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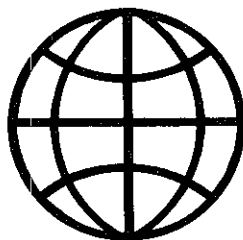
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Language, Law, and Land in
Pre-Amazonian Brazil

William Balée

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Language, Law, and Land in Pre-Amazonian Brazil

WILLIAM BALÉE[†]

SUMMARY

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This Article seeks to show a link between law and language in the context of the disposition of Indian lands in extreme eastern Brazil. The history of the relationship between the Brazilian state and the native inhabitants, especially the Ka'apor Indians, constitutes the framework for this discussion. The biological and cultural distinctiveness of the region known as Pre-Amazonia, inhabited by these people, is presented. The changes between the biological and cultural relationship and the physical environment of the region caused by deforestation are documented. Although environmental and human rights laws already exist in Brazil to protect these lands and their native inhabitants from invasion and usurpation by non-Indians, it is suggested that appeal be made to the Constitution of 1988 in order to help curb the illegal expansion of settlers and ranchers into the federally protected Indian lands of eastern Amazonia and elsewhere in Brazil.

I. INTRODUCTION

Law exists insofar as it is encoded in language. But whether law occurs universally apart from words and the infinite productivity of language may be debatable. From a scientific point of view, law may precede changes in the physical environment and the status of citizens to whom it pertains, but the thesis that law affects such changes in those empirical phenomena does not lend itself to falsification. The field of anthropology represents the scientific study of humankind in the broadest sense. As an anthropologist, I find it somewhat perplexing to demonstrate the effects of law on the nonstate peoples and the forested lands of Latin America, if only because like effects may result from unlike causes in human as well as natural affairs. Nevertheless, I consider it to be axiomatic that environmental law and law concerning the rights of indigenous peoples as citizens in the world may indeed have material implications for the rainforests and native peoples of Latin America. Having stated that premise, I would like to assess the specific interaction of Brazilian society and that of the Ka'apor Indians in the context of applicable environmental and human rights laws.

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II. KA'APOR SOCIETY AND CULTURE

The Ka'apor Indians (also known as the Urubu-Kaapor or Urubus) number approximately 600 persons. They live within the biogeographic region called Pre-Amazonia, in the extreme east of Amazonian Brazil (Legal Amazonia), within the state of Maranhão. Their subsistence derives from mostly slash-and-burn horticulture, the gathering of nondomesticated plant foods, hunting, and fishing. However, there is some wage labor and cash-cropping (of rice) mediated by the National Indian Foundation (FUNAI).¹ The artifacts that Ka'apor people make include post-and-beam houses with palm thatching, pottery, baskets, rope, hammocks, infant-carrying straps, beadwork, featherwork, bows and arrows, ceremonial clubs, bowls, and utensils. They have about fifty domesticated species of plants and raise a few animals.

As for the people themselves, by far most marriages are endogamous to Ka'apor society. Only a few marriages occur between Ka'apor individuals and individuals originally from different societies, such as Brazilians and other Indian societies (especially Tembê, Guajá, and Guajajara). The polysemous Ka'apor word *anam* encompasses all living members of Ka'apor society as well as 'sister' for a female speaker and 'relative' in a loose (consanguineal) sense. The Ka'apor live in about twelve villages within the reservation known as Indigenous Reservation Alto Turiaçu (Reserva Indígena Alto Turiaçu). These villages, in practice, are politically autonomous, insofar as no native leader exercises authority over all or perhaps even any of them. All of them lie within the jurisdiction, however, of the state through its National Indian Foundation, the FUNAI. Connections of kinship and marriage, moreover, link all these villages together in a common society, and almost all individuals are ultimately *anam* to one another in the broad sense of being a people, by virtue of societal endogamy.

The Ka'apor share a common set of ideas, behaviors, and artifacts that can be elicited and identified as pertaining to Ka'apor culture. Such distinctive material artifacts include the bow and arrow, face paint designs, and men's and women's feather adornments for which they are world famous. Other distinctive traits of the Ka'apor include a common language with little free variation and dialect differentiation, a rule of bilateral descent, an uxorilocal residence pattern, prescriptive cross cousin marriage, avuncular marriage, a basically stable folklore about the origins of the seen and unseen worlds and diverse peoples of indigenous, alien, and fictitious sorts, a coherent classification and nomenclature of plants and animals, and distinctive life cycle rituals (such as the initiation rite for pubescent girls, marriage ceremony, infant-naming ceremony, magical and medicinal practices and beliefs, ritual shamanism, and mortuary rites).² However different some specific features of these cultural elements may have become since Luso-Brazilian colonization of eastern Amazonia began, these elements still would be recognizable to the ancestors of the Ka'apor.³ The language would no doubt be understood, too. The Ka'apor have maintained an ethnic and linguistic identity whose boundary markers have changed in a few attributes but not in their essential uniqueness. In other words, the Ka'apor as a native society with a distinctive culture represent an ethnographic phenomenon that can be determined and examined intersubjectively.

1. See William Balée and Anne Gély, *Managed Forest Succession in Amazonia: The Ka'apor Case*, in 7 *ADVANCES IN ECONOMIC BOTANY* 129, 139 (D.A. Posey & W. Balée, eds., 1989).

2. See generally WILLIAM BALÉE, *FOOTPRINTS OF THE FOREST* (1994) [hereinafter *FOOTPRINTS*].

3. See generally F. HUXLEY, *AFFABLE SAVAGES* (1957).

III. THE BIOGEOGRAPHIC REGION OF PRE-AMAZONIA

The Ka'apor have lived in the biogeographic region of Pre-Amazonia since about the 1870s.⁴ The boundaries of Pre-Amazonia or Amazonian Maranhão, as it is sometimes called, are the Rio Gurupi to the west, the Atlantic Ocean to the north, the upper courses of the Rios Grajaú, Pindaré and Gurupi on the south, and the left bank of the Rio Mearim on the east.⁵ In particular, the region consists of a sector of Amazonian rainforest between the Rios Gurupi, Turiaçu, and upper Pindaré.⁶ This region corresponds well to the current habitat of the Ka'apor, Guajá, and Tembé Indians. It covers about 6,000 square miles and is as rich in species as any other region of eastern Amazonia.⁷ Many rare animal species exist in Pre-Amazonia, including the golden parakeet, harpy eagle, *Morphnus guianensis* (an eagle), *Crax fasciolata pinima* (a curassow), a new species of capuchin monkey (*Cebus kaaporii*), bearded sakis, and the jaguar.⁸ Many of these species are endemic to the region.

Many of the at least one thousand plant species in Pre-Amazonia⁹ are exclusive or endemic to the area of eastern Amazonia that is sometimes referred to as the Belém Refuge, and they are threatened with local (or ecological) extinction there (as are the above mentioned animals). Much of the plant diversity seems to be associated with ancient agroforestry practices of the indigenous peoples, insofar as many of the plants that thrive in old secondary forests, as well as some domesticates have been favored and managed by the Indians.¹⁰ Long term management of the forest by the Indians seems to be associated with the high alpha and beta diversities encountered in the forested habitat of the Ka'apor today.¹¹ Where there are forests in Pre-Amazonia, there are Indians. Sadly, where the forests have been removed, the Indians are gone too.

IV. ENVIRONMENTAL LAW, INDIGENOUS POLICY, AND PRE-AMAZONIA IN TIME

Ka'apor society has had at least sporadic engagements with Luso-Brazilian society since the time of the Brazilian Empire in the early 1800s. At that time, the Ka'apor lived within the present boundaries of the state of Pará to the northwest of their current habitat.

4. See William Balée, *The Ka'apor Indian Wars of Lower Amazonia, 1825–1928*, in DIALECTICS AND GENDER 155, 162 (R.R. Randolph et al. eds., 1988) [hereinafter *Ka'apor Indian Wars*]; see also FOOTPRINTS, *supra* note 2. Cf. D. Cleary, ANATOMY OF THE AMAZON GOLD RUSH (1990).

5. See Ricardo De Lemos Fróis, *Estudo Sobre a Amazônia Maranhense e Seus Limites Florísticos* [Study of the Maranhense Amazon and its Forest Boundaries], 15 REVISTA BRASILEIRA DE GEOGRAFIA [MAGAZINE OF BRAZILIAN GEOGRAPHY] 96, 97–100 (1953).

6. See A. Ducke and George A. Black, *Phytogeographical Notes on the Brazilian Amazon*, ANAIS DA ACADEMIA BRASILEIRA DE CIÊNCIAS [ANNALS OF THE BRAZILIAN ACADEMY OF SCIENCES], 1953, at 1, 6.

7. See FOOTPRINTS, *supra* note 2.

8. See David Conway Oren, *Uma Reserva Biológica para o Maranhão* [A Biological Reserve for Maranhão], CIÊNCIA HOJE [SCIENCE TODAY], July 1988, at 36, 37–39. [hereinafter *Uma Reserva Biológica*]; Helder L. Queiroz, "Checklist" Preliminar da Fauna de Mamíferos da Amazônia Maranhense [Preliminary Checklist of the Mammalian Fauna of the Maranhense Amazon], paper presented to the Congresso Brasileiro de Zoologia, Salvador, Bahia (1991) (on file with the *Texas International Law Journal*); Helder L. Queiroz, *A New Species of Capuchin Monkey, Genus Cebus Erxleben, 1777 (Cebidae: Primates) from Eastern Brazilian Amazonia*, GOELDIANA ZOOLOGIA, Dec. 2, 1992, at 1.

9. See FOOTPRINTS, *supra* note 2.

10. See W. Balée, *The Culture of Amazonian Forests*, in 7 ADVANCES IN ECONOMIC BOTANY 1 (D. A. Posey & W. Balée, eds., 1989); W. Balée, *Indigenous Transformation of Amazonian Forests: An Example from Maranhão, Brazil*, L'HOMME, Apr.–Dec. 1993, at 231; FOOTPRINTS, *supra* note 2.

11. See William Balée, *Indigenous Agroforestry and Tropical Biodiversity: Reconsiderations of Refuge Theory*, paper presented to the 94th Annual Meeting of the American Anthropological Association, Washington, D.C. (Nov. 17, 1995) (unpublished manuscript on file with author).

Until 1928, these engagements were mostly of a hostile sort, involving raids by the Ka'apor on Brazilian settlements in order to acquire steel tools and counterraids by Brazilian settlers and state militiamen on Ka'apor villages.¹² The Ka'apor ultimately made peace with Brazilian society in 1928 through mediation by agents of the SPI, the predecessor to the FUNAI. At that time, colonization in pre-Amazonia was minimal and the extent of the forests far greater than today—as was the total Ka'apor population (roughly around 2,000 people). In 1928, concepts such as demarcation of Ka'apor lands didn't exist; the principal objective of the government was to pacify the Ka'apor with gifts of steel tools, hammocks, and other coveted goods. At that time, before the age of antibiotics, there was little concern for the health of the people. As a small scale, relatively mobile society, the Ka'apor did not constitute a continuous human reservoir for bacterial and viral pathogens that require thousands of susceptibles to become endemic (such as measles and smallpox).¹³ Without these pathogens, the Ka'apor were subject to frequent epidemics which killed adults and children.¹⁴ Hence, disease reduced their population consistently and dramatically from the late 1920s until the mid 1970s, when the Ka'apor population dipped below 500.¹⁵ Since the 1970s, better medical attention, including preventive medicine, and a tendency toward sedentism have enabled the Ka'apor population to increase. That increase does not necessarily mean that Ka'apor individuals of today are better nourished and more free of pathogens than were their ancestors. However, this issue cannot currently be addressed due to a lack of evidence.

While the population seems to be increasing, the available land has decreased rapidly. Pre-Amazonian forests were largely intact before the early 1960s. However, in the early 1960s, settlers, mainly from the drought-stricken northeastern states, began to expand into the region and to establish new towns. In 1962, the federal agency SUDENE formulated an "escape-valve" plan to route poverty-stricken, landless peasants from northeastern Brazil into the essentially uninhabited forests of pre-Amazonia (uninhabited, except, of course, for a relatively small number of Indians, including the Ka'apor, Guajá, and Tembê). This plan involved dedicating about 4,000 square miles of pre-Amazonian forests, including some lands occupied by Ka'apor Indians, to resettle landless peasants from the Northeast. By the mid-1980s, almost all of that region had been deforested and an increasing amount had been converted from rice fields to cattle pasture. The population density of the settlers was much higher than that of the Indians, at about 4 persons/km² for the settlers compared to about .2 persons/km² for the Indians by 1980.¹⁶ In 1974, the government opened a new paved highway, the BR-316, to provide an overland link to the region's major ports, Belém and São Luís. The highway was built over former Ka'apor villages and actively producing swidden fields. To escape construction of the highway, the Ka'apor Indians living near the highway successively moved west away from it, but settlers who expanded into the lands they abandoned also moved west behind them, always maintaining a thin border between the Indians and themselves. Finally, if the Indian villages and their remaining forests were

12. See FOOTPRINTS, *supra* note 2; *Ka'apor Indian Wars*, *supra* note 4.

13. See Linda A. Newson, *An Historical Ecological Perspective on Epidemic Disease*, in *ADVANCES IN HISTORICAL ECOLOGY* (William Balée ed., forthcoming 1997).

14. See D. Ribeiro, *Convívio e Contaminação: Efeitos Dissociativos da Depopulação Provocada por Epidemias em Grupos Indígenas [Familiarity and Contamination: Dissociative Effects of Depopulation Provoked by Epidemics in Indigenous Groups]*, 18 *SOCIOLOGIA* 3 (1956).

15. Viral syndromes less severe than measles and smallpox in virgin soil populations may indeed persist in populations smaller than one thousand, but the more acute pathogens among small and dispersed groups will result in epidemics with high mortality and then become 'fade outs.' See Newson, *supra* note 13.

16. See Instituto Brasileiro de Geografia e Estatística [Brazilian Institute of Geography and Statistics] (IBGE), [1:1:6] 1980 SINOPSE PRELIMINAR DO CENSO DEMOGRÁFICO: MARANHÃO [Preliminary Synopsis of the Demographic Census: Maranhão], xvii-xxi (1981); FOOTPRINTS, *supra* note 2.

not to be entirely grazed over by the geographical expansion of the settlers, it became clear that the region still inhabited by the Indians required demarcation.

In 1978, the Reserva Indígena Alto Turiaçu, (2,048 square miles of high Amazonian forest and inhabited by the remaining Ka'apor as well as some Guajá, Tembê, and Timbira people) was demarcated. This demarcation was ratified (*homologada*) in 1982 by Decree No. 88002.¹⁷ Almost all the region had been legally protected by the Brazilian Forestry Code since 1961, when the Gurupi Forest Reserve (encompassing about eighty percent of the present reserve and much of the surrounding lands at a total of 6,463 square miles)¹⁸ was decreed.¹⁹ The Brazilian Forestry Code provides that forest reserves, such as the Gurupi Forest Reserve, were destined to "maintain the necessary environment for the life of indigenous peoples" and that such forest reserves occupied by indigenous peoples were considered to be under a "regime of permanent preservation" by the federal government.²⁰ In that same forest reserve, large ranching concerns were established after 1961. Of the 6,463 square miles of forest reserve, the only remaining forested areas lie almost entirely within two Indian reserves ratified in 1978, that of the Alto Turiaçu and Caru Reserve at 676 square miles, and the yet to be demarcated Indigenous Area Awá (inhabited by Guajá Indians as well as by agroindustrial concerns) at about 600 square miles. In other words, of the original 1961 forested land area of the Gurupi Forest Reserve Decree, about half (fifty-one percent) remains inside Indian reserves and areas. However, of this amount, a smaller fraction is now composed of forest because of the advent of invasions.

Since 1989, about 1,300 settlers, loggers, and ranchers have been invading and deforesting lands within the ratified Turiaçu Indian Reservation. The present situation is marked by tension and escalating violence. Raids on Indian villages by squatters and loggers and counterraids by Indians on squatters' and loggers' camps inside the reservation have occurred since 1993 with at least one fatal casualty.²¹ These raids have been amply documented by the Indigenous Missionary Council (CIMI) and other concerned groups. The invasion and deforestation of these lands are illegal under every law pertaining to the environment and to the Indians since 1961. However, the illegality of their actions has not deterred the settlers, loggers, and ranchers.

To help combat the invasion of Indian land, a new constitution was created. The Brazilian Constitution of 1988 represents perhaps the most environmentally sound and humane legal document concerning nonstate peoples (Indians) within the borders of a world nation. This Constitution specifically prohibits, under penalty of law, the occupation and degradation of Indian lands, especially those already ratified as reserves before the enactment of that Constitution in Article 231.²² Article 231 holds that Indian lands are permanently part of the federal patrimony of Brazil. Decree 22 of 1992, in keeping with the spirit of Article 231, disavows the possibility of dispute by entities other than the federal

17. See generally Mércio Pereira Gomes, *O Povo Guajá e as Condições Reais para a sua Sobrevivência* [*The Guajá People and the Real Conditions of Their Survival*], in *POVOS INDÍGENAS NO BRASIL* [INDIGENOUS PEOPLE OF BRAZIL] 354 (CEDI eds., 1987).

18. See *id.* at 358.

19. See *Uma Reserva Biológica*, *supra* note 8, at 42; see also William Balée, *Ka'apor: Forêt en otage dans l'état du Maranhão* [*Hostage Forest in the State of Maranhão*] *ETHNIES*, Printemps 1990, at 106, 106-10; SURVIVAL INTERNATIONAL, VIOLATIONS AGAINST INDIGENOUS PEOPLES IN THE AREA OF THE GREATER CARAJÁS PROJECT, (1993) (written submission to the United Nations Working Group on Indigenous Populations) (on file with Survival International (U.K.)).

20. Forestry Code, CÓDIGO FLORESTAL, Lei No. 4.771, art. 3, de 15 de setembro 1965, D.O. de 28.09.65 (Braz.), reprinted in 5 *COLEÇÃO DAS LEIS* 157 (1965).

21. William Balée, Testimony in Hearing on Indigenous Peoples and the Natural Environment of Brazil, Subcommittee on Western Hemisphere Affairs, U.S. House of Representatives, 103d Congress, Washington, D.C. (May 10, 1994) (transcript on file with the *Texas International Law Journal*).

22. CONSTITUIÇÃO FEDERAL art. 231 (Braz.).

government (i.e., local interests) regarding the boundaries of federal Indian lands.²³ As such, the recent Decree 1.775 that would permit states, counties, and other interested parties to sue the federal government for indemnification or to demonstrate mistakes in the identification and delimitation of native lands clearly seems unconstitutional.²⁴ In effect, Decree 1.775 relegates the disposition of Indian lands to quasi-independent nonnative entities, such as states, counties, and local courts. In recognition of the detriment to indigenous lands and human rights that this decree might permit, the President of the American Anthropological Association, Yolanda Moses, on the advice of the AAA Committee for Human Rights, wisely wrote the World Bank President requesting that the World Bank suspend payments on three different projects concerning demarcation of indigenous reserves in Brazil.²⁵ In Maranhão and Pará, these local governmental and political entities have been traditionally indifferent if not actively opposed to the protection of Indians and their lands from expansion by settlers.

It is challenging to demonstrate how the law can bring benefits to the nation-state and its subject millions. In relation to Brazil, it is fair to ask why anyone other than the Indians themselves and the people who depend on them for their livelihoods (including FUNAI personnel, other indigenists, and missionaries) should be actively concerned with the degradation of their lands and the erosion of their rights to those lands? Even if the state is construed to be benevolent to all its people in principle by treating each person with the fair hand of justice, Brazil surely has more pressing problems with its urban unemployment, pervasive underemployment, and famines in the countryside which affect millions of people every day than it does with its Indians. All of Brazil's Indians number only about 250,000—constituting only a small fraction of the total Brazilian population of roughly 163,000,000. While the quiet extinction of species and conversion and burning of vast tracts of forest may have global implications when seen through the cold lens of a satellite camera, these occurrences seem to have little or no impact on the welfare and consciousness of the great majority of Brazilian citizens.

An enlightened state would seek science in the public interest to uncover the origins of afflictions to society, such as urban and rural poverty, so that present and future conditions may not favor them again elsewhere within that state's borders. The Amazon is experiencing what most of the rest of Brazil previously saw more than forty years ago—the disappropriation of farmers, large scale deforestation, and the sometimes forcible *de facto* removal of Indians from the lands of their ancestors (to the extent that these lands become deforested and that deforested areas are incompatible with tropical forest peoples' lifestyles). Hence, cities like Belém are swelling with unskilled and uneducated immigrants from the countryside who are not merely ecological refugees, but are also, in a very real sense, the losers in a struggle of wills between themselves and the landed elites of the interior.²⁶ The law forbids frontiersmen to expand everywhere, but in addition to possessing their own language and dogmas, the frontiersmen possess the means to enact deeds which are incompatible with the law. If the state lacks the means to disenfranchise *donos do poder* (power-owners) in the Amazonian countryside, those who would keep such power at any cost can maintain indefinitely the convenient fiction of a benevolent state. But environmental and human rights laws can be effective in deterring some people who would

23. *Id.*

24. Beto Ricardo and E. Carlos Mares, FHC Reacende Estopim Antiindígena [FHC Relights the Fuse of Anti-Indianism] *PARABÓLICAS*, Jan. 1996, at 3.

25. Terry Turner, *Association Protests Threat to Indigenous Land Rights*, *ANTHROPOLOGY NEWSLETTER*, May 1996, at 22 [hereinafter *Indigenous Land Rights*].

26. See THOMAS A. MITSCHERIN ET AL., *URBANIZAÇÃO SELVAGEM E PROLETARIZAÇÃO PASSIVA NA AMAZÔNIA: O CASO DE BELÉM* [SAVAGE URBANIZATION AND PASSIVE PROLETARIANISM IN THE AMAZON: THE CASE OF BELÉM], 21-24, 35, 62, 116-17 (1989).

otherwise contribute to the invasion and destruction of forested lands, endemic biota, prehistoric sites that constitute federal patrimony, and native cultures on federally protected Indian lands in Brazil. At present, the best possibility for achieving effectiveness in such deterrence involves seeking recourse in the law of the land rather than in the formulation of additional decrees and laws.

As ensconced in its Constitution of 1988, Brazil has perhaps the most enlightened environmental and human rights laws concerning native lands and native peoples in the world. Article 231 is unequivocal in assigning to the federal government responsibility for the protection and preservation of Indian lands:

The social organization, customs, languages, beliefs and traditions as well as original rights to the lands they occupy traditionally are recognized, it being the obligation of the Union to demarcate them, protect them, and require respect for all their worth § 1º Lands traditionally occupied by Indians are those in which the Indians reside permanently, those utilized for their productive activities, those indispensable to the conservation of environmental resources required for their welfare, and those necessary to their demographic and cultural reproduction according to their uses, customs, and traditions.²⁷

If Decree 1.775 is not nullified or repealed, the Brazilian legal model for itself and other countries that harbor egalitarian societies (ethnic minorities *sensu lato*), as so eloquently expressed in the Constitution of 1988, may not materialize beyond language. Decree 1.775 may be associated with the continuing degradation and usurpation of Indian lands in Pre-Amazonia, and it may contribute to the local extinction of unique flora, fauna, archaeological sites, and native cultures in the immense region of eastern Amazonia that lies east of the Tocantins River and south of the Amazon River.²⁸ This outcome would represent an extension of the poverty of the Northeast into a region that was once inimitably rich, both environmentally and culturally, and upon which a price tag in monetary terms seems inestimable. It would further remove the possibility of the rehabilitation of degraded pastures in extreme eastern Amazonia and afforestation with native species in that region, since many of those species are found only in the remaining forests inhabited by the Ka'apor Indians and other Indians.

The Indians cannot defend their own way of life and their lands from modern frontiersmen. They lack the means, and generally speaking, they lack the will. The Indians lack these traits because they did not invent the concept of culture and they did not establish private or even corporate ownership of real estate. Western societies along with every other modern state did. For this reason, the Indians of Pre-Amazonia and of Brazil generally require more federal protection in practice, if their lands and ways of life are to survive in their current form.

The economic, political, and social costs of Decree 1.775 to Brazil loom more ominously than words. Hopefully, the Brazilian leaders will help ensure that the spirit and letter of the law, as expressed in Article 231 of the Brazilian Constitution, materialize for the benefit of Brazil, its citizens, and its native peoples.

27. CONSTITUIÇÃO FEDERAL art. 231 (Braz.).

28. See *Indigenous Land Rights*, *supra* note 25.