisore and Amidu (2008) investigated land valuation issues in Yorubaland, Nigeria. The focus was not on land claims, but rather on valuation methods for sacred indigenous property, in an UK post-colonial context. The authors set forth valid approaches such as financial compensation or substitution or replacement theories of valuation (Aluko, Omisore and Amidu, 2008: 159). Their research was in the context of compulsory acquisition (takings). Their work is important because Yoruba are prominent survey respondents in this current research.

#### **Tribal Land Claims outside Africa**

Simons and Pai (2008) studied the outcomes of the First Nations (indigenous peoples) tribal land claims process in Canada, which was active up through 2005. There is a two-track administrative process. Comprehensive claims are larger scale and less common (under 20 total claims) and address First Nation land claims. A majority of these were successful, and Nations (individual tribes) received title to, and in some cases partial planning rights and control of, large tracts of northern tundra. Specific claims involved smaller tribal claims, only for money. Pooling together claim outcomes, the majority got some economic benefits from staking their claims. 20% of those asking for land were awarded money or similar compensation instead. A special commission was set up by a quasi-governmental agency. Specific claims results were considered non-binding, and financial awards allowed recipients to enter the open market to acquire land if they wished. This recent case study was researched exclusively via the internet.

Kark and Franzman (2010), addressed Turkish, British and Israeli land policies in Israel with respect to legal challenges from Bedouin tribes in the Negev desert region for the return of land they claimed to have owned. The authors trace land title back to ownership by Turkish Sultans over 150 years ago, then forward into the Turkish and British mandate periods and finally to the State of Israel. The Turkish system of limited private land, state ownership, and non-own-able "dead" (mawat) lands is described. This history sheds light on the legal, as opposed to political, status of Bedouin claims on State of Israel and potentially for

Jordan, Egypt and other lands formerly under Turkish and British rule.

Havatzellet Yahel (2006) is an Israeli government land claims lawyer who examines land disputes between the Negev Bedouin and the State of Israel in the context of widespread illegal construction and land use, noting that these disputes create obstacles to the development of the Negev for the benefit of all its inhabitants. The research lays out the Israeli Government's approach to the resolution of the land dispute, through financial settlements. Both ownership claims, with and without written title, have been recognized. Current use claims (regardless of claimed former ownership), based in part upon a look-up table of economic development factors, can also be the basis for compensation. Both monetary and land compensation have been offered, along with related resettlement policies.

Small and Sheehan (2008) and Small (2008) researched aboriginal land rights in Australia, where the recent litigation process to award land back to aboriginal people has been going on for a decade or more. Their metaphysical approach highlights the substantial difference between western and indigenous notions of property rights (see also Roulac, 2008). One main point is that if property is recognized to consist of both material and non-material values, then it cannot be adequately valued in commercial terms alone. Overall, the Australian method for assessing compensation for extinguishing indigenous ownership has been less than satisfactory, with few resolutions and many of those negotiated in secret. Conclusions from this experience provide insight into the dilemma of defining indigenous interests in land by modern commercial terms. The solution probably lies outside the traditional definition of ownership to also incorporate the use of land. Sheehan and Small's work dovetails with Wilson, Du Plessis, and Pienaat (2007), who also addressed Australian land rights, tracing back the notion of aboriginal title through Australian civil process, focusing on dozen or more laws including the *Native Title Act* of 1993 and the more recent *Wik* and *Mabo* court decisions. They point out that freehold title holders cannot be involuntarily displaced, although successful land claimants can be otherwise compensated.

Kashyap (2011) studied the emerging issue of tribal land reform in India. There are hundreds of scheduled tribal groups in India constituting 8.2% of the population, especially in five states in west and central India (Kashyap, 2011). Retaining access to and obtaining own-

ership of their traditional tribal lands are clashing with economic development, including agriculture, forestry and mining interests, and many tribal people have been displaced. Legislation such as the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act* of 2006 is also covered, which sets forth criteria for vesting of forest rights, including right to remain or receive compensation.

Fortes (2005) addressed the tribal land issues concerning the Maori in New Zealand, covering the Treaty of Waitangi, and more recent legislation. The Maori seek redress financial compensation and access to formerly tribal lands in various forms, including recognition of customary lands and freehold title. They also seek non-financial cultural returns, including an apology, renaming certain places and admission of the actual land value, regardless of any compensated values, of their land.

Alterman (2010) examined the issue of eminent domain and public taking of private land for public purpose in about a dozen developed countries, none of which are in Africa. While such practices are not necessarily easily transferrable to the African context, the connection can be made to public purpose and procedures used by developed nations where there is considerable variation in the role of the state, definition of compensation, and implementation. This ties in because some condemnation and compulsory acquisition of land for public purposes may work against individuals or groups, and hence is not “Pareto optimal” (at least one person is better off and nobody is worse off), but that public needs can be fairly achieved in order to meet national or local government policy.

To summarize, land reform including redistribution and registration of formerly tribal lands has been connected to economic development, and thus to housing development and access to employment. The tension between indigenous tribal groups and their national governments have been studied in several other countries outside Africa, including Australia, New Zealand, Canada, India, and Israel. Interestingly enough, all of these are formerly British colonies, as is South Africa. A mix of legislation and court decisions, followed by development of land commissions and or valuation procedures has been the typical response. Despite the large number of tribes and a colonial past within the African continent, only Burundi and South

Africa have documented land claim processes, and both of these are individual rather than tribal based. However, several other countries, including Nigeria, have been studied in detail concerning property rights, property valuation, role of tribal courts, and changes to the legal context for informal land.

#### RESEARCH METHODOLOGY

The data for this research were collected through an internet survey administered in September/October of 2010. A survey form was devised and pretested, including review for language and context that could affect response rates (e.g., the sensitivity of the word “tribe”, instead of other formulations). The revised instrument was reformatted and uploaded onto the internet survey website Survey Monkey. An introductory email inviting participation was sent to three slightly overlapping groups: 75 selected African-oriented scholars registered with the policy and networking-oriented Africa Desk website. A total of 70 American Real Estate Society (ARES) members with last names believed to be of African origin, and the African Real Estate Society (AfRES) mailing list with approximately 500 names. The total non-duplicated sample from these sources is 620. The email with the invitation to participate and link to the survey was sent out in late September 2010, and then resent again two weeks later. Preliminary results were presented at the AfRES conference in Kenya in late October 2010. A total of 136 responses were received, giving a response rate of 22%. Because respondents were able to self-select their participation, this should be considered a non-random sample with respect to the population of real estate scholars. However, the sample size is adequately large, and results are interesting and valuable as a data set regarding the topic at hand.

The instrument was structured to address the respondents’ personal or professional knowledge of these research questions:

- Is “tribe” the right term?
- Respondent and tribal background data
- Tribal land registration issues
- Tribal housing finance programs
- Role of tribes in justice and planning for urban and rural development for their tribe
- Economic benefits of tribal membership, by place of residence
- Tribal land claims process and outcomes

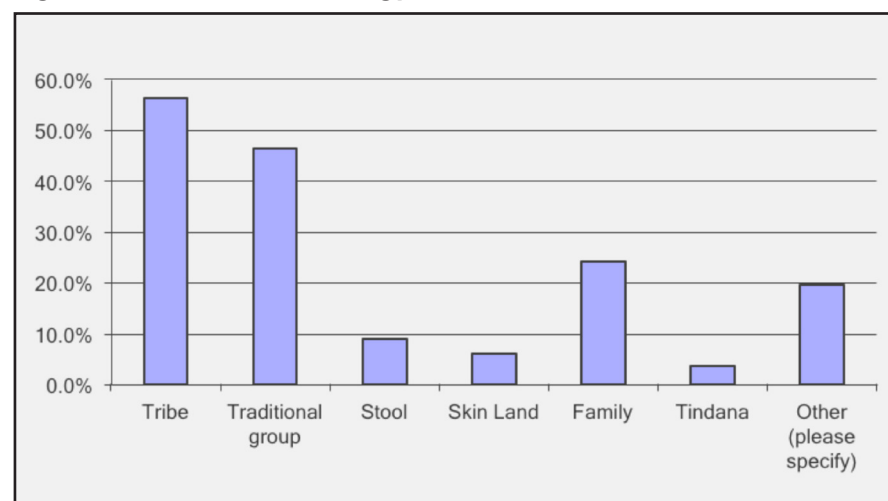


**SURVEY RESULTS**

**Background on Tribal and National Affiliations**

Asked if tribe was the right word to use in this context, a majority (57%) said it was, 47% preferred ‘traditional group’, with 24% stating ‘family’ and another 19% combined using the terms skin/ stool land (multiple responses allowed, N=136, See Figure 1).

**Figure 1: Preferred terminology for tribe**



Source: Author’s Survey, 2011

When asked for nation of residence, 56% said Nigeria, followed by Tanzania - 10%, South Africa - 7%, all other African countries (primarily Uganda and Ghana) at 11%, and all nations outside Africa combined 16% (N=121). Not surprisingly, 84% of respondents were of the Black African race.

Although tribal membership is tracked by respondents only slightly more through the father’s side, the data reflect almost exclusively the experience of the father’s tribe. Over 35 tribes were mentioned, Yoruba (based in Nigeria) was the most common response (38% of all respondents): no other tribe had more than 5% of the sample.

**Tribal land and population**

This section addresses factors about the tribe and its lands. Respondents stated that 82% of their tribes have a homeland with territory

(n=99). Some of the tribal lands extended beyond a single national boundary, but only in a minority of cases.

In terms of size of tribal lands, 22% were able to provide an estimate of the size of tribal land holdings in square kilometers (SqK). Results range from small size of 75 SqK to large of 650,000 SqK. The average is 50,300 SqK, and the median is 4,400 SqK. Because Yoruba is largest tribe and also dominates the survey, median results should be considered more representative than average for this section, with respect to the 62% of the sample that is not Yoruba. Thus, footnotes are provided below that break out just the Yoruba respondents to determine potential undue influence with respect to the sample.

When asked “How many tribal members live (full time) on the traditional territory?”, only 54 respondents (40%) provided an answer. The lowest population reported was 2,000 and the highest was 46 million. The average size was 5.8 million tribal members, and the median tribal population was 1,025,000<sup>2</sup>.

When asked “How many tribal members live outside the traditional territory, but in the country?” only 36 (27%) respondents answered. The lowest answer was 900 people, with the highest at 80 million people. The average was 4.2 million, and the median was 125,000. Compared to members living on tribal lands, about 1/3 live in the Country but off the traditional territory.

When asked “How many tribal members lived outside the Country, but on a recognized tribal land in another nation?” – 17 respondents (13%) answered. The low response was 100, with the high at 15 million. The average was 1.4 million, and the median was 50,000. Although a statistical comparison is difficult (quite a range of results using average, median and total), this status is clearly a minority situation.

When asked “How many tribal members live outside the country?” -32 (24%) respondents provided an answer. The low answer was 100 people, and the high was 25 million people. The average number in the “Diaspora” was 2.4 million, with a median of 92,500.

To summarize, the most common tribal residence status is living on the tribal lands, followed by living off tribal lands, but in the country. Next is “Diaspora” tribal members, and the least likely group lives on

2. As expected, the average reported population for Yoruba respondents is 10.8 million people, substantially higher than overall.

tribal lands in another country. As indicated, the Yoruba tribe dominates these data. When asked if the respondent personally lives on the tribal traditional lands, about ¼ lived there full time or nearly full time (see Table1), while 11% never visit at all (N=90).

**Table 1: Which of the following best describes how often you live on your tribe's lands?**

Answer Options	Response Percent	Response Count
All year	21.1%	19
Most of the time (9 months or more per year)	5.6%	5
Split time about equally (~6 months per year)	2.2%	2
Occasionally (3 months or less per year)	17.8%	16
Never live there, but visit frequently	13.3%	12
Never live there, but visit occasionally	28.9%	26
Never live there, never/very rarely visit	11.1%	10

Source: Author's Survey, 2011

To summarize this section, taking these figures at face value (and assuming no non-respondent bias) the median responses indicate that a tribe of just over one million people resides on tribal lands of 4,400 square kilometers. More tribal members are living on designated tribal lands than (collectively) those living elsewhere in the country, or abroad, either on or off designated tribal lands. This provides enough critical mass to support government-related functions like courts and planning, and development programs.

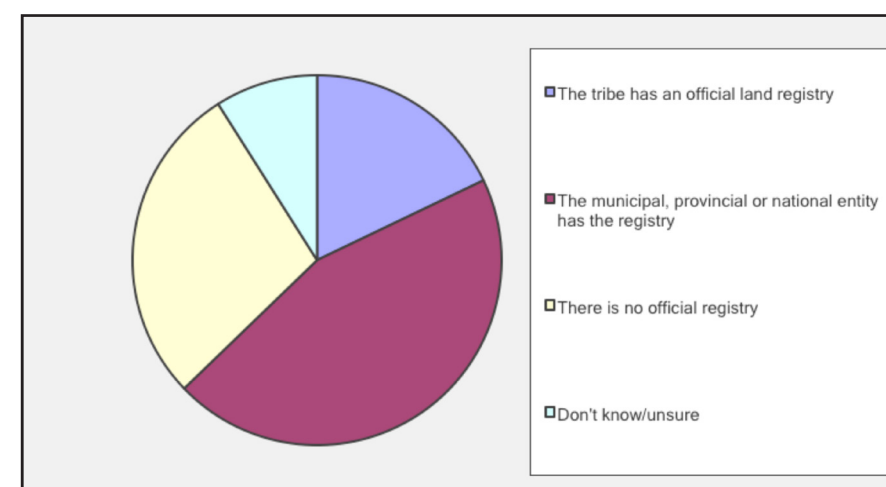
**Tribal land registry and rights**

This next section addresses land registration and control. When asked how the tribe originally came to be on their land, 85% got their land through initial settlement, and 12% through conquest (N=81). Concerning the official ownership entity for land, respondents mentioned that 80% of the land ownership was in the tribe's name, 15% in a chief's name, and 5% in the name of the Tribal Council group (N=60).



When asked about property registration on tribal lands, 18% stated that the tribe had an official land registry, 45% said there was a tribal lands registered within the municipal, provincial and/ or national entity, and 28% said there was no official land registry<sup>3</sup>. (See Figure 2, N=78). By western standards, this is a very low level of formality in the property housing markets.

**Figure 2: Preferred terminology for tribe**



Source: Author's Survey, 2011

Concerning permission to move to and occupy a plot on the tribal land and build a house, about one third equally reported that they would need to get an official land title document from the tribe, or that there was no official document but the tribe keeps an unofficial record, or that it was only required to get the right to lease the plot from the tribe authority/chief (N=54).

Concerning a hypothetical situation for normal improvements to be made to their household plot, participants were asked: "If once you build a house, you want to take down some trees and some old outbuildings, can you do this?", 64% said "Yes, it could be done with no restrictions", and 36% said it could be done only with permission from the Chief, Tribal Council or other authority (N=74).

3. Among Yoruba, 56% said the registry was held by government, slightly higher than the 45% respondents as a whole.

Following the questions about consistent land registration (or the apparent lack of it), the next set of questions dealt with the ability to get a mortgage loan/bond. The real question is whether there a tribal plot and house can provide sufficient collateral/ security for the lender, similar to marketable title associated with land registry. When asked: “If you want to build a house, can you get a mortgage or debt bond on it from a commercial bank?” 58% said it was possible (N=74). A total of 40% stated it was possible to get a mortgage loan even if the house was on leased land (N=72).

With respect to the house or plot serving as collateral for a loan, and whether it could be repossessed by the lender if the borrower/ owner does not pay in full, 72% said the plot served as collateral and could be taken by the lender for lack of mortgage payment (See Table 2, N=60). This is typically how banking systems work in developed countries<sup>4</sup>. The form of security available for other remaining 28% of lenders is unclear, but it seems to fall outside normal western banking practice.

**Table 2: Type of Collateral required**

Answer Options	Response Percent	Response Count
Yes, the house/plot serve as collateral, and it can be taken by the lender	71.7%	43
Yes, the house/plot serve as collateral, but it can NOT be taken by the lender	1.7%	1
No, the house/plot do not serve as collateral, but they can be taken away	5.0%	3
No, the house/plot do not serve as collateral, and they can NOT be taken away	13.3%	8
No, collateral is not necessary	8.3%	5

Source: Author’s Survey, 2011

4. For Yoruba, 74% said the property could be put up as collateral, and taken if needed, very similar to respondents as a whole.

When asked: “Is there a tribal bank or government program that will give you a loan to build a house?” 39% of respondents stated that there was a tribal bank or lender (N=71). These types of non-commercial loans may not require collateralization with marketable title to the property.

To summarize, despite that fact that 80% of the land is collectively in the tribes’ name, land registration of individual plots on tribal land is much less common than municipal land registration, indicating that tribes yield authority in this area. Since less than half the property is formally registered, it is not surprising that the percentage of houses that can get a mortgage/bond is also quite low (58%). Borrowers in over two-thirds of those locations where mortgages are possible are able to put up houses as collateral in a conventional manner. Still, the conclusion is that on tribal lands less than half can obtain a secured mortgage to build a house. This may serve as a retardant for economic development. Given the mortgage crisis though, lack of availability of debt is not uniformly a bad thing, because it eliminates the risk of mortgage default.

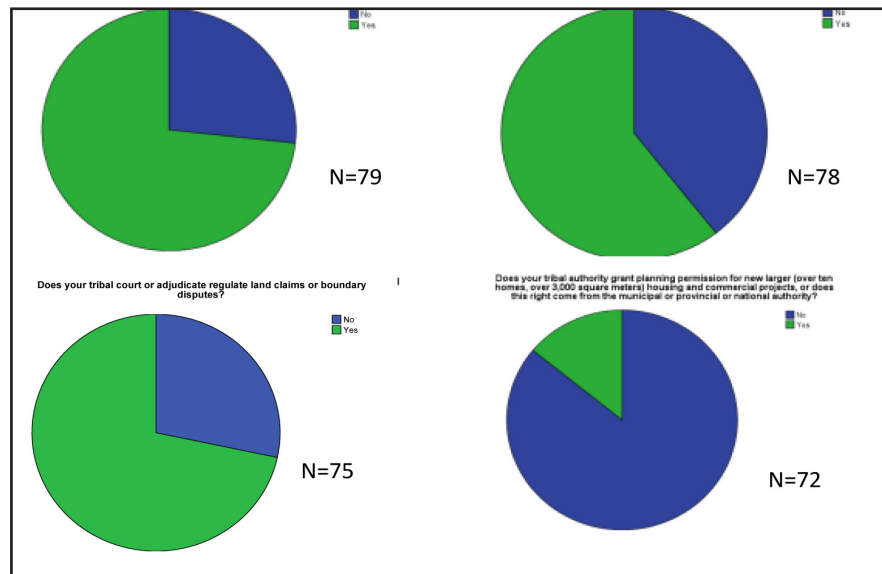
**Tribal governance and town planning approval**

This next section deals with tribal courts and governance. When asked: “Does your tribal authority have a court system for personal and small civil financial disputes?” 72% of respondents indicated that they have a tribal court (N=79). A total of 59% also have criminal court (N=78). 72% stated that tribal courts can adjudicate tribal boundary disputes (N=75).

With respect to town planning authority, respondents were asked if their tribal authority grants approvals for the development of new larger housing and commercial projects (over ten homes, over 3,000 square meters), or if permission comes from the municipal, provincial and/or national entity. Only 15% of respondents indicated their tribes have planning authority, with the balance of development review taking place at the municipal, provincial, and/or national entity<sup>5</sup> (N=72). Figure 3 shows these results.

5. Among Yoruba, 56% said the registry was held by government, slightly higher than the 45% respondents as a whole.

**Figure 3: Role of tribal courts in justice and development planning**



Source: Author's Survey, 2011

To summarize, most of the respondents' tribes have active court systems, including both civil and sometimes criminal matters, as well as property boundary disputes. However, this starkly contrasts with the avoidance of town planning and land use control at the tribal level.

**Social and economic benefits of tribal membership**

The next set of questions addressed the perceived benefit economic position of the tribe due to the tribal land's location relative to employment, and availability to services such as education, water, sewer and electricity.

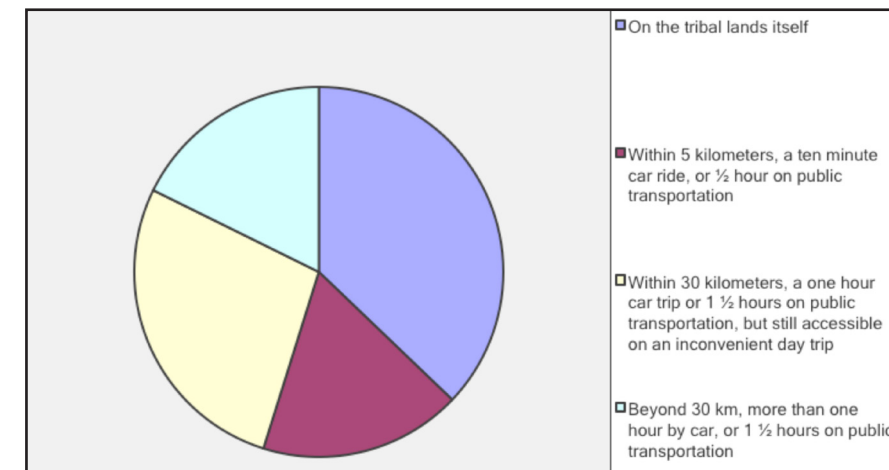
With respect to location, 70% of respondents' tribal locations are far away from a main city, have primary schools only and fair to poor utility services i.e. water at central locations only, electricity in most homes, dirt roads, no central sewerage system. A total of 30% said the tribal lands were on the fringe of a main city and have full services (sewer, water, electricity available to all homes, paved roads, internet access, telephones/mobile service)<sup>6</sup>, (N=57).

6. Yoruba respondents reported 69% far away from a main city, very similar to the overall sample.



With respect to proximity of tribal lands to commercial services and employment, respondents were asked: "Other than normal personal garden plots, local services and shops, and small part-time hospital clinics, does the tribal land have any basic industry (factories, offices, corporate agriculture, secondary schools, full service hospitals universities, etc?) on the tribal lands itself?" A total of 37% said that basic employment was located on the tribal land, 18% said it was close by, within an easy commute, 27% said employment was over an hour away, and 18% said meaningful employment was more than an hour and 1/2 away. (See Figure 4, N=62)<sup>7</sup>. Thus, only about half the tribal locations are conveniently located relative to employment.

**Figure 4: Location of basic employment**



Source: Author's Survey, 2011

In terms of the demographic mix, respondents were asked: "Are the primary occupants of the tribal lands older people and young children, or is there a balanced mix of residents (parents, secondary aged children, young adults, young families)?" They told us that 63% had a balanced demographic mix. The rest were evenly split between a markedly older group, and a mix of old and young residents, generally under-represented by working age people (N=59).

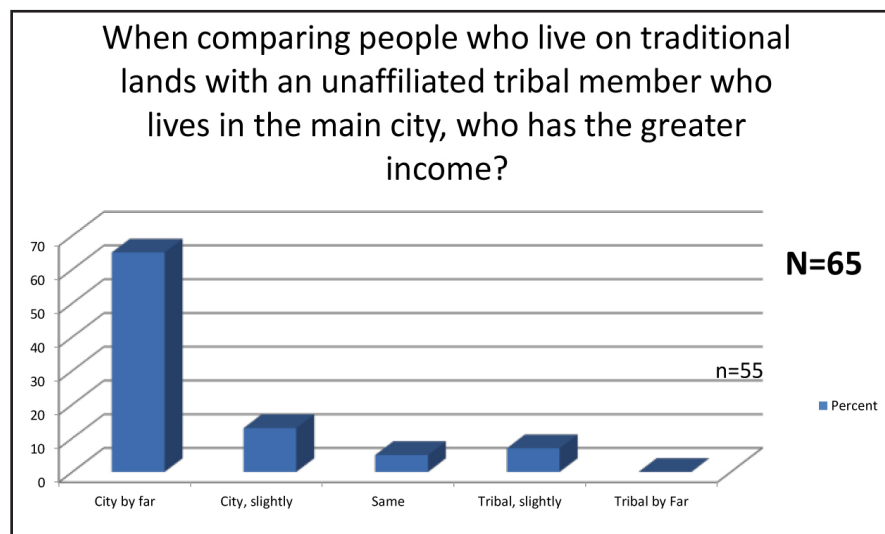
Finally living on a tribal homeland may have benefits, but it appears these are not economic ones. When asked: Do people who live

7. Yoruba respondents reported 69% were conveniently located to employment, compared to 55% for the general sample.



on traditional lands have below average, average, or above incomes compared with an unaffiliated tribal member who lives in the main city? The vast majority said incomes were lower, and none said tribe residents had higher incomes (see Figure 5, N-65).

**Figure 5: Economic benefits of tribal membership by place of residence**



Source: Author's Survey, 2011<sup>8</sup>

When asked if this pattern changed when the national economy is thriving or depressed? 56% said no change (N=62). It is unclear from surveys which direction, but it is likely tribal lands are relatively less badly-off and therefore more secure in a down economy, because that's when city jobs are likely to be scarce. Tribal land can also be a place to retire, and may form a type of social security network.

To summarize, tribal locations, as expected, tend to have a more isolated location that is not proximate to employment. Only 30% of tribal locales are urban or urban fringe with full municipal services, and just over half are within an easy commute to employment opportunities. The demographic (age) mix of residents is proportionate to the overall population on only 63% of the respondents' tribal locations, indicating that almost 40% of tribal locations have an imbalance (more young and old

8. N=55 and N=65. Which of these two are correct? N= 65 is correct, it's an updated table. Can we cover up the old N=55 with a blank text box?



persons) due likely to lack of employment nearby. Not surprisingly, then, living on tribal lands is associated with lower incomes when compared with living in an urban area. Given all the importance of getting land tribal lands, back, there does not appear to be, at this time, any economic advantage for the individual.

**Official tribal land recovery claims**

Regarding types of land rights asserted by the tribe, respondents were asked: "Which of the following property rights are generally asserted by the tribe over their traditional lands?" The possible responses were: "Own all rights (air, surface, subsurface/minerals/water)" represented 41% of respondents, "exclusive use (hunting, grazing, agriculture, living)" was most common at 59%, "control (planning rights, prevent others from coming on)" was 31%<sup>9</sup>, and "disposal (can sell off to other tribal members or to outsiders)" was 54% (multiple responses were possible, N=70, see Table 3 below). Thus, about 60% of tribes represented in this survey have less than complete rights to their land.

**Table 3: Which of the following property rights are generally asserted by the tribe over their lands? Choose all that apply.**

Answer Options	Response Percent	Response Count
Own all rights (air, surface, subsurface/minerals/water)	41.4%	29
Exclusive use only (hunting, grazing, agriculture, living)	58.6%	41
Control (planning rights, prevent others from coming on)	31.4%	22
Disposal (can sell off to other tribal members or to outsiders)	54.3%	38
Other (please specify)		9

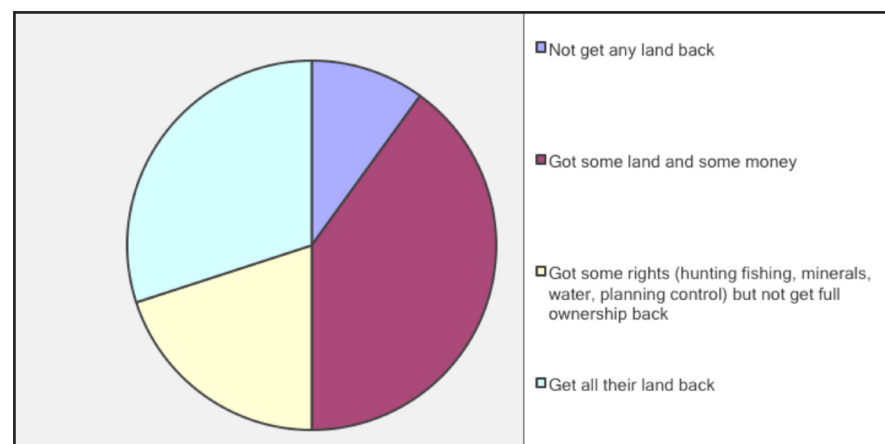
Source: Author's Survey, 2011

9. Note that this figure is higher than the 15% that reported having town planning control for the hypothetical medium sized real estate project. Planning control can extend beyond development review to include master planning, infrastructure planning, and resource planning beyond property development.

Finally, to the issue of formal land claims, we asked respondents if there been an official tribal land claim that they knew of (the tribe claims land or use rights from the government or another tribe, not against individuals), and details on the outcomes. A total of 61 (45%) responded yes to a tribal land claim, and 60 knew of household-level (or other smaller economic unit) land claim<sup>10</sup>.

If yes, what was the result? Did the or claimant or tribe: not get any land back (10%), got some land and some money (40%), got some rights (hunting, fishing, minerals, water, planning control) but not get full ownership back (20%), and get all their land back (30%). This was a modest sub sample: N=30. Figure 6 shows this distribution of responses<sup>11</sup>. Winning back partial rights or some land and some money was the typical outcome.

**Figure 6: Result of tribal land claims**



Source: Author's Survey, 2011

**Types of evidence presented for land claims**

Also of interest is the type of evidence normally presented to support land claims. When asked: "What factors or evidence did the tribe present in their claims process ?", 80% of respondents stated historical records, 72 % said oral records were also accepted, and current presence or use of the land (occupation) was claimed by 44% (multiple sources of

10. Note that these cases are most likely those that filed in court of some type. This is not a random sample of all potential claims.

11. Yoruba respondents reported 78% of claims got back some land and some money.

evidence OK, N=39). Table 4 shows these results. Thus, non-written evidence appears to be common in asserting tribal and related land claims.

**Table 4: What factors or evidence did the tribe present in their claims process? Select any and all that apply.**

Answer Options	Response Percent	Response Count
Historical records	79.5%	31
Traditional/oral records	71.8%	28
Air photos of occupation at some past date	2.6%	1
Current occupation	43.6%	17
Other (please specify)		6

Source: Author's Survey, 2011

**DISCUSSION AND CONCLUSIONS**

This study reports on the results of an internet survey of 136 African-oriented researchers regarding their personal and professional knowledge about their tribe's demographic, economic, housing, governance, and land location and claim issues. The internet survey format was quick (only 2-3 weeks to get results) and relatively inexpensive. The willingness to participate was acceptably high, at 22%. Of course, with internet surveys in a non-secure format, having a non-random sample is always an issue. Over 80% of respondents were of Black African origin, and a similar percentage currently living in Africa.

The focus of this research is on creating a baseline for understanding tribal economic conditions, especially housing development, finance, and tribal institutions such as planning controls and courts, as well as tribal land claims. Although over 35 tribes were represented among those participating in the survey, this research has Nigeria-based results because an abundance of respondents were from Yoruba tribal members. Thus, results cannot be generalized beyond the sample. However, responses of Yoruba were calculated separately, and the differences between their answers and the respondent pool as a whole are known for key questions. In many cases (notable exceptions: tribal

population and municipal planning control) Yoruba results mirrored the overall results<sup>12</sup>.

Tribal land area and populations varied widely, but the median values were tribal holdings of 4,400 square kilometers of land, and just over one million residents residing on these tribal lands. This resident status was most common, followed by those tribal members living in the country but off tribal lands; followed by those tribal members living abroad (in a “Diaspora”) and those living on recognized tribal lands in another country. Most respondents did not live year round on tribal lands.

With respect to land rights and registry, most respondents (80%) stated that collective property was registered in the tribe’s name, although sometimes it was in the chief’s name. Further, although individual property was formally registered about 2/3 of the time, more frequently the records were kept by the municipality than the tribal office. 28% of tribal property was unregistered.

Residential loans are sometimes available (58%), and it is even possible to get a mortgage on leased land (40%). A house serving as collateral for a loan could be taken by the lender under 72% of responses, which is the typical situation in banking systems in developed countries. The form of security available for other remaining 28% of lenders is unclear, but it seems to fall outside normal western banking practice. A total of 40% of respondents reported the presence of a tribal bank or other government agency.

Most respondents (72%) reported an active tribal court system, often with ability to adjudicate criminal matters (59%) as well as boundary disputes (also 72%). However, with respect to town planning approvals, the municipal level (rather than tribal authorities at only 15%) dominated large land use decisions. This is potentially a likely source of tension between tribal authority and local government, and represents some issue of redundancy in a dual governing system.

With respect to tribal land location relative to employment and economic opportunity, traditional lands are generally not that well positioned. A total of 70% of respondents’ tribal locations are far away from a main city with mediocre utility services, while only 30% said tribal lands were on the fringe of a main city with full services. Even more im-

12. According to widely published figures, the Yoruba population is about 40 million, and Africa’s is about a billion. Thus, Yoruba represent about 4% of Africans, but over a third of this study sample, a clear over-representation.

portant for migration issues, only 55% said that basic employment was located within an easy commute. Not surprisingly, then, 37% of respondents reported that the tribal populations were unnaturally saturated with dependents (old and young), and virtually all respondents stated that those tribal members living in urban areas were better off economically than those on tribal lands.

Lands rights asserted by the tribes were generally less than the “fee simple” bundle of property rights (only about 40%) known in western or developed countries. Most common rights included exclusive use, and right to sell off the land (both over 50% of respondents) with planning approval less common (consistent with what was reported earlier).

With respect to tribal land claims, 22% reported knowing about some cases of tribal level claims or smaller units like household-level claims. Of those, nearly all got some form of compensation, but only 30% got all their land back. The relatively low percentage of tribal land claims is consistent with the earlier response that 85% were the “original settlers” and only 15% of respondents said their tribe took the land by conquest. In addition to historical records such as formal deeds (accepted in 80% of cases) and similar documents, alternative evidence such as oral testimony (72%) and to a lesser degree current occupancy (44%) are also commonly accepted forms of evidence when asserting land claims.

Future research can take several directions. One issue is whether tribal government is on the upswing or on the wane. Tribes have played a role in the past, and they continue to play a role now but without more economic development, the inferior tribal locations relative to employment and services may limit land use, population growth and tribal expansion. If trends continue as they have been, tribal lands could be relegated to a role as a retirement community in the future.

The research topic of ‘tribal land claims’ has only been partially addressed in this study. Following up with the respondents who indicated knowledge of tribal land claims is an option. If there is interest in the return of tribal lands, does that mean there is interest in the strengthening of the tribe as a political, community or governing entity? Or is the land claim merely a righting of a previous wrong.

To summarize, despite the emotional benefits of tribal land, the link between living on tribal land and economic prosperity is not strong, in fact it may be considered a disadvantage from purely an income standpoint. This is primarily due to underdevelopment of capital markets, pos-

sibly lack of planning control, and overall lack of employment opportunities on tribal land. Thus, tribal economics must be strengthened, or a continued population exodus is likely, at least when economic opportunities in main cities is better than on tribal lands.

#### ACKNOWLEDGEMENTS

Thanks to Dr. Raymond Abdulai for looking over an early version of the instrument and for his helpful suggestions. Thanks to Daniel J. Simons for statistical support, and to an anonymous colleague for reading a late draft of this paper. I also acknowledge the Lady Davis Scholarship program at the Technion - Israel University of Technology, and Cleveland State University's sabbatical program for partial funding support.

#### REFERENCES

- Alterman, R (Ed.) (2010) *Takings International: A Comparative Perspective On Land Use Regulations And Compensation Rights*. Washington DC: ABA press.
- Fortes, R (2005) Compensation Models for Native Title, 2005, *Unpublished paper presented at the 2005 Pacific Rim Real Estate Society Conference*.
- Grossman, H I (1994) Production, Appropriation and Land Reform *American Economic Review*. 84 (3) 705-712.
- Iwarere, J , Megbolugbe I (2008) Property Rights And Land Market Dynamics: An Economic Interpretation Of The Indigenous Land Tenure Transformation Process In Nigeria In (Simons R.A. , Malmgren R. and Small G, (eds.) *Indigenous Peoples and Real Estate Valuation*. American Real Estate Society. New York: Springer.
- Kark, R and Franzman S (2010) One of The Most Spectacular Law-suits Ever Launched": Abdülhamid's Heirs, His Lands And The Land Case In Palestine, 1908-1950, *New Perspectives on Turkey*. Spring 2010.
- Kashyap, A (2011) Land Claims- India Case Study, *Unpublished manuscript. University of Ulster*.
- Richard, M (2010) Land Access for Ex-Refugees in Burundi: An Evaluation Of The CNTB In Availing Land To Ex-Refugees, *Scholarly Paper presented at the annual AfRES meeting in Naivasha, Kenya, October 2010*.

Mattingly, M (1991) Urban land Markets in Developing Countries: Do Planners Know Enough About them? *Land Use Policy* 8: 90-94.

Roulac, S (2008) The 21st Century Property Challenge: Reconciling Spirituality, Sacred Places and Profit-Seeking Property Involvements In (Simons R A, Malmgren R and Small G (eds.) *Indigenous Peoples and Real Estate Valuation*. American Real Estate Society. New York: Springer.

Small, G and Sheehan J (2008) The Metaphysics of Indigenous Ownership: Why Indigenous property is Incomparable to Western Concepts of Property Ownership In (Simons R A, Malmgren R and Small G (eds.) *Indigenous Peoples and Real Estate Valuation*. American Real Estate Society. New York: Springer.

Small G (2008) A Just Integration of Western and Customary Land Rights in Australia in ( Simons R A, Malmgren R and Small G (eds.) *Indigenous Peoples and Real Estate Valuation*. American Real Estate Society. New York: Springer.

Simons, R A and Viruly F (2008) Real Estate Practices Among Indigenous Peoples in Southern Africa: Clashed on the Urban Fringe In ( Simons R A, Malmgren R and Small G (eds.) *Indigenous Peoples and Real Estate Valuation*. American Real Estate Society. New York: Springer.

Simons, R A and Pai S (2008) Indigenous Land Claims in Canada: a Retrospective Analysis In (Simons R A, Malmgren R and Small G (eds.) *Indigenous Peoples and Real Estate Valuation*. American Real Estate Society. New York: Springer.

Terbanche, N (1996) Restitution of Land Rights in South Africa: Issues and Challenges to Property Valuers. *Australian Land Economics Review* 2 (2): 3-11.

United Nations (2006) Declaration on the Rights of Indigenous Peoples. 61/295.

Walker, C (2008). *Landmarked*. Athens, OH: Ohio University Press.

Weissner, S (1999) Rights And Status Of Indigenous Peoples: A Global Comparative And Legal Analysis. *Harvard Human Rights Journal* 12.

Wilson, P J, Du Plessis, P G and Pienaat, J (2007) Land Claims of Indigenous Peoples – The Impact of Property Values: A Comparative study on South Africa and Australia. *Unpublished paper, University of Technology Sydney, Australia*.

Yahel, H (2006) Land Disputes Between the Negev Bedouin and Israel. *Israel Studies* 11 (2):1-22.