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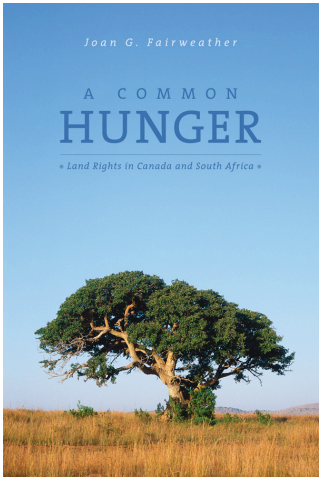

A COMMON HUNGER: LAND RIGHTS IN CANADA AND SOUTH AFRICA

by Joan G. Fairweather

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⊙ *Land Rights in Canada and South Africa* ⊙

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To my parents.

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Preface

This comparative history of two former British colonies – Canada and the Republic of South Africa – focuses on the response of indigenous peoples to their experience of European colonization and domination.[1] While the methods and political objectives of dispossession differed in many important ways, the alienation of land had devastating consequences for the aboriginal peoples of both countries. Today, by reclaiming rights to the land and an equitable share in the wealth-producing resources they contain, the first peoples of Canada and South Africa are taking important steps to confront the legacies of poverty that characterize many of their communities.

On a visit to South Africa in October 2001, I took a journey that led me to the heart of the land rights issue. A community in the Richtersveld, 600 kilometres north of Cape Town, was reclaiming traditional land belonging to the state-owned diamond company, Alexkor Ltd. The case, which was similar to many aboriginal land claims in Canada, was unusual in South Africa. The Richtersveld land claim was based on both racial discrimination and aboriginal rights – the first such case in South Africa's history. Henk Smith, the community's lawyer, encouraged me to visit the area and meet some of the people.

As we drove north from Port Nolloth along the tarred coastal road to Alexander Bay (where the Alexkor headquarters are located), the diamond company's presence was everywhere. Two rows of tall, barbed wire fences had been erected along the road, sealing off the mining operation from intruders. Beyond the tailings dumps we could see hydraulic excavators, bulldozers and dump trucks at work extracting the diamond-bearing ore from the beach terraces. On the road inland from Alexander Bay, where the Gariep (formerly Orange) River flows into the sea, the ubiquitous Alexkor fences lined the road on both sides. Along the river valley, irrigation plants produced lush fields of crops and green pastureland; across the road, in stark contrast, penned ostriches grazed on the

Alexkor Ltd diamond mine.

sparse vegetation. When the tarred road became an unpaved track, I knew we had left Alexkor property behind. At the remote, dirt-poor settlement of Sanddrif (one of the five villages involved in the land claim) a meeting of community leaders was already in progress. The Richtersveld community's struggle to regain control over their traditional lands had been long and costly. Earlier that year, their case had been rejected by the Land Claims Court in Cape Town and now their hopes rested with the Appeal Court. If this also failed, their final resort would be to appeal to the Constitutional Court. Alexkor seemed to hold all the cards, but the community was not about to give up. They had no other choice.

My visit to the village of Sanddrif helped to crystallize the themes of this book and provided fresh insights into the motivation and strategies of indigenous peoples to regain control over their land and their lives. The plight of the Richtersveld community – and their determination to restore hope and dignity to their villages – epitomizes the experience of local inhabitants worldwide whose lands and resources have been taken over by European settlers (and now by large corporations) for their own use and profits. While hunger for land and human dignity is one of the most destructive and enduring consequences of European colonization, it has also become the catalyst for cultural renewal and political change.

The research for this project has progressed through several phases of my life. In the 1960s, as an undergraduate student at the University

Ostrich farm near Alexander Bay, Northern Cape.

of South Africa (UNISA) I learned about South Africa's history from the perspective of its white population. In the 1980s, having emigrated to Canada, I became involved in the work of International Defence and Aid Fund for Southern Africa (Canada). Part of my role in this organization was to research and help to disseminate information about the violation of human rights under the apartheid regime.[2] In the 1990s, my interest in aboriginal justice expanded to Canada's treatment of its indigenous peoples. The parallels and differences between South Africa and Canada with respect to aboriginal rights became the topic of my M.A. thesis at the University of Ottawa in 1993: *Is This Apartheid? Aboriginal Reserves and Self-Government in Canada, 1960–1982*. The final phase of my research for this book came in the late 1990s when I returned to South Africa to work as an archivist at the Mayibuye Centre for History and Culture in South Africa at the University of the Western Cape near Cape Town.

Most of the primary sources on early European settlement were found in the National Archives of Canada (now Library and Archives Canada), the Cape Archives and State Library in Cape Town, the South African National Archives in Pretoria and the State Library of Victoria in Melbourne. The chapters on land claims and the legacies of injustice in Canada are based on documentation in the Law and Medical Libraries at the University of Ottawa and in the reading room of the Inuit Tapirisat of Canada in Ottawa. Publications produced by the Department of Land Affairs and the Land Claims Commission, the Surplus People Project, the

Legal Resource Centre and the Program for Land and Agrarian Studies (PLAAS) at the University of the Western Cape provided essential background on land claims in South Africa.

A variety of secondary sources relating to Canada and South Africa as well as Australia and New Zealand were consulted, some recently published, others dating from the nineteenth century. Books, conference papers and journal articles on aboriginal rights, and the complex legal and constitutional constraints on aboriginal justice, were of vital assistance in the preparation of this manuscript. Of particular relevance to this study were publications that have come out of South Africa in recent years, including critiques of South Africa's Truth and Reconciliation Commission by African theologians and academics.

This analysis of land rights in Canada and South Africa is divided into three parts: Dispossession, Reclaiming the Land and Dealing with Legacies. A brief discussion of land rights in Australia and New Zealand is provided in the Appendix.

Part One covers a broad sweep of history from the arrival of Europeans on the shores of North America and southern Africa in the sixteenth century to the present. This four-hundred-year overview is provided on three levels: human, legal and political. Chapter One traces the human interaction between aboriginal and non-aboriginal peoples from first contact to early European settlement. These are the defining stories of wars, epidemics, enslavement, exploitation and, above all, territorial dispossession whose legacies are being challenged by present generations of first Canadians and South Africans. Chapters Two and Three present an analysis of the legal and political foundations of aboriginal-state relations in Canada and South Africa and the struggle of the indigenous peoples for sovereignty and constitutional rights. Central to the discussion are contrasting histories of treaties, reserves, civil rights and policies of segregation and assimilation.

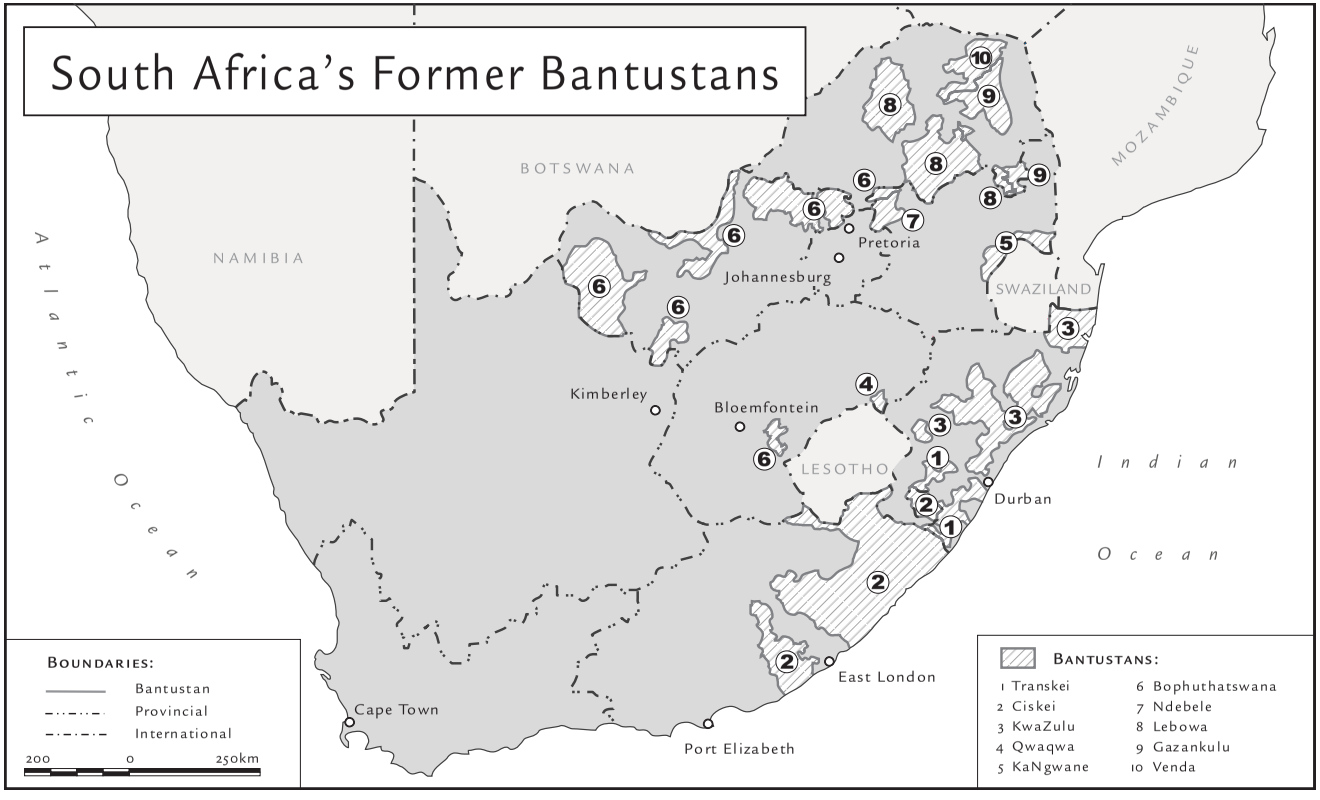
Part Two examines the ways in which indigenous communities are reclaiming control over their ancestral lands and the wealth-producing resources they contain. In Chapters Four and Five, a selection of case histories illustrates the extent to which litigation and negotiated settlements have restored dignity and a measure of prosperity to indigenous communities. Chapter Six focuses on issues of self-government and land tenure as they relate to Canada's First Nations and to South Africa's former bantustans.

The broader issues relating to land justice and the legacies of colonialism and apartheid in Canada and South Africa are discussed in Part Three. Chapter Seven is about the poverty and loss of human dignity

associated with land loss and why land rights are critical in restoring hope and healing to landless communities. The final chapter draws comparisons between South Africa's Truth and Reconciliation Commission (TRC) process and Canada's Royal Commission on Aboriginal Peoples (RCAP), both of which took place during the 1990s. As instruments of restitution, neither commission can claim any notable success: meaningful reconciliation requires changes in state policies that address the ongoing hunger for land and dignity in aboriginal communities.

The choice of terms for the peoples of Canada and South Africa requires some explanation. The indigenous peoples of both countries are referred to generically as "first peoples" or "aboriginal peoples." Although "Indian" – the name erroneously given to the local people of the Americas – is controversial (and easily confused with South Africans of Indian origin), it is used here to refer to members of registered bands who are governed under Canada's Indian Act. These groups are also referred to as First Nations, a term that has come into use since the 1970s. The adjective "native," favoured by North American Indians, is used sparingly in this comparative study because of its highly negative connotations in South Africa. "African" is used as both a noun and an adjective, and refers to South Africa's indigenous Bantu-speaking inhabitants. The term "black" is also used in reference to Africans but appears most often as a collective term for Africans, Euro-Africans (classified as "Coloureds" by white governments) and South Africans of Indian descent, who shared a common experience of oppression under white supremacist governments.

Canadians and South Africans of European descent are generally referred to as "white" or "non-aboriginal." The term "Afrikaner" refers to white South Africans whose home language is Afrikaans. In the eighteenth and nineteenth centuries, these descendants of Dutch, German and French immigrants were referred to as "Boers" (Dutch for farmer) or as "Trekboers" (frontier farmers) or "Voortrekkers" (meaning pioneers or those who travel ahead).



Map by Dariusz Ciach.

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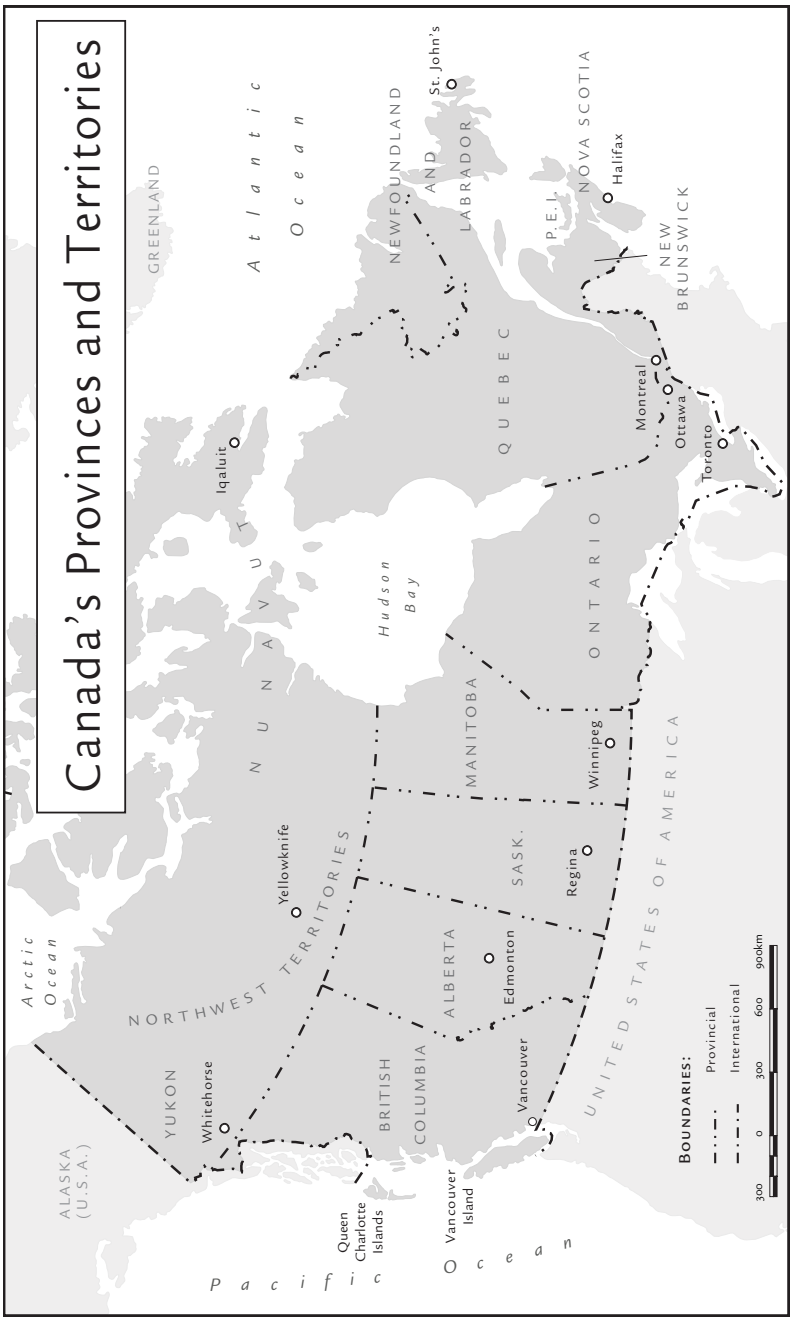
MAP 3



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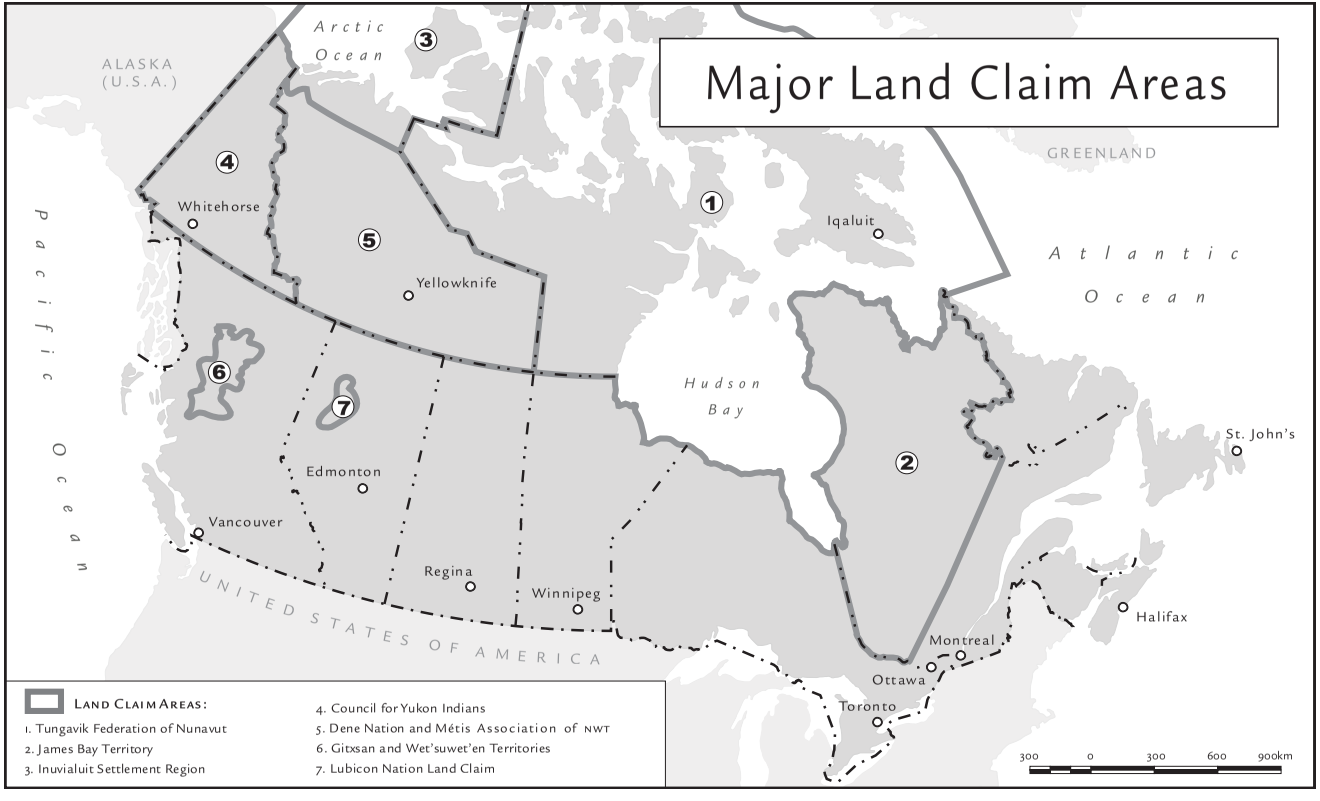

Map by Dariusz Ciach.

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Introduction

CANADA AND SOUTH AFRICA

The indigenous peoples of Canada and South Africa share a common hunger for land and human dignity due to their experiences of colonization and dispossession. However, comparing the history of land rights in these countries presented a number of challenges.

Geographically and demographically Canada and South Africa could not be further apart. Canada is a northern country – the second largest in the world – blessed with many waterways, forests, mountains and vast open spaces. The majority of Canada's population of just over thirty-one million is primarily of European descent (mainly British or French) with the aboriginal peoples (Indian, Inuit and Métis) forming about 4 per cent of its total population. By contrast, South Africa, the most southerly country on the African continent, is not much bigger than the province of Ontario.[1] Although it is rich in minerals (notably gold and diamonds), South Africa is limited in critical resources like arable farmland and water, vital to support its population of forty-four million people. Unlike Canada where the aboriginal population is a tiny minority, the vast majority of South Africa's population is African. In 1996, the size of the various population groups was recorded as follows: 33.7 million Africans, 5.3 million white South Africans, 3.7 million Euro-Africans and one million people of Asian descent.[2]

The political histories of Canada and South Africa are also very different. Colonized in the seventeenth and eighteenth centuries by France and Britain, the Confederation of Canada was established in 1867 comprising four provinces: Ontario, Quebec, New Brunswick and Nova Scotia.[3] Over the following decades, the country expanded from east to west across the continent and today consists of ten provinces and three territories. (Map 4, *xix*.) The province of Quebec, which is predominantly French-speaking, has had an active separatist movement since the 1970s. Although the Canadian Constitution was repatriated in 1982, Canada remains a member of the British Commonwealth. The Governor General

is the official head of state, representing the British monarch.[4] Canada has two official languages: English and French. South Africa has developed along different lines. It was colonized by the Dutch and then the British in the seventeenth and eighteenth centuries. The Union of South Africa (established in 1910 from two British and two Boer colonies) had four provinces and two official languages: English and Afrikaans.[5] In 1961, South Africa became a republic, having already withdrawn its membership from the British Commonwealth. In 1994, after its first democratic elections, South Africa was invited to rejoin the Commonwealth. The country is now divided into nine provinces and has eleven official languages: English, Afrikaans and nine African languages.[6] (Map 2, *xvii*.)

The issue of indigenous land rights is complex and controversial in both countries. Even the term aboriginal (or indigenous) is problematic. Who, in fact, *were* the original occupants? Over the centuries, the continents of North America and southern Africa have been inhabited by successive waves of peoples. Wars and displacement of one group by another took place long before Europeans arrived. In this study, the term "indigenous peoples" refers to descendants of the original or pre-colonial inhabitants of a territory or geographic area who, despite the legal status imposed on them by the dominant society, retain some or all of their social, economic, cultural and political institutions.

For all their differences, South Africa and Canada have a number of things in common that relate to the issue of land rights. The indigenous peoples of Canada and South Africa comprise not one but many nations, each with their own languages, cultures, histories and ancestral territories. Among the fifty-two bands and nations claiming land rights in Canada are the Innu, Mi'kmaq and Maliseet in the Atlantic provinces, the Algonquin, Iroquois and Ojibway in eastern Canada, the Lubicon Cree, Blackfoot and Peigan nations in the Prairie provinces, the Inuit, James Bay Cree and Dene in the northern territories and the Nisga'a, Haida, Gitxsan and Wet'suwet'en on the west coast. (Map 3, *xviii*.) South Africans are similarly diverse in cultural origin. The major African or Bantu-speaking peoples of South Africa are the Zulu, Xhosa, Tswana, Pedi, Ndebele, Tsonga, Venda and Sotho nations. Other groups of indigenous South Africans include the Griqua, Nama (Khoikhoi) and San, most of whom have adopted Afrikaans as their mother tongue.

For all their diversity, the indigenous peoples of Canada and South Africa have similar reasons for reclaiming rights in their ancestral lands. Since the arrival of Europeans on their shores, the wealth of both countries (from mining, industry, farming and technology) has been exploited and monopolized by the non-indigenous, settler community. Although

the traditional economies of Canada's first nations and indigenous South Africans differ considerably, their means of production have historically been embedded in the land and the products of the land. Reclaiming control over the land and resources is therefore a question of economic and cultural survival for many indigenous communities. The poorer the community, the more vital their need for access to land and natural resources. Subsistence farming in South Africa and hunting and trapping in Canada are traditional ways to ward off hunger in times of need, but they require sufficient land and a protected environment to make them viable and fruitful.

In post-apartheid South Africa, the recognition of land rights is both a constitutional issue and a question of national security. The Constitution of 1996 assures every South African the right to own land. However, most of the land and its wealth-producing resources remain in the hands of the white minority, while the vast majority of people remain landless and poor. At the same time, the threat of civil war still hovers over this fragile democracy. In neighbouring Zimbabwe, conflict over land rights has escalated into anarchy. The African National Congress government has established mechanisms designed to avert such a catastrophe in South Africa. But for these mechanisms to succeed, the Land Claims Commission and Constitutional Court must ensure that land restitution takes place in a timely fashion.

In Canada, the recognition of aboriginal land rights has received little political attention thus far although the human rights of its indigenous peoples are at stake. While aboriginal Canadians represent a tiny minority of Canada's population, their numbers are increasing, and social problems (poverty, health care, housing, education and unemployment) are also escalating. The social conditions of many aboriginal communities in Canada are a source of national shame and reveal a hypocrisy that is all too apparent to native Canadians who bear the brunt of anachronistic government policies. Political activism within aboriginal communities has intensified since the early 1970s. Canada's First Nations, Inuit and Métis are now confronting governments and the courts with demands for compensation for the loss of land and culture and for recognition of inherent aboriginal rights.

ABORIGINAL RIGHTS AND INTERNATIONAL LAW

The history of indigenous land rights in southern Africa and North America began five hundred years ago. In the years following the first European forays into the New World in the fifteenth century, the legal authorities realized that special laws were needed to deal with the in-

digenous inhabitants of the colonies and the lands they occupied. More important still was the need to ensure that once European sovereignty had been proclaimed over an occupied territory, rival European states could not establish similar proprietary rights over the same territory. In other words, they required an internationally recognized law to ensure the undisturbed occupation of the lands and jurisdiction over the peoples of their colonies.

Yet a long period of lawlessness preceded the era of treaties and proclamations. The Spanish conquistadores of the fifteenth century followed no law except rapacious greed. Their campaigns of extermination against the Indians of Hispaniola left behind a legacy of dispossession and exploitation that plagues the region to this day. By 1496 (four years after Christopher Columbus landed on the Caribbean island of Taino, thinking he had arrived in India), the Spaniards were in complete control of the West Indies. Mexico, Peru and Cuba were soon to follow.

Following the practice of the day, the conquistadores claimed title to the New World in the name of the King of Spain and Christianity merely by planting a flag in the soil. Priests accompanying the soldiers would read the *Requerimiento* to the defeated tribes, demanding that they acknowledge their allegiance to the Spanish Crown and adopt the Christian faith. Failure to comply resulted in either death or forced labour. In 1510, the conquistadores introduced a forced labour system known as *ecomienda*. The Crown not only gave land to individual Spaniards (usually soldiers) but allotted them Indians to work the land for them. While the Indians were not officially enslaved, they received no wages, and their life was one of involuntary servitude. Thus, for many years the *ecomienda* model under the King of Spain was the only legal code governing the southern colonies.

In the sixteenth century, two Spanish advocates of aboriginal rights challenged the legitimacy of Spanish claims in the Americas. One was Bartolomé de Las Casas, a Dominican priest, and the other was Francisco de Vitoria, a theologian. Both men based their views on the classic concept of *jus gentium* (the equality of humankind) and its founding principle of natural law. Their publications and lectures, which became known as the Spanish School, laid the foundations for a more enlightened approach to colonization. However, both de Vitoria and Las Casas were men of their time and their arguments were laced with ambiguities. De Vitoria declared on the one hand that "Indians are rational beings and true owners of their lands and estates." However he also proclaimed that the Spanish were entitled to retaliate if the Indians refused to trade with them – by declaring war, occupying their cities and enslaving them.

Las Casas also preached conflicting messages. He defended the right of Indians to resist Spanish aggression but also insisted on the Spanish right to Christianize Indians; indeed that this was their sacred mission to the New World. Thus, the dispossession continued and the system of forcing indigenous peoples to work for their colonizers became a model for European imperial powers throughout the next two centuries.

In most parts of the world, the mere act of "discovery" remained a justification for colonization for at least another century. In 1670, Canada's northern region, known as Rupert's Land, was declared the private property of a band of English adventurers, thereby beginning the imperial invasion of Canada. Inuit writer Zebedee Nungaq observes with some irony that, "by some sleight of hand, by some fluke [my ancestors] became tenants in our own ancestral homeland."[7] A century later, Australia and New Zealand were colonized under similar circumstances. In 1788, under the justification of first possession, the British government declared sovereignty over the land and people of Australia. New Zealand followed a few decades later. (See Appendix).

In the eighteenth and nineteenth centuries, as competition for new colonies intensified, international lawyers looked for new arguments to justify European settlement. The question of the moral and legal entitlement of colonizers to discovered territories was raised by eighteenth century Dutch jurist Hugo Grotius:

> Discovery confers no rights unless the area was uninhabited. Indeed, the Indians, when first discovered by the Spanish … were idol worshipers and wrapped in serious error. Nonetheless, they had full sovereignty, both over public and private property which was their natural right which could not be taken away. Thus it is heretical to believe that those outside the faith do not have full sovereignty over their possessions, for this reason: plunder is not excused by the fact that the plunderer is a Christian.[8]

New theories of law emerged in the latter part of the eighteenth century to replace the high-minded but largely unaccepted concepts of natural law. These new positivist theories provided a legal loophole for imperialism. Unlike natural law, which considered indigenous rights to be based on notions of human equality and Christian morality, positive law abandoned traditional codes of ethics altogether. Proponents of positive law argued that since indigenous populations pursued migratory lifestyles and did not occupy territory in any formal sense, they had

no proprietary rights to their land. By portraying indigenous peoples as primitive and uncivilized, European states asserted that lands they occupied were *res nullius*, a term derived from Roman property law meaning without an owner.

The positivist argument was supported by United States Chief Justice John Marshall, one of the most influential legal minds of the time. In the case of *Johnson v. McIntosh* in 1823, Marshall declared:

> Although we do not mean to engage in the defense of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them … the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness.[9]

Sixty years later, positivist reasoning was used to justify the Partition of Africa. The Berlin Conference (1884–85), which defined the entire continent of Africa as no-man's-land, allowed European nations (Britain, France, Belgium, Italy, Germany and Portugal) to stake out their claims to the entire continent, thereby denying Africans the right to their ancestral homes. In his *Principles of International Law* of 1895, T.J. Lawrence asserted that all territory " not in the possession of states who are members of the family of nations, must be considered as *terra nullius* and therefore open to occupation."[10]

In North American law, a distinction came to be made between the proprietary rights of so-called civilized inhabitants (settlers) and the aboriginal rights of the indigenous inhabitants. The historical rationale for the distinction can be explained as a combination of expediency and paternalism. In the first place, the distinction was designed to prevent conflict with rival European nations competing for possession of the American continent. But there was also a marked degree of paternalism about the requirement that Indian lands could only be alienated by order of the Crown. As Marshall explained in his 1823 judgment, although the rights of the original inhabitants were not lawfully extinguished under this arrangement, they were certainly severely restricted:

> [Indians] were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession

> of it, and to use it to their own discretion, but their rights to complete sovereignty as independent nations were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it.[11]

Among the cultural baggage the Europeans brought with them to North America, Africa and other colonies was an ingrained belief in their race's superiority, which may explain how ordinary men and women could have gone about the task of dispossession and even genocide without apparently questioning the morality of their actions. Alexander Sutherland, a nineteenth-century historian, saw the killing of indigenous peoples not as an ethical issue but as part of a divine plan:

> As to the ethics of the question, there can be no final conclusion. Whether the European has the right to dispossess these immemorial occupants of the soil … is a problem incapable of absolute determination.… It is a question of temperament; to the sentimental it is undoubtedly an iniquity; to the practical it represents a distinct step in human progress, involving the sacrifice of a few thousand of an inferior race.… If it is a divine law that Anglo-Saxon people must double themselves every half century, it must be divine law that they are to emigrate and form new homes for themselves in waste lands. Yet there will ever cling a pathos around the story of a vanishing race.[12]

Not everyone agreed with him. In 1830, S. Bannister wrote a treatise appealing for the more humane treatment of indigenous peoples. Finding no logical explanation for the practice of "destroying everywhere those whose only crime is that they precede us in the possession of lands which we desire to enjoy to their exclusion," Bannister recognized that European notions of "racial superiority" played a significant part in their destruction.[13] Thus racial prejudice came to represent one of the most lethal weapons to be used against the indigenous populations of the colonized territories of Africa and North America.

THE CLEARING OF LANDS AND LANGUAGES

Many indigenous peoples who were colonized by European powers over the past four hundred years suffered the double loss of ancestral lands and cultural identity. The loss of indigenous languages – an intrinsic part

of human identity – has had profound and far-reaching consequences for the colonized peoples of South Africa and Canada.

The close relationship between the languages of indigenous peoples and their ancestral land is eloquently described by South African historian Noël Mostert. African languages, Mostert writes, are among the most beautiful in the world, they "seem to resound always with the very nature, the poetic character of the lands where they were used. The sand and dry heat and empty distance of the semi-desert lands where the Khoikhoi originated are embedded in their speech. But so is softness, greenness. They run together like the very passage of their olden days."[14] Yet the Europeans who came to settle on their lands dismissed the complex diction of local languages as closer to animal sounds than human speech.[15] The psychological and social impact of this dehumanization of African people endures to this day.

In post-apartheid South Africa, the voices of aboriginal minorities like the Khoikhoi and San are still struggling to be heard. The Nama (Khoikhoi) people of the Richtersveld, who were driven from their ancestral lands by colonial settlers, are clinging to the last vestiges of their land and language. For generations, Afrikaans replaced Nama as the home language of most Nama families. Parents stopped using *Khoekhoegowap* (the Nama language) because they perceived it as a burden rather than a medium of advancement in their lives. Even in the new South Africa, Nama is not one of the eleven official languages. There is no institutional support for it to be used on radio, television, in the print media or to correctly name and spell places that are derived from Nama words. In this way, the Nama have suffered the dual loss of ancestral lands and their cultural identity.

The San, whom the colonists named Bushmen, met with a similar fate to the Khoikhoi.[16] For most of the twentieth century, the tiny remnant of San still to be found in South Africa were depicted by educators and museum curators as less than human, as part of South Africa's indigenous fauna. Western media have portrayed them as humorous relics of a bygone age, untouched by the modern world. The movie *The Gods Must be Crazy* tells nothing of the reality of a people dispossessed of their land and humanity by waves of intruders. In the 1970s, hundreds of San men were recruited by the South African army to serve in ethnic-based units in the war against SWAPO (South West Africa People's Organization) in Namibia. In 1996, after apartheid had crumbled, the Truth and Reconciliation Commission heard evidence of atrocities committed against San soldiers by their white comrades. The allegations were that San trackers who stepped out of line would be summarily executed.[17]

The impact of this dehumanization of South Africa's first peoples is starkly apparent in a desolate settlement called Schmidtsdrift, an hour's drive west of Kimberley (where diamonds were discovered in the 1860s) in the northern Cape. This is home to the largest community of San people in South Africa of more than 4,300 people. Schmidtsdrift, a former South African Defence Force camp, consists of rows of military tents set on an open, windswept and stony slope leading down to the Vaal River. Many of the former soldiers continue to draw pensions and there are two schools (Afrikaans is the medium of instruction) and a clinic. But the rampant use of alcohol and dagga (marijuana) is a sign of the dislocation and loss that afflict so many indigenous communities worldwide. According to the army doctor at Schmidtsdrift, children as young as twelve are addicted to alcohol. Staff Sergeant Mario Mahonga, the leader of the !Xhu Traditional Council, points out one of the primary causes for the social dissolution:

> A lot of our culture is lost in our lives … like the old stories that were told by mothers and fathers who would go into the bush and then return to tell the others what they had seen. The problem now is that no one goes out and does anything, so we have no stories to tell our children. We have nothing to pass on. In the old days we had to make a musical instrument and sing along to it. Now we just go to town and buy a tape and listen to that.[18]

The clearing of lands and languages has been experienced differently by South Africa's black majority whose vernacular languages withstood the assault of colonization. But language – or rather the use or manipulation of language – has nevertheless played an important role in the relationship between white and black South Africans, especially during the apartheid era. Despite their overwhelming numerical presence, Africans were rendered "invisible" by their treatment as units of labour in white-owned mines, farms and factories. White employers (who referred to themselves as "Baas" or "Master") seldom called their employees by their African names or spoke their languages. Domestic servants were typically referred to as "boys" and "girls" by white adults and children alike. Thus language became a psychological tool that was used to subjugate and deprive African workers of their human dignity.

The language used by white farmers when addressing their black workers was notoriously demeaning. While farm workers were frequently maltreated physically, verbal abuse was also commonly used to undermine the dignity and independence of Africans. The life story of

Kas Maine, who worked as a sharecropper (tenant farmer) on a white farm between 1895 and 1985, reveals how the pain of losing ownership of his ancestral land was compounded by the ignorance and brutality of his white Afrikaner landlord. After many years of longing for the birth of a son "to help him coax a living out of the dry Transvaal soil," Kas Maine went to his landlord's house to announce the arrival of his newborn son as tradition required. This is how Maine recounted the incident to historian Charles Van Onselen sixty years later:

> That was the rule on the farms. When a child was born you went to the landlord and said, "We have had a baby boy." The landlord would be pleased and say, "Oh, you have had a little monkey, have you cut off its tail?" Then we would say, *"Nee baas, ek het die stertjie afgesny, is nou 'n mens, is nie meer 'n bobbejaan nie."* (Yes master, I have cut off the tail, it's a person now, no longer a baboon.) That was how the white farmers used to put it.[19]

These words, spoken with such mocking cruelty, were made even more unpalatable by the meanness of the Maine family's illiterate landlord, who prided himself on his inability to read the finer print in the countryside's code of race relations. As Van Onselen explains, "[n]ormally, a price was attached to such joking relationships, since the white landlord, having 'won' a verbal joust that affirmed the Darwinian-cum-social order in his own mind, was expected to give his 'defeated' vassal a sheep to celebrate the arrival of another potential male labourer on the property. This embarrassing exchange was therefore left without its customary conclusion, and Kas departed feeling humiliated."

Kas Maine, who died in 1985 at the age of ninety-one, did not live to see the birth of the new South Africa. However, his unwavering dignity and innate sense of pride provided a model for his children and grandchildren to follow. Canadian anthropologist Hugh Brody argues that where languages survive – as they have for black South Africans – the experience of loss is less absolute. As a nation Africans have lost their lands and endured unspeakable humiliation but their sense of identity and pride in who they are and have been has remained intact.[20]

In Canada, the clearing of indigenous land and languages took place in different ways. Less than a century after the first fur-trading mission in Haida Gwaii (or Queen Charlotte Islands, an archipelago of more than 150 islands off the coast of British Columbia), the sea otter has vanished, and the migratory populations of various other species of fish are greatly reduced. Over the decades, the lakes and forests of Haida Gwaii have

Clearcut forests, Moresby Island, Queen Charlottes, British Columbia.

been damaged almost irreparably by over-hunting, over-fishing, and clear-cut logging. But according to Robert Bringhurst, "the single most abused and heavily damaged ecosystem in Haida Gwaii to date has been the fragile, half-tangible ecosystem of language, thought, memory and behaviour: the ecosystem of culture."[21] Few totem poles, distinctive symbols of west coast cultures, remain on the islands.[22] Many of these imposing structures now grace the hallways of the Smithsonian Institution in Washington, D.C., and museums in Vancouver and Ottawa.

In the perception of many Western people, aboriginal oral traditions epitomize what is different and "other" to their own written histories and traditions. Missionaries who came to North America in the seventeenth and eighteenth centuries tried to capture the mystical quality of oral literature by devising orthographies for the North American languages. But their purpose was not to preserve the culture: it was to create tools for proselytizing the Christian faith and thereby subvert the influence of the shamans and traditional storytellers. It was an effort to render aboriginal cultures invisible. The results have been little short of catastrophic. With the exception of Cree, Ojibwa and Inuktitut, most aboriginal languages have been lost or are on the brink of extinction.

For societies steeped in oral traditions and the transfer of knowledge through legends and stories, language is as critical to their survival as their ancestral lands. In North American aboriginal tradition, language has a spiritual value; through their languages, the people are able to

Totem poles at the University of British Columbia's Museum of Anthropology, Vancouver, British Columbia.

communicate with the spirits of the animal world. According to one legend, there was a time when all animals and humans spoke the same language: the language of Mother Earth. But human beings abused the animals and provoked them into taking new voices and new languages. Since that time, human beings have found it difficult to understand beings who are different from themselves. The moral of this legend is: "to live well on the earth, one must learn its languages."[23]

Stories played a central role in the language of Indian diplomacy. There were stories told through songs and dances, stories of sorrow and shared sufferings, stories of burying the hatchet and rejoicing, stories about connections made, broken and renewed, and stories that envisioned all humankind as one people united under a Great Tree of Peace.[24] However, as the diversity of peoples in North America increased, Indian diplomats had to supplement this language and learn to communicate in different ways. The records of treaty councils and negotiations in the seventeenth and eighteenth centuries describe the remarkable creativity of Indian diplomats. In the twentieth and twenty-first centuries, negotiating treaties with Canadian federal and provincial governments requires special skills to reach settlements that are meaningful to Indian communities and respectful of the common good.

John Snow, Chief of the Stoney Nation in the foothills of the Rocky Mountains, recounts in his memories of childhood that storytelling was an ongoing educational process. Aboriginal children learned the his-

Haida totem pole at Old Masset, Queen Charlotte Islands, British Columbia.

tory of their people and all they needed to know about life from their parents, grandparents and elders around the campfires, in the teepees, on the hillsides, in the forests, and at a variety of special gatherings.[25] When residential schools were introduced in Upper Canada in the 1850s this treasured way of life came to an abrupt end for thousands of Indian children. As a key program in the process of assimilation, the schools were seen as an effective way to "stamp out" Indian languages and cultures.

The purpose was to remove children from the "uncivilized" influence of their parents and communities, a major source of the "Indian problem." By 1894 attendance at school became compulsory under Canadian law for all aboriginal children, and parents were liable for imprisonment for failing to send their children to school. In the testimony given at the Mackenzie Valley Pipeline hearings in the 1970s, people told how they were treated like criminals for preventing their children from attending school. The priests came down in barges, they said, and seized children from each village. The parents would hide them in the bush until the priests had gone.[26]

One of the first things that happened to the thousands of Indian children who attended these schools was that they were forbidden to use their own names. Many received only a number; others were given a "Christian" name. By insisting that only English be spoken, the Indian children were deprived of their self-esteem, their culture, their knowledge of who they were and where they came from. The impact of this loss of language on former students now has a direct bearing on the ability of aboriginal communities to reclaim their land and resources. As Hugh Brody expressed it, "they must first reconcile themselves to a profound loss at the centre of their being and then move forward to assert their rights to land and resources in the language of the settlers."[27]

Canada's residential schools for Indian children cannot be equated to the British educational system of the day, nor can the church authorities claim they were unaware of the conditions in the schools. This letter written in 1899 by Elizabeth Shaw, a matron at a Presbyterian Church home for Indian boys in Port Simpson, B.C., is one of many outraged complaints from former teachers and staff to be found in church archives.[28] The conditions she witnessed were clearly extraordinary even to her Victorian eyes:

> The slightest mistake on the part of the boys brought down the wrath of authorities and the severe flogging, which were the almost inevitable consequences of wrong-doing, seemed to me in many cases to be out of all proportion to the gravity of the offence. I know that children need to be corrected and Indian children are probably no exception to this rule, but to keep them in a state of chronic fear, as these children were, seems to me wrong and unnatural … I was compelled to set meat before the boys that my brothers would not set before their dogs … this, when there was an abundance of good wholesome food in the house seemed to me inexcusable.[29]

Contrary to the expectations of the church leaders and government officials who established the residential schools, instead of producing invisibility and integration, the schools have produced generations of aboriginal people determined to maintain their cultural roots and to reclaim their ancestral land. A high proportion of the leadership in aboriginal political organizations came through the residential school system. Elijah Harper, John Tootoosis, Phil Fontaine and Matthew Coon Come are among the current leaders who were educated in residential schools. But on the other end of the spectrum are generations of people gravely damaged by the experience. As one Peigan woman explains, "They took away our brains, because they brainwashed us in residential school. They took away our languages. They took away our songs.… They just whipped our spirits. It's the emotional part and the spiritual part that hit us so hard.[30]

The term "land claim" is itself a barrier to aboriginal justice in Canada. It implies that in order to claim their homes the burden of proof lies with the original inhabitants to make their "claim" for its return. Moreover, European-based courts set the criteria for making these claims. If the claim is based on aboriginal rights, then the claimants must prove that they use and occupy the territory to the exclusion of other people; that they have lived there from time immemorial; and that they are an organized society. Aboriginal Australians face these same challenges (See Appendix).

The language of the Canadian court system presents an additional obstacle for aboriginal people. The Reverend Stan McKay, a Fisher Lake Cree from Manitoba and the first aboriginal Moderator of the United Church of Canada, sees the current land claim process as a continuation of colonial domination and dispossession. The very language of land claims runs counter to aboriginal values and relationship with the land. To participate, "our statements and language are forced to become sterile and technical … the legal jargon contains concepts of ownership that contradict our spiritual understanding of life.… As marginalized people, forced to live on tiny plots of land, we encounter the world view of the wealthy and powerful in the land claim process and are forced to compromise or die."[31]

Despite the impact of missionaries and government interference, story telling and oral traditions remain a distinctive part of North American Indian culture. In his recent book about Canada's northern peoples, Hugh Brody describes how the Nisga'a, like many other west coast societies, have celebrated and institutionalized the power of the word. The young are still trained in public speaking. In the potlatch, the famous

The Right Reverend Stan McKay, Moderator of the United Church of Canada (1992–94).

west coast event at which inheritance, territory, names and disputes are adjudicated, to be able to talk with authority is part of *having* authority.[32] The Inuit of Canada's northern regions share this tradition. Despite an educational system seeking to replace Inuktitut with English, Inuit isolation from mainstream society has worked in their favour. Many northern families still speak their own language, and the elders continue to gather the children around them and tell their stories.[33]

When the Gitxsan and Wet'suwet'en brought their case to the Supreme Court of British Columbia in May 1987, they refused to be silenced by standard court protocol and conventions. In addition to the evidence brought forward by their legal team and expert witnesses, their testimony included traditional stories and songs in accordance with the rules

of their own society. At one point, Chief Mary Johnson of the Gitxsan people proceeded to tell the history of her territory through a traditional story. As with many stories, this one included a song. Justice McEachern told the leading council, "I have a tin ear … It's not going to do any good to sing to me." But Mary Johnson sang her song anyway. As Brody, who attended the trial, writes:

> Her voice was strong, and the sadness of the lament was clear, anguished and startling … It did not belong in this court, against the opposition of the judge, resounding in his tin ear. Yet it was somehow perfect, a complete expression of Gitxsan language, in all its senses, with all its meanings.… The history of the region and of the nation, of the encounter between colonists and indigenous cultures, the story of whites and Indians, the deaths by smallpox, the losses of life, of land, of hope.[34]

For the Gitxsan people in court, the song evoked memories of loss and starvation. But not everyone was moved. The judge, whose indignation was conveyed in his hunched shoulders, expressed his displeasure and non-comprehension by ruling the oral testimony of the claimants inadmissible. Judge McEachern concluded that the Gitxsan and Wet'suwet'en could not claim aboriginal title to their territories because their societies "lacked all the badges of civilization, [since they had] no written language, no horses, or wheeled vehicles." But the response of the hereditary chiefs showed their case was not to be dismissed so easily:

> Aboriginal people will protect their rights and will force this agenda. The actuality, or threat of violent force by the state cannot keep people down. It has not worked in South Africa and it did not work last summer in Oka. Justice will be served in the end and this province may expect considerable unrest, protest and direct political action if the government attempts to use this small, silly judgement to inform policy. An appeal can be expected.[35]

A decade later, the Supreme Court of Canada overturned McEachern's ruling. In 1997, Chief Justice Antonio Lamer ruled that the lower court had erred in its rejection of the Gitxsan and Wet'suwet'en case and ordered a retrial. The most striking part of his ruling was his assertion that courts should recognize oral history as evidence in aboriginal land claim cases; that stories matter.