

**A Comparative Analysis of Indigenous Rights in  
Canada and Africa - with a focus on Kenya and  
South Africa**

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I feel very honoured, and I confess a little intimidated, to be invited to speak to this gathering on the indigenous experience in Canada and in Africa. I feel particularly shy about speaking of the indigenous experience in Africa, to a gathering which is infinitely more expert on these issues than I could ever be.

I should begin by defining who is “indigenous” in Canada. Very generally, the descendants of the pre-Columbian peoples of North America. That is, the people who lived and thrived in Canada prior to the arrival of the European explorers. For this reason the preferred term for indigenous people in Canada now is the “first nations”. These pre-Columbian societies ranged from highly sophisticated city states, to farmers, to hunters and gatherers. They had complex political relationships, internally and with one another. Trade was extensive. So was warfare and slavery. The pre-Columbian society was hit by a cultural earthquake with the arrival of the European. The people who survived, with their many cultural and economic differences, are all considered first nations.

As in South Africa, the contact between European settlers and the original peoples led to the creation of a new people, the Metis, whose culture drew on both European and indigenous traditions and became a new and unique nation. Their struggle for recognition as a distinct society was an epic chapter in Canadian history. The First Nations in Canada may date back to the pre-Columbian times but these are vibrant and developing communities, constantly adopting to new challenges and social change.

While all Africans are native, they are not all considered indigenous, at least for the purposes of the global indigenous rights movement. In practice, the indigenous peoples of Africa are generally defined in terms of lifestyle, as nomadic or migratory peoples, or in terms of occupation, notably as hunter-gatherers or as pastoralists. Perhaps even more significantly, they have in the past tended to suffer from discrimination at the hands of both the colonial powers and of other tribesmen—what has been described as a double struggle for identity. Whether as a matter of colonial myth or reality, they are often considered to have been the first peoples of their country, whose tenure was challenged by later arrivals, especially sedentary farmers. This working definition of indigenous people has caused a lot of discomfort for the governments of Africa, not only because it is not always clear who qualifies as indigenous within a society, but because it implies particular tensions between some communities and others, and is sometimes seen as a challenge to the state’s overarching objectives in terms of national unity.

You know, the definition of indigenous is very powerful. Earlier this week, here in Cape Town, I attended a conference of cultural ministers from around the world who came together to discuss cultural diversity. The official spokesman welcomed the delegates “back” to South Africa. Why back to South Africa? Because, he explained South Africa is the cradle of humankind, where the oldest artefacts of humanity have been found. Therefore it is the spiritual home and the mother nation of all human beings, from everywhere in the world. We are all South Africans. This was a deeply moving message for the cultural ministers attending the conference, but it is very different from the concept of indigenous people that we are discussing here today.

A second issue is the relationship between indigenous peoples and the state. Our history in Canada, as in so much of the world, is a trail of tears, including the persecution to extinction of the Beothuk people in Newfoundland, the decimation through influenza, measles and other diseases of many first nations communities, the military suppression of the Metis nation’s search for independence in Manitoba and Saskatchewan, and the loss of tribal lands from sea to sea. But since colonial times the governments in Canada have had a legal responsibility to serve as stewards and protectors for first nations. This means they had to treat with the leadership of those communities, negotiating accords on the use of land and natural resources, and the provision of services in compensation for the use of these resources. They have had legal responsibility for health, education and social services, even before the time that universal

services were seen as the birthright of every Canadian. It also meant that the state was responsible for the physical protection of the indigenous peoples, a powerful role during the so-called Indian wars in the American West, when many tribes fled to Canada for the protection provided by the North-West Mounted Police.

The Indian Act, the principal piece of legislation governing relations between Canada and the first nations has been often criticised as racist, colonialist, and patronising. It certainly reflected its times. But it did set out some basic principles of protection for the rights of first nations and provided for the recognition of first nation self-government.

Canada's reservations were also set up under this concept of stewardship; intended to provide areas where traditional hunting grounds and farmlands could be reserved for first nations' use. The natural resources beneath the ground were to be managed by the federal government, as trustee, for the benefit of the community resident in the reservation. While the practice often fell woefully short of the promise, it is important to note that the Canadian government had promised to establish its relations with first nations on the basis of trust, service and stewardship. The First Nations often referred to these principles in seeking justices from administrative and cultural abuse by the government.

The experience here in Africa is varied very much from region to region. In some cases, in furtherance of specific colonial objectives like the construction of railways, such as in Masai land, treaty relationships were put into place and land was set aside for tribal reserves. In other cases, such as in Nigerian, and Ghana the imperial government favoured indirect rule and negotiated directly with tribal leaders for concessions, but left the substance of tribal governance structures intact. Arguably this was beneficial in preserving traditional African culture but the imperial overlord did not feel any responsibility for the protection of minority groups or castes facing discrimination within those communities. I think, for example of the treatment of the Batwa in the Great Lakes Region. With boundaries being drawn arbitrarily, at the whim of cartographers in Europe, this planted the seeds of future communal tension. Here in Southern Africa, the decision to establish white farming colonies and gold mines led to a ruthless strategy to seize as much land as possible, to push back the native population to the frontiers, and to adopt divide and conquer strategies to subvert any national unity movements of the indigenous peoples - a strategy that reached its climax with apartheid. Trust, service and stewardship were not given much lip service here in Southern Africa.

While the relationship enshrined in the Indian Act was based on trust and stewardship, it was never a relationship of equals. It has been described as modelled in law on the relationship of a guardian to a child. The child, in this case the first nation, was not considered mature enough to manage its own affairs or to make decisions for itself. Its kindly guardian, the Department of Indian affairs, had to approve any important decision. Until well into the 20<sup>th</sup> century, native people resident on reservations were not given the full legal rights of other Canadians; they were not even given the right to vote!

The most important development in the past 50 years in aboriginal rights has been the recognition that relations with the state must be on the basis of full partnership, a partnership of equals. This is the striking difference in the treaties which have been negotiated in the past few years in British Columbia, as well as in the evolution of the relationship between the government and first nations under long-standing treaties. There has been a steady increase in self-government, and on the transfer of management and stewardship of natural resources to native communities. This has evolved most dramatically in the Far North, where the new territory of Nunavut has been created. Since 2002 the community, which is primarily Inuit in origin, has been operating with all the powers of a province (not just a reservation) over a vast and mineral-rich territory.

Meanwhile, back in Africa, the overriding objective since the Sixties has been national independence and national unity. The treaty guarantees obtained by some tribes in negotiating with their colonial masters were treated with contempt by some of the new breed of African leaders who saw these contracts as humiliating concessions to the colonial master. Similarly the system of indirect rule was compromised by its colonial associations and the new leaders devalued the role of traditional chiefs and communal lands. They tried to create a common nationality, revolving around language, flag and anthem, and bullied minority leaders into accepting these national symbols. Ethnicity and cultural differences became a source of tension within the state. In many of the newly-independent states it actually became more difficult to belong to a tribal or religious minority than it had been under colonial rule, because the new governors saw minorities as disloyal to the new state. Sometimes these minorities became so alienated, they did indeed revolt. This led to the tragedies in Biafra, and communal war in Uganda. Centralisation rather than devolution; control of natural resources and policy making from the capital; the governors dictating to the people, rather than government by the people, all characterised the first phase of independence in Africa. And the indigenous people, especially in remote regions, were often the losers.

So far I have highlighted the differences between the Canadian and African experiences. But there is one area where our experience has been remarkably similar and that has been the process of economic development.

For most of the 20<sup>th</sup> century, here in Africa as well as in Canada, there has been a strong belief in economic growth as the engine of development. This was to be done through education, through extension of social services, through industrialisation and urbanisation. Everyone had to participate in this development process, and nobody could opt out. Indigenous peoples posed a challenge to this development philosophy. If they were going to benefit from the riches of development they too would have to go to school; live in settled communities where social and health services could be provided; and participate in the cash economy. They needed to participate in the common culture, cheer for the national heroes and watch the same television programs as everyone else. The continued existence of indigenous communities, who did not share these values or partake of the benefits of development, was seen as a living reproach to the national development strategy. So both in Canada and in Africa efforts were made to persuade, and if necessary, coerce, indigenous people to adopt the dominant lifestyle. In Canada, we sent first nations children to boarding schools, where they were punished if they spoke their home languages; we organised the migratory Inuit peoples to relocate to settlements where they could get education and health services but could no longer hunt in traditional fashion; we introduced welfare payments and processed food to the reservations, leading to skyrocketing level of diabetes. All of this was done with the best intentions in the world. Here in Africa, a similar strategy of development was adopted; hunters and gatherers were forced off the land, to make way for giant farming projects in Tanzania; school curricula were offered in only one national language, or in English only, at the expense of indigenous languages. And pastoralists who were used to roaming over larger areas were restricted to one country and pressured to become farmers. Again, this was done with the best of intentions, in pursuit of an ideal of national development. It was not only the newly emergent African states who pursued these policies; it was done with the enthusiastic support and financial assistance of donor countries like Canada. The trail of tears was paved with good intentions.

We are now facing the consequences of these policies. While there has been much progress, we have also lost a great deal, not only in the failed development projects of Africa but even in the successful economies of North America. We have problems with sustainability and we have problems with spiritual values. We want a more balanced life, based on more than consumer values, and we want a more sustainable form of development, that we can pass on to our children. We are looking to those societies who have marched to the beat of a different drum, who have embraced different values, to give us that balance.

This is where the indigenous peoples are coming into their own. They have lost so much, but they have kept so much as well. Their indigenous knowledge, of plants and animals, their spiritual values and practices, their history and knowledge of the land, are all earning renewed respect. Children are going back to the villages to listen to the stories of their grandparents. Traditional elders are no longer treated as national embarrassments but as national treasures. Indigenous people are coming together from all regions of the world to learn and share experiences with one another. At the World Summit on Sustainable Development, only last month, the wisdom and knowledge of indigenous peoples were recognised as a powerful tool for sustainable development for all the world's peoples. It is just a start, but a powerful start, for change in the relations between indigenous peoples and nation-states.

Thank you very much.