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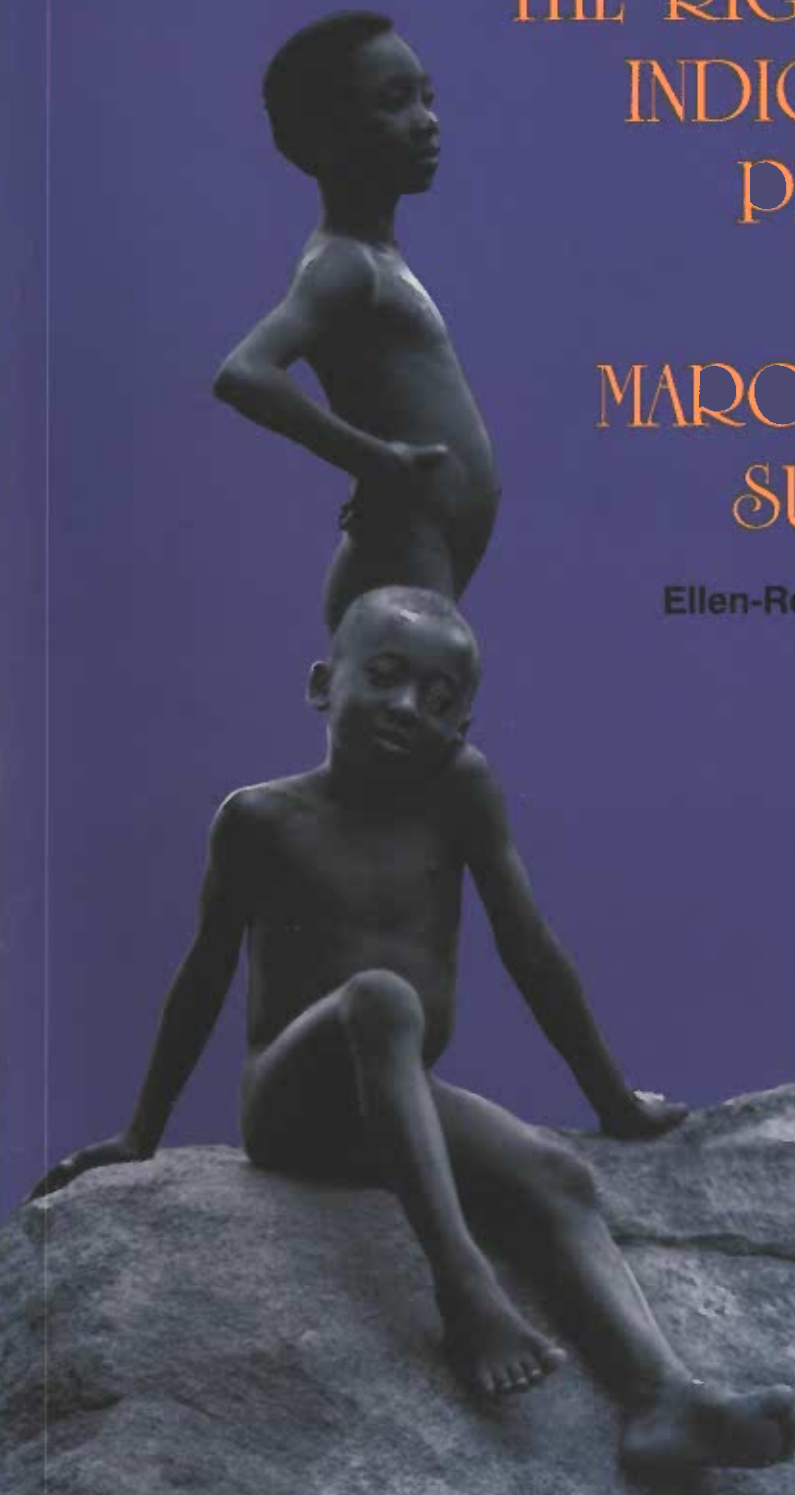
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Ellen-Rose Kambel and  
Fergus MacKay



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INDIGENOUS PEOPLES  
AND MAROONS  
IN SURINAME

Ellen-Rose Kambel  
and  
Fergus MacKay

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**THE RIGHTS OF INDIGENOUS PEOPLES AND MAROONS IN SURINAME**

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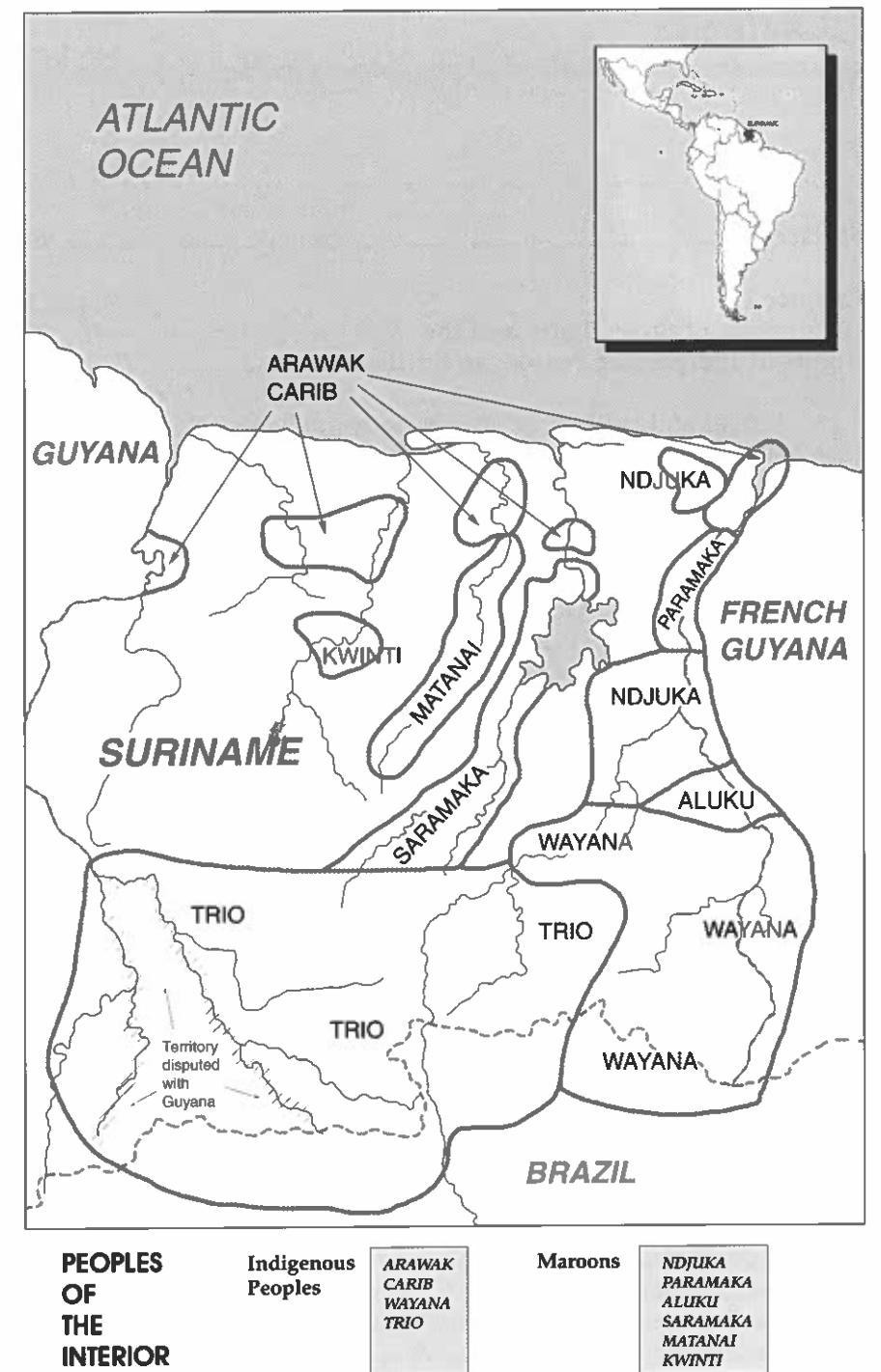
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# CONTENTS

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Preface .....	10
<b>Chapter 1</b> <b>Acquisition of Sovereignty and the</b> <b>Rights of Indigenous Peoples in Suriname .....</b>	<b>22</b>
• Arrival and Settlement of Europeans in Suriname .....	23
• International and English law on Territorial Sovereignty and Indigenous Rights .....	24
• The Dutch Era - Transfer of Sovereignty and Early Legal Relations .....	31
• West-Suriname - Coppename to Corantijn .....	39
• Dutch Colonial Practice in Other Regions .....	40
• Conclusions .....	43
<b>Chapter 2</b> <b>Treaties and Other Agreements</b> <b>with Indigenous Peoples and Maroons .....</b>	<b>50</b>
• Treaties with Indigenous Peoples .....	51
• Treaties with Maroons .....	55
• Maroon Treaties: International or Domestic? .....	61
• Were the Maroon Treaties Binding? .....	64
• Content of the Maroon Treaties .....	66
• Are the Treaties with the Maroons Still Valid and Enforceable in 1999? .....	73
<b>Chapter 3</b> <b>Indigenous and Maroon Rights in</b> <b>Surinamese Land Legislation .....</b>	<b>82</b>
• Historical Background .....	82
• Land Titles Currently Available under Surinamese Law .....	84
• The Domain Principle .....	87
• The Savings Clause .....	91
• Concluding Remarks .....	94
<b>Chapter 4</b> <b>Indigenous and Maroon Rights and the Exploitation</b> <b>and Preservation of Natural Resources .....</b>	<b>100</b>
• Mining .....	100
• Forestry .....	106
• Nature Conservation .....	108
• Concluding Remarks .....	116
<b>Chapter 5</b> <b>The Peace Accord of Lelydorp .....</b>	<b>120</b>
• General Principles .....	121
• Article 4 - The Council for the Development of the Interior .....	121
• Article 10 - The Right to Land .....	122
• Article 11 - International Labour Organization Convention no. 169 .....	128
• Article 12 - Representation of the Interior Population .....	129
• Article 13 - Status of the Traditional Authorities .....	129
• Legal Status of the Peace Accord .....	129
<b>Chapter 6</b> <b>Constitutional Guarantees .....</b>	<b>134</b>
• The 1987 Constitution .....	135
• Constitutional Rights .....	137
• Limitations of Fundamental Rights and Freedoms .....	145
• Enforceability of Fundamental Rights and Freedoms .....	146
• Concluding Remarks .....	147
<b>Chapter 7</b> <b>International Human Rights Law and the Rights</b> <b>of Indigenous Peoples and Maroons .....</b>	<b>152</b>
• The United Nations System .....	153
• The Inter-American Human Rights System .....	158
• The CARICOM Charter of Civil Society .....	162
• The UN and OAS Declarations on the Rights of Indigenous Peoples .....	163

• Land and Resource Rights .....	167
• Self-Determination .....	170
• Participation Rights .....	170
• Non-Discrimination/Equal Protection .....	171
• Cultural Rights .....	172
• Concluding Remarks .....	173
<b>Chapter 8</b>	
<b>Conclusions and Recommendations .....</b>	<b>178</b>
<b>Bibliography .....</b>	<b>192</b>
<b>Annex</b>	
<b>Indigenous and Maroon Rights in</b>	
<b>Surinamese Land and Resource Legislation .....</b>	<b>202</b>
<b>Abbreviations .....</b>	<b>206</b>

**Boxes**

I	The Rights of Maroons in the Colombian and Brazilian Constitutions .....	57
II	Suralco and Adyumakondre .....	103
III	The Afobaka Dam and Nieuw-Koffiekamp .....	105
IV	The Suriname Biodiversity Prospecting Initiative .....	115
V	The Commission Domainland .....	124
VI	Resolution no. I Adopted During the Third Regional Meeting of Indigenous Women .....	127
VII	General Recommendation of the Committee on the Elimination of Racial Discrimination XXIII (51) concerning Indigenous Peoples .....	157

**PREFACE**

## INDIGENOUS PEOPLES AND THE LAW IN THE GUYANAS

This book is the second in a series of collaborative publications on the legal situation of the indigenous peoples of the Guyanas, being coordinated by the Forest Peoples Programme on behalf of the International Work Group for Indigenous Affairs. The series, while necessarily technical in content, aims to provide concise and readable summaries of the rights of indigenous peoples in the legislation of the four countries of the Guyanas: Venezuela, Guyana, Suriname and French Guyana.

All these countries of the Guyana Shield are at a critical juncture in their histories. Annexed by the European powers between the 15th and 17th centuries, they have over the following centuries been gradually integrated into the world market. The impact of European colonization on the indigenous peoples has been diverse and the situation of the peoples is today equally varied. In all four countries the indigenous peoples now find themselves in a minority, their lands having been taken over by majority populations originating through miscegenation and by migration from other parts of the world. While the indigenous peoples now face many problems in common in the four countries - lack of secure rights to their lands, marginalisation and discrimination - the political and legal challenges they face in resolving these problems are quite different. They confront four markedly different legal systems - Spanish, English, Dutch and French - and four quite distinctive political regimes, with one region, French Guyana, still being administered by a European metropolitan power as if it was an integral part of Europe.

Despite these differences, the commonalities in the region's geology and ecology are now causing an apparent convergence in the problems and threats to these peoples' futures. New technologies and the globalization of trade and financial transfers have brought about a massive escalation in pressure to open up the forests and minerals of the region to exploitation. The rich tropical forests which blanket a very large part of the region, while unique in many respects, form a northern extension of the Amazonian Hylaea and have long been coveted by logging companies as a lucrative source of timber. The common geology also means that localised reefs and alluvial deposits of gold and diamonds occur right across the region and have drawn successive waves of miners into indigenous territories.

**Table 1:**

Indigenous and Maroon Peoples in the Guyanas

	Total	Ethnic Groups
Venezuela	314,815	30
Guyana	60,000	9
Suriname:		
Indigenous People	10-22,000	4
Maroons	45,000	6
French Guyana:		
Indigenous People	10,000	7
Maroons	22,000	3
<b>Total:</b>	<b>470,000</b>	<b>not an addition as many overlap</b>

Sources: OCEI 1993; Colchester 1997:ix; Chin and Buddingh 1987:xiii; Pou d'Agouti 17 June 1998.

In Guyana, the ending of two decades of one-party dictatorship, euphemistically described as 'cooperative socialism', has led to an astounding increase in pressure on the country's natural resources. Over ten million hectares of rainforest, an area the size of Portugal, have been leased to foreign timber companies, many with disturbing track records overseas. A mining bonanza is also underway, with a host of foreign companies energetically screening the Interior for minerals. Permits to mining companies now cover fully one tenth of the country's territory, much of this in territory claimed by Venezuela. Guyana now has the distinction of playing host to one of South America's largest gold mines, which in August 1995 suffered a massive tailings dam burst, pouring three million cubic metres of cyanide-laced waste into the country's main river. It was a tragedy that Cheddi Jagan, the country's then president, called 'a national environmental disaster.' Those to suffer most from these developments are the country's 60,000 indigenous people who make up the majority population in the sparsely

inhabited Interior but whose rights to land remain limited and have not been reassessed by the government since 1969<sup>1</sup>.

Venezuela has witnessed a very similar intensification of mining and logging in recent years. Although pressure on the Interior was weak during the 1960s and 1970s - the years of the oil boom - since the 1980s a rising national debt, macro-economic restructuring and low oil prices have combined to intensify pressure to exploit the country's renewable and non-renewable natural resources. Large-scale iron ore and aluminium mining and processing works established in the 1960s and 1970s have thus more recently been eclipsed in importance by a proliferation of medium- and large-scale gold and diamond mining enterprises, many concentrated on indigenous lands in the south-east of the country. Foreign investment in mining has been encouraged by policy and legal reforms and even forest reserves have been opened to exploitation leading to a national outcry from Venezuelan environmental and indigenous organisations. At the same time, national logging companies with southern European connections have been intensifying their exploitation of the country's forests. This pressure coupled with conversion of forests to pastures and agricultural settlements has led to rapid forest loss. Venezuela now has one of the highest rates of deforestation in the Americas<sup>2</sup>.

High labour costs and relatively strict forestry regulations have impeded a similar expansion of logging in French Guyana. A handful of highly subsidised French timber companies are active in the northern forests but the main concerns of local environmentalists are focused on agricultural colonization schemes in coastal wetlands. Mining, however, is another story. French and Canadian mining ventures are opening several very large-scale mines in the Interior and new roads are being opened up to service both them and the neighbouring mines in Suriname. Indigenous peoples' organizations have openly questioned these projects but have been rebuffed in their demands for collective title to their ancestral lands, as the French integrationist policy based on the revolutionary slogan of '*liberté, égalité et fraternité*' does not permit the recognition of special rights for any social sector<sup>3</sup>.

#### Pressure on Suriname's Interior

Suriname is a small former Dutch colony on the north-east coast of South America. It became independent in 1975 after attaining formal autonomy within the Kingdom of the Netherlands in 1954. Although it was very much dependent on Dutch financial support, at the time of

its independence Suriname was one of the most prosperous nations in South America. The Independence Agreement with the Netherlands guaranteed a substantial amount of development assistance leading many to conclude that Suriname was in for a rosy future in which aid money and substantial natural resources could ably support its small population of around 400,000. This was not to be however, as falling prices for bauxite caused revenues to drop and a brutal military dictatorship (1980-87, 1990-91) characterised by economic mismanagement and gross violations of human rights led the Dutch to suspend all aid in 1982. A few years later in 1986, armed conflict erupted pitting Maroon insurgents against the dictatorship further damaging the economy and destroying much of the country's infrastructure. The cumulative effect was macro-economic crisis.

In 1991, democracy and Dutch aid were restored and the new government formed by a coalition of political parties calling itself the New Front sought to revive the economy, in part by agreeing to an International Monetary Fund structural adjustment programme and by seeking foreign investment, especially in the timber and gold sectors. Inflation was reined in but the country still had serious problems. In 1996, the New Front lost the election and was replaced by the National Democratic Party (NDP), headed by former military dictator, Desi Bouterse. Essentially the party of the military dictatorship, the NDP has presided over a second economic meltdown causing inflation and foreign exchange rates to spiral out of control. Dutch aid was suspended once again in 1998 citing corruption, gross mismanagement and bad relations in part due to the trial *in absentia* of Bouterse for drug trafficking. In 1999 alone the Surinamese guilder lost over three hundred percent of its value against the US dollar.

The preceding has had dire consequences for Suriname's extensive forests and the indigenous and Maroon peoples who live in and from the forests. Covering around 80 percent of Suriname's land mass, until recently these forests were considered one of the best prospects for long term sustainable management and conservation<sup>4</sup>. With few exceptions, this optimism has been proved to be unfounded. In an attempt to reduce dependency on bauxite revenues and aid, Suriname has now turned to the forests to generate much needed income.

The early colonial economy was primarily based upon agricultural production from coastal plantations. Other than limited logging and some small-scale gold mining, the interior forests were for the most part left alone. In the early 20th century bauxite was discovered along the coast and Suriname soon became the world's leading producer, a

position it held until the 1950s. These bauxite mines still form the backbone of the Surinamese economy - more than 70 percent of export earnings and 15 percent of GDP came from bauxite in 1998. Its impact upon the environment and local communities has been considerable. For instance, 6000 Maroons were forcibly relocated in 1963-64 to make way for a hydro-electric dam that powers a bauxite refinery operated by US company ALCOA. Until recently, logging was limited to the so-called forestry belt that runs in a 40 kilometer wide strip from east to west along the coastal area<sup>5</sup>. All of this changed in the 1990s when a series of Asian logging companies and Canadian gold mining companies arrived on the scene and the small-scale mining sector dramatically increased.

In 1993, the government entered into negotiations with three Asian logging companies - MUSA of Indonesia, Berjaya Berhad of Malaysia and Suri-Atlantic of Indonesia - for concessions covering between 3-5 million hectares, almost two-fifths of the country. These concessions caused local and international uproar, not least because of the dubious reputations of MUSA and Berjaya and the inability of the government to oversee and control logging operations. Analyses of contracts revealed that the Surinamese treasury would receive few if any benefits and that the environment and indigenous and tribal peoples would suffer irreparable damage<sup>6</sup>. For the next three years, indigenous peoples and Maroons and NGOs forcefully stated their objections to these and other concessions and diplomatic missions from the European Union, the Inter-American Development Bank and elsewhere shuttled in and out of the country offering aid and incentives to the government in exchange for not granting the concessions.

After the 1996 elections, the newly elected President Jules Wijdenbosch announced that the concessions would not be granted and the government would adhere to the 150,000 hectare limit prescribed by the 1992 Forest Management Act. Recent evidence, however, indicates that the government has given almost as much as that requested in 1993, only in smaller parcels. According to recently obtained information MUSA appears to have obtained concessions amounting to at least 800,000 hectares both in its own name and through a variety of front companies, a practice it first employed in 1993 when it registered over 70 front companies. Chinese companies have also arrived and set up operations on the lands of Saramaka Maroons in central Suriname. Despite a substantial investment of time and money by the UN Food and Agriculture Organisation to strengthen the Surinamese Forest Service, logging operations are taking place with little or no supervision and often under the patronage of powerful persons within or associated with the

government. In some cases, members of the government, usually associated with the military, have their own concessions which undermines attempts to regulate the sector.

In addition to timber, the government has aggressively sought investment in the gold sector to exploit the substantial gold and diamond deposits thought to underlie much of the Interior. In 1991, Golden Star Resources, the first of a number of Canadian mining companies, arrived. A year later it obtained concessions totaling over 1.2 million hectares in which to prospect for gold. Enclosed in these concessions were at least 19 Maroon communities, none of whom were consulted or even informed about the concessions. In 1994, Golden Star and the government concluded the Gross Rosebel Mineral Agreement, by which Golden Star, and later Cambior of Montreal, obtained exploration rights to the Gross Rosebel concession. The Maroon village of Nieuw Koffiekamp lies at the center of the southern block of this concession. It has been informed that it will have to be relocated for the second time in 35 years to make way for a proposed mine in the concession. Golden Star has been followed by a number of other companies who have all been granted concessions, the majority of which encompass or affect indigenous and Maroon villages.

The majority of mining activity in Suriname today is small-scale. As many as 10,000 Surinamese, many of them Maroons, and anywhere between 15-40,000 Brazilians are actively mining in Suriname's forests. Most of the Brazilians arrived between 1997 and 1999, after the Government began issuing one-year permits for US\$200. This massive influx of miners has resulted in immense social and environmental problems in the interior. Shoot-outs between Brazilians and Maroons have been reported, Maroons have been killed and farming areas have been destroyed. An estimated 20 tonnes of mercury was released into the environment in 1998 alone and many waterways in the Interior are unfit for human consumption due to sedimentation and other pollution. Matawai Maroons, for instance, are forced to import water from the city because their rivers and creeks have been polluted by miners. They also report catching fish with soapy white eyes and tumors<sup>7</sup>. Wayana Indians report that they are unable to use the main river in their territory due to pollution. They say that the river water causes vomiting, skin rashes and diarrhoea<sup>8</sup>. Canadian companies, Canarc, Blue Ribbon and Golden Star, are all working in the Matawai and Wayana areas. Malaria and sexually transmitted diseases have reached epidemic proportions in most areas of the interior. The situation has become so bad that parts of the interior are routinely referred to as the 'wild west' by government authorities and the media. While this activ-

ity is generally justified as providing much needed income, the World Bank concluded in 1998 that revenues from gold mining were close to zero<sup>9</sup>.

Suriname has no coherent policy dealing with indigenous peoples and Maroons, the environment, sustainable development or resource management. The vast majority of decisions are made by a small minority of persons, who exercise their authority mostly by decree with few restraints and little oversight. Institutional monitoring capacity is virtually non-existent and there are serious questions about the will of the state to control mining and logging given the interests of the powerful in those activities. Also, Suriname has no environmental laws that can be used to regulate environmentally damaging activities. While an institute has been established to develop and implement environmental laws, it has yet to produce any results. In the meantime, a bauxite company is mining a nature reserve in eastern Suriname (Wane Kreek), Brazilian and local miners have destroyed large areas of the Bronsberg Nature Reserve, less than one hour's drive from the city, and a host of local and multinational miners are wreaking havoc on large areas of the rest of the Interior.

Indigenous peoples and Maroons have vigorously objected to this invasion of their ancestral lands and have demanded that all existing concessions be suspended and that no more be given until their rights are recognized in accordance with international human rights standards, and enforceable guarantees are in place in Surinamese law<sup>10</sup>. The state maintains that indigenous peoples and Maroons are merely permissive occupiers of privately owned state land without any effective rights thereto and asserts the right to issue concessions irrespective of the presence and subsistence needs of these peoples in the name of national development.

Indigenous peoples and Maroons are the majority in the Interior with a combined population of around 60,000. There are four indigenous peoples – Kalinya (Carib), Lokono (Arawak), Trio and Wayana – and six Maroon peoples – Saramacca, Kwinti, Matawai, Ndjuka or Aucaner, Paramacca and Aluku, each of which has a distinct ancestral territory. The Kalinya and Lokono are based on the coast and the intermediate savannahs, the Trio and Wayana in the forests of the south and the Maroons along the major rivers of the centre of the country.

Maroons are the descendants of escaped African slaves who fought for and won their freedom from the Dutch colonial administration in the 18th century. Their freedom from slavery and rights to territorial and political autonomy were recognized by treaties concluded with the Dutch in the 18th and 19th centuries and by two centuries of colonial

administrative practice. They succeeded in establishing viable communities along the major rivers of the rainforest interior and have maintained a distinct culture based primarily upon an amalgamation of African and Amerindian traditions. Maroons consider themselves, and are perceived to be, culturally distinct from other sectors of Surinamese society and regulate themselves according to their own laws and customs. Consequently, they qualify as tribal peoples according to international definitional criteria and enjoy the same rights as indigenous peoples under international law<sup>11</sup>.

Against the background of the preceding, this book describes and analyses the Surinamese legal system as it relates to the rights of indigenous peoples and Maroons. It is sub-divided into eight chapters, seven of which deal with a relevant legal issue: the first chapter examines the manner by which Suriname came into being and the consequences of colonization for the rights of indigenous peoples; the second deals with the treaties concluded by the Dutch with both indigenous peoples and Maroons; the third and fourth examine legislation relating to land tenure and resource exploitation and conservation; the fifth deals with the 1992 Peace Accord that officially ended the interior war of 1986-92; the sixth describes Constitutional guarantees; the seventh evaluates Suriname's obligations under international human rights law to recognise and respect the rights of indigenous peoples and Maroons; and, the eighth and final chapter contains a number of conclusions and recommendations.

The book took over a year to complete. This was in large part due to the virtual absence of judicial decisions and previous legal research on the issue. While some studies have dealt with the indigenous and Maroon rights tangentially, only two have focused directly on the subject, one in descriptive rather than legal analytical terms, the other, written by Professor A.J. Quintus Bosz, as incidental to a larger study on Surinamese land law. The latter is generally regarded as the authoritative work on Surinamese land law and therefore, we have paid particular attention to what is written there. While Quintus Bosz's book is undoubtedly impressive, it nonetheless contains a series of dubious assumptions about, and inconsistencies in its treatment of, the rights of indigenous peoples and Maroons that require discussion. Moreover, it was written in the 1950s and is reflective of thinking about indigenous rights at that time. In this respect, this book is particularly directed to policy makers and the legal profession in Suriname.

In this study we have not discussed the role of gender. Due to different gender roles, however, the failure of the Surinamese govern-

ment to recognize indigenous and Maroon rights and destructive resource exploitation operations have a differential impact on women. Also, although not readily visible, in recent years indigenous women in Suriname have been actively involved in the articulation of their rights and have expanded the demand for legal recognition of land rights to include adequate and culturally appropriate educational facilities, health care and income generating projects<sup>12</sup>. One of the authors is presently researching these and other issues related to gender and indigenous rights<sup>13</sup>.

The study concludes that in principle Surinamese law affords more rights to indigenous peoples and Maroons than the official position of the state concedes, but that even these protections are inadequate and ineffective guarantees. International human rights law impose specific obligations on Suriname with respect to indigenous and Maroon rights. The law as it presently stands is substantially incompatible with these international standards and therefore, pursuant to Suriname's international obligations domestic law must be revised to provide for the full recognition of and respect for indigenous and Maroon rights. In this regard, the book offers a number of conclusions that hopefully can aid policy makers to harmonize Surinamese law with international standards.

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#### Notes

- <sup>1</sup> Colchester 1997.
- <sup>2</sup> Latin American Mining Monitoring Programme 1998. Miranda et al. 1998.
- <sup>3</sup> Forest Peoples Programme (FPP), *Indigenous People in French Guiana contemplate legal action to protect their land rights*, 1997; FPP, *Mining Companies Covet Area Proposed for Nature Reserve in French Guiana*, 1997 and FPP, *Canarc and Placer Dome sign deal to extract gold desposit in Benzdorp concession*, 1997.
- <sup>4</sup> Colchester 1995, at 7.
- <sup>5</sup> Gopairal 1998, at 19.
- <sup>6</sup> World Resources Institute 1995.
- <sup>7</sup> FPP, *In Search of El Dorado, Again: Mining and Tribal Peoples in Suriname*, 1997.
- <sup>8</sup> Ibid.
- <sup>9</sup> World Bank 1998.
- <sup>10</sup> Resolution I of the 1996 Gran Krutu (Great Gathering) of Indigenous Peoples and Maroons, June 1996. In: PARS/VIDS 1997.
- <sup>11</sup> See World Bank Operational Directive 4.20 on indigenous peoples (1991); Proposed OAS Declaration on the Rights of Indigenous Peoples, art. 1(2): - "This Declaration applies to indigenous peoples as well as peoples whose social, cultural and economic conditions distinguish them from other sections of national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations" - and International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989, Article 1- "This Convention applies to: (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations."
- <sup>12</sup> See reports by Sanomaro Esa (1998 and 1999). Sanomaro Esa is a national indigenous women's organization that has been involved in establishing a network of indigenous women in Suriname since 1994.
- <sup>13</sup> See, on indigenous women and land rights in the forestry belt, Kambel 1999.

# CHAPTER 1

## ACQUISITION OF SOVEREIGNTY AND THE RIGHTS OF INDIGENOUS PEOPLES IN SURINAME

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One of the central organizing principles of Surinamese land and resource legislation is the 'domain land principle' which is currently found in article 1 of the 1982 Decree Principles of Land Policy and provides that, 'all land to which others have not proven ownership rights, belongs to the domain of the State.'<sup>1</sup> Although this principle (the domain declaration) was not introduced until 1982, Prof. Quintus Bosz claimed that it was not new, stating that, 'For centuries government authority in Suriname has been exercised as a right which emanates from the supreme ownership of the land, in relation to which the Government currently still regards itself as private owner of the domain.'<sup>2</sup> He provides no evidence or analysis to substantiate this conclusion.

Since 'domain' is understood to be the private ownership of the State, in Quintus Bosz's opinion, only those with titles issued by the government have 'ownership rights.'<sup>3</sup> Accordingly, indigenous peoples and Maroons, who do not possess such titles, are believed not to have ownership rights but, as Quintus Bosz put it, mere 'entitlements' or 'interests.'<sup>4</sup> As we shall see in this chapter, Quintus Bosz's interpretation that the domain is private property of the State is only partially correct and is based on an erroneous understanding of the distinction between public law and private law title to land. In order to show this, we will analyze international legal principles applying at the time of British colonization and cession to the Netherlands, the municipal law of both England and the Netherlands (as applied to Suriname) in force during this same period and the interaction between international and municipal law.

At the outset, we believe that it is important to state that international law pertaining to colonial acquisitions, particularly in the 19th century, essentially developed as a tool to facilitate and justify European colonial expansion and the denial or abrogation of the rights of indigenous peoples and others. The analysis in this chapter should be viewed in this context; it applies a series of rules and principles that are for the most part European in origin, are self-serving and do not account for Indigenous or tribal peoples' perspectives.

### Arrival and Settlement of Europeans in Suriname

By virtue of Alonso de Ojeda's 'discovery' of the coast of Guyana in 1499, Spain claimed exclusive rights over the territory north of Brazil, including what is currently known as Suriname. In support of this, the Spanish referred to the Papal Bulls issued by Pope Alexander VI in 1493, which purported to grant exclusive rights to Spain over all territories 100 leagues west of the Azores and 'entrusted the heathen inhabitants of the lands newly discovered to the care and tutelage of a qualified Christian monarch', in this case Spain.<sup>5</sup>

Other European nations however, did not accept Spanish claims based solely upon discovery and the Papal Bulls, contesting Papal authority over secular affairs and asserting that discovery must be accompanied by effective occupation for rights over a given territory to concretize. As we shall see, this view prevailed and became a rule of international law. Therefore, in the eyes of the English, French and Dutch, Suriname was considered unclaimed land. Unclaimed, but certainly not uninhabited: in 1661, Major John Scott mentions 800 Carib families and 1400 Paricoates living along the Marowijne River, while along the Suriname, Saramacca, Coppename and Corantyne Rivers about 5000 Carib families, 1400 Turroomacs and 1200 Sapoyes.<sup>6</sup> While a number of attempts were made, until 1650, European efforts to maintain trading posts and plantations failed because of armed resistance by indigenous peoples.<sup>7</sup>

In 1650, Francis Willoughby, the governor of the Caribbean island of Barbados, an English Crown Colony, sent Anthony Rowse and several others to the mainland. Rowse negotiated with 'two Carib kings or princes' in the Suriname River who were 'all willing to receive our nation, and that we shall settle amongst them.'<sup>8</sup> Several months later, some 100 planters and their slaves traveled from Barbados to Suriname and established sugar plantations along the Suriname, Commewijne and Para Rivers.<sup>9</sup> However, English law prohibited Willoughby from acquiring lands without express authorization from the Crown.<sup>10</sup> In 1662, Willoughby received such authorization in the form of Letters Patent from King Charles II. The Letters Patent, stated that 'whereas Lord Willoughby in 1650 furnished out a vessel, and by treaty with the natives of that part of Guiana called Suriname, began to settle an English colony...', and retroactively conferred to Willoughby 'the whole and Sole Lordsp., Property, Jurisdiction and Command' of the area between the Coppename and Marowijne River, named 'Willoughby Land.'<sup>11</sup>

Five years later, in 1667, during the Second English-Dutch War, Fort Willoughby capitulated to the Zeelander Abraham Crijnsen. By the

Treaty of Breda concluded several months later by England and the United Provinces of the Netherlands, the territories that each had acquired during the war were formally ceded to each other. The Dutch kept Suriname, while the English kept New Netherlands (the Island of Manhattan). In the next 15 years, Suriname came under the jurisdiction of the Province of Zeeland, the Dutch West India Company (WIC) and finally, the Society of Suriname. With the exception of two periods of British interim rule during the Napoleonic era, Suriname remained in Dutch hands until its independence in 1975.

In order to assess the legal implications of European colonization, first by the English and then by the Dutch, for the rights of indigenous peoples, in particular rights to lands, territory and resources, we need to look at the legal principles that were created by the Europeans to justify bringing territories under their control during the 16<sup>th</sup> and 17<sup>th</sup> century. In doing so, we must determine the nature of the rights acquired by the English Crown, and derivatively by Lord Willoughby; what was ceded to the Dutch by the Treaty of Breda; and what was granted by the States-General (the government of the Dutch United Provinces) to the West India Company and those that followed. The answer to these questions is in large part determinative of the legal consequences of colonization with regard to the rights of indigenous peoples.

#### International and English Law on Territorial Sovereignty and Indigenous Rights

The international law doctrine of inter-temporal law stipulates that international legal issues, especially related to the acquisition of territory, must be evaluated in the context of the rules of international law in force at the relevant historical period, not as they exist today.<sup>12</sup> Consequently, our starting point is the rules of international law related to the acquisition of territory and sovereignty over territory as they applied in the 17<sup>th</sup> century. For our purposes, there were three primary means by which territory could be acquired in the 17<sup>th</sup> century: settlement demonstrating effective occupation; conquest; and cession.<sup>13</sup>

According to John Scott, Willoughby's claims were based on 'A naturall Right, Hee being the first Discoverer, there being noe Christian vpon the Place, inhabited only by the Indians, by whose consent and Agreement Hee possessed Himself of the River, and begann to settle an English Protestant Colonie.'<sup>14</sup> The Letters Patent mentions both Willoughby's settlement and the agreement with indigenous peoples. As

stated here, Willoughby claimed to have discovered and settled Suriname and on this basis sought and acquired Letters Patent from King Charles II. This begs the question: by what authority did King Charles issue the Letters Patent to Willoughby, as this presumes that Suriname was subject to the sovereignty of the English Crown? The answer to this question lies in the nature of the rights that flow from discovery and effective occupation, as defined by both international and English law.

In international law, or the Law of Nations as it was called at the time, discovery coupled with settlement and effective occupation gave rise to the acquisition of sovereignty over territory.<sup>15</sup> In theory this only applied to uninhabited territories, or *terra nullius*, but in practice also applied to inhabited territories. Territorial sovereignty amounts to a right to govern (have jurisdiction over) a certain territory. More specifically, 'This general power of government, administration, and disposition is *imperium*, a capacity recognized and delineated by international law.'<sup>16</sup> Territorial sovereignty is also equivalent to international legal title that can be asserted against other States, or title in a public law sense. Accordingly, Charles II, as the sovereign of the territory known as Suriname, was capable of issuing Letters Patent to Willoughby to, among others, establish or maintain a colony and to dispose of lands within that colony.

There is a fundamental distinction between territorial sovereignty in international law and title to land in private law. While territorial sovereignty pertains to the ability to rule over a certain territory and has to do with matters of jurisdiction that are governed by international and constitutional law, private title to land relates to proprietary rights which depend on domestic property laws.<sup>17</sup> '*Imperium* is thus distinct from *dominium* either in the form of *public ownership of property* within the State or *in the form of private ownership recognized as such by the Law*'<sup>18</sup> (emphasis added). As a consequence of this rule, international law at the time made clear that assertions of sovereignty made by Europeans were only good against other Europeans and in no way affected the property and other rights of the indigenous peoples living in the territory in question. This principle was reiterated by Chief Justice Marshall of the US Supreme Court in 1823, who stated that acquisition of territorial sovereignty could not

annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man. It gave the exclu-

sive right to purchase... [The original inhabitants] 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 according to their own discretion.<sup>19</sup>

Having established that under international law of the time the English did acquire sovereignty we now turn to an evaluation of the international legal principles applying to the extent of territory - what Brownlie calls 'Geographical Doctrines' - that could be acquired by discovery and effective occupation.<sup>20</sup> These geographical doctrines (effective occupation, continuity and contiguity), determine the actual scope of territory obtained by the various accepted modes of acquiring territory.

For the terms of our study only effective occupation is relevant as continuity and contiguity are relatively recent additions to international law<sup>21</sup> and apply when the territory in question 'is uninhabited, barren or uncharted.'<sup>22</sup> Consequently, the territory over which the English acquired sovereignty was that over which they could demonstrate effective occupation, although this effective occupation did not have to amount to a permanent presence. In other words, the English acquired sovereignty over those areas between the Marowijne and Coppename Rivers in which they had established settlements and over the areas peripheral to those settlements in which they exercised some form of control however impermanent. For the purposes of the law, this effective occupation would have extended over much of the coastal plain of Suriname, including the lower reaches of the Suriname, Saracca, Cottica and Coppename Rivers. In later years, this area increased due to acquisition of additional territory and the operation of other principles of international law (see below).

However implausible in fact, under international law, the English acquired sovereignty over much of the coastal plain of Suriname by virtue of Willoughby's 'discovery' and 'effective occupation.' The Crown did not acquire private property rights over indigenous lands. It only obtained jurisdiction over and the right to dispose of lands within its jurisdiction. As we shall see, this is also the case under English law, or English colonial constitutional law as it is known, relating to the acquisition of territorial sovereignty.

English colonial constitutional law classifies territories according to the manner by which they were acquired and is based upon English rather than international law. It is important in that the manner by which a territory is classified determines both the law in force there and the powers of the Crown in connection with the prior rights of private

persons.<sup>23</sup> Under English law, sovereignty could be acquired over inhabited lands by settlement and effective occupation; when so established the Crown assumed jurisdiction and paramount lordship by virtue of the feudal doctrine of tenures over the newly acquired territory.<sup>24</sup> An understanding of this paramount lordship or doctrine of tenures is fundamental to understanding the nature of the rights that the Crown acquired in Suriname and, as we shall see below, fundamental to interpreting Surinamese law as presently conceived in Suriname.

Paramount lordship is based upon the feudal rule that there can be no land without a lord, a rule which was imported into England in the 11th century by the Normans.<sup>25</sup> According to the legal fiction known as the doctrine of tenures, which developed on the basis of this rule, 'the King must at one time have been in possession of all lands in the realm, some of which he granted out to subjects in return for services. [This] constituted the King's lordship, which though *incorporeal* was possessed and owned by the King as a thing, *separate from the land to which it related*.'<sup>26</sup> (emphasis added)

In other words, the Crown became paramount lord whose rights to the land were separate and distinct from its paramount lordship and in no way detracted from the ownership rights of others. To establish actual or private title to the land the Crown would have to prove its title as would any other person.<sup>27</sup>

We can also employ the civil law language used by Quintus Bosz to describe this situation: 'If a country is part of Her Majesty's dominions, the sovereignty vested in her is of two kinds. The first is the power of government (*imperium*). The second is title to the country (*dominium*)... This ownership of country is radically different from ownership of the land: the former can belong only to a sovereign, the latter to anyone.'<sup>28</sup>

The overall effect of the assumption of paramount lordship by the Crown is, as stated by Kent McNeil in his authoritative study on aboriginal title in English common law, that

The moment the Crown acquired sovereignty over a territory by settlement, possession of and title to vacant lands would vest in the Crown by virtue of its occupancy of the territory as a whole. Possession of and title to lands that were occupied by indigenous people would vest in the occupiers, giving them lawful fee simple estates. At the same time, the doctrine of tenures would apply and give the Crown a paramount lordship over those occupied

lands, with the result that the indigenous occupiers would become tenants in fee simple of the Crown.<sup>29</sup>

A fee simple estate is a real property right (in civil law, immovable property), in reality a bundle of rights that includes the right to sell or devise the estate, to regain possession if the land or part thereof is unlawfully taken and the right to compensation if expropriated by the Crown.

Additionally, in settled territories, English law was imported to the extent that it was applicable to local circumstances and did not necessarily overrule pre-existing customary law.<sup>30</sup> Under English law, whether territory was acquired by conquest, cession, or settlement, private property rights under local laws or customs would remain in force at least until explicitly modified by legislation.<sup>31</sup> As stated by McNeil, 'the Crown could not, in its executive capacity and simply by virtue of acquiring sovereignty over a settlement, acquire title to land then occupied by indigenous people under their own customary systems of law.'<sup>32</sup>

This interpretation of the common law of England stated above is well established in the jurisprudence of the highest courts of Canada, the United States, Aotearoa-New Zealand and Australia, all of whom have legal systems based on the common law. While the courts have not classified aboriginal title in terms of common law estates, such as fee simple, as does McNeil, holding instead that aboriginal title is a *sui generis* or unique right to land, they have all recognized the existence and enforceability of aboriginal/native/indian title as rights that are based upon immemorial indigenous occupation and use and the customary law of the indigenous people(s) in question. These rights are held to predate colonial intervention and are not based upon a grant from or explicit recognition by the Crown. In Aotearoa-New Zealand, for instance, Justice Chapman stated in 1847 that

Whatever may be the opinion of jurists as to the strength or weakness of the native title... it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the native occupiers.<sup>33</sup>

In *Calder v. A.G of British Columbia* (1973) the Supreme Court of Canada stated that 'the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means...'<sup>34</sup> Also, abo-

original title 'flows from the fact that the owners of the interest have from time immemorial occupied the areas in question and have established a pre-existing right of possession'<sup>35</sup> and 'from the prior social organization and distinct cultures of aboriginal peoples on that land.'<sup>36</sup> In *Mabo vs. Queensland*, the Australian High Court stressed that indigenous land rights or 'native title has its origins in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory'<sup>37</sup>. In the United States, the Court of Claims wrote that 'Indian title based on aboriginal possession does not depend on sovereign recognition or affirmative acceptance for its survival. Once established in fact, it endures until extinguished or abandoned.'<sup>38</sup>

The recognition that indigenous rights predate colonial intervention is not unique to the common law tradition. Both the Brazilian and Argentine Constitutions, for example, recognise that indigenous rights are preexisting rights.<sup>39</sup> The Brazilian Constitution defines indigenous land rights as 'original' rights and accepts that the indigenous peoples were the original owners of the land and that as a result their rights precede administrative and other acts carried out by the State.<sup>40</sup>

The doctrine of aboriginal title originated in the writings of Spanish jurists of the 15<sup>th</sup> and 16<sup>th</sup> centuries.<sup>41</sup> They argued that indigenous peoples had certain rights that were unaffected by colonization. Grotius accepted this as a rule of customary international law.<sup>42</sup> Whether this was in fact the case is debatable, nonetheless, contemporary international human rights law has incorporated these ideas and has defined indigenous land and resource rights as rights based upon historical occupation and use. This will be discussed further in Chapter Six.

In summary, the Crown acquired sovereignty and paramount lordship over Suriname as a settled territory. By virtue thereof, it could govern the territory, legislate over and purchase indigenous lands and issue land to settlers. It did not acquire private property rights over the lands occupied and used by indigenous peoples and/or held subject to their own customary laws. The only land that the Crown directly acquired private property rights over were those lands that were vacant and unoccupied. [As we shall see, Dutch law and policy was based on similar principles.]

By issuing Letters Patent to Willoughby, Charles II delegated to him certain sovereign powers, specifically, 'the whole and Sole Lordsp., Property, Jurisdiction and Command' of the area between the Copename and Marowijne Rivers.<sup>43</sup> Our next question therefore, is: under

English law, did the Letters Patent grant private property rights to Willoughby, and derivatively to the settlers under his command, or did it amount to a seizure or extinguishment of Indigenous property rights? The answer to the first question is a qualified yes; the answer to the second is no. Concerning the legal effect of the Letters Patent in general, it can be said that in English law, 'a royal charter for a colony (or a patent for lands within a colony) would convey the soil of any lands that the Crown has actually acquired for itself and a lordship over lands held by the local population under customary law or common law aboriginal title.'<sup>44</sup> Chief Justice Marshall restated this principle in a modified form in 1832, stating that colonial charters merely

regulated the right given by discovery among the European discoverers, but could not affect the rights of those already in possession, either as aboriginal occupants [or through earlier discovery]... These grants asserted a title against Europeans only, and were considered as blank paper so far as the rights of the natives were concerned.<sup>45</sup>

As noted above, the Crown had acquired private rights 'to the soil' but only over those lands that were vacant or already settled by the English within the bounds of its territory. Therefore, it could only transfer private property rights to Willoughby in these areas, which did not include those lands occupied by indigenous peoples as they were not vacant. The Letters Patent did delegate authority to Willoughby to govern the area and to dispose of lands between the Marowijne and Coppename Rivers. In doing so, he could issue lands to settlers thereby extinguishing or modifying indigenous rights. We have found no evidence to suggest that Willoughby legislated over or otherwise legitimately extinguished indigenous property rights outside of the areas issued to settlers after he obtained his Letters Patent. Consequently, with the exception of the areas covered by lands issued to settlers both prior to and subsequent to issuance of the Letters Patent, the private property rights of indigenous peoples were not affected.

In conclusion, neither international law nor English law vested private property rights over indigenous lands in the Crown. At the end of the English period in 1667, the Crown was paramount lord of all lands within its jurisdiction and private owner only of those vacant lands within its jurisdiction not held by either indigenous peoples or the settlers via Willoughby. As we shall see below, neither the change of sovereignty in 1667 nor subsequent legislation affected these private rights.

## The Dutch Era – Transfer of Sovereignty and Early Legal Relations

By the Treaty of Breda in 1667, Suriname was formally ceded to the United Netherlands by the English Crown. This is a significant date in Surinamese legal history and a key date in the context of this study. We have already established what rights the English and indigenous peoples had in Suriname prior to cession, we must now turn to an examination of what rights the Dutch acquired and whether the rights of indigenous peoples were affected thereby after the cession.

Cession is one of the recognized methods of transferring sovereignty and territory under international law. According to Berman, 'Because the rights so acquired are derived from the ceding State, the criteria for determining the validity of this mode of transfer in a specific situation are first, that the ceding entity possess the legal capacity to cede and second, that it is transferring rights that it legitimately and actually holds'<sup>46</sup>. This second point is a restatement of the international law maxim of *nemo dat quod non habet*, or, no donor can give a greater interest than that which he himself has.<sup>47</sup> Thus, the English could transfer only what the English held at the time of cession and the Dutch could receive no more than the English held.

Consequently, the transfer was of private property rights over vacant lands and, sovereignty and the power to legislate over the colony of Suriname, including the rights of private property holders. Private property rights were protected and guaranteed according to the terms of article 3 of the 1667 Articles of Capitulation concluded between Crijnsens and Byam (see below) and the international law doctrine of acquired rights, which holds that a change in sovereignty alone cannot deprive persons of rights that existed under the old sovereign.<sup>48</sup> Given that the Dutch now had the power to legislate over property relations in Suriname, including the private property and other rights of indigenous peoples within its jurisdiction, our focus now shifts to the nature of Dutch regulations in the colony, some of which predated the cession itself.

Prior to acquisition of sovereignty by the Dutch, in 1629 the States-General had issued the *Ordre van Regieringe soo in Policie als Justitie in de Plaetsen veroverd ende te veroveren in West-Indiën* ('*Ordre van Regieringe*'). Originally intended for the newly acquired Brazilian colony of Bahia only, a revised *Ordre van Regieringe* was held to apply to 'all conquered and to be conquered areas in the West Indies' and provided an overarching set of principles to guide Dutch colonial activities. The *Ordre van Regieringe* was valid in Suriname until 1869<sup>49</sup> and provided

that in the case of marriage and inheritance law the political ordinances of Holland and the customs of Zeeland and South Holland would apply (art. 59) and, that Roman law would govern contracts (art. 61). In connection with land issues, the *Ordre van Regieringe* contained two special provisions (arts. 18 and 19). which stated, respectively, that

The lands which are unmanaged, wild or which remain unsettled and which can be cultivated, will be issued by the Councils of West India to the Colonies that are there or will be planted there by the West India Company... The Colonies will freely possess the issued lands for the first five years, only with recognition and registration thereof...

Hunting, Fishing and Bird Catching shall be free to all Inhabitants and Subjects, provided that the Councils will take care of and establish order (ensuring that existing game does not become extinct and is extended with other useful species).

That managed and settled lands were excluded from the authority of the Councils, was further underlined by article 14, which explicitly stated that the property rights of the Spanish, Portuguese and *Naturals* (indigenous peoples) shall be respected:

...the Spaniards, Portuguese and Naturals of the land who subject themselves to the government and obedience of the lords States-General will keep their *ingenios*, lands, houses and other goods and will remain and protected in the free possession and use thereof... (art. 14)

Article 14 further instructed the Councils to maintain public order, peace and unity between all those dwelling 'under' her territory and

take special care that the Spaniards, Portugese and Naturals of the land who enter in their cities, fortresses, on land, on sea or in ships and resort under the territory and the protection of the Lords States General, will not be violated, hindered or done injustice to their persons, wives, children, family, houses, money, trade and all goods none exempted, but will adequately protected, having all those acting to the contrary vigorously punished...

Article 14 was re-affirmed in the Articles of Capitulation, which provided in article 3 that

32

'all persons whatsoever & of what naçon soever, whether they be English, Jewes &c., that at present do personally inhabite Surinam with their families, shall have absolutely reserved, & confirmed unto them, *their Estates, Lands Goods, of wat nature & Condiçon soever, to enjoy, inherite and possess them to themselves & their heires for ever, without the least opposiçon, molestaçõ or hinderance...*'<sup>50</sup> (emphasis added)

Did this apply to indigenous peoples: the Articles of Capitulation only mentions 'all nations' but not Indians specifically? It certainly did. At that time Indians were considered to be separate nations and were always referred to as such. Article 11 of the Articles of Capitulation, for instance, provides 'that we, & our Estates shall not be endamaged by ye Dutch, French or other Indian *Naçons*.' (emphasis added)

The combined effect of the Articles of Capitulation and the *Ordre van Regieringe* was to explicitly recognize and guarantee indigenous property rights originating in themselves.

The Charter of West India Company is another example of Dutch regulations that applied to Suriname and had been issued prior to cession. The West India Company (WIC) was founded in 1621 and was granted a trade monopoly over the Americas and the west coast of Africa by the States-General in the same year. The actions of the WIC, by virtue of its delegated powers from the States-General, were considered to be the same as State activity for the purposes of acquiring sovereignty.<sup>51</sup> As early as the 1600s it had established trading posts in what is now called Guyana and in 1682 it took over the administration of the colony of Suriname.

Did the WIC Charter create or delegate private property rights in Dutch colonies or did it extinguish the private property rights of indigenous peoples? The answer in both cases is no. According to Trelease, the Charter 'gave the company no original land title. Ownership remained in the native occupants, and the charter grant, as well as the patents issued under it by the company, conferred only the ultimate right of ownership once Indian titles were extinguished.'<sup>52</sup> Professor Howard Berman concurs with Trelease stating that

Extraterritorial Dutch patents [ie. WIC Charter] constituted reserved rights under Dutch law granted (or sold) by the company in expectation of a future cession. Although lands encompassed by the patents may have been extraterritorial, rights of owner-

33

ship and possession were not. They remained confined to Dutch political society and were inchoate until political jurisdiction and dominium were extended to the territory by consensual transfer. Each legal regime, Indian and Dutch, were isolated within its own territorial zone of political operation. Territorial rights could only be legally transferred at the [Indian-Dutch] intergovernmental level... Prior patents thus represented inchoate titles representing distributional rights among subjects of Dutch jurisdiction, titles that could only vest substantive rights to the lands in question after they had been assimilated to Dutch sovereignty.<sup>53</sup>

In 1664, three years before the Dutch acquired Suriname, the States-General published an official interpretation of the Charter of the WIC in which it unequivocally 'declared their meaning to have been expressly, and still to be, that the Company was empowered, and still is empowered, to establish Colonies and Settlements of people on *lands which are not occupied by others*, to extend themselves so far as the [geographical] limits related in the Charter.'<sup>54</sup> (emphasis added) Clearly, indigenous peoples were 'others' and therefore, the WIC had no authority to settle on indigenous lands.

Grotius provides us with a strong indication of the scope of the term 'occupied' as used by the Dutch in this era. Discussing the methods by which unoccupied property may be acquired under Dutch-Roman law, he states in his *De Jure Belli Ac Pacis* (1625) that 'anything which has been occupied as a whole has not yet been assigned to individual owners, it ought not on that account be considered as unoccupied property; for it remains subject to the ownership of the first occupant, whether a people or a king. To this class ordinarily rivers, lakes, ponds, forests, and rugged mountains belong.'<sup>55</sup>

There is no indication that the States-General, through the WIC Charter, granted private property rights in the area covered by the Charter, at least not until the territory in question had been appropriated to Dutch sovereignty. Moreover, it specifically exempted lands occupied by others from the control of the WIC. If we accept Grotius as authority for the interpretation of 'occupied,' these exempted lands include 'rivers, lakes, ponds, forests and rugged mountains.' The Charter should thus be interpreted in the same manner as the Letters Patent issued to Willoughby by Charles II with the same result: that indigenous private property rights, or as stated by Grotius 'ownership' rights, were not affected in any way.

Prior to its acquisition by the WIC in 1682, Suriname was governed for 15 years by the State of Zeeland. This raises a number of interesting questions given that Zeeland at no time was authorized by the States-General to govern or issue land in Suriname. In fact, Zeeland's claimed rights were vigorously contested by Holland and others who stated that the WIC had exclusive rights to the area. There are therefore doubts about the legality of Zeeland's acts in Suriname during its tenure, which are not clarified by the manner in which the States-General resolved the situation. This resolution involved a political compromise by which it was agreed that the WIC would pay a certain amount to Zeeland as compensation for its costs and that Zeeland would give up any claims to Suriname. This may be considered as a retroactive endorsement of Zeeland's rights to Suriname by the States-General. However, for the purposes of this study these questions are academic and we will assume that Zeeland's acts were lawful.

In 1669, Zeeland issued a regulation relating to the rights of property holders guaranteed under the Articles of Capitulation.<sup>56</sup> This regulation required that those holding titles from the English era must register them in order to be recognized. It may be argued that since indigenous peoples did not register title that they lost whatever was guaranteed by the Articles of Capitulation. This argument fails on two accounts: first, it is extremely doubtful that this regulation applied in anyway to indigenous peoples whom the Dutch considered as separate nations and outside their jurisdiction at the time. This is supported by Schalkwijk's statement that 'Colonists could pick their own lots, as far as it did not overlap with existing claims or intrude on the Amerindians'<sup>57</sup> (emphasis added) Second, as described in the next paragraph, the property rights of indigenous peoples were explicitly guaranteed by the *Ordre van Regieringe*.

The 1669 regulation also provided that all 'wild and fallow' lands shall be considered as part of the ownership of the sovereign.<sup>58</sup> The specific effect of this provision is unclear, its scope in particular: did it apply to all lands, including indigenous lands, that were deemed to be wild and unmanaged or did it only apply to such areas within the plantation zone? What is clear is that the ownership of the sovereign amounts to public rather than private title to land, or the right to dispose of public lands rather than private ownership of land held under real title by the sovereign. Moreover, this regulation cannot supercede the *Ordre van Regieringe*, which was issued by the States-General and as such represented superior legal authority over regulations issued by Zeeland. Consequently, even if the regulation, again

assuming that it was legal, did apply to indigenous lands, the property rights of indigenous peoples would have to be respected and would survive the effects of the regulation.

Additionally, as evidence that the Dutch, including the Zeelanders, always accounted for the presence of indigenous peoples, Quintus Bosz refers to the fact that even the earliest land warrants issued by the Dutch contained a provision which read that 'nothing shall have the intent of prejudicing the Indians or any prior concessions.'<sup>59</sup> Failure to observe this condition of the warrant was grounds for revoking the title.

Quintus Bosz opined that the clauses did not mention the 'rights' of indigenous peoples but only used the term 'prejudice' implying that the Dutch did not have the intention of respecting the rights of indigenous peoples.<sup>60</sup> However, if we compare this clause with article 3 of the articles of Capitulation, we notice the same wording, molested, deprivation and prejudiced. Moreover, 'prejudice' is a broad enough term to account for the prior rights of indigenous peoples and is not based upon the assumption that the rights of indigenous peoples were dependent upon a grant from the State, which appears to be the reasoning employed by Quintus Bosz. We will discuss these savings clauses in greater detail in Chapter 3.

According to Quintus Bosz, a regulation issued by the States of Holland and West-Friesland for the Wild Coast (Guyanas) in 1675 gives a good idea of the general land policy followed by the Dutch. It provided, among others, that land would be parceled out by a Council which would take care that the 'Indians will not be molested or prejudiced in their Plantations.'<sup>61</sup> This provides further evidence to support the conclusion that the Dutch consistently saved and guaranteed indigenous peoples' rights to their lands.

As stated above, in 1682, after much argument, Suriname was sold by Zeeland to the newly incorporated West India Company, renamed as the Society of Suriname. The Society of Suriname had three partners each owning an equal share: the WIC, the City of Amsterdam and an individual, Cornelis Aerssen van Sommelsdijck. A new Charter was issued by the States-General on September 20, 1682, which made no mention of land ownership issues. As the States-General chose not to modify the *Ordre van Regieringe* through the new Charter, the former maintained its legal force and effect. The new Charter, Suriname's first Constitution valid until 1816, introduced a local government system with full powers, subject only to the lordship of the States-General, to

legislate over the colony. A Governor was installed as was a colonial legislature consisting of the Council of Policy and Criminal Justice. This system was employed in Suriname until 1796 when it was replaced by the Batavian Republic's Council for the Colonies during the Napoleonic era.

The Society of Suriname could have acquired through purchase only what Zeeland had to sell. Since the Charter of the Society was granted by the States-General, we shall presume that in legal terms the sale was via the States-General. Thus the Society obtained from the States-General private property rights to all lands acquired from the English over which the English had such rights and all lands over which Zeeland had granted rights to planters. It also acquired, as delegate of the States-General, public law title, not private ownership rights, to the remainder of Suriname including those 'wild and fallow' lands covered by Zeeland's 1669 regulation and the lands of indigenous peoples, who by virtue of, among others, the *Ordre van Regieringe* maintained their private property or ownership rights.

In 1682 (probably as a continuation of the practice during Zeeland's tenure), the Society began to structure property relations in order to maximize agricultural production. This was achieved through a system that is conceptually similar to feudal doctrines embedded in English common law in which a lord parcels out lands within his jurisdiction to tenants who hold and work the land in exchange for various services provided to the lord. As in English law, the tenants or freeholders held private property rights (in Suriname referred to as *alodiale eigendom en erfelijk bezit*), subject to the eminence of the lord (in the case of Suriname, the right to take the property if it was not cultivated or had been abandoned, a modified form of eminent domain). Thus, as a logical extension of the mercantilist economy of the colony, residency and cultivation became the prime criteria for maintaining property rights.<sup>62</sup> In most respects, contemporary Surinamese land law has maintained the same philosophical underpinnings.

The lord in the case of Suriname was the Society of Suriname (as delegate of the States-General), which administered its territory, in Quintus Bosz's words, according to the *jus patronatus*, the law of the patron or absolute private owner.<sup>63</sup> This appears to be the basis for Quintus Bosz's assertion that 'For centuries government authority in Suriname has been exercised as a right which emanates from the supreme ownership of the land, in relation to which the Government currently still regards itself as private owner of the domain.'<sup>64</sup> He states that '... the supreme ownership (*dominium eminence*), of the landlord,

made his position comparable to the sovereign lord to whom according to the conceptions at the time, belonged the direct ownership (*dominium directum*)<sup>65</sup> and, 'From old, the ownership of the landlord was the basis for the issuance of land.'<sup>66</sup> He describes the tenants as having *dominium utile*, a simple or derivative property right, as opposed to the *dominium directum* of the landlord, which is a full property right.<sup>67</sup>

Recall that the *Ordre van Regieringe* included special provisions to govern land and immovable property matters, not Roman or civil law. Quintus Bosz's application of Roman/civil law concepts to what were essentially feudal property relations is the source of much confusion, particularly as these concepts were, with the sole exception of times of war, unknown in Dutch law and classical Roman law.<sup>68</sup> Moreover, Dutch legal scholars explicitly rejected the proposition that the sovereign held *dominium directum*, stating that the powers of the sovereign are confined to *imperium*.<sup>69</sup> They relied on classical Roman jurists, Seneca in particular, to reach this conclusion.<sup>70</sup>

As stated above, the *dominium* of the sovereign refers to public ownership, or jurisdiction over and the right to dispose of lands within that jurisdiction. In this sense, if the landlord is comparable to the sovereign, the 'supreme ownership,' (the '*dominium directum*' of the sovereign or the *jus patronatus*), should be interpreted as territorial title (in international law parlance) or paramount lordship (in English law terms), not as the private law property rights of the sovereign. That ownership (in the public law sense) is the basis for issuing lands is entirely consistent with this, but certainly does not mean that private ownership is vested in the State. The rights of private property holders are only constrained by legislation and by the powers of eminent domain.

If we assume that the Roman/civil law concepts used by Quintus Bosz are in fact an accurate description of the property relations envisaged by the *Ordre van Regieringe's* landfeudal principles, his assertion that the State is private owner of all lands still cannot be maintained. In particular, this '*dominium directum*' would only apply to those lands over which the Society, through the States-General, had acquired private property rights, ie. the plantation area covering the majority of the current coastal plain of Suriname, which can accurately be described as the private domain of the State. Once again, the *Ordre van Regieringe* explicitly guaranteed Indigenous peoples' property rights, which could not, therefore, be considered part of the private domain of the State.

38

In sum, Quintus Bosz and those who have relied upon him are mistaken in asserting that all land in Suriname is ultimately held in private ownership by the State. The State holds a combination of public and private law title and certain prescribed powers of eminent domain. Indigenous lands guaranteed by the *Ordre van Regieringe* and the subsequent legislation, fall within the former, the public domain. Those who can show ownership rights to their lands, including indigenous peoples, do so freely subject only to the private property rights residual in the State in the case of the private domain or subject to the powers of eminent domain in the case of the public domain.

We believe that the 1982 L-Decrees cited at the beginning of this chapter, which state that all lands belong to the domain of the State, except those over which others can show ownership rights, must be read in this context. Presently in Suriname, pursuant to the writings of Quintus Bosz, ownership rights are meant to include only those rights which derive from a grant from the State. However, to propose that indigenous peoples do not have ownership rights to their lands simply because they cannot trace these rights to a grant from the State is discriminatory and manifestly unjust given that until very recently the State made no attempt to regulate indigenous (and Maroon) land tenure nor sought to regularise these rights through issuing titles. We will return to the L-Decrees in greater detail in chapter 3.

#### West Suriname – Coppename to Corantijn

As noted earlier, the original colony of Suriname encompassed the lands between the Marowijne and Coppename Rivers. This changed in 1686 pursuant to an agreement made between the colonies of Suriname and Berbice, both under the jurisdiction of the WIC at the time.<sup>71</sup> This agreement situated the boundary between the two colonies at the midpoint between the Corantijn and Berbice Rivers. The area between the Coppename and half-way between the Berbice and Corantijn Rivers thus became part of the colony of Suriname and subject to the sovereignty of the States-General through the SocietyWIC. By virtue of its sovereignty, the States-General acquired public, not private, law title to the area. The *Ordre van Regieringe* also applied to this area and required that indigenous property rights be respected.

In 1799, during the British Protectorate era (1799-1802) discussions were held between the Governor of Suriname and the Governor of Berbice in an attempt to resolve their differences over the location of the boundary between the two colonies. On 7<sup>th</sup> of February 1800, by

39

agreement of the parties, the boundary was fixed at the center of the Corentijn River and the first plantations were established in West Suriname. By the end of the 18<sup>th</sup> century, the Dutch had sufficiently extended their effective control, however impermanent, over the colony that Dutch sovereignty and public law title would have been acquired over the vast majority of Suriname's present land mass.<sup>72</sup> The exceptions were the disputed areas with the French in the east (resolved in 1891) and the and so-called New River Triangle with the British in the west (still unresolved). The southern border with Brazil was fixed by treaty in 1906.

### Dutch Colonial Practice in Other Regions

We shall now briefly turn to Dutch practice in other colonial situations. While not determinative of Dutch practice, legal or otherwise, in Suriname, an examination of these other colonial encounters does provide a number of indicia of the Dutch legal and colonial state of mind in the 17<sup>th</sup> century, which aid our interpretation of their practice in Suriname.

According to G.J. van Grol, former governor of the Caribbean island St. Eustatius, who wrote a study on the land rights in the Dutch West Indies at the request of the Dutch government in 1931, the Dutch believed that any sovereign and property rights to land had to be satisfied and acquired 'in a friendly manner' from indigenous peoples, who had to be fairly compensated.<sup>73</sup> While there is no evidence that the Dutch treated for or purchased land from indigenous peoples in Suriname, the obligatory practice of purchasing land from North American Native peoples in the 17<sup>th</sup> century was laid down in the colonial charter that the City of Amsterdam issued for its colonies in North America. It stated that 'All those who establish a Colony outside the resort of the Manhattan Island, are required to satisfy the savages of that place for the land...' <sup>74</sup> (emphasis added)

Dutch practice was undoubtedly influenced by Grotius. Renowned as one of the founders of international law, Hugo Grotius was highly influential and well-known in his time. In an early publication commissioned by the Dutch East India Company (*Mare Liberum*, The Freedom of the Seas, 1609), Grotius argued against Portugal's claims to sovereignty over the East Indies. He asserted in the first place that discovery is no basis to claim sovereignty, 'for to discover a thing is not only to seize it with the eyes but to take real possession thereof...' <sup>75</sup> Grotius also rejected the beliefs set forth by other European sovereigns that indig-

enous peoples had no legal rights to land because they were not sufficiently Christian or not sufficiently civilized. He argued that

...discovery per se gives no legal rights over things unless before the alleged discovery they were *res nullius*. Now these Indians of the East, on the arrival of the Portuguese, although some of them were idolators, and some Mohammedans, and therefore sunk in grievous sin, had none the less perfect public and private ownership of their goods and possessions, from which they could not be dispossessed without just cause... <sup>76</sup>

Grotius considered it heresy 'to believe that infidels are not masters of their own property: consequently, to take from them their possessions on account of their religious belief is no less theft and robbery than it would be in the case of Christians.'<sup>77</sup> He dismissed the argument that because of their barbarity East Indians were incapable of holding property rights, considering the argument a pretext to justify 'the greedy longing for the property of another,' and stated that

such a pretext on its very face is an injustice... And... that well-known pretext of forcing nations into a higher state of civilization against their will... is considered by all theologians... to be unjust and unholy.<sup>78</sup>

That the Dutch recognized indigenous land rights does not mean that they were more principled 'humane' or 'better' than other European States regarding indigenous peoples. Grotius was involved with the establishment of both the VOC and the WIC.<sup>79</sup> He wrote *Mare Liberum* at the request of the VOC who had a keen interest in dismissing Portugal's claims to East India and justifying their own desire to dominate the highly profitable East Indian trade routes.<sup>80</sup> Similarly, MacLeod pointed out that the recognition of Indians as rightful owners of the land served Dutch (and later Swedish) interests in their struggle with other Europeans to settle and trade in North America:

[The Dutch and the Swedes] felt they had little chance of sustaining a claim themselves on the basis of right of discovery, which the English at first rested their case on; or donation from the Pope, upon which the Spanish claim rested. So they had to find something else. They decided to argue, against the claims of Spanish and English, that the Indian tribes or nations were owners of the land - as of course they were. This title could be obtained from the natives, they contended, only by conquest, or by gift or purchase. The Swedes, arriving in 1688, with the same

theory as the Dutch, in their disputes with the Dutch over lands, admitted Dutch claims when a deed of transfer to the Dutch from the Indians could be produced as evidence of transfer; and the Dutch likewise formally admitted the validity of Swedish titles when so evidenced.<sup>81</sup>

Whatever their motivations the Dutch clearly recognised Native title to lands in North America. Early regulations issued in 1624-25 by the West Indian Company for North America provided that the company's officers were empowered to make treaties with the Indians and 'faithfully to fulfill their promises to Indians... and not to give them any offense without cause as regards their persons, wives, or property...'<sup>82</sup> Recall the guarantee clauses mentioned by Quintus Bosz.

In what is now called Guyana, the Dutch made a series of treaties of alliance and friendship with indigenous peoples, the last in 1769, and exerted themselves to develop and maintain a good relationship.<sup>83</sup> In doing so they recognized the authority and jurisdiction of the indigenous leaders. Menezes defines the Dutch policy as: (1) treaties of alliance and friendship; (2) annual or triennial presents for services rendered; (3) appointment of postholders (*uitleggers*), who 'were appointed and sent to live among them in order to gain their goodwill and to collect and lead them in slave hunting expeditions against their enemies, the Spaniards, and later against the runaway negroes;<sup>84</sup> and, (4) as decided by the Court of Policy in 1750, strict non-interference in their affairs unless the life of the colony was threatened.<sup>85</sup>

In Indonesia, the Dutch felt no great need to acquire lands as their main objective was trade, which they did through the VOC based on contracts with indigenous rulers. Only when conflicts arose, did they wage wars against them and, when successful, acquired land in this manner. As 'sJacob put it; 'the acquisition of land and sovereignty was not an objective but merely a tool to find a basis for trade.'<sup>86</sup> Largely owing to the work of Dutch law professor Van Vollenhoven and his students, who tried to describe native land use and law (*adat* or customary law) at the turn of this century, the Dutch created elaborate legal regulations to account for the variety of native land rights.<sup>87</sup> Until Indonesia's independence, Dutch East Indies Law distinguished between lands that were placed under their direct rule (government lands) and lands that were governed by indigenous rulers and peoples (self-governing lands). The latter were recognized pursuant to treaties or political contracts. In the self-governing territories, general ordinances did not apply, nor did the declaration of 1870 that all land to which others cannot prove ownership, belongs to the State (the Indonesian Domain Declaration).

42

## Conclusions

Under International law, the English Crown acquired sovereignty over much of the coastal plain of Suriname and the lower reaches of the Suriname, Saramacca, Cottica and Coppename Rivers. By virtue of that sovereignty it acquired the right to govern and dispose of its territory. It did not acquire private property rights as, with the exception of *terra nullius*, territorial sovereignty, or title in international law, does not amount to private ownership rights.

Under English colonial constitutional law, the Crown acquired sovereignty, as described above, paramount lordship over the lands within its jurisdiction and private property rights over any vacant or unoccupied lands in that same area. It did not nor could it acquire private property rights over lands occupied and used by indigenous peoples or lands held under their own customary law. Indigenous ownership included areas used for settlement, farming, fishing, hunting, gathering and other purposes. Neither the Letters Patent nor the Charter of the West India Company subsequent to cession affected these rights. Indeed the latter explicitly excluded lands occupied by others, which included rivers, forests and rugged mountains, from the control of the company.

The Treaty of Breda ceded Suriname to the United Netherlands. It ceded exactly what the English had and no more. By virtue of the Articles of Capitulation, the *Ordre van Regieringe* and the international law doctrine of acquired rights, the property rights of indigenous peoples and others were not in any way affected by the transfer of sovereignty. The Charter issued to the Society of Suriname also did not affect these rights.

According to Dutch colonial theory and practice, property rights of Indians and other inhabitants were recognised and respected. The sovereign could only acquire ownership rights from indigenous peoples through cession and/or purchase: there is no evidence of either in Suriname. To the contrary, the *Ordre van Regieringe* and, as pointed out by Quintus Bosz, the land warrants issued by the Dutch all required that indigenous rights and interests be respected. In an article he wrote ten years later, however, Quintus Bosz contradicts his earlier statements by asserting that

since the first colonization of Suriname in the 17<sup>th</sup> century, the authority of the government has been exercised as a right based on the overriding ownership of the land. All private rights to

43

land could only be derived from the Landsheer. Even the Indians, the original inhabitants, could not assert rights originating in themselves.<sup>88</sup> (emphasis added).

Quintus Bosz appears to have misread the distinction between public and private ownership of land and applies one to the exclusion of the other. The better view is that the State's right in Suriname is a combination of the two: part is private domain and part is public domain, or to use Dutch colonial terminology, free domain and unfree domain (see, chapter 3). Within the public domain fall the lands of indigenous peoples (and later maroons) and any lands unconditionally alienated from the private domain, while private domain relates to the coastal plantation area or those areas in which the State can trace private ownership rights. Within the public domain, indigenous peoples certainly could assert rights originating in themselves and, moreover, these rights were explicitly saved by the *Ordre van Regieringe* and subsequent legislation.

Thus far we have not dealt with the issue of indigenous sovereignty in this Chapter. This in no way implies that we have concluded that indigenous sovereignty, including jurisdiction over their territories, was extinguished or diminished by English and Dutch colonization. To the contrary, there is ample evidence that the Dutch and the English never considered that indigenous peoples or their territories were ever within their jurisdiction, at least for the majority of Suriname's existence. Rather, other than to make a few comments here, for the sake of space, we will deal with issues pertaining to political rights in the Chapter pertaining to international human rights law.

One strong indication that the English and the Dutch recognized Indigenous sovereignty was the practice of treaty making. Despite attempts made in the 19<sup>th</sup> and 20<sup>th</sup> centuries to deny the international legal personality of indigenous peoples, it is accepted that indigenous peoples were and were perceived as being equivalent to States in the 16<sup>th</sup> and 17<sup>th</sup> centuries.<sup>89</sup> Indeed, Berman states that the Six Nations Iroquois Confederacy was in form and operation similar in many respects to the Dutch States-General of the same era.<sup>90</sup>

Seventeenth century thought did not apply the same criteria of statehood used today, and recognized a variety of organisational structures, including those of indigenous peoples, as States. The simple fact that treaties were concluded between Europeans and indigenous peoples is evidence of the recognition that indigenous peoples were in fact and law distinct sovereign entities with all the powers normally attrib-

44

uted to that status. The Dutch government concluded a number of treaties with indigenous peoples in Suriname and later with groups of African slaves, the maroons, who escaped the plantations, established viable communities in the rainforest and fought themselves free from slavery. This is the subject of the next chapter.

## Notes

- <sup>1</sup> Decree L-1 (SB 1986, no. 11).
- <sup>2</sup> Quintus Bosz 1993, at 329.
- <sup>3</sup> *Ibid.*, at 371.
- <sup>4</sup> *Ibid.*, at 337.
- <sup>5</sup> Williams 1990, at 80.
- <sup>6</sup> Harlow 1925, at 137.
- <sup>7</sup> *Ibid.*, at 138-142.
- <sup>8</sup> Letter from Willoughby to his wife, 9th August 1651. In Williamson 1923, at 153, cited by Schalkwijk 1994, at 126. See, also, Wekker 1993, at 174.
- <sup>9</sup> Scholtens 1994, at 15.
- <sup>10</sup> McNeil 1989, at 116.
- <sup>11</sup> Letters Patent, 2 June 1662; the full text is published in Hartsinck 1770, at 521-558.
- <sup>12</sup> Brownlie 1990, at 129. See, also, among others, *Island of Palmas Case* (United States v. The Netherlands), 2 Hague Ct. Rep. 83,100, (Perm. Ct. Arb. 1928) and; *Western Sahara (Advisory Opinion)*, 1975 I.C.J. 12.
- <sup>13</sup> Brownlie 1990, at 131. See, also, Berman, 1992, atp. 125 &, 132.
- <sup>14</sup> Harlow 1925, at 178.
- <sup>15</sup> Brownlie 1990, at 138. See, also, Clinebell & Thomson 1978., at 669, 684
- <sup>16</sup> Brownlie 1990, at 109.
- <sup>17</sup> McNeil 1989, at 108.
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Johnson v. MacIntosh* 21 US (8 Wheat.) 543, 574 (1823).
- <sup>20</sup> Brownlie 1990, at 149.
- <sup>21</sup> *Ibid.*, at 150. See, also, *Eastern Greenland Case*, PCIJ, Ser. A/B, no. 53.
- <sup>22</sup> Brownlie 1990, at 149-50.
- <sup>23</sup> McNeil 1989, p., at 113.
- <sup>24</sup> *Ibid.*, at 117.
- <sup>25</sup> *Ibid.*, at 81.
- <sup>26</sup> *Ibid.*, at 82.
- <sup>27</sup> *Ibid.*, at 218.
- <sup>28</sup> Roberts-Wray 1966, at 635.
- <sup>29</sup> *Ibid.*, at 221.
- <sup>30</sup> *Ibid.*, at 115-116.
- <sup>31</sup> *Ibid.*, at 192.
- <sup>32</sup> *Ibid.*, at 4.
- <sup>33</sup> *Regina v. Symonds*, [1847] N.Z. P.C. Cas. 387, 390.
- <sup>34</sup> *Calder v. Attorney-General of British Columbia* (1973) 34 DLR (3d) 145, 146.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> *Van der Peet v. The Queen* (1996) 137 DLR (4th) 289, 320 (SCC).

45

- <sup>37</sup> *Mabo v. Queensland* (1992) 66 A.L.J.R. 408, 429.
- <sup>38</sup> *Lipan Apache Tribe v. United States*, 180 Ct. Cl. 487, 492 (1967).
- <sup>39</sup> Brazil Const., 1988, at art. 231; Argentina Const., 1994, art. 67.
- <sup>40</sup> IACHR, *Report on the Situation of Human Rights in Brazil* 1997, at 95.
- <sup>41</sup> Lindley 1926, at 12-17.
- <sup>42</sup> Grotius, *Mare Liberum*, Ch. 2, trans. by Brown Scot 1916.
- <sup>43</sup> Letters Patent, 2 June 1662; the full text is published in Hartsinck 1770, at 521-558.
- <sup>44</sup> McNeil 1989, at 238.
- <sup>45</sup> *Worcester v. Georgia*. 31 US (6 Pet.) 515, 544-46 (1832).
- <sup>46</sup> Berman 1992, at 125, 133.
- <sup>47</sup> Brownlie 1990, at 125.
- <sup>48</sup> O'Connell 1956, at 267.
- <sup>49</sup> Van Grol 1934, at 28.
- <sup>50</sup> Articles concluded upon between Commander Abraham Crynssens and Colonel William Byam late Lieutenant General of Guyana and Governor of Willoughby Land. Printed in: Harlow 1925, at 217.
- <sup>51</sup> *Island of Palmas Case*, at 44; Brownlie 1990, at 144.
- <sup>52</sup> Trelease 1997, at 40; Jennings 1976, at 131.
- <sup>53</sup> Berman 1992, at 136.
- <sup>54</sup> *Counter-Case presented on the part of the Government of Her Britannic Majesty to the Tribunal of Arbitration constituted under article I of the Treaty concluded at Washington on the 2nd of February, 1897 between Her Britannic Majesty and the United States of Venezuela (Venezuela No. 2 1899)*. HMSO: London (1889), at 49 & 56.
- <sup>55</sup> Grotius, *De Jure Belli*, 2.2. ii. Quoted in Bennett 1996.
- <sup>56</sup> Schiltkamp & De Schmidt 1973, at 5.
- <sup>57</sup> Schalkwijk 1994, at 88.
- <sup>58</sup> Schiltkamp & De Schmidt 1973, at 5-6.
- <sup>59</sup> Quintus Bosz 1980, at 331.
- <sup>60</sup> *Ibid.*
- <sup>61</sup> *Condiën, de welcke bij de Ed. Groot Mog. Heeren Staten van Hollandt ende West-Vrieslandt, toegestaen werden aen een yeder, die genegentheyt mochten hebben om een aensienelijke Colonie uyt te setten op een seer bequame ende wel-gelegene plaetsen, op de vaste Kuste van America, die daertoe vast-gesteld en aengewesen sal worden*. Dated 20 July 1675. Cited by Quintus Bosz 1980, at 25.
- <sup>62</sup> Schalkwijk 1994, at 88.
- <sup>63</sup> Quintus Bosz 1980, at 13.
- <sup>64</sup> *Ibid.*, at 329.
- <sup>65</sup> *Ibid.*, at 15.
- <sup>66</sup> *Ibid.*, at 329.
- <sup>67</sup> Quintus Bosz, *Commentaar op eigendomsbeschouwingen*, 1993, at 163.
- <sup>68</sup> Pers. Com. Prof. G. Van Den Bergh, 25 August 1999.
- <sup>69</sup> *Ibid.*, citing, C. van Bijkershoek, *Quaestiones juris publici*, 3.15.
- <sup>70</sup> *Ibid.*, Seneca, , 7.4.2.
- <sup>71</sup> Bakker et al., 1993 at 10.
- <sup>72</sup> Acts of State, such as map making, regulations and physical occupation, are evidence of sovereignty over territory in the 19th century. In terms of map making, only one-quarter of Suriname had been mapped by the end of the 19th century. See, Aleva & Krook 1998, at 176.

- <sup>73</sup> Van Grol 1942, at 155.
- <sup>74</sup> *Vrijheden ende Exemptien voor de Patroonen, Meesters of te Particulieren, die op Nieu-Nederlandt eenighe Colonien ende Vee sullen planten geconsidereert ten dienste van de Generale West-Indische Compagnie in Nieu-Nederlandt, ende het voordeel van de Patroonen, Meesters ende Particulieren* (Amsterdam Charter), article XXVI. Printed in Van Grol 1942, at 265-272.
- <sup>75</sup> Translated by Brown Scott 1916, at 11.
- <sup>76</sup> *Ibid.*, at 13.
- <sup>77</sup> *Ibid.* Grotius views were largely based on those of the Spanish theologian and jurist Francisco de Vitoria (1486-1587) who maintained that discovery of Indian lands 'alone could not confer title in the Spaniards anymore than if it had been they who had discovered us.' Quoted in, Anaya 1996, at 11.
- <sup>78</sup> Brown Scott 1916, at 14. These views were reasserted in Grotius' later publication, *De jure belli ac pacis* (1625), which is widely considered as one of the foundational treatises of international law.
- <sup>79</sup> See Kunst 1981, at 46, on the involvement of Grotius during initial efforts to establish the WIC.
- <sup>80</sup> See Gerbenson and Algra 1983, at 142, and the introductory note to *The Freedom of the Seas*, Brown Scott 1916, at vi.
- <sup>81</sup> Macleod 1928, at 195.
- <sup>82</sup> Van Laer 1997, at 37.
- <sup>83</sup> Menezes, 1992, at 9.
- <sup>84</sup> *Ibid.*, at 10.
- <sup>85</sup> *Ibid.*, at 9-10.
- <sup>86</sup> 'sJacob 1945, at 1.
- <sup>87</sup> Muinck 1911, at 2-3.
- <sup>88</sup> Quintus Bosz, *De Rechten van de Bosnegers* 1993, at 132 (original in SJB no. 5, 1965).
- <sup>89</sup> Berman 1992, at 128-31.
- <sup>90</sup> *Ibid.*, at 131.

## CHAPTER 2

## TREATIES AND OTHER AGREEMENTS WITH INDIGENOUS PEOPLES AND MAROONS

Consistent with general European practice throughout the colonial era, from the earliest days of colonial activity in Suriname treaties were made with indigenous peoples. Treaties were also made with the Maroons in the 18<sup>th</sup> and 19<sup>th</sup> centuries. While international law in the late-19<sup>th</sup> and 20<sup>th</sup> centuries has attempted to diminish the status of Indigenous-European treaties by asserting that indigenous peoples at no time possessed the capacity to enter into international legal relations, this conclusion is contrary to practice in the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> centuries, when indigenous peoples were clearly considered to be sovereign entities capable of holding and enforcing rights in international law.<sup>1</sup> As stated by Berman, 'In North America as elsewhere, the treaty-making process was based on a recognition of the mutuality of legal capacity and specific interests of the parties to the agreement... Expressly or de facto, wars and treaties evidenced European recognition of the political personality and territorial sovereignty of Indian nations.'<sup>2</sup>

In the late-20<sup>th</sup> century, there are signs that international law may be reversing course again on the status of indigenous treaties. These treaties are once again being considered as proper matters of international concern. The United Nations 'draft and Organisation of American States' proposed Declarations on the Rights of Indigenous Peoples both contain similar language recognizing and affirming the rights that flow from treaties made by indigenous peoples. The UN instrument, for instance, states that

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.<sup>3</sup>

50 | In 1988, the UN Commission on Human Rights authorized the appointment of a Special Rapporteur to undertake a study on treaties, agree-

ments and other constructive arrangements between States and indigenous peoples.<sup>4</sup> This study was issued in four parts and took ten years to complete. On 'the issue of whether or not treaties and other legal instruments concluded by the European settlers and their successors with indigenous nations currently continue to be instruments with international status in light of international law...', [t]he Special Rapporteur is of the opinion that said instruments indeed continue to maintain their original status, and to be fully in effect and consequently, are sources of rights and obligations for all the original parties to them (or their successors), who shall fulfill their provisions in good faith.'<sup>5</sup> The Special Rapporteur is clear that these treaties were and remain international instruments.

In Suriname, the treaties made with indigenous peoples have been lost and, therefore, cannot form the basis for asserting rights that may have been recognised therein. However, to this day, Maroons refer to the extant peace accords or treaties made between their ancestors and the Dutch administration as evidence of their rights to govern and own the territories in which their foreparents established themselves during the 17<sup>th</sup> and 18<sup>th</sup> centuries. These treaties were ratified by the colonial government as well as by the Minister of Colonies in the Netherlands. This chapter will focus on these indigenous and Maroon treaties and agreements. In particular it will evaluate whether they are still valid today, what rights, if any, are recognised therein and whether those rights are enforceable today. While the treaties with indigenous peoples were undoubtedly international in character, can the same also be said of the "treaties" with the Maroons, or were they, as is generally accepted in Suriname, domestic agreements governed by domestic law?

### Treaties with Indigenous Peoples

The first treaties between the Dutch and indigenous peoples were concluded in the 1680s in connection with the so-called 'Indian war' (1678-1686). While the Indian war appears to have been triggered by a trade dispute between the English and the Dutch, several sources cite European incursions into indigenous territories as one of the more fundamental causes of the sudden attacks on the colonists in 1678, when previously warring Carib, Arawak and Warao tribes joined forces in a concerted effort to drive the intruders out of their lands.<sup>6</sup> Many colonists were killed during systematic attacks on the plantations and African slaves were encouraged to escape, many of whom later fought alongside the Indians or in groups by themselves.

In 1683, Cornelis van Aerssen van Sommelsdijck, one of the shareholders of the recently established Chartered Society of Suriname, was appointed governor of Suriname. One of his first tasks was to establish peace with the Indians, which he did in a series of treaties concluded in 1684-85. While most authors state that treaties were concluded with the three nations who inhabited the coastal area at the time, the Caribs, Arawaks and Waraus, Wekker argues that treaties were concluded only with (different groups of) Caribs.<sup>7</sup> Several authors also mention a peace treaty with one group of Maroons, the Coppename or Condie Maroons, who had joined forces with the Amerindians in the war against the Dutch.<sup>8</sup> Little is known about this group of escaped slaves except that they intermarried with Caribs of the Coppename river (as a result, they become known as Karbugers or Black Caribs) and that they were used by the colonial government in the 18th century in the struggle against the Matawai and the Kwinti Maroons.<sup>9</sup>

The loss of the treaties led Quintus Bosz and lawyers relying on him to assume that the treaties were merely oral agreements lacking any legal significance.<sup>10</sup> Notwithstanding this dubious assumption, even if the treaties were oral, and there is no evidence that they were, this does not mean that they were not taken seriously or that they lacked legal effect. That Governor Van Aerssen van Sommelsdyck was forced to marry the daughter of one of the indigenous chiefs, 'for without this tie, they said, we cannot trust the whites at all,' is a strong indication that both parties took the agreements very seriously.<sup>11</sup> Moreover, both Surinamese and international law recognize that oral agreements have legal force.<sup>12</sup>

Few historians or lawyers have paid serious attention to the treaties making it difficult to fully establish their scope or effect. Those who have, all agree that the peace accords recognized the freedom of the indigenous peoples. Support for this is found in a 1781 ordinance which prohibited all unlicensed trade with 'Indian nations with whom this province has concluded an agreement of peace and friendship', as it was believed that unregulated trade 'could easily lead to enslavement of one of them, which is directly in violation of this agreement.'<sup>13</sup>

Besides the prohibition of Indian slavery, there is some evidence that the treaties were more comprehensive and included the recognition of a large measure of autonomy. Raymond Buve, for example, quotes Van Heshuyzen, a colonial official in Suriname at the end of the 18th century, who stated that the peace treaties recognized the Carib, Arowak and Warao as 'free nations,' free to settle wherever they wanted and live according to their own laws and customs.<sup>14</sup> Wekker refers to Van Coll who wrote that

the three tribes (Caribs, Warraus and Arowaks) were guaranteed their freedom and their virtually independent existence in Suriname, and provided the certainty that they would never be enslaved. For 200 years now, [they] live separately but peacefully in their forests... and thus the Indians of Suriname maintained the undisturbed property of their land.'<sup>15</sup>

By virtue of their unfettered freedom of movement and choice of settlement and the freedom to hunt, to fish and fell trees wherever they wanted, Wekker concluded that the peace treaties amounted to a 'recognition of a certain measure of sovereignty of the Indians.'<sup>16</sup> Quintus Bosz on the other hand, supposed that the treaties did not guarantee any territorial rights, stating that 'Considering their nomadic existence the Indians would probably not have insisted on an own territory.'<sup>17</sup> In the attendant footnote he explains that 'their relations with the land appear to be very weak' and refers to 'bushland teachers,' 'Indian experts' and an early Carib ethnography to support this statement.<sup>18</sup> Apart from lacking any semblance of legal analysis, this statement cannot in any way be considered evidence that indigenous peoples would not have insisted on territorial rights, or even have felt the need to do so. As noted by McNeil

...modern anthropological research has revealed that few hunting and gathering groups are indiscriminate wanderers. On the contrary, they tend to be attached to definite areas, where they often have spiritual ties, are familiar with the resources available and are able to keep conflict with potentially rival groups to a minimum. Boundaries may or may not be clearly defined, and there may be peripheral strips of shared or no man's land, but generally a group's territorial range will be known both to its members and to neighbouring groups.<sup>19</sup>

According to Wekker, while the coastal Indians of Suriname did travel occasionally from one river to the other, 'The rule was that they moved within the proximity of the area where they belonged.'<sup>20</sup> His study of indigenous settlement patterns, based on maps, travel records and church documents from the period 1600-1992, shows that since time immemorial there have been specific areas occupied by indigenous peoples, an area which he refers to as the 'Amerindian Domain between Apura and Galibi.'<sup>21</sup> At present, fourteen of the approximately 37 indigenous settlements are located in areas where archaeological material has been found, pointing to the historical relationship of indigenous peoples with lands occupied and used by their ancestors.<sup>22</sup>

Wekker also pointed out that by consistently including a savings clause in the land warrants issued to the colonists, which, after the peace treaties referred to Indians as 'Free Indians' or the 'Indians, our Friends' the government ensured that third-parties respected these freedoms.<sup>23</sup> As mentioned in chapter 1, the fact that this clause did not mention 'rights' but only spoke of 'prejudice' was further evidence for Quintus Bosz that the colonial government did not intend to recognize any rights.

While we do not have the text of the treaties, the subsequent practice of the parties does provide some evidence of their intent and effect. Although further research is required before any conclusive statement can be made on this issue, the picture that emerges from the literature reviewed for this study is summed up by sociologist Marten Schalkwijk, who described the post-treaty period as follows:

Sommelsdijck's peace treaties put an end to animosities between colonists and the indigenous people... The Amerindians were left no other choice than to accept permanent colonization in the coastal areas, but were left with enough territory and freedom to prolong an independent existence in the hinterlands. From this time onwards relations between colonists and Amerindians were foreign relations i.e. between the colonial state and several Amerindian states.<sup>24</sup>

While we cannot refer directly to the treaties, their interpretation by various commentators, many of them colonial officials, is powerful evidence of Dutch perceptions of their political and legal relations with Indigenous peoples. In particular, this evidence indicates that, at least for the first 200 years of Suriname's existence, the Dutch never considered Indigenous peoples or their lands to be under their jurisdiction, let alone the private property of the State as Quintus Bosz claims, and maintained some form of government to government relationship with them. That Indigenous peoples traded with the Dutch, aided in capturing escaped slaves and even acquiesced to certain Dutch incursions does not change this conclusion, for as stated by Schalkwijk

Once they had concluded peace and been recognized as sovereign states - several early historians describe them as republics or nations - they [Indigenous peoples] had an interest in maintaining a good relationship with the colonial state.<sup>25</sup>

54 | The subsequent practice of the parties to a treaty is not simply an academic matter. It is employed in international law to provide evi-

dence of the intent of the contracting parties and may even, in certain circumstances, provide strong evidence of mutual consent to modify the written terms of the treaty with legal consequences that may be contrary to the original intent of the parties.<sup>26</sup> Consequently, the statements of colonial officials concerning their legal and other relations with Indigenous peoples provide important evidence for determining the nature and intent of the treaties.

The preceding observations concerning the nature of the treaties are consistent with Dutch practice elsewhere, North America and parts of Indonesia in particular. As stated in chapter 1, the Dutch believed that sovereignty had to be acquired from the indigenous peoples.<sup>27</sup> In Indonesia, treaties were established with local rulers whose territories were classified as self-governing.<sup>28</sup> Here, the domain principle did not apply; the relationship with the Dutch government was based upon treaties. While it may be argued that these treaties, and the legal consequences thereof, were specific to Indonesia, in North America Berman observes that 'Each legal regime, Indian and Dutch, were isolated within its own territorial zone of political operation. Territorial rights could only be legally transferred at the intergovernmental level ...'<sup>29</sup> Additionally, Macleod notes that in its South African colonies, the Dutch East India Company 'were holding formal treaties with the native tribes, giving them money or goods in exchange for land and privileges and even paying a stated tax to the local tribe for each ship entering the harbour at the Cape!'<sup>30</sup>

As discussed in chapter 1, Indigenous peoples have historical or pre-existing rights. These rights were recognised and guaranteed by the Dutch, whether they intended to or not, by, among others, the Articles of Capitulation and the *Ordre van Regieringe*. The treaties concluded with Indigenous peoples therefore, did not confer any new rights on them, but simply reaffirmed existing rights. Evidence of this is provided by the savings clause included in the land warrants, which did not change significantly before or after the Indian war. As we shall see in chapter 3, these historical rights remain valid to this day.

### Treaties with Maroons

*His wife - I don't know if she was a girlfriend or a real wife - worked in the white man's house. Once, she gave her husband a drink of water. [Whispering:] But they tell me that it was really sugar cane juice, because that was the "water" the white man normally drank. Well, they saw that and said: "The woman gave Lánu sugar cane juice!" and they*

*whipped her. They beat the woman until she was dead. Then they carried her to him and said, "Look at your wife here." Then they whipped Lánu until he lost consciousness, and left him lying on the ground. Then, the spirit of his wife came into his head, and he arose suddenly and ran into the forest. The white man seeing this said "Lánu's gone!" But his men said, "He won't live; he's as good as dead already."*

*When Lánu went into the forest, he ran this way and that, calling out the name of his wife, trying to find her. This woman was from Dahomey; they called her Osíma of Dahomey. Well, he kept calling out and calling out until he got deep into the forest. Finally, the forest spirit [apúku] named Wámba called out in reply. And Wámba came into Lánu's head, and brought him directly to where some Indians lived. These Indians welcomed him, took care of him, and gave him food. And he lived with them there.<sup>31</sup>*

Almost from the moment that African slaves were transported to Suriname, they escaped their bondage and sought safe haven in the forests surrounding the plantations. They became known as Maroons or Bush Negroes.<sup>32</sup> As their numbers grew, the Maroons began to raid the plantations for supplies and additional recruits, especially women, sometimes killing the owners. The Dutch took this threat to their precarious existence very seriously. Numerous military expeditions were undertaken against Maroon settlements and captured Maroons were treated with extraordinary cruelty to deter the slaves from further escapes. The enormous damages that marronage wrought on the plantation economy, not the least caused by the massive expense of the military expeditions carried out by the Dutch, forced the colonial government to negotiate peace treaties with three Maroon groups in the 1760s. These treaties were renewed in the 1830s and in 1860, the government concluded peace with the Boni Maroons, the last group of rebellious Maroons at large.

Many Surinamese believe that Suriname is the only country in which Maroons exist and that it is the only country to have concluded treaties with them. However, Maroons have existed and treaties were made with them in Colombia, Cuba, Ecuador, Jamaica, Brazil, Mexico and elsewhere.<sup>33</sup> These treaties all exchanged a cessation of hostilities for a recognition of Maroons' collective control over their territories in which they could exist as autonomous political and cultural entities.<sup>34</sup> Some of these countries, Jamaica, Colombia and Brazil in particular, have regularized the rights set out in these treaties in legislation, in the case of Colombia and Brazil in their present Constitutions (see Box I, below). Despite respect for the treaties in Suriname that lasted well into the second half of the 20<sup>th</sup> century, the government now asserts that it

56

has no legal obligations under the treaties and the Maroons have no rights derived therefrom.

#### Box I – The Rights of Maroons in the Colombian and Brazilian Constitutions

##### **Article 68 of the 1988 Brazil Constitution**

*The Definitive ownership of the descendants of the quilombos [Maroons] to the land they are occupying will be recognized and the State shall make every effort to issue them title to these lands.*

##### **Transitional Article 55 of Colombia Constitution of 1991**

*Within two years of this Constitution's entry into force, the Congress shall establish a Special Commission to undertake a study and make a law that recognizes the black [Maroon] communities that have been occupying waste lands and the riverain zone of the Pacific Basin, which shall be in accordance with their traditional subsistence practices, the right to collective ownership of property over the areas that will be delineated in the same law.*

*The Special Commission shall include the participation of representatives elected by the [Maroon] communities.*

*Their property shall be recognized in the law.*

*The same law will establish mechanisms to protect their cultural identity and the rights of these communities, and strengthen their economic and social development.*

Pursuant to Article 55 of the Constitution, Act No. 70 of 1993 established the policies and mechanisms by which Maroon land rights are addressed. The Act was written by a joint government-Maroon committee. The policies set out in the Act are described by the Colombian government as: 1. Support for a process of socio-economic development in keeping with their world view; 2. The right to be different; 3. Recognition of the right to territory and to natural resources; 4. Strengthening of organizations and institutions; 5. Equitable participation in all the country's goal-setting and steering bodies.<sup>35</sup> Decree No. 1745 of 12 October 1995, established the mechanisms and procedures for issuing collective titles to Maroon communities on the Pacific Coast.

Contrary to the treaties signed with Indigenous peoples, the text of the treaties with the Maroons, if indeed they can be called treaties in an

57

international sense, are available and can be directly referred to as a source of rights. However, the text is rudimentary and does not provide much of an indication of the intent of the parties. Consequently, in addition to the text we will also look to other sources, including subsequent practice and other interpretive aids, to determine the intent of the parties and the legal effect of the treaties. In addition to determining whether the treaties recognize or confer any rights, we must evaluate the more fundamental question of how to classify these treaties: are they of an international character and therefore governed by international law, or are they domestic in nature and governed by domestic law? In either case, the final question is: are these treaties presently valid and enforceable? Prior to turning to these issues we will provide an overview of the treaties themselves.

#### *Treaty with the Ndyuka (1760)*

The first treaty was concluded with the Ndyuka after extensive negotiations during which the Ndyuka made considerable changes to the proposed provisions. The treaty consisted of nine articles which provided among others that the Ndyuka were free people, free to settle wherever they wanted (provided they notified the government first and settled at least at a distance of 10 hours away from the plantation area). It was also agreed that the Ndyuka would extradite newly escaped slaves (for which they would be paid); that they would not 'disturb' the 'befriended Indians,' and in case of the death of the Granman, that they would inform the colonial government, who would approve the successor chosen by the Maroons.<sup>36</sup> Interestingly, 'free Indians' were also included as beneficiaries of this treaty and can therefore in principle also use this treaty as a source of their rights.

The treaty further established that trade was allowed with the plantation area (but only in groups of 10 or 12 men with prior notice sent to the governor) and that should they need anything a delegation of the Granman could be sent to Paramaribo. During the negotiations, the Ndyuka rejected any limitation on their ability to rule themselves and attempts by the Dutch to include language providing for the extradition of Ndyuka in cases of capital crimes failed. To ensure compliance, a blood bath was sworn and 'hostages' were exchanged. The government placed a 'posthouder' (postholder) in the village of the Granman, while several Maroons were sent to live in Paramaribo.

There were also postholders placed with Indigenous peoples in West-Suriname (around 1765 in Orealla at the Corantijn River and between 1843-1879 in the Marataka River, near the current village of

Post Utrecht).<sup>37</sup> According to an instruction of 6 March 1766, the postholder in Orealla was the only one allowed to trade with Indigenous people<sup>38</sup> and he also had to ensure that the planters would not 'wrong the Free Indians' or force them into labour.<sup>39</sup> The postholder should further see to it that everyone entering the Corantijn held a pass and that all violent acts against Indians, in particular 'violations of Indian wives and daughters' would be punished with corporeal punishment, if not the death penalty.<sup>40</sup>

The function of the 'Maroon' postholders was different from the postholders living among the Indigenous peoples of West-Suriname. While they both served as intermediaries between the interior population and the government, the function of postholders placed in Maroon territories was to oversee the observance of the peace treaties and issue passes to Maroons travelling to the plantation area (see below).<sup>41</sup>

In 1809 (during the British Interim Rule), the 1760 treaty with the Ndyuka was renewed. This was felt necessary partly because the Dutch planters opposed an agreement concluded between the Ndyuka and the Aluku and because the Ndyuka had allowed a group of deserted ex-slaves of the Free Corps Negroes, the Porigudu, to settle in their territory.<sup>42</sup> Although the Dutch were not able to compel the Ndyuka to extradite the Aluku and the Porigudu, under the renewed treaty, which explicitly provided that the old 1760 treaty would remain in force, the Ndyuka guaranteed that the Aluku and the Free Corps Negroes living in their territory ('their districts') would not attack the whites or travel to Paramaribo, nor would the Ndyuka give land to newly deserted rebels of the Free Corps or allow them to settle with the Aluku.<sup>43</sup>

#### *Treaty with the Saramaka and the Matawai (1762)*

In 1762, a second treaty was concluded, this time with the Saramaka of the Upper Suriname River. The treaty differed slightly from the 1760 instrument and included, among others, the requirement to inform the government of the location of their settlements (as well as those of other Maroon and Indigenous peoples) and that the Saramaka either fight or attempt to pacify other Maroon and Indigenous nations. Moreover, the Saramaka were expressly prohibited from making treaties with the Ndyuka. Saramaka criminal jurisdiction was recognized and it was agreed that the government would supply goods on a regular basis.<sup>44</sup>

#### *The Matawai Treaty (1769)*

Although the treaty with the Saramaka was also signed by the Matawai, a new treaty was concluded with them in 1769 after the Matawai had resumed their attacks on the plantations. The text of the treaty with

the Matawai remains unknown, but according to Scholtens contained similar provisions as the 1762 treaty.

*Renewals of the 1760's Peace Treaties with Ndyuka, Saramaka and Matawai*

In the 1830's, the old peace treaties were renewed: with the Saramaka in 1835,<sup>45</sup> with the Ndyuka in 1837<sup>46</sup> and with the Matawai in 1838.<sup>47</sup> These treaties both reaffirmed and modified the original agreements.<sup>48</sup> The new treaties, which contained largely similar provisions to the old, stated that the Maroons were to remain where they were; designated the territory of each group (see below); provided that Maroons living in territories other than their own had to return to the territory of their own group; that they could not maintain contacts with newly escaped slaves, who had to be extradited; and, prohibited them from entering into treaties with other Maroon groups. In return, the Maroons would receive goods which they had to pick up themselves in Paramaribo. The treaties also established a pass-system by which the Maroons could obtain permission to travel outside of their territory and required that they receive the permission of the postholder before buying guns. An important new element was that the Paramount Chiefs had to swear an allegiance to the Dutch Crown.

In the oath the Chiefs swore, among others, to honor, respect and recognize the King of the Netherlands and all authorities established by him, to live in peace with their neighbours and other Maroon peoples, to allow free access to missionary activities related to religious education, to provide support for gold and balata concessionaires, to extradite criminals who flee to their territories and to refrain from entering into relations with foreign powers.<sup>49</sup> Also they swore to refrain from all unlawful activities, to encourage the well being of their people, to govern in a just manner and to behave themselves according to the stated intention of the governor.<sup>50</sup>

The territories designated by the renewed treaties were: for the Saramaka: the Upper-Suriname River, at a distance of at least two days by boat from Post Victoria; for the Ndyuka: above the village of Auka located along the Suriname River; and, for the Matawai, the Upper-Saramaka River, at least two days away from Post Saron (see further below).

*The Boni or Aluku Maroons*

In 1860, almost a hundred years after the Saramaka and the Ndyuka had been 'pacified,' peace was also established with the last group of Maroons, the Aluku or Boni. The Aluku had posed a substantial enough threat to the plantation area, that the Dutch were forced to establish

military posts all around the plantation area, the so-called 'Cordon pad.' The Aluku settled in east Suriname and later in French Guiana.

The treaty with the Dutch lifted the restrictions on the freedom of movement of the Aluku, who had been dependent on the Ndyuka for products from Paramaribo, and allegedly were used as slaves by them. From then on they were allowed to enjoy the same freedom of movement as the other 'pacified bushnegroes.'<sup>51</sup> The Aluku peace accord referred also to the new treaties that the Dutch had concluded with the Ndyuka, Saramaka and Matawai between 1835 and 1838 and which were held to be equally applicable to the Aluku.<sup>52</sup>

*The Kwinti and the Paramaka*

Peace treaties were never concluded with the Kwinti and the Paramaka. Instead, their existence as separate Maroon groups with their own political authority (the Granman) was recognized by the colonial administration in the 1880s.<sup>53</sup> In addition, the Kwinti territory was officially demarcated in 1894.

**Maroon Treaties: International or Domestic?**

We now turn to whether the treaties with the Maroons are international treaties or domestic agreements. We conclude that while the treaties may be considered in some respects to be international treaties this issue requires extensive research before this conclusion can be fully supported. While the treaties may or may not be international in character, they certainly are enforceable domestic contractual arrangements that the Maroons can rely upon to support their rights to, among others, territory and the autonomous administration thereof.

Brownlie defines a treaty as an agreement in written form concluded between two (or more) States or other subjects of international law.<sup>54</sup> The Maroon treaties were in written form, but were they concluded between States or other subjects of international law? The answer to this turns on whether Maroons possessed the requisite legal capacity to enter into international relations at the time the treaties were concluded, or, more generally, the status of Maroons under international law at that time. While a full answer to this question requires the type of research most suited to a doctoral thesis, we can offer the following comments.

According to the doctrine of inter-temporal law, we must examine this issue under the law of the second half of the 18<sup>th</sup> and first half of

the 19<sup>th</sup> centuries. In this time, late 20<sup>th</sup> century criteria for evaluating statehood were not determinative of international legal personality, which was not attributed to any one particular type of political organization.<sup>55</sup> For instance, in 1788, von Martens wrote that 'For a state to be entirely free and sovereign [to possess legal personality], it must govern itself, and acknowledge no legislative superior but God. Everything which is compatible with this independence is also compatible with sovereignty, so that mere alliances of protection, tribute, or vassalage which a state may contract with another, do not hinder it from continuing perfectly sovereign...'<sup>56</sup> Clearly, under this definition Maroons would have possessed the capacity to enter into international treaty relations, and this is true despite the oath of allegiance contained in the later treaties.

Maroons could arguably qualify as 'para-Statal entities recognized as possessing a definite, if limited form of international personality, for example, insurgent communities recognized as having belligerent status - *de facto* authorities in control of specific territory.'<sup>57</sup> In contemporary international law, these belligerents do have a certain measure of international personality and do enter into treaty relations. It is unclear if this was also the case in the period in question; the evidence suggests, absent recognition by States, that it was not. Note, however, that the British did make a treaty with the Ndjuka in 1809, which may constitute some evidence that the British recognized their status as a subject of international law. It is more likely though that the British at the instigation of the local plantocracy were simply continuing Dutch practice and this signifies nothing more.

For the Dutch, the status of the Maroons was not a straightforward matter. As late as the first quarter of the 20<sup>th</sup> century, Maroons were referred to as a 'state within a state';<sup>58</sup> as a 'friendly nation' by a member of the Colonial States,<sup>59</sup> and in 1924, a member of the Dutch First Chamber wondered whether they should be perceived 'as Dutch citizens or as allies.'<sup>60</sup> Also, Dutch law professor, Van Vollenhoven, perceived a contradiction between the Government Regulation, a kind of Constitution, which was completely silent on the existence of the Maroons and the fact that the government allowed a Maroon Granman to send a letter to the League of Nations in the name of his people. Schalkwijk's analysis of the relations between the Maroons and the Dutch was that they should be seen as foreign relations.<sup>61</sup>

If these treaties were indeed international treaties, they would be governed by the rules of international law. In the 1993 Aloeboetoe Case, the Inter-American Court of Human Rights, if only tangentially,

62

looked at the 1762 Treaty with the Saramaka.<sup>62</sup> In this case, the Inter-American Commission on Human Rights, representing the petitioners, had argued that the Saramaka had 'acquired their rights on the basis of a treaty concluded with the Netherlands, recognizing, among others, the Saramaka's local authority over their own territory. [And that the] obligations under the treaty are applicable by succession to the state of Suriname.'<sup>63</sup> The Court decided not to investigate if the treaty was in fact an international treaty, stating that 'if it were an international treaty, it would be invalid today because it would be contrary to the rules of *jus cogens superveniens*,' as it provides for the purchase and return of slaves and therefore, 'cannot be invoked before an international court of human rights.'<sup>64</sup>

*Jus cogens* are peremptory norms of international law that are so fundamental that they will void any conflicting treaty provision or rule of customary international law.<sup>65</sup> The prohibition of trade in slaves is undoubtedly a peremptory norm and therefore, at least with respect to the provisions concerning slavery, the 1762 Treaty is void. This does not necessarily mean however that the entire treaty would be invalid. In response to the Court's statement on *jus cogens*, the Commission stated that it did 'not contend that the Saramakas are now a community with international subjectivity, but rather that the autonomy claimed for the tribe is a matter of domestic public law.'<sup>66</sup> This point leads us to our next line of analysis: can the treaties be classified as domestic law agreements?

Notwithstanding the ambivalence noted above, the Dutch, as did Quintus Bosz, mostly referred to the treaties as 'domestic political contracts.' Neither defined the term legally. We shall assume for the purposes of analysis that 'domestic' means non-international, 'political' means public rather than private, and 'contract' is used as the term is normally understood: a legal agreement between two or more parties. Quintus Bosz defines 'political' to mean that they were not legal contracts, but rather something like gentlemen's agreements. This conclusion is clearly incorrect; if this were the case, why would the Dutch go to the trouble of having the colonial legislature and the Minister of Colonies ratify them?

The most persuasive evidence is that the Dutch used the term 'political contracts' to describe treaties made with Indonesian Princes, Radjas and Kings between 1677-1899 and in part relied on the legal status of these political contracts in the Island of Palmas Case against the United States.<sup>67</sup> The political nature of these contracts was described by the international arbitrator, Max Huber, thus: 'Their eminently

63

political nature is confirmed by the supplementary agreements of 1771, 1779 and 1782, concerning the obligations of vassals in the event of war.<sup>68</sup> (emphasis added) As used here, 'political' refers to the subject matter of the agreement rather than to its legal force or lack thereof. The use of the term 'obligations' confirms that the parties have rights and duties which, as a basic principle of law, is the essence of a legally binding contractual relationship. Basically then, a political contract is one that deals with political or public law subject matter and is as legally binding as any other contract, unless the parties have indicated otherwise (see below).

Without prejudice to the possible status of the Maroon treaties as international instruments, we agree with the statement of the Inter-American Commission quoted above and believe this is the correct interpretation of the legal status of the Maroon treaties. The treaties contain both rights and duties and, therefore, are legal contracts between the Dutch State and the various Maroon parties, the subject matter of which is essentially governed by public law. In other words, they are public law contracts.

#### Were the Maroon Treaties Binding?

In their authoritative work on Dutch administrative law, Van Wijk & Konijnenbelt describe two kinds of agreements made between government and a private party and determine that whether they are binding depends on whether the parties made an express declaration to that effect or in absence of such a declaration, if one party could reasonably have assumed that the other intended the agreement to be binding.<sup>69</sup> The treaties themselves do not expressly state that they are intended to be binding; can we then infer that one or both parties intended them to be legally binding? In the case of the Dutch, the answer is yes; the same applies in the case of the Maroons.

Concerning the treaties of the 18<sup>th</sup> century, the Dutch signified their intent to be bound by the ratification of the Governor, the chief executive of the colony, subsequent to approval by the legislative body and the planters in general. Ratification of the 1762 Saramaka Treaty, for instance, took place in a formal ceremony held at the Court of Policy and a public day of thanksgiving (December 5) was declared to celebrate conclusion of the treaty on which church services asked God to 'assure that the Peace be permanent and prosperous.'<sup>70</sup> The Dutch also posted public notices of the treaties describing the terms of the agreement in which they prohibited the colonists, under threat of punish-

ment, from interfering with or harming Maroons who came to the Paramaribo with the permission of colonial authorities.<sup>71</sup>

With regard to the 19<sup>th</sup> century treaties, including that with the Aluku, the Dutch expressly incorporated them into official legal instruments (resolutions). These resolutions were ratified by the Governor-General of Suriname, and by the Dutch government, through the Minister of Colonies.<sup>72</sup> As such, the treaties became part of Surinamese law.

In the case of the Maroons, the treaties were and still are regarded as sacred, immutable agreements consecrated with the blood of both parties.<sup>73</sup> Hoogbergen describes the signing ceremony for the 1760 Ndjuka treaty in this way

After the whole treaty had been reviewed to the satisfaction of the planters, the Ndjuka demanded that the peace treaty be confirmed in their way as well. They asked for a clean piece of white linen. When the linen arrived, a Maroon chief took a razor and cut the left arm of both the white negotiators and the Maroon chiefs to draw blood. "When this was done, someone else came up with the linen cloth. After examining the arm to see whether blood was dripping sufficiently, we had to wipe off our arms ourselves, and then a third man came with a gourd of clean water, in which the linen cloth was washed and rinsed, and he did the same and swore that peace had been settled with the white man, they would never ever bear grudge against nor do harm to the white people. *And that, if they ever did any such thing or if they did not comply with all that had been promised and signed, this mixture of blood would bring death and damnation upon them.* Whereupon Arabie [the Ndjuka paramount chief] followed him and subsequently everyone who had signed and we did the same, every person for himself. When this was done, *a man whom we believed to be their priest cried out: the earth cannot bear those who have sworn falsely and do not keep their promise.* Thereupon they all made an extraordinary noise and started to shout hooray"<sup>74</sup> (emphasis added).

With regard to the Saramaka, Richard Price observes that 'Saramakas, like their Maroon counterparts in Jamaica... have continued to see the treaty as a sacred charter and have refused to believe that it could be fundamentally altered. The whitefolks' various ultimatums, sometimes couched in legalistic language, have never been understood by Saramakas as more than arbitrary and transitory words'<sup>75</sup>. Finally, Bilby states that 'In concluding treaties with European colonial powers in

their own manner, Maroons were both swearing by the past – drawing on the legitimating power of their African gods and ancestors – and swearing to the future, by endorsing a new life of peace and prosperity that these pacts promised. From the Maroons' perspective, the sacred basis of the treaties has remained unchanged, partly because oath-taking procedures similar to those used during the eighteenth century remain embedded in Maroon religion and social practice.<sup>76</sup> As the preceding demonstrates, the Maroons undoubtedly understood the treaties to be binding and by swearing a blood oath expressly declared both themselves and the Dutch bound for all time.

### Content of the Maroon Treaties

Thus far we have shown that the treaties with the Maroons, if not international treaties, are binding public law contracts. We shall now turn to the content of those treaties to determine what rights, if any, are contained therein. We shall divide this discussion into two main parts: autonomy rights, which includes self-government powers, jurisdiction and cultural integrity; and, land rights, ownership or other rights to lands and resources.

#### *Autonomy rights*

According to Scholtens, who is undoubtedly an authority on the treaties, the Maroon treaties amounted to a legal recognition of Maroons' right to an autonomous, self-governing existence.<sup>77</sup> The Dutch concurred, but believed that the second treaties contained a recognition of their overall authority over the Maroons. According to the minister of Colonies, the second peace treaties placed the Maroons in an 'appropriate relationship' with the colonial government.<sup>78</sup> Presumably, the Minister felt that the first treaties represented an inappropriate relationship. At the same time however, the Dutch acknowledged that Maroons held a different opinion on this matter. Even Quintus Bosz who has consistently diminished the status of the peace accords (see below) stated that the Maroons continue to base their land claims on the peace treaties and that the 'pretensions of the Granmans are far-reaching.'<sup>79</sup>

If we look at the text of the peace treaties themselves, they clearly recognized the position of the Granman and procedures to replace him. Art. 4 of the Treaty with the Saramaka and the Matawai (1762) reads, for example, that

They shall report who their chiefs are, and at the death or change of these, they shall first send news of who replaces them, in order to receive approval and recognition from the Government.<sup>80</sup>

66

The treaties also explicitly recognized the jurisdiction of the Granman in criminal cases committed within his territory involving members of his tribe.<sup>81</sup> In case of conflicts with whites or if crimes were committed outside the Maroon territory, jurisdiction pertained to the colonial government. While the earlier treaties acknowledged the Granman's jurisdiction in cases punishable by the death penalty, the later treaties required that these cases be dealt with by Dutch authorities. The treaties did not explicitly recognize Maroon jurisdiction in non-criminal cases, yet, to this day customary laws regulate land tenure, marriage, inheritance and other aspects of Maroon social relations. In a recent letter to the President, several Saramaka captains and basias explained that

[two hundred years ago] our ancestors regulated who had rights to fell trees, to make agriculture plots and to hunt game. According to the Saamaka law every *lō* [matrilineal clan] may work where it has rights. Somebody who is not a clan member must ask permission from that clan before he can work in their forest. We ask permission from the clan, we do not ask permission from the Government in the city, we don't ask permission from the Granman, because the Saamaka law was already made before they gave us a Granman. Until now all Saamaka live according to that law. Our law has not been written on paper, but it remains a law.<sup>82</sup>

In his testimony before the Inter-American Court, Richard Price states that

In my experience, since the 1960's I am aware of only one case, in which the Saramakas asked for assistance from the Government, the judicial system of Suriname. Other than that, there is a very competent and clear judicial system in Saramaka, which works through the appointed assistant headmen, Captains and param[ount] Chief, the Grandman, and depending on the severity of the crime, the Grandman's Council.<sup>83</sup>

The treaties were not referred to in Constitutional arrangements such as the State- and Government Regulations of 1865, but as Quintus Bosz observed, in practice

the Bushnegro and Indigenous communities fall outside the normal legal order. They have their own government. . . . The Granman and his captains and basias maintain their own rules within their sphere of influence, which are only sideways touched by the laws of the Land.<sup>84</sup>

67

The discussion revolving around labour agreements that were concluded in 1920s also provides some insight into the way the Dutch interpreted the prior peace accords. During a three month strike in 1921 - referred to as 'the greatest strike in the history of the colony' - Ndyuka boatmen halted all traffic to the gold and balata fields.<sup>85</sup> The government 'who normally silently accepted the autonomous status the Bushnegroes enjoyed in the society, changed their position, now that the economic interests of the country were threatened.'<sup>86</sup> An agreement with the Ndyuka Granman Amakiti, which was set in the form of a protocol, provided, among others, that the strike was considered as an act of animosity for which the whole tribe would be punished and that Surinamese laws must be respected by the Ndyuka. A final provision added that 'Upon violations of any of these provisions, the self-government of the Aucaners [Ndyukas] will be abolished and government officials, police and military will be sent to the Tapanahony to govern the area in the same way as the districts of the whites.'<sup>87</sup> (emphasis added). Commenting on the new protocol, the editor of a local newspaper (The Surinamer) felt that the measures taken were unrealistic as the government would not be able to abolish self-government in the interior.<sup>88</sup>

In 1924, after conflict with Granman Djankuso of the Saramaka, the Dutch produced a new protocol applicable to the Saramaka which led the Granman to remark that 'he had come here [to Paramaribo] to listen to the laws that the whites make for us, about us, without us.'<sup>89</sup> The protocol subdivided the Saramaka territory into three areas and stated that the Saramaka had to respect the laws and authority of the central government. The humiliating treatment of Djankuso by Governor led to protests by a member of the Colonial States 'against the abuse inflicted upon the head of a friendly nation.'<sup>90</sup> Despite the firm language, however, according to Scholtens the protocols had little significance in practice.<sup>91</sup> That the Governor felt that the Granman had violated the 1835 treaty by refusing to come to Paramaribo, and that the protocol makes two references to this treaty, is further evidence that the treaty was considered to be in force in 1924.

A little earlier, in 1918, questions were raised in the Colonial States about the status of the Maroons and the Indigenous peoples. In a financial report of the States, the Commission of Rapporteurs concluded that 'the Bushnegroes and Indians form as it were a state in a state.'<sup>92</sup> And in 1923, when a member of the States inquired what the relationship was between the Maroons and the government, governor Van Heemstra answered that 'In theory this relationship was no different than other inhabitants of the colony.'<sup>93</sup> (emphasis in original) Yet

Van Heemstra contended that, 'as long as the Bushnegroes remain separate groups, located at a large distance from the rest of the population of the colony, a certain measure of self-government under incidental Government rule - as has been recognized in the past centuries in the treaties with their ancestors - will in practice remain the form of government'<sup>94</sup> (emphasis added).

Also, in 1924, the Government-Secretary stated in the Colonial States that it was 'certainly curious that in a country with a Government Regulation, there still exist treaties between the government and a tribe in the forests'<sup>95</sup>. The fact that there had never been any objections against this, however, led him to conclude that it would be 'highly impractical... to change this system, which is the only one possible'<sup>96</sup>. The discussion in Suriname was picked up in the Netherlands, where a member of the First Chamber wondered 'whether the Bushnegroes were to be perceived as Dutch citizens or as allies ['bondgenoten']'.<sup>97</sup> The Minister of Colonies answered cryptically that this discussion was only interesting for historical reasons and had no practical relevance as the 'Bushnegroes would still remain the same Bushnegroes as they are now'<sup>98</sup>.

It is evident from the discussion above that both the Dutch and the Maroons believed that the treaties either recognized or established a right to a substantial measure of autonomy over the internal affairs of the Maroons. With regard to the nature of this autonomy in terms of the political organisation of the colony, Richard Price states that

A system was established during the 19<sup>th</sup> century that is related to the system that the British used in Africa, which they call indirect rule, in which by recognizing the Ruler, the Chief and sub Chiefs, of a particular tribe, or ethnic group within a larger colony, they were able to communicate in terms of legal and other matters through that hierarchy, and in very much the same way in Suriname, the central government of the colony of Suriname, dealt with the Grandmans of each Maroon group... The Government dealt directly with the Grandman, as the representative of the Saramaka people. Indeed, after the Grandman is chosen by traditional Saramaka means, that is by divination, and through also its royal rituals, after he is chosen he comes to the city, and this has happened since the 18<sup>th</sup> century, where he is recognized by the city authorities and since Suriname became independent in 1975, each Grandman is recognized by the city authorities and given a set of clothes, a uniform from the city, so that he serves as the Chief or King of this autonomous group with

the nation or Republic of Suriname, formerly within the Colony of Suriname, and also as the representative, the link, between his people and the central government, the coastal government.<sup>99</sup>

If we look to the 'political contracts' with the Indonesian Kings referred to in the Island of Palmas Case and above, we see the same type of situation. In that case, the Arbitrator stated that 'These successive contracts are one much like another; the more recent are more developed and better suited to modern ideas in economic, religious and other matters, but they are all based on the conception that the prince receives his principality as a fief to the Company or the Dutch State, which is suzerain.'<sup>100</sup> He added that this is 'a form of internal organisation of a colonial territory, on the basis of autonomy for the natives.'<sup>101</sup> While neither of these analogies directly fit the Surinamese situation, particularly that of vassal and suzerain, they do come close to describing the relationship established by the treaties, which clearly represented an internal administrative division of the colony into autonomous, self-governing territories – the 19<sup>th</sup> century treaties defined the boundaries – that the State was bound to respect.

#### *Land Rights*

While there seems to be little dispute over rights to autonomy and self-government, there is less clarity regarding land and resource rights. The dominant (non-Maroon) opinion, provided as always by Quintus Bosz, is that the peace treaties did not confer any rights to land, but rather should be seen as conferring a privilege on the Maroons to stay where they were. He states, 'the permission to remain where they were was only meant as a privilege which included the permission to fell timber and make forest plots for purposes of subsistence.'<sup>102</sup> The only argument Quintus Bosz provides to substantiate this is that the treaties did not mention 'rights' but only duties<sup>103</sup> and that the treaties did not define or demarcate the Maroon territory.<sup>104</sup>

However, as noted above, the treaties did define Maroon territory and in one case, the Kwinti, the area was demarcated. The first peace treaties indicated that the Maroons were free to settle where they wanted, but had to stay at least two days away from the plantations. The 19<sup>th</sup> century treaties not only indicated for each tribe the area where they should live, but also reiterated the boundary between Maroon lands and the coast. For example, the 1837 treaty with the Aucaner stipulated that 'they shall have to stay in Auka' (art. 3) while the Saramaka and the Matawai had to stay at the Upper Suriname River 'and never closer than two days south from Post Victoria' and at the Upper Saramaka River 'and never closer than two days south from Post Saron, respectively (art. 3, Treaty of 1835 and art. 3,

Treaty of 1838). According to Van Vollenhoven, plans were made in 1894 to demarcate the area along an East-West line, south of which the Maroons would be able to freely cut timber, gather forest products, including balata, make forest plots and dig up minerals.<sup>105</sup> However, for reasons that remain unclear only the Kwinti territory was demarcated and certified in an official resolution in 1894.<sup>106</sup>

The conditions under which the 18<sup>th</sup> and 19<sup>th</sup> century treaties were concluded differed significantly. The 18<sup>th</sup> century treaties were the outcome of over a century of armed confrontation in which the Maroons fought the Dutch to a standoff and forced the Dutch to acknowledge their freedom. As Richard Price recounts, for the Saramaka, the peace treaty of 1762 'was the culmination of military victories won in the face of overwhelming odds, and provided unmistakable proof of their superiority. They considered the guarantees of their territorial integrity, the periodic tribute, and the formal recognition of their leaders as clear signs of capitulation by the colonial government.'<sup>107</sup>

The 19<sup>th</sup> century treaties were concluded when the parties were no longer engaged in open hostilities and the balance of power had to a certain extent shifted in favour of the colonial government. Most indicative of this shift was the oath of allegiance that the Granmans had to swear under the second treaties. Also, while the first peace treaties mainly served to stop the attacks on the plantations and additional defections, the second treaties were largely aimed at preventing the different Maroon groups from forming alliances against the Dutch.<sup>108</sup> Maroons value 18<sup>th</sup> century treaties over the 19<sup>th</sup> century versions. They consider the former to be sacred documents that established their freedom and their ownership and control of their territories, whereas the latter are viewed as one of the many manipulations of the whites and of little consequence.<sup>109</sup>

While Quintus Bosz acknowledged that the Dutch always tried to maintain a closed boundary between Maroon territory and the 'cultivated coastal area with its Western legal system,' he holds on to his view that the Maroon territory was not demarcated and that they therefore did not have any rights to land<sup>110</sup>. A close reading of the treaties suggests however that the Dutch, at least at the time they concluded the treaties, considered that the areas where Maroons were living were controlled, if not legally owned by them. The treaty concluded in 1809 with the Aucaners, for instance, consistently refers to 'their districts' and recognizes the authority of the Aucaners to issue land to others (in this case absconded members of the Free Corps).<sup>111</sup> Similarly, the treaty of 1837 with the Aucaners refers to 'their land.'<sup>112</sup>

In practice, the Maroons had divided up their territory in accordance with their own laws and traditions prior to signing the treaties, the legality of which is still adhered to today. As stated by Price

The Saramaka people, the Saramaka nation, if we can call it that, as a whole, have a particular territory... In terms of agricultural lands, and the lands in which they have their houses, they are held communally by large kinship groups, of which there are 13 or 14 in Saramaka, and the whole river is divided into large areas of several miles long owned by one of these particular groups. Every Saramaka belongs to one of these groups called Lō. They are what anthropologists call matrilineal clans, every Saramaka belongs to one and only one Lō. A person's Lō owns particular lands, and any member of the Lōs has rights to work, to ask the village Captain in the area where the Lō owns lands for an area to cut gardens. Any member of the Lō has a right to pick food from trees that grow in that area. Members of other Lōs, other Saramakas, have to ask permission in order to pick food. But the land is held communally... so that if I am given a particular garden for the present, I do not have rights to pass that particular place on to my children, rather the matrilineal group as a whole ...<sup>113</sup>

In connection with land rights, the treaties can be interpreted in a number of different ways. First, the treaties represent a recognition and regularization of existing Maroon land rights as defined by Maroon law prior to their conclusion.<sup>114</sup> In this sense, the treaties converted *de facto* (in non-Maroon terms) land ownership into *de jure* ownership.

Second, the Maroons had every right to assign rights to land within their territories by virtue of their autonomous self-governing status established by the treaties. There was no requirement in the treaties that Maroon law or administrative decisions had to be approved by the colonial authorities; to the contrary, Maroon law, at least until the second quarter of the 20<sup>th</sup> century, was routinely deferred to by the colonial government. In 1920, for instance, a civil servant who happened to be at the scene of a murder in which two Maroons were involved and who wanted to investigate the case, was reprimanded by the Governor for interfering in issues that were no concern of the government.<sup>115</sup> It may therefore be asserted that the treaties recognized Maroon authority to issue land and by implication their ownership thereof.

Finally, the treaties may be regarded as a delegation of authority that included the right to assign and distribute lands according to

Maroon legal traditions and that these decisions were as much law as if the colonial government itself had acted.

### Are the Treaties with the Maroons Still Valid and Enforceable in 1999?

We have found no evidence that the treaties with the Maroons have ever been lawfully terminated. Moreover, the Independence Treaty between The Netherlands and Suriname in 1975 did not affect the validity of the treaties as prior legislation was saved.<sup>116</sup>

According to Van Wijk & Konijnenbelt, rather than trying to establish whether a contract concluded between two parties, one of which is the government, is of a public or private law character in terms of determining its enforceability, it is more appropriate to look at the norms governing the agreements.<sup>117</sup> Rules such as *pacta sunt servanda*, good faith and the *exceptio non adimpleti contractus* [if one party does not comply, the other does not have to either] are not typical private law rules, but rules of general contract law that for instance also apply to treaties (international agreements) and communal regulations (public law contracts).<sup>118</sup> Under the Surinamese Civil Code, this general body of principles applying to contracts includes: the contract cannot be unilaterally abrogated or changed without the consent of both parties, subsequent practice may be evidence of the consent of the parties to modify the contract and changing circumstances may preclude compliance with parts of the contract.<sup>119</sup>

If we apply these principles to the Maroon treaties, it follows, among others, that one party by itself cannot terminate the treaties, both parties must expressly consent to termination; the treaties must be adhered to in good faith and with due respect to their objects and purposes; the abolition of slavery and the pass system have rendered the corresponding provisions inapplicable due to a material change in circumstances; and, that the subsequent practice of the parties, at least for the past 40 years, has marginally diminished Maroon self-government powers in general and substantially diminished Maroon jurisdiction with regard to serious criminal law violations. Maroon land tenure and law relating thereto have been unaffected.

In addition to applying general rules of contract law, modern principles of good governance found in Surinamese law should aid in determining that the government has a duty to respect the treaties at least in spirit if not in substance. The fact that the Maroons have

occupied and used their territory and governed themselves for over 200 years should be compelling evidence that a customary rule of public law has crystallized and should be respected by the State. In principle then, either as a matter of public law or contract law, or as a matter of general principles of good governance, or any combination thereof, the treaties should be enforceable.

Whether these arguments will be accepted by the Surinamese government is extremely doubtful. In theory, any of the Maroon tribes with whom the Dutch concluded treaties would have standing in court to seek enforcement of the rights defined therein. However, these issues have not been dealt with by Surinamese courts before so it is unclear what the courts would do with the legal issues raised by such a case. Further, Surinamese legal culture is extremely positivistic and the rules of evidence are such that it is unlikely that oral history would be admissible. If this were to happen, the courts would not hear the Maroon perspective at all and would base a judgement solely upon the text of the treaties, which would provide only a fragment of their larger legal significance.

In this context, we believe it appropriate to look at jurisprudence in countries other than Suriname in which treaties have been concluded between the State and Indigenous peoples. This jurisprudence provides a number of important interpretive tools that should be used in an analysis of the Maroon treaties, particular those concerning the intent of the parties. The jurisprudence of the Canadian and US Supreme Courts are especially instructive in this regard. In *Nowegijick v. The Queen*, the Canadian Supreme Court in a unanimous decision stated that 'treaties and statutes relating to Indians should be liberally construed, and doubtful expressions resolved in favour of the Indians.'<sup>120</sup> In *R. v. Badger*, the Court stated that 'any limitations which restrict the rights of Indians under treaties must be narrowly construed.'<sup>121</sup> The United States Supreme Court stated that 'Indian treaties must be construed, not according to the technical meaning of their words, but in the sense in which they would naturally be understood by the Indians.'<sup>122</sup> Added to the latter, the Courts have also held that extrinsic evidence, such as oral histories, can and should be used to determine the state of mind of the parties and the facts associated with the signing of treaties.<sup>123</sup>

74 Failure to account for the Maroon and larger perspective on these treaties forces the law to divorce itself from justice. As noted by Richard Price, 'Collective control of territory (for agriculture, gathering, hunting and fishing) also meant control over space in which to develop an

autonomous culture.<sup>124</sup>... In the case of Suriname, scrapping Maroon history is tantamount to ethnocide.'<sup>125</sup>

As noted at the beginning of this Chapter, international human rights instruments presently being developed by inter-governmental organisations deal directly with Indigenous-State treaties providing strong moral and legal arguments in favour of respecting these treaties according to their original spirit and intent. The United Nations Special Rapporteur on Treaties states 'questions of how a treaty came about and was concluded, in particular from the indigenous viewpoint, cannot be answered without – sometimes extensive – reference to historical and cultural circumstances. No treaty is self-explanatory.'<sup>126</sup> These are all compelling reasons to treat the Maroon treaties with great seriousness and evaluate how the relationship they enjoy with the Surinamese State has been and shall be structured.

## Notes

- <sup>1</sup> See, generally, Clinebell & Thomson 1978, at 669; Berman 1992.
- <sup>2</sup> Berman 1992, at 128-29.
- <sup>3</sup> *The UN draft Declaration on the Rights of Indigenous Peoples*. UN Doc. E/CN.4/Sub.2/1993/29, Annex, art. 36.
- <sup>4</sup> Commission on Human Rights, *Resolution 1988/56*
- <sup>5</sup> Martinez, Final report 1998, at 54.
- <sup>6</sup> See Wekker 1993, at 179 and Dragtenstein, 1993, at 188, who quotes a letter written by governor Heinsius who wrote that as far as the Indians were concerned, 'the Europeans who came in ships, have to leave again in ships so that they would have the land again that is theirs.'
- <sup>7</sup> Wekker 1993, at 184.
- <sup>8</sup> Dragtenstein 1992, at 192, and Scholtens 1994, at 19.
- <sup>9</sup> Scholtens 1994, *ibid*.
- <sup>10</sup> See for example Dayala 1984, at 56, and Nelson 1993, at 39.
- <sup>11</sup> Nassy 1974, at 40-1, cited by Schalkwijk 1998, at 152.
- <sup>12</sup> See, article 3 of the 1969 Vienna Convention on the Law of Treaties, which states that the requirement, under the Convention that treaties be in written form is without prejudice to the legal force of agreements 'not in written form.' Brownlie 1990, at 606.
- <sup>13</sup> Placard of 30 August 1781. Printed in Schiltkamp & de Smidt 1973, at 1029, cited by Wekker 1992, at 14.
- <sup>14</sup> Heshuyzen, at 346, see Buve 1966, at 39, who also refers to Hartsinck 1770, at 649.
- <sup>15</sup> Wekker 1993, at 184.
- <sup>16</sup> Wekker 1993, at 185.
- <sup>17</sup> *Ibid*.
- <sup>18</sup> Quintus Bosz 1980, at 331.
- <sup>19</sup> McNeil 1989, at 202-03.

- <sup>20</sup> Wekker 1992, at 16.
- <sup>21</sup> *Ibid.*, at 27. The 'Amerindian Domain' stretches from the lower Marowijne River (between Galibi and Bigi Ston) to the Wayambo/Nickerie River (between the villages of Corneliskondre and Tapuripa) and includes the Marataka River and the savannahs between the Agama Creek and the Tibiti (*Ibid.*, at 30).
- <sup>22</sup> *Ibid.*
- <sup>23</sup> Wekker 1993, at 185.
- <sup>24</sup> Schalkwijk 1998, at 152.
- <sup>25</sup> *Ibid.* at 153.
- <sup>26</sup> Brownlie 1990, at 625-26 and 629. According to the International Law Commission of the United Nations, subsequent practice can even modify treaties: 'consistent practice, establishing the common consent of the parties to the application of the treaty in a manner different from that laid down in certain of its provisions, may have the effect of modifying the treaty.' International Law Commission, draft law of treaties, art. 27.b.3. ILC Rep. 2d.pt., 17th sess., at 52-53, UN Doc A/6309/Rev.I. Cited by Quaye 1991, at 214.
- <sup>27</sup> Van Grol 1942, at 155.
- <sup>28</sup> For discussion of the Indonesian situation, see, among others, *Island of Palmas Case* (United States v. The Netherlands), 2 Hague Ct. Rep. 83, (Perm. Ct. Arb. 1928).
- <sup>29</sup> *Ibid.*, at 136.
- <sup>30</sup> Macleod 1928, at 196.
- <sup>31</sup> Price, *First-Time*, 1983, at 45.
- <sup>32</sup> Whereas in Paramaribo, the term *Marrons* is more frequently employed, in the Interior Maroons commonly use the term *Businenge* (Bush Negroes) to describe themselves.
- <sup>33</sup> Price 1998, at 233.
- <sup>34</sup> *Ibid.*
- <sup>35</sup> *Ninth periodic report of States parties due in 1998: Colombia*. 17/11/98. CERD/C/332/Add.1. (State Party Report), at para. 108.
- <sup>36</sup> The full text of the peace accord with the Ndyuka is printed in Schiltkamp & De Schmidt 1973, at 757-62, no. 633.
- <sup>37</sup> Wekker, *Archiefdocumenten*, 1992, at 107.
- <sup>38</sup> In 1800, this rule seems to have been abandoned and from that time on everyone with a pass was allowed to enter into trade relations with indigenous peoples. See Wekker, *Archiefdocumenten*, 1992, at 107.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> *Ibid.*
- <sup>41</sup> See Scholtens 1994, at 22, and Wekker, *Archiefdocumenten*, 1992, at 108-109.
- <sup>42</sup> Renewed Peace Treaty with the Aucaners of 21 September 1809. See for full text: Scholtens 1994, at 37.
- <sup>43</sup> The original wording of this provision (art. 3) states: 'dat bijaldien er weder rebellen [...] bij 's Lands Vrij korps ontstaan [...] zij dan dadelijk [...] dezelve met al hunne magt zullen attaqueeren en bevechten en dezelve nimmer onder hun verbergen, noch in hunne districten Grondgebied te verleenen noch toe te staan, dezelve bij de nadere rebellen of Bonie negers zich vervoegen[...]' (Scholtens 1994, at 37).
- <sup>44</sup> The full text of the treaty with the Saramaka is published in Price, *To Slay the Hydra* 1993, at 159-654.
- <sup>45</sup> The text of the second peace treaty with the Saramaka (1835) is printed in: Vollenhoven 1916, at 374-80, and Vollenhoven 1935, at 78-82. The treaty is

- provided in Resolution no. 1210/1094 of 11 November 1835, which was ratified by the governor-general on 24 April 1837 and by the Dutch government through missive of the minister of Colonies of 29 September 1837, no. 9/132. In: ARA-2, Archief van de Gouverneur van Suriname, afdeling Kabinet Geheim 1885-1951 (AGS), inv. nr. 36 (Scholtens 1994, note 62, at 175).
- <sup>46</sup> The text of the peace treaty with the Ndyuka of 1837 is established by Resolution no. 364/322 of 10 March 1836, ratified by the governor-general on 24 April 1837 and by the Dutch government through missive of the minister of Colonies dated 29 September 1837, no. 9/132. In: ARA-2, Archief van het ministerie van Koloniën (MvK) 1814-49, inv. nr. 1113, exh. 30 Augustus 1837, no. 21. The full text is printed in Vollenhoven 1916, at 374-80 and Vollenhoven 1935, at 78-82. (Scholtens 1994, note 63, at 175)
- <sup>47</sup> The text of the peace treaty with the Matawai of 1838 is established by Resolution no. 364/332 date 10 March 1836, ratified by the governor-general on 10 March 1838 and by the Dutch government through missive of the minister of Colonies of 16 July 1838, no. 13. In: ARA-2, MvK 1814-49, inv.nr.1163, exh. 8 juni 1838, no. 13. See Vollenhoven 1916, at 372-73, and Vollenhoven 1935, at 94-98. (Scholtens 1994 note 67, at 176)
- <sup>48</sup> In the explanatory note to the Gold Ordinance which provided that 'no rights of Bushnegroes and Indians to their villages, settlements and agricultural plots shall be violated', it was stated that these rights were based on the treaties concluded with the Maroons in the 1760's. No mention was made of the second peace accords or of the peace accord with the Aluku concluded only 20 years earlier (in 1860). This indicates that the Dutch did not regard the second peace treaties as replacements of the first ones but as amendments. See *Memorie van Antwoord, Delfstoffen verordening, Bijlagen 33e vel, 1881-1882, La. A Ns 1/4, p. 111.*
- <sup>49</sup> See, Scholtens 1994, at 45.
- <sup>50</sup> *Ibid.*
- <sup>51</sup> Scholtens 1994, at 32.
- <sup>52</sup> The text of the treaty with the Aluku is printed in the annex of a report by T.K. Eyken Sluyters en E.J. Slengarde: *Centraal Archief Paramaribo, Protocollen 1861, no. 69.*
- <sup>53</sup> The Dutch recognized only the Granman of the Paramaka (around 1881). The leader of one part of the Kwinti (those settled along the Corantijn River) was officially recognized as 'head' not as 'Granman' in 1887; the other part of the Kwinti (settled along the Saramaka River) were to remain under the influence of the Matawai Granman (Scholtens 1994, at 33).
- <sup>54</sup> Brownlie, at 605.
- <sup>55</sup> Berman, at 130.
- <sup>56</sup> von Martens 1795, at 23-24. Quoted in Berman, at 130, note 14.
- <sup>57</sup> Fitzmaurice 1958, at ii. 24, 32, cited by Brownlie, 1990, at 65.
- <sup>58</sup> Commission of Rapporteurs 1918; Scholtens 1994, at 86.
- <sup>59</sup> Scholtens 1994, at 83.
- <sup>60</sup> *Ibid.*, at 87.
- <sup>61</sup> Schalkwijk 1998, at 151-154.
- <sup>62</sup> *Aloeboetoe Et Al Case, (Art. 63.1 American Convention on Human Rights)*, Inter-American Court of Human Rights, Judgement of Sept. 10, 1993. The Aloeboetoe Case involved a determination of reparations for the extra-judicial killings of 7 Saramaka Maroons by the Suriname National Army in 1989.

- <sup>63</sup> Ibid., at 16-17.
- <sup>64</sup> Ibid., at 17.
- <sup>65</sup> See, article 53 of the 1969 Vienna Convention on the Law of Treaties.
- <sup>66</sup> *Aloeboetoe Case*, at 17.
- <sup>67</sup> *Island of Palmas Case*, at 41-46.
- <sup>68</sup> Ibid., at 41.
- <sup>69</sup> Van Wijk & Konijnenbelt 1988, at 298.
- <sup>70</sup> Price 1983, at 174.
- <sup>71</sup> Bakker et al. 1993, at 66.
- <sup>72</sup> See chapter 1. References of the resolutions are mentioned by Scholtens 1994, at 175 (footnote no. 62 and 63).
- <sup>73</sup> See, among others, Bilby 1997, at 678; and, Price 1990, at 343.
- <sup>74</sup> Hoogbergen 1990, at 28. Quoted in, Bilby 1997, at 667.
- <sup>75</sup> Price 1990, at 343. The Saramaka ratified the Treaty on the 19<sup>th</sup> of September 1762 at the mouth of the Sara Creek. The Treaty was concluded in a similar manner to that with the Ndyuka; as described by a colonial official present at the ceremony, 'They took earth and water, and each chief placed a child or youth from his own family in front of him, calling on God Above and the Earth as witnesses. Then they swore, with considerable ceremony, that anyone who violated any of the articles would perish with his people, giving a little of the mixture to the youths to consume. Quoted in, Price, *First Time*, 1983, at 173.
- <sup>76</sup> Bilby 1997, at 677.
- <sup>77</sup> Scholtens 1994, at 26.
- <sup>78</sup> Ibid., at 46.
- <sup>79</sup> Quintus Bosz, *De Rechten van de Bosnegers*, 1993, at 131, 135.
- <sup>80</sup> Art. 6 of the Peace Treaty with the Aucaners (1760) includes similar language. Although the Dutch tried to increase their influence in the appointment of the Granman, only once (in 1835) did they succeed in replacing a Granman, making use of internal conflicts among the Saramaka (see Scholtens, 1994, at 43).
- <sup>81</sup> See art. 11 of the 1742 Treaty with the Saramaka and the Matawai: '...likewise they shall be required to punish those among them who shall come to commit any crimes or mischief, even including the death penalty...' (English translation in Price, *To Slay the Hydra*, 1983, at 159-165).
- <sup>82</sup> *Letter to the President of the Republic of Suriname*, 5 June 1998. The letter was written in light of timber activities in the area and served to inform the President 'that the forests of Papoto and Daumè are not unused forests, so that they are not be issued to others.' It was signed by 11 captains and basias from 5 villages and approved by another 8 basias and captains from 3 villages.
- <sup>83</sup> *Transcript of Testimony in the Aloeboetoe Et Al Case*, Inter-American Court of Human Rights (1993), at 93-4.
- <sup>84</sup> Quintus Bosz, *De Rechten van Bosnegers*, 1993, at 134. See also Scholtens 1994, at 55.
- <sup>85</sup> Scholtens 1994, at 72.
- <sup>86</sup> Ibid., at 78.
- <sup>87</sup> Other provisions included the re-affirmation of the authority of the Queen, that laws created in Suriname must be respected; that a postholder must be consulted in all cases related to whites and that the Ndyuka were prohibited to enter into any treaty with other Maroon tribes (see Scholtens 1994, at 79 for the full text of the agreement).

- <sup>88</sup> Scholtens 1994, at 79. Scholtens refers to The Surinamer of 23 and 27 October and 3. 6. 10 and 13 November 1921. The Protocol is published as Resolutie 5 April 1924, no. 1101 (Central Archive Paramaribo)
- <sup>89</sup> Quoted in Scholtens 1994, at 83.
- <sup>90</sup> Scholtens 1994, at 83.
- <sup>91</sup> Ibid., at 84.
- <sup>92</sup> Ibid., at 86.
- <sup>93</sup> Cited by Scholtens 1994, at 87.
- <sup>94</sup> Ibid.
- <sup>95</sup> Ibid.
- <sup>96</sup> Ibid.
- <sup>97</sup> Ibid.
- <sup>98</sup> Ibid.
- <sup>99</sup> Richard Price, testimony in the Aloeboetoe Case. *Transcript of Testimony in the Aloeboetoe Et Al Case*, Inter-American Court of Human Rights, 1993, at 64.
- <sup>100</sup> *Island of Palmas Case*, at 41.
- <sup>101</sup> Ibid., at 45.
- <sup>102</sup> Quintus Bosz 1980, at 331 and Quintus Bosz, *De Rechten van de Bosnegers*, 1993, at 132-133.
- <sup>103</sup> Quintus Bosz 1980, at 331.
- <sup>104</sup> Quintus Bosz, *Rechten van Bosnegers*, 1993 at 133.
- <sup>105</sup> Van Vollenhoven 1916, at 8.
- <sup>106</sup> CAP Resolution no. 8100, dated 24 November 1894, which includes the report of the surveyor W.L. Loth dated 5 November 1894, see Scholtens 1994, note 147 at 170.
- <sup>107</sup> Price 1975, at 23.
- <sup>108</sup> Other rationales for renewing the peace treaties included: the general unrest in the colony after a big fire in Paramaribo caused by slaves, an (unsuccessful) slave rebellion in Coronie and fears about the effects of the abolition of slavery in neighbouring British Guyana. See, Scholtens, at 42.
- <sup>109</sup> Pers. Com. Richard Price, 29 August 1999.
- <sup>110</sup> Quintus Bosz, *Rechten van Bosnegers*, 1993, at 133.
- <sup>111</sup> See art. 3 and 4 of the Peace treaty with the Aucaners of 21 September 1809. Reprinted in Scholtens 1994, at 37.
- <sup>112</sup> See art. 27 of the Peace Treaty with the Aucaners of 25 March 1837 which reads: 'Those who have violated one or more of these conditions shall be punished, if they fall in the hands of the Government in Paramaribo and if they are in their land or go to their land, by the Granman...'
- <sup>113</sup> Testimony of Richard Price, at 91-2.
- <sup>114</sup> With regard to Maroon law, Price states that 'It was the migratory patterns of the First-Time people that established land rights for posterity...' Price, *First Time*, 1983, at 7. See, also, Ibid., at 65-8.
- <sup>115</sup> Wijnholt 1965, at 9.
- <sup>116</sup> The Treaty of Independence between Suriname and the Netherlands provided that previous legislation would not be affected by the decolonization process.
- <sup>117</sup> Van Wijk & Konijnenbelt 1988, at 297.
- <sup>118</sup> Ibid.
- <sup>119</sup> *Surinaams Burgerlijk Wetboek* (1969), arts. 1264, 1359.
- <sup>120</sup> *Nowegijick v. The Queen*, (1983), 144 D.L.R. (3d) 193 (S.C.C.).
- <sup>121</sup> *R. v. Badger*, [1996] S.C.J. No. 39, at 10.

<sup>122</sup> *Jones v. Meehan*, 175 U.S. 1 (1899).

<sup>123</sup> See, among others, *R. v. Sioui* (1990), 70 D.L.R. (4<sup>th</sup>) 526 (S.C.C.), at 537; *R. v. Horseman*, [1990] 1 S.C.R. 901; *Simon v. The Queen* (1985), 24 D.L.R. (4<sup>th</sup>) 390 (S.C.C.) and; *Mitchell v. Peguis Indian Band* (1990), 71 D.L.R. (4<sup>th</sup>) 193 (S.C.C.)

<sup>124</sup> R. Price 1998, at 233.

<sup>125</sup> *Ibid.*, at 237.

<sup>126</sup> Martínez, first progress report, 1992, at 32.

## CHAPTER 3

## INDIGENOUS AND MAROON RIGHTS IN SURINAMESE LAND LEGISLATION

The main argument why indigenous and Maroon rights to their lands and resources are not recognized under Surinamese law today is that they can not show titles to their land. According to Quintus Bosz, proof of a title issued by the state is required to claim rights because the state is and has always been the private owner of all land in Suriname.

In the first chapter, where we focused on the question of which rights the English and Dutch acquired when they first arrived in Suriname, we established that Quintus Bosz is only partly correct about the private ownership rights of the State. While the English and later the Dutch acquired territorial sovereignty over the whole territory of Suriname, they did not obtain private property rights over lands occupied and used by indigenous peoples. In the second chapter we looked at the peace treaties and concluded that while the indigenous treaties did not contain any significant changes in the Dutch policy towards indigenous lands (their property rights were recognized and remained intact), the Maroon treaties recognized their rights to political and territorial autonomy, including the ownership thereof.

This chapter explores the extent to which subsequent legislation has affected the status of indigenous and Maroon rights. After a brief historical overview of both land and resource legislation, we will discuss the various forms of title to land that have been issued in Suriname. We will then focus on the origin and nature of the domain principle and the nature of the savings clause found in the land warrants and land legislation.

### Historical Background

The historical development of Surinamese land and resource legislation may be divided into four periods. The first is the period of settlement and the establishment of a plantation system (1650-1865) during which rights to land were issued with the objective of cultivating tropical crops for export to Europe. The title attached to these rights was called *allobiale eigendom en erfelijk bezit* (allodial ownership) by governor Van Scharphuizen (1689-1696). By using the term 'allodial' instead of

'feudal,' he tried to reassure the colonists that their ownership was not restricted by feudal conditions.<sup>1</sup> Yet, like feudal titles, the rights of the allodial owner were limited by various conditions, most importantly the requirement that the land be continuously cultivated. There was no distinction between surface and subsurface ownership; allodial owners could freely mine for gold and other minerals on their land and keep and sell their finds. However, special grants did exist for the felling of timber. These grants, called permission letters, were generally issued for a limited period and exclusively for exploiting timber.

During the second period (1863-1930), which was characterized by the decline of the plantation system - in part as a result of the abolition of slavery - the government took an active interest in other types of resource exploitation, natural rubber or balata and gold in particular. By 1875, special leasehold titles were issued for gold mining and balata and in 1888, a Gold Ordinance was promulgated to regulate the right to mine gold and to establish the principle that allodial title holders were owners of the minerals found on their land and that their prior consent was necessary for exploitation by third parties. Regulations on balata exploitation appeared in 1893 replacing the leasehold titles with 'concessions.'<sup>2</sup> With regard to 'domain lands and forests,' the 1865 Government Regulation, a kind of constitution, provided that regulations for granting ownership or leasehold titles must be prescribed by law or, in absence thereof, by Colonial Ordinance.<sup>3</sup> Although a Surinamese Civil Code, almost an exact copy of the Dutch Civil Code, was introduced in 1869, which also mentioned ownership and leasehold, the regulations required by the Government Regulation did not appear until 1937 in the Agrarian Ordinance. Until then, rights to cultivate land continued to be issued as allodial ownership.

In the 1930's and 40s, the third period, we see important changes in land and resource legislation. A revised Gold Ordinance (thereafter referred to as 'Mineral Ordinance') introduced a distinction between surface and subsurface rights. While the Mineral Ordinance did not vest ownership of minerals in the State (this was done in 1986), it did require that government permission be obtained by those who sought to exploit minerals. A few years later, in 1937, the long awaited Agrarian Ordinance was approved. It regulated the granting of domain land as leasehold and absolute ownership and prohibited further grants of allodial ownership titles. Finally, in 1947, a Timber Ordinance was promulgated requiring State-granted timber concessions for logging operations.

This system largely remained in place until the 1980s, the fourth and final period, when the newly independent republic was placed under

military rule. In 1982, the Agrarian Ordinance was replaced by the L-Decrees, which remain in force today. The main features of the L-Decrees were the promulgation of a domain declaration which provided that all land to which others cannot prove ownership rights belongs to the Domain or the State; and, the introduction of a new form of title granted by the State (land lease, *grondhuur*). Since 1982, this is the only form of title that can be granted. The military government also approved a new mining law, the 1986 Mining Decree, which replaced the Mineral Ordinance and declared all minerals to be property of the State, a principle which was also incorporated in the new Constitution of 1987. Finally, in 1992, after a civilian government was elected through free elections, the old Timber Ordinance was repealed by the enactment of the Forestry Management Act which governs forest management and logging.

### Land Titles Currently Available under Surinamese Law

In 1982, the military government sought to reform existing land legislation and policy by introducing the L-Decrees.<sup>4</sup> The main result was that land titles would only be issued as in the form of land lease (*grondhuur*). The new legislation did not extinguish titles issued prior to 1982, however, which may be converted into the new title of land lease. In the case of titles issued for a limited period (leasehold), they will remain intact until their scheduled expiration. The laws governing the old titles remain in force, but are incorporated into the new legislation, in particular the L-Decree Principles of Land Policy (Decree L-1), which contains an important provision regarding the rights of indigenous peoples and Maroons. This provision is also applicable to the old titles (Decree L-3, art. 1 sub 2). Consequently, there are presently four types of valid title by which rights to cultivate or occupy land have been issued by the government: allodial ownership, full ownership, lease hold and land lease.<sup>5</sup>

#### A. Allodial ownership

*Allodiale eigendom en erfelijk bezit* is the oldest land title issued by the Dutch. The nature and content of the title is a matter that continues to puzzle legal practitioners today, although there seems to be consensus that the title developed out of the land warrants that were first issued by the English in the period between 1650 and 1667. Various studies have been commissioned and numerous papers written on this form of title which is unknown in Dutch law.<sup>6</sup> During a recent discussion, Surinamese lawyers even claimed that the title does not exist since everybody, including the government, is under the impression that

allodial ownership is the same as absolute ownership (*eigendom*) as defined by the Civil Code.<sup>7</sup> Most of the land in what is known as 'the cultivated area' was granted as this form of title.<sup>8</sup>

Allodial title was issued subject to various conditions, the most important of which was that the land must be cultivated. Also, most (but not all) allodial titles included a provision in which the state reserved the right to reclaim the land by using a simple procedure (*nadering*).<sup>9</sup> Finally, the title holder was prohibited from doing anything to the prejudice of the Indians 'or any prior concession.' Below, we will further discuss the meaning of this savings or guarantee clause, which has been included in virtually every piece of Surinamese legislation (see the annex).

#### B. Absolute ownership (*BW-eigendom*)

This is the most complete title to land available in Suriname and is found in both the Civil Code and the Government Regulation of 1865. It was not issued until the Agrarian Ordinance was promulgated in 1937 and then only to plots not exceeding 10 hectares.<sup>10</sup> In practice, because the allodial titles were also called '*eigendom*' and were the most complete title available in Suriname, legal practitioners, who were all educated in the Netherlands where allodial title is unknown, started to apply the Civil Code regulations to allodial titles. The result was that gradually the general public began to believe - and many apparently still do - that allodial ownership is no different from absolute ownership (*BW-eigendom*). Quintus Bosz argued convincingly that this is not the case.<sup>11</sup> Due to fears that the land would be abandoned, and therefore be unproductive, *BW-eigendom* was issued sparingly,<sup>12</sup> and in 1982, with the introduction of the L-Decrees the allocation of *BW-eigendom* titles was further limited by article 10 of Decree L-1, which provides that it can only be issued to foreign states for diplomatic purposes.<sup>13</sup>

Although the Surinamese Civil Code ('SBW') has undergone many changes since its introduction, article 576 which defines state lands (domain land) as lands that are unmanaged or without an owner, has survived. In our discussion of the domain principle below, we will explain the implications of this provision for indigenous and Maroon territories, which are obviously not 'unowned' or 'unmanaged.' As we shall see, Quintus Bosz nonetheless argues that these lands also belong to the State.

#### C. Leasehold (*erfpacht*)

Although leasehold had been issued as early as 1690 and had formally been available since the introduction of the Civil Code, it was not until

the introduction of the 1937 Agrarian Ordinance that it became the most common title issued by the government, largely, although not completely, replacing allodial titles. Leasehold titles are valid for a renewable period of 75 years and are issued subject to the payment of an annual fee. Under the L-Decrees renewal of leasehold title is not possible, thus the last leasehold titles will expire in 2057.

The Agrarian Ordinance stipulated in article 1(1) that

The allocation of domainland . . . shall be carried out with respect of the legal rights and entitlements of third parties, including the rights of Bushnegroes and Indians on their villages, settlements and forest plots.

We shall return to this provision, which has been replaced by Decree L-1, below.

A year after the adoption of the Agrarian Ordinance, governor Kielstra drafted a law to create so-called '*dorpsgemeenten*' (village communities) which were to be provided with communal leasehold titles. Although the plan was mainly intended for Javanese (Indonesians) living in the districts and was seen as a measure to stem their migration to Paramaribo, in 1938, four indigenous villages in the forestry belt were designated as '*dorpsgemeenten*' and were given leasehold titles for a period of 75 years.<sup>14</sup> These titles differed in important respects from leasehold under both the Civil Code and the Agrarian Ordinance as they could be neither alienated nor mortgaged. They were to be automatically renewed and a symbolic annual fee was set at one guilder. Further, a village leader, appointed by the governor, was installed who could issue use rights to members of the community within the titled area. As far as the indigenous communities were concerned, these had little meaning in practice. In 1981, the Village Communities Act was repealed,<sup>15</sup> and as a result the leasehold titles were automatically terminated.<sup>16</sup> No compensation was provided and there is no evidence that the four communities were even informed that their titles had been terminated.

#### *D. Land lease ('grondhuur')*

Since 1982, land lease is the only title issued by the State. The stated aim of the L-decrees was 'to end abuses of land policy,' in particular, speculation, corruption and changing the usage of the land, and to fully break with the 'liberal capitalist principle of private land ownership.'<sup>17</sup> Despite this rhetoric, in form little seems to have changed; like leasehold, land lease is a real title issued for a limited duration (15 to 40

years, as opposed to 75 years for leasehold) and is subject to various conditions. These include: an annual fee and usage of the land according to the purpose for which it was issued, among others, cultivation, housing and recreation. Unlike leasehold, however, land lease can only be sold or mortgaged with permission of the Minister of Natural Resources.<sup>18</sup> Also, renewal of the title is only possible if the Minister, after consulting the Land Chamber, does not consider it necessary to 'return the land to the . . . State Domain.'<sup>19</sup> The Minister may also decide to reclaim the land if the holder does not comply with the conditions under which the title was issued or fails to pay the annual fees. If the title expires or is extinguished, the title holder has the right to compensation.<sup>20</sup> In the chapter on the Peace Accord of Lelydorp, which includes a procedure for indigenous and Maroon individuals to obtain real titles, we shall discuss the implications of introducing land lease titles in indigenous and Maroon territories (chapter 5).

#### **The Domain Principle**

Another new feature of the L-Decrees is the so-called 'domain principle'<sup>21</sup> which reads that: 'All land to which others have not proven their right of ownership, is domain of the State.'<sup>22</sup> Although the domain principle was not set out in Surinamese law before, it has been cited by Quintus Bosz as the reason why indigenous peoples and Maroons do not have land 'rights' under Surinamese law. In his view, the domain principle has always been the basis of Surinamese land and resource legislation

Since the first colonization in Suriname in the 17th century, government authority has been exercised as a right emanating from the supreme ownership of the land. All private rights to land could only flow from the Landlord [i.e. the State]. *This meant that without a title from the competent authority nobody could claim any rights to land. Even the Indians, the original inhabitants could not pretend any rights inherent in themselves.* Despite all changes in public and private law, this domain principle has always remained the basis of land disposal. Even today, the Land [government] - heir to the previous land lord - still assumes the private ownership of all land in Suriname on which no rights of third parties have been issued before.<sup>23</sup> (emphasis added)

Quintus Bosz's argument is based on two related assumptions: the first, that the State is private owner of all land in Suriname; the second, that

only those with titles derived from the State can have 'rights' to land. In chapter 1, we saw that Quintus Bosz's first assumption does not correspond with the historical evidence. The English and Dutch only acquired private rights to land within their jurisdiction that was not occupied or used by indigenous peoples or others. Unoccupied lands belonged to the *private domain*, which the colonial administration could freely allocate to others, which they did in the form of allodial ownership, leasehold and presently land lease. Over indigenous territories, the English and Dutch only acquired public law rights, which is why these areas should be considered as part of the *public domain*. Lands that were later unconditionally separated from the private domain, i.e. land issued as absolute ownership or *BW-eigendom*, are also part of the public domain.

This distinction between public and private domain explains why allodial ownership, leasehold and land lease can be *reclaimed* by the state or, as it is often put in Suriname, *returned to the [private] domain* if the conditions attached to the title are not met. As we shall see, the public/private domain distinction also corresponds with the notions of 'free' and 'unfree' domain used in Dutch East Indian (Indonesian) land law, where the domain declaration was first introduced. Dutch East Indian law is also the place where we may gain more insight into the meaning of the domain declaration, since the explanatory note to article 1(1) of Decree L-1 is not helpful, stating only that 'In this article, the so-called domain principle has been inserted, i.e., that to the extent that no special persons (natural or legal persons) prove rights to it, all land is domain of the State.'<sup>24</sup>

Article 1(1) of Decree L-1 repeats verbatim the language used in the domain declaration which the Dutch issued in the Dutch East Indies in 1870.<sup>25</sup> This declaration became the subject of extensive debate among Dutch law professors, colonial administrators and others who argued over the various aspects of the declaration, eventually pitting the Leiden and Utrecht law schools against each other in an acrimonious fight. Central to this debate were the rights of the native population (*inlanders*), particularly whether (and if so, which) rights of native Indonesians were affected by the domain declaration. The declaration did not to apply in the 'self-governing territories' where the Dutch had concluded political contracts with local rulers similar to those made with the Maroons. The discussion was therefore limited to the 'directly ruled' territory (mainly Java), where a distinction was made between *unfree domain* - land to which both registered and unregistered native property rights as well as absolute ownership rights based on the Civil Code were attached - and *free domain* - the private domain of the State.<sup>26</sup>

88

With one important exception, the Indonesian domain declaration was understood to shift the burden of proof from the State to 'others' who had to show that they owned the land. The exception, according to Quintus Bosz's academic supervisor, Professor 'sJacob, was that the domain declaration could not be used by the Government to force natives to prove that they owned the land.<sup>27</sup> This would be contrary to the intent of the Indonesian domain declaration which specifically provided that lands used by the *inlanders* were considered to be their property. If the State wanted to dispose of land to which native property rights were attached, in other words to assert that the land was part of the State's free (or in our terms, private) domain, it would have to prove indisputably that the land was indeed free.<sup>28</sup>

'sJacob also discussed the relationship between the Indonesian domain declaration and article 576 of the old Dutch Civil Code which also applied to Indonesia. This article, which was copied verbatim in the Surinamese Civil Code, states that 'lands and immovable property which are unmanaged or have no owner . . . belong to the [State].' In 'sJacob's view, the main difference between the Indonesian domain declaration and article 576 of the Dutch Civil Code is again the burden of proof. Unlike the domain declaration, article 576 places the burden of proof on the *State* to show that lands are unmanaged or have no owner. He referred to several cases in the Netherlands where the government could not provide the required evidence that the land was not owned or was unmanaged. Even though the other party was unable to show ownership rights, the government lost the cases.<sup>29</sup> But in the case of indigenous property rights it did not matter whether the designation of land as state land was based on the domain declaration or on article 576, either way the burden of proof fell to the state to show that the domain was free and not restricted by rights of indigenous peoples.

After the domain declaration was introduced in Indonesia, the question arose in Suriname whether a similar declaration should be adopted there also. The idea was eventually shelved, mainly as result of a Dutch report published in 1930, which described the Indonesian domain declaration as a 'limitation on the land rights of the native population... theoretically both naive and ineffective.'<sup>30</sup> State ownership was felt to be ineffective and unnecessary as the government could achieve the same goals by virtue of its public powers to issue laws and regulations concerning land use.<sup>31</sup>

Quintus Bosz argued that in Suriname, the debate did not involve indigenous rights, citing governor Kielstra who said that, unlike Indonesia, the principle of State ownership had never been contested in

89

Suriname.<sup>32</sup> According to Quintus Bosz, in Suriname the main issue was the problem of the abandoned plantations. By placing the burden of proof on the owners of such plantations, the domain declaration would provide the government with a simple tool to re-issue lands which had long been abandoned and whose owners could not be traced anymore, thereby ensuring that the land continued to be productive. Quintus Bosz points out that the problem of the abandoned plantations was the main reason for a commission appointed by the Dutch minister of Colonies in 1913 (the Commission-Radier) to recommend inclusion of a domain declaration in Surinamese law. The recommended provision was similar to the Indonesian declaration but according to Quintus Bosz it did not contain the reservation regarding the rights of the native population.<sup>33</sup> He failed to mention however, that the Commission specifically excluded indigenous and Maroon rights from their understanding of 'the domain,' stating that

with the exception of the rights, which have been left to the . . . Amerindian population and the Bushnegroes, one may assume the entire soil which can be cultivated, to be... domain.<sup>34</sup>

With regard to the meaning of article 576 SBW and indigenous and Maroon rights, Quintus Bosz reached a different conclusion than 'sJacob, arguing that *only* in the case of indigenous and Maroon lands does the burden of proof not rest on the State, but on indigenous and Maroon peoples who must show that their lands are owned and managed. His reasoning is, again, unconvincing.

In his opinion article 576 SBW means 'that the moment when there does not *appear* to be any owner, the State legally *is* owner of the good. For the large territory of yet unissued wild forest land, this conclusion a priori does not present any problems.'<sup>35</sup> Article 576 only poses difficulties, in his view, in the 'actual culture area where rights to land have been exercised of old' (the plantation area).<sup>36</sup> Whether the State may act against possessors without titles (in which case the State may declare itself to be owner of the land and is allowed to re-issue the land to others), depends according to Quintus Bosz on the 'actual situation' or 'sphere' of the land:

If the actual situation is such, that every one has to be able to understand that he is dealing with unissued land, or land which unmistakably belongs to the domain, then the [State] will be able to freely exercise its sovereign rights. One may also state that the rights of the [State] are dependent on the *sphere* in which the land is located and that this distinction of sphere should be regarded as a necessary element of the Surinamese legal order.<sup>37</sup>

Although he does not state it as such, Quintus Bosz apparently refers to the different spheres existing in the coast and the hinterland. Elsewhere he argued that each sphere has their 'own legal order: that of the cultivated colonized area in the coast and that of the hinterland with its Bushnegroes and Indians.'<sup>38</sup> Unfortunately, he does not tell us what applies to the sphere where legal relations are *not* governed by European law, stating only that 'In the sphere where legal relations are governed by European law, the State has to prove first that the land is unmanaged and has no owner before it can dispose of unused land.'

The idea that indigenous peoples and Maroons would be the only groups in Suriname who must prove against the State that they own and manage their lands, with no reasonable justification except some vague notion of a different legal sphere, is discriminatory and cannot be accepted today. In our view, both article 576 and the Domain Declaration found in article 1(1) of Decree L-1 should be read to mean that all lands which are not owned or managed belong to the private domain, while lands that are owned and managed (including indigenous and Maroon lands and lands which have been issued as absolute ownership or *BW-eigendom*) are within public domain. Such an interpretation is consistent with the findings of chapter 1 that the State's title is divided between private and public law ownership. Following 's Jacob's line of reasoning, the burden of proof provided by article 1(1) of Decree L-1 does not apply to indigenous peoples and Maroons because this would be contrary to the meaning and intent of the Surinamese law as evidenced by the savings clause which has been part of Surinamese land law since Europeans first settled. If the State wants to parcel out indigenous and Maroon lands to others it must first provide evidence that these lands are unmanaged or without an owner. We shall now take a closer look at the savings or guarantee clause, in particular at its development over time and its scope and content.

### The Savings Clause

In chapter 1 we noted that in accordance with the land policy formulated by the Dutch States-General (the 1629 *Ordre van Regieringe*), the Dutch inserted savings or guarantee clauses in every land grant issued until 1820 and then again after 1860. While hunting and fishing was free to all inhabiting the territory, the *Ordre* stated that colonists could only acquire rights to lands that were uninhabited or uncultivated and that the rights of Spaniards and Portuguese as well as of the indigenous peoples ('Naturals') to their lands, goods, houses etc. must be respected. Failure to comply, to molest, hinder, violate or treat those present in the

acquired territory unjustly, would be met with criminal sanctions. In accordance with these provisions, lands were issued to planters in Suriname on the condition that 'Indians and other prior concessions' would not be molested or prejudiced.

With the exception of the period between 1821 and 1860, this clause was included in all land warrants. In 1860, the clause reappeared in land warrants with slightly different wording: 'should there be Indian or Bush negro settlements in the area granted, the concessionaire is not allowed to disturb them or force them to move.'<sup>39</sup>

We can only speculate as to why the savings clause was omitted from the model warrant in 1821, which sought to create uniformity in the various land grants that were issued after the dismantling of the Society of Suriname in 1795.<sup>40</sup> One possibility is that after the conclusion of the peace treaties with the Dutch in the 1680s, the indigenous peoples moved further inland away from the expanding plantation area, which was left to the Europeans who were thereafter free to allocate land without the need to take into account prior indigenous (or other) rights. This coincides with Quintus Bosz's observation that the 1860-formula was not included in every land deed, but only for land located 'outside the actual cultivated area.'<sup>41</sup> Also, the clause was retained in permission letters which were issued for timber exploitation outside of the cultivated area at the end of the 18th century. Quintus Bosz pointed out that the government did not want to issue the usual allodial titles to the loggers, 'who often worked amidst the "pacified" Bushnegroes' but rather preferred a right that could easily be terminated... 'as the Administration exercised the least influence over the extended and uncontrollable timber grounds in the remote corners of the colony where political conflicts could easily develop'<sup>42</sup>.

In 1877 a new formulation of the savings clause was introduced in special leasehold titles for mining activities. Probably under the influence of debates in Indonesia on native land rights, where a distinction was made between cleared and uncleared or 'waste' lands, the savings clause now provided that 'no rights of Indians and Bushnegroes to their villages, settlements and agricultural plots shall be violated.'<sup>43</sup>

The same clause was also inserted in the Agrarian Ordinance of 1937, which, in Quintus Bosz' words, constituted 'a general confirmation of the rights protected in the guarantee clause.'<sup>44</sup> The provision elicited several questions from the colonial parliament. In particular, some members wished to know which rights the provision referred to. Governor Kielstra replied that the rights of Bushnegroes and Indians

[mentioned in article 1(1) of the Agrarian Ordinance] are not meant to be 'ownership or other rights described in the civil legislation [the Civil Code] . . . [but] . . . rights that are rooted in the customs which apply to their villages, settlements and agricultural plots.'<sup>45</sup>

Kielstra's interpretation of article 1(1) of the Agrarian Ordinance has been used to argue that the savings clause only sought to protect indigenous and Maroon rights to cleared and cultivated lands but not to uncleared and uncultivated 'waste lands' (*woeste gronden*) which, according to Quintus Bosz are part of the domain of the State.<sup>46</sup> As we have seen, the savings clause has been part of Surinamese law at least since 1667, yet Kielstra's unsubstantiated comments have been employed as the authoritative interpretation of the savings clause. See for example Joyce Nelson who stated:

that there has been no recognition of the rights of hinterland dwellers, despite the guarantee clause, follows from the [discussions on the draft] Agrarian Ordinance [where it is stated that] with the term 'rights' in article 1, no ownership rights or other rights described in the Civil Code are indicated.<sup>47</sup>

Distinguishing indigenous and Maroon lands in terms of 'cultivated,' 'cleared' and 'wild' land not only reflects euro-centric notions of land use and is unacceptable in current understandings of the rights of indigenous peoples and Maroons, but if we look at the wording of article 1(1) of the Agrarian Ordinance we need not arrive at the conclusion that only cultivated and cleared lands are protected. The provision does not exclude uncleared lands, it simply states that rights of third parties will be respected *including* the rights of Bushnegroes and Indians to their villages, settlements and agricultural plots.

Further, whereas we would agree with governor Kielstra that the rights of indigenous peoples and Maroons were not ownership rights as defined by civil legislation (unless we include the treaties in this category), we do not share the conclusion of Quintus Bosz and others that these rights are inferior to or require less protection than civil code or other statutory rights.<sup>48</sup> Indigenous and Maroon rights may not be defined as Civil Code ownership or statutory rights, but they are ownership rights nonetheless. In this respect, indigenous and Maroon rights can be conceptualized as non-statutory ownership rights rooted in and based upon indigenous and Maroon law and traditions, or as a somewhat modified form of aboriginal title.<sup>49</sup> Failure to respect these rights or to attribute a second class status to these rights is discriminatory.

The current version of the savings clause, included in article 4 of Decree L-1 reads that

1. In allocating domainland, the rights of the tribal Bushnegroes and Indians to their villages, settlements and forest plots will be respected, provided that this is not contrary to the general interest;
2. General interests includes the execution of any project within the framework of an approved development plan.

According to the explanatory note, it is 'a requirement of justice that in allocating domain land, [the] factual rights to those areas [on which the tribal communities depend for their livelihood] shall be taken into account as much as possible.'<sup>50</sup> (emphasis added). Despite these promising words, article 4 embodies a considerably lower standard for indigenous and Maroon rights compared to that in the Agrarian Ordinance. The Agrarian Ordinance may at least be interpreted to mean that indigenous and Maroon rights are to be respected on an equal footing with 'third parties' (such as holders of absolute statutory ownership rights). Under Decree L-1 however, indigenous peoples and Maroons are the only Surinamese citizens whose land rights are only to be respected 'as much as possible,' and as the explanatory note reveals, only during the period that indigenous peoples and Maroons are not yet assimilated into Surinamese society:

Of course, this principle [respecting the rights of hinterland dwellers] will have to be applied during a - possibly long - transitional period in which the forest population will be gradually incorporated into the total socio-economic life...<sup>51</sup>

Moreover, the restriction related to the general interest is so broad that indigenous and Maroon rights will always be overruled by any action that the State deems in the public interest or any project that the government has included in a development plan. The effect is to substantially limit the rights of indigenous peoples and Maroons to the point that their rights become essentially meaningless.

### Concluding Remarks

This chapter has discussed the status of indigenous and Maroon rights in Surinamese legislation pertaining to land tenure. We focused especially on the domain principle which - even though it was not introduced in Suriname until 1982 - was used by Quintus Bosz in 1954 to

argue that indigenous peoples and Maroons have no land rights. We have devoted considerable attention to Quintus Bosz as his works (dating from the 1950's and 60's) are still required reading for first year law students in Suriname and his opinion continues to be the main authority on the status of indigenous and Maroon rights in Suriname today.

However, as we pointed out in this chapter, some of his most important statements are either completely unsupported or discriminatory. They include the notions that: (1) based on the domain principle, the State should be regarded as the private owner of all land in Suriname, and as a result; (2) that only those with titles may claim rights, which means that indigenous peoples and Maroons do not have 'rights' but just entitlements or interests; (3) that if indigenous peoples and Maroons *do* have rights, these only pertain to cleared and cultivated lands, not to waste lands and finally (4) that, because of the different 'sphere' of their lands, article 576 of the Surinamese Civil Code requires indigenous peoples and Maroons (as the only groups in Suriname) to prove against the State that their lands are owned and managed and therefore not State lands.

Regarding the first assumption, in chapter 1 we have pointed out that the State is only private owner of lands that belong to its private domain, not to lands owned and used by:

- a) Indigenous peoples. Their rights are based on their first occupation and subsequent recognition thereof in English and Dutch legislation, in particular the *Ordre van Regieringe* and the insertion of savings clauses in all subsequent land grants and legislation;
- b) Maroons; whose rights are recognized by the peace treaties and, later, the savings clauses; and;
- c) holders of absolute ownership (*BW-eigendom*) titles, which are the only titles issued by the State without any limitation, except the power of eminent domain.

As a result, Quintus Bosz' second assumption is incorrect; indigenous peoples and Maroons do have rights under Surinamese law, albeit not rights based on the Civil Code or other laws. To limit the scope of these rights to cultivated and cleared lands only (his third assumption) and to exclude lands used for hunting and fishing, for collecting medicinal plants and palm leaves for roofing, in sum, to the lands indigenous peoples and Maroons need for their very survival, would be contrary to the right to equal protection of the law and a violation of both constitutional rights and rights recognized under international law.

The same can be said about Quintus Bosz' final assumption regarding the burden of proof required for state lands. Even Quintus Bosz' own supervisor Prof. 's Jacob made crystal clear that in Indonesia, where the Surinamese domain declaration finds its origin, neither article 576 of the Civil Code nor the domain declaration could be used by the State to force indigenous peoples to provide evidence of their land ownership. To do this would be contrary to the meaning and intent of Surinamese law which has saved and guaranteed indigenous and Maroon rights for over three centuries.

Our conclusion that Surinamese land law recognizes and has always recognized indigenous peoples and Maroons as owners of the lands and territories used and occupied by them and not just as permissive occupiers of cleared and cultivated state lands, is consistent with the practice of the Surinamese government. With few exceptions land titles have not been granted in indigenous and Maroon territories; neither to indigenous persons and Maroons nor to third parties.<sup>52</sup> Indigenous peoples and Maroons have been able to hunt, fish, gather and to freely practice agriculture in their ancestral territories. In general, the most important threat to their rights to the free enjoyment and use of their territories, does not come from the issuance of land titles, but from the government's practice of issuing mining and logging concessions in their territories and establishing protected areas encompassing and near their communities. Legislation pertaining to these issues is the topic of the next chapter.

#### Notes

- <sup>1</sup> See Quintus Bosz, *Commentaar op Eigendomsbeschouwingen*, 1993, at 163-4.
- <sup>2</sup> Quintus Bosz 1980, at 208-209.
- <sup>3</sup> Government Regulation of 1865, art. 152.
- <sup>4</sup> There are seven L-decrees. We shall only refer to the Decree Principles of Land Policy, SB 1982, no. 10 ('Decree L-1'); the Decree Issuance of Domain Land, SB 1982, no. 11 ('Decree L-2') and the Decree Legal Status of Lands Issued before 1 July 1982, SB 1982, no. 12 ('Decree L-3').
- <sup>5</sup> Other titles to land exist as well, but these cannot be enforced against third-parties nor can they be mortgaged. By contrast, the four land titles outlined here, are real titles (rights in rem) which may be alienated and mortgaged, albeit with certain restrictions.
- <sup>6</sup> Of these, the studies by the Commissie-Radier (appointed by the Minister of Colonies, 19 March 1913); Prof. A.S. de Blécourt (ministerial missive of 9 May 1922, G.J. van Grol (1938 and 1942) and A.J.A. Quintus Bosz (1980) were the most influential. See, Quintus Bosz 1980, at 263-270 for an overview of the discussions.
- <sup>7</sup> See Mohan 1997.

- <sup>8</sup> Quintus Bosz 1980, at 482.
- <sup>9</sup> The competent authority simply issues a declaration that the land will be reclaimed in the general interest and that the land will return to the domain. See Quintus Bosz, *Commentaar op eigendomsbeschouwingen*, 1993, at 173.
- <sup>10</sup> art. 1, Agrarian Ordinance (GB 1937, no. 53).
- <sup>11</sup> Quintus Bosz, *Commentaar op eigendomsbeschouwingen* 1993, at 170. According to Mr. Baar, present during the panel discussion mentioned above, a recent decision (6 June 1996) of the Surinamese Court of Justice reached the same conclusion.
- <sup>12</sup> Quintus Bosz, *Commentaar op eigendomsbeschouwingen* 1993, at 168.
- <sup>13</sup> See art. 10a (1), Decree L-1.
- <sup>14</sup> Village Community Resolution (*Dorpsgemeente besluit*, GB 1938, 66) and resolution of 29 September 1937 (GB 1937, 110) which established the village communities of Bigi Poika, Powaka, Redi Doti and Casipora. See generally Ramsoedh 1990, at 111-119 and Quintus Bosz, *De Toepassing van het uit Indonesië geïmporteerde desa-model in Suriname* 1993, at 141-149.
- <sup>15</sup> Resolution of 1 April 1981 (SB 1981, 31).
- <sup>16</sup> According to 24 (1) of the Village Communities Resolution, the right of leasehold will automatically expire upon abolition of the village communities.
- <sup>17</sup> See explanatory note to Decree L-2, at 38-42.
- <sup>18</sup> Decree L-2, art. 30 (1).
- <sup>19</sup> *Ibid.*, at art. 33.
- <sup>20</sup> *Ibid.*, at art. 32 (1). As the explanatory note to Decree L-2 explains, by building on or cultivating the land, the holder of the title does not become the owner of this property, but is entitled only to the 'monetary value corresponding with the property' (at 43). See, for a comparison of the title of leasehold and land lease, Tuinstra 1997, and Dayala 1984.
- <sup>21</sup> See explanatory note to art. 1 (1) Decree L-1, at 11.
- <sup>22</sup> In Dutch: 'Alle grond waarop niet door anderen recht van eigendom wordt bewezen, is domein van de Staat.' Art. 1 (1) Decree L-1.
- <sup>23</sup> Quintus Bosz, *De Rechten van de Bosnegers* 1993, at 132.
- <sup>24</sup> Explanatory note, at 11.
- <sup>25</sup> art. 1 Agrarian Ordinance, (KB 20 July 1870).
- <sup>26</sup> See De Muinck 1911, at 2-14.
- <sup>27</sup> 'sJacob 1945, at 229-230.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> 'sJacob 1945, at 229-230.
- <sup>30</sup> Agrarian Commission 1930, cited by Quintus Bosz 1980, at 328-29.
- <sup>31</sup> *Ibid.*
- <sup>32</sup> Quintus Bosz 1980, at 328.
- <sup>33</sup> Quintus Bosz 1980, footnote 1, at 358.
- <sup>34</sup> Commission-Radier 1913, at 1.
- <sup>35</sup> *Ibid.*, Quintus Bosz 1980, at 370.
- <sup>36</sup> *Ibid.*
- <sup>37</sup> *Ibid.*, at 372.
- <sup>38</sup> Quintus Bosz, *De Rechten van de Bosnegers*, 1993, at 134.
- <sup>39</sup> Quintus Bosz 1980, at 334; see, also allodial grant to Kappler for Albina printed in Quintus Bosz 1980, at 433-434.
- <sup>40</sup> Royal Ordinance of 1820 (GB 1821, no. 7).
- <sup>41</sup> Quintus Bosz 1980, at 334.

- <sup>42</sup> Ibid., at 187.
- <sup>43</sup> Resolution of 30 July 1877, La-11, cited by Quintus Bosz 1980, at 334.
- <sup>44</sup> Quintus Bosz 1980, at 337.
- <sup>45</sup> Explanatory note to art. 1 of the Agrarian Ordinance, Annex Colonial States, 1935-1936, 5.2.
- <sup>46</sup> Quintus Bosz 1980, at 337.
- <sup>47</sup> Nelson 1993, at 41.
- <sup>48</sup> See, for example, Nelson 1993, and remarks by members of the Commission Domainland 1997, at 2 (discussed in chapter 5 below).
- <sup>49</sup> See Ch. 1, text accompanying notes 30-42.
- <sup>50</sup> Explanatory note to art. 1 (1) Decree L-1, at 13.
- <sup>51</sup> Ibid.
- <sup>52</sup> Some of the exceptions are Santigron, Bernharddorp (after consultations with the inhabitants who opted for individual titles) and several indigenous vil-lages along the lower-Marowijne (Wan Shi Shia, Pierrekondre and Erowarte). These are all located relatively close to the urban coastal area.

## CHAPTER 4

## INDIGENOUS AND MAROON RIGHTS AND THE EXPLOITATION AND PRESERVATION OF NATURAL RESOURCES

This chapter provides an overview of the protection of indigenous and Maroon rights in laws relating to resource exploitation and conservation. It begins with historical and contemporary legislation applying to mining and logging and concludes with legislation pertaining to nature conservation, environmental protection and biodiversity. As we shall see, the same savings clause found in the land laws is also found in most of the laws discussed in this chapter.

### Mining

Mining has been a major part of Suriname's economy since the beginning of this century. While the focus was initially on gold mining, bauxite mining has been the mainstay of the economy since the 1940s and has remained so to-date. Most mining activities are presently governed by Decree E-58 of May 8, 1986 Containing General Rules For Exploration And Exploitation Of Minerals, which regulates large- and small-scale mining as well as mining for building materials.<sup>1</sup> Bauxite and petroleum are regulated in special laws which we will not discuss here. The Mining Decree is based on the principle that ownership of the subsurface is distinct from ownership of the surface (art. 2 (1)). It introduced for the first time in Suriname's history, the legal principle that all minerals are property of the State (art. 2 (2)). This same principle was included in the Constitution a year later (art. 41, see also chapter 6). The objective of the Mining Decree is to facilitate 'an orderly development of mining' which 'fits within [the government's] national economic policy.'<sup>2</sup> The Decree also aims to provide incentives and guarantees to private investors, domestic and foreign.<sup>3</sup>

Under the Mining Decree, no one is allowed to conduct mining operations without a previous grant by the government (provided by Resolution or Ministerial Order, art. 2(6) and art. 6). To carry out large-scale mining, three licenses must be obtained which correspond with the various stages of mining: reconnaissance, exploration and exploitation. The Decree contains regulations for each license relating to the size of the area, the duration of the right, application procedures and the rights and

duties of the permit-holder. In addition to the rules relating to each license, all mining activities are also subject to article 4, which requires that mining activities must take into account, among others, 'the higher interest of the nation,' prevailing norms concerning safety and health of workers and the community, and norms relating to the protection of ecosystems.

### *Protection of Indigenous and Maroon Rights in Mining Laws*

Maroons played a crucial role in the gold industry around the turn of the century by providing transportation to the interior. While the Maroon treaties do not refer to mining rights, Prof. Van Vollenhoven mentioned a plan to demarcate a territory in 1894 where 'the Bushnegroes could freely take away timber, forest products and balata, make agricultural plots [and] exploit minerals...'<sup>4</sup> Exactly what this plan entailed and whether it was ever implemented are unclear.<sup>5</sup>

When issuing mining permits the Dutch routinely included language protecting indigenous and Maroon rights. First, in 1877, two years after the government started to issue special leasehold titles for gold mining, they issued a resolution which provided that all leasehold titles should contain a provision stating that 'no rights of Bushnegroes and Indians to their villages, settlements and agricultural plots shall be violated.'<sup>6</sup> According to Quintus Bosz, this was the first time that the term 'rights' was used in relation to indigenous peoples and Maroons.<sup>7</sup>

Second, in 1882, a new Gold Ordinance was promulgated which contained a similar provision. In the discussions about the meaning of this provision, the governor stated that these rights were based on the treaties concluded with the Maroons in 1761<sup>8</sup> and 1762, 'which left them free to remain living in the villages and in the places where they were located.'<sup>9</sup> The governor added 'that this includes the places on domain land where they are currently living and the agricultural plots they have there.'<sup>10</sup> Regarding indigenous peoples, the governor only mentioned that they 'gradually seem to be dying out.'<sup>11</sup>

Finally, article 35 of the Mineral Ordinance of 1932 (last amended in 1952), provided that 'no concession or its effects, may violate the rights of Bushnegroes and Indians to their villages, settlements and agricultural plots, which may be found within the issued parcel of domain land.' Violations were classified as misdemeanors, punishable by a maximum fine of 500 guilders (art. 38).

Considering the long history of the 'guarantee' or 'savings clause,' it is surprising that, with one exception, the current Mining Decree does

not mention indigenous peoples and Maroons at all. As the explanatory note is completely silent on the issue, there is no indication why article 35 of its predecessor was omitted. The only reference to Indigenous and Maroon peoples is article 25(1)(b), which provides that applications for exploration permits must include a list of all tribal communities located in or near the area to be explored. The Decree does not state what the purpose of this requirement is, but anyone submitting maps, reports or registers knowingly including information which is false or misleading, is liable to imprisonment (maximum of two years) or a fine of 100,000 guilders maximum (art. 71(c)). As a recent OAS study on the conflict between the Maroon community of Nieuw-Koffiekamp and Canadian mining companies, Golden Star Resources and Cambior, reported, this provision is not enforced. Nieuw Koffiekamp was not mentioned in Golden Star's application for an exploration license and no action was taken to investigate and punish this violation.<sup>12</sup>

The Decree provides some very limited protection for the rights of 'third parties' to private land. The basic rule is that third parties must allow mining activities on their land, including the construction of buildings and other works. The concession holder must inform the third parties beforehand about the objective, time and location of the activities (article 47(1)(a)) and compensate them in advance (art. 47(1)(b)). Compensation should cover all damages caused by the operation, irrespective of whether these damages can be attributed to the miner (art. 48). Instead of monetary compensation, the third parties may also require that the holder of a mining right will restore the land to its previous state (art. 49).

The question is whether indigenous peoples and Maroons can be considered as 'third parties' under the Mining Decree. The Decree distinguishes between 'claimants' and 'third parties entitled to land.' Claimants are 'those, who have ownership or other real user rights to private land' (art. 46(b)). According to the explanatory note, these are holders of a real title (such as leasehold and allodial ownership) or a personal title, such as land lease.<sup>14</sup> With few exceptions, indigenous peoples and Maroons hold neither, therefore, it is unlikely that they could be regarded as claimants under the Mining Decree.

The second category ('third parties entitled to land') are 'those whose interests... are based on personal use rights to private land...' (art. 46(c)). The term 'use rights' refers to the actual use or enjoyment of the land.<sup>15</sup> Indigenous and Maroon peoples should be regarded as 'third parties,' because indigenous and Maroon use and enjoyment of land concerns private rather than domain land.<sup>16</sup> Private land is defined in article 46 as

## Box II - Suralco and Adyumakondre

Maroon communities near Moengo in eastern Suriname have experienced serious problems caused by bauxite mining operations. These operations are conducted by Suralco, a wholly owned subsidiary of the US company Alcoa. The communities have never been compensated for the loss of their lands and livelihoods and for severe environmental degradation caused by Suralco's activities. These once forested communities now live in a moonscape, surrounded by blasted rock, covered in dust and debris from blasting and are subjected to high intensity lights that allow mining to take place 24 hours a day, seven days a week. Adyumakondre is an extreme example of the impact of Suralco's activities. It is presently surrounded by three active concessions and mining is taking place less than 200 metres from the village itself.

After it commenced operations near Adyumakondre in 1991, Suralco informed the community that they would be relocated. The community objected and sought help from the government. Negotiations between Suralco and the government ensued, resulting in an agreement to relocate the village. The community was not accorded a meaningful role in the negotiations. They did, however, accept relocation at this point as they saw it as inevitable. Suralco identified a site, which had already been mined near the village, and bulldozed it flat to build a new village. At this point, Suralco changed its mind and, pointing to its contract with the government, stated that the government alone was solely responsible for ensuring the welfare of local communities. The government took no action and relocation did not take place. Seven years and numerous requests to the government and Suralco later, the community's position has worsened.

In September 1998, the community petitioned the President to intervene. The petition stated that 'Suralco's activities have severely impacted upon our rights and well-being. In particular: our agricultural plots and houses have been destroyed, without any compensation; our river has been polluted so badly that we can no longer use it - wastes from the mining operation run down hill through the village into the river, turning it an orange-brown colour; health problems have occurred from villagers using the river water; use of dynamite by the company causes noise pollution and has contributed to the loss of game animals we use for food; and, destruction of the forest and pollution of the river has also substantially limited our ability to hunt and fish on our lands'<sup>13</sup>.

Suralco is presently constructing a road into the Nassau Mountains, the heart of Ndjuka Maroon territory, to exploit the bauxite deposits that exist there.

either land owned by someone other than the State, or domain land issued in personal or real titles. For practical purposes, however, whether indigenous peoples and Maroons are considered third parties under the Mining Decree is not particularly relevant; they will nonetheless have to accept mining activities on their lands.

An important exception is made for rights to mine building materials (sand, natural stone, granite). Article 43(3) provides that if a use right attaches to the land, the right to exploit building materials may only be granted to the owner of the land or, if it is domain land, to those who have a real or personal use right. Since there are use rights attached to indigenous and Maroon lands, the State can only issue concessions for building materials in indigenous and Maroon lands to the indigenous and Maroon owners of these lands. However, in practice, this is not the case; large concessions for building materials are often issued on or near indigenous and Maroon lands.<sup>17</sup>

Most mining agreements concluded with multinationals supercede the Mining Decree if there is conflict between the two. In this case, the mining agreements are approved by the National Assembly and become a form of primary legislation. The 1994 Mineral Agreement with Golden Star Resources was concluded in this way as it conflicts with provisions of the Mining Decree and certain tax laws. The protections for the Maroon communities located in the area covered by the Agreement are contained in Section 6.11, which provides that

The Private Parties will not unlawfully disrupt or bother the living conditions of the indigenous people, if present, established at the moment in Gross Rosebel. The Republic of Suriname will not require, encourage or allow additional settlements in Gross Rosebel during the time this agreement is in effect. Without prejudice to the preceding, the Private Parties will adapt to and urge their employees and contractors to respect the customs of the indigenous people c.q. to have these customs respected. If at any moment the relocation of a settlement turns out to be absolutely necessary, the Private Parties will use the utmost caution, with the consent of the Republic of Suriname and in consultation with the authorities of the settlement, to convince the inhabitants to move and will bear the expenses for a totally adequate relocation programme, this in accordance with the indications of the responsible Minister.

Even these rudimentary protections were routinely violated, often with overt support from the government. Agreements made with bauxite companies do not contain any protections whatsoever.

### Box III – The Afobaka Dam and Nieuw Koffiekamp

Mining has had both direct and indirect impacts on Maroons. In the Brokopondo district, approximately 6000 Saramaka and Ndjuka Maroons were forced off their land in 1963-64 to make way for a hydroelectric dam and a reservoir constructed to provide power to a bauxite refinery operated by Suralco. The reservoir flooded an area of approximately 600 square miles, almost half of Saramaka territory. The communities were paid the equivalent of US\$3 in compensation and were not provided with secure land rights in their new areas. They frequently refer in very emotional terms to the pain and suffering caused by transmigration.

Nieuw Koffiekamp was one of the relocated villages. It presently faces a second relocation, this time to make way for a gold mine to be operated by Canadian companies, Golden Star Resources and Cambior. Less than one year after its arrival in Suriname in 1991, Golden Star obtained rights to the Thunder Mountain, Headley's Reef and Gross Rosebel gold and diamond concessions. In 1994, it concluded a Mineral Agreement with the government granting it exclusive rights to explore the 17,000 hectare Gross Rosebel concession. In 1996, Cambior Inc. of Montreal, Golden Star's partner in the infamous OMAI mine in Guyana, exercised its option to acquire a 50 percent interest in this concession. Nieuw Koffiekamp, which has a population of 500-800 persons lies in the center of the southern block of Gross Rosebel concession. It was neither consulted nor informed about the granting of the concession.

In early 1995, Nieuw Koffiekamp complained that they were surrounded by armed guards and that their subsistence activities, including small-scale mining, were being restricted by Golden Star security personnel and armed police units, including the paramilitary Special Police Support Group, working with them. They also complained that Golden Star personnel and the police were firing live ammunition to intimidate them and keep them from areas in which Golden Star was working. These allegations were substantiated by Moiwana '86, Suriname's main human rights organization, which asserted that Golden Star, Cambior and the Government of Suriname were jointly responsible for violations of at least eight articles of the American Convention on Human Rights.<sup>19</sup>

Suriname is presently in the process of revising the Mining Decree and adopting a new investment law to provide incentives and protections for international investment. Revision of the Mining Decree is being supported by international consultants, notably from the British Geological Survey and Europe.<sup>18</sup> At this time, draft versions of both proposed laws are unavailable and therefore, comment cannot be made here.

### Forestry

On 18 September 1992, the Forest Management Act was passed by the National Assembly.<sup>20</sup> Based on a 1972 FAO study, the Act aims to provide the legal framework for the government's forest policy and contains comprehensive regulations concerning exploitation of timber and non-timber forest products (including plants for bio-prospecting). According to the explanatory note, government policy includes protecting forests which are necessary for a healthy environment and making efficient use of those forests that are designated as production forests. The Act provides for a classification of all forests in Suriname into permanent forest, conversion forest or temporarily maintained forest (article 4).

The Minister of Natural Resources is responsible for the management of all forested areas in Suriname and has the authority to classify forests for different purposes (article 2(1)(a) and (2)). Not all forests are considered to be domain land, article 42 explicitly distinguishes between forest activities on domain land (defined as 'all land on which no real use right has been established) and on lands on which a real title is established in accordance with the Agrarian Ordinance (i.e. leasehold or absolute ownership) or the L-Decrees (i.e. land lease).

This is the first definition of domain which mentions the establishment of 'real titles.' As we have seen in chapter 3, previously domain land has been defined as unowned or unmanaged land (art. 576 SBW) or land to which others have not proven ownership rights (art. 1(1), Decree L-1). We do not know why this definition was inserted in the Act, although it is possible that it is related to the influence of Quintus Bosz, who believed that domain land is land to which others can not show titles issued by the state (see chapter 3).

The historical savings clause is also included in the Forestry Management Act. Article 41(1)(a) states that 'the customary rights of the tribal bushland inhabitants to their villages, settlements and agricultural

plots, will continue to be respected as much as possible.' No definition of these 'customary rights' is provided. Nonetheless, if they are violated, the traditional authorities may file a complaint with the President (art. 41(1) b). The complaint must be filed by the appropriate traditional authority (presumably the village leaders) and include the reasons for the complaint. The President may establish a commission to guide him on the matter (art. 41 (1) b). This is the extent of the remedy provided for violations of these customary rights. Considering the nature of the remedy, and that the customary rights are only to be respected 'as much as possible,' this provision may be of little use to affected Indigenous and Maroon communities.

Finally, the Forest Management Act introduces the concept of 'community forest' (article 41(2)), which is defined as

forested areas located around community lands [i.e. lands on which tribal communities are located, or land they have cultivated, see article 1 (n)] and which have been set aside for their subsistence as well as for possible commercial logging use, collection of non-timber by-products and land-clearing for agriculture' (art. 1(o)).

The community forests will be set aside by the Minister of Natural Resources after consulting with the Minister of Regional Development (art. 41(2)). To-date, no forests have been designated as community forests, nor have any resolutions been established regulating their use and management. According to article 58(4), in the absence of new laws or resolutions, prior legislation, in this case the 1947 Timber Act and the Timber Resolution remain in force.

The historical development of forestry legislation shows that the colonial government consistently made a reservation for Indigenous (and later: Maroon) rights when issuing logging permissions and concessions. Since the end of 18<sup>th</sup> century, the government issued permission letters, also referred to as 'temporary concessions' or 'licenses' which included a savings clause.<sup>21</sup> The savings clause in the 1947 Timber Ordinance reads that 'The holder of a permit for the exploration or exploitation of timber shall respect the rights of Bushnegroes and Indians to their villages, settlements and agricultural plots which may be located within the allocated terrain.'<sup>22</sup>

The Timber Ordinance was accompanied by a Timber Resolution, which contained specific regulations for forest exploitation by indigenous and Maroon communities.<sup>23</sup> The resolution provided that

individuals - usually the village leader - could obtain woodcutting permits (*houtkapvergunning* - HKV) which were issued for the benefit of his family and 'persons who could be considered as members of his tribe' (art. 9(3)).

Since the community forest areas envisaged by the 1992 Act were never created, the HKVs provided for by the Timber Resolutions remain in force. They have been issued free of charge and for an initial 5 year period, after which they would be automatically renewed, unless the Governor (now, presumably the Minister of Natural Resources) decides that this would be against the general interest (art. 10). Within the HKV, only the license holder and members of his tribe members are allowed to fell trees for subsistence use and to gather non timber forest products. In 1984, a total of 113 HKVs had been issued, which many Indigenous and Maroon people still regard as something akin to a land title.<sup>24</sup> While the Resolution clearly states that it is impermissible to lease the HKV to others, this has frequently occurred with the acquiescence of the State Forestry Service.<sup>25</sup> This has in most cases led to over-exploitation of forest resources and has created considerable tensions within the communities as village leaders have entered in to deals with loggers without informing community members.

#### Nature Conservation

Compared to many other countries, nature conservation has a relatively long history in Suriname. In the 1950's, when roads and bridges were constructed in the forest adjacent to the coastal area to facilitate resource exploitation, the decision was taken to conserve parts of the Interior as nature reserves.<sup>26</sup> At this time, a legal framework was established for nature conservation, which consists of the 1954 Nature Protection Act,<sup>27</sup> the 1954 Hunting Act<sup>28</sup> and the Fish Protection Act of 1961.<sup>29</sup> Policy guidelines about nature conservation are also provided by the Planning Act<sup>30</sup> and the Constitution which lists the protection of nature and the maintenance of the ecological balance as one of the social objectives of the state (art. 6(g)).

The Nature Protection Act provides the legal basis for protected areas which may be established on domain land by the President (art. 1). The Act contains rules on the use of nature reserves, prohibiting hunting, fishing or any damage to the soil, the flora and fauna and natural beauty of the reserve (article 5 (a)). Management and monitoring of protected areas is in hands of the Head of the State

Forestry Service (LBB) who may issue special permits to carry out activities in the reserve for the purposes of scientific, cultural or other objectives (art. 6). Criminal sanctions may be imposed in case of violations of the Act (art. 8). Currently, sixteen protected areas have been established, including one nature park (Brownsveg) and one multiple use management area and six more have been proposed. Counting the most recent nature reserve, the Central Suriname Nature Reserve, protected areas in Suriname now cover over 2 million hectares.

#### *Protected Areas and the Rights of Indigenous Peoples and Maroons*

According to Molendijk and Kanhai, indigenous and Maroon communities are located within or in the vicinity of seven of the existing and proposed protected areas.<sup>31</sup> The number of communities affected by protected areas is much higher however. For example, with regard to the Wane Creek reserve, Molendijk and Kanhai only mention the existence of 'small bushnegro family units.'<sup>32</sup> During UNDP consultations on biodiversity protection in September 1997, it became apparent that the Wane Creek is also an important fishing and hunting area for virtually all the Indigenous communities in the Lower-Marowijne and is considered the ancestral territory of the Lokono community Wan Shi Shia (Marijkedorp). Everybody present at the meeting expressed their genuine surprise when they heard that the Wane Creek was part of a nature reserve and had been so for over 10 years.

In fact, most of the existing and currently proposed protected areas are located within or near areas traditionally used and occupied by indigenous and Maroon peoples (see table). The Nature Protection Act makes no exception for indigenous and Maroon traditional use of the resources within protected areas: Indigenous peoples and Maroons are subject to the same restrictions as anyone else regarding the use and management of protected areas.

Only in 1986, when four new protected areas were established by the Nature Protection Resolution, was it provided that if villages and settlements are located in or near those areas, the rights of the tribal population will be respected.<sup>33</sup> According to the explanatory note this provision was the outcome of talks between the Forestry Service with the board and an advisor of KANO (a defunct indigenous association). They reached the following agreement:

that the forest inhabitants who live in or near the nature reserves will maintain their traditional rights and interests in the newly

established protected areas (a) as long as the national goal of the nature reserves is not violated; (b) as long as the motives for these traditional rights and interests are still valid and (c) during the process of growing towards one Surinamese citizenship.<sup>34</sup>

Again, we find here the assimilationist framework found in the L-Decrees; indigenous and Maroon rights are only to be respected during a certain period (when they are not yet assimilated into mainstream Surinamese culture) and only if they do not interfere with the goals established by the government.

The 1986 Resolution established four nature reserves in the coastal area and the bordering savanna belt (i.e. Peruvia, Wane Creek, Upper-Cusewijne and Copi), at least three of which include areas used and occupied by indigenous people and Maroons (Wane Creek, Upper-Cusewijne and Copi). The existence of cultural heritage sites, in particular the presence of pre-Columbian habitat, was cited as justification for all the protected areas, while 'traces of early Maroon settlements' were mentioned as one of the special characteristics of the Wane Creek nature reserve.<sup>35</sup> The explanatory note remarked that 'It was not completely avoidable that terrains were selected on which "traditional" rights and interests... are claimed,' suggesting that the location of the protected areas within indigenous and Maroon territories was purely coincidental.<sup>36</sup> Yet, elsewhere, the explanatory note states that these areas were selected for nature conservation precisely because they are inhabited and used 'which makes conservation of [unique animal and plant] populations more difficult.'<sup>37</sup> Molendijk and Kanhai also question the intention of the legislator and suggest that protected areas are selected not so much because of the lack of alternatives, but because indigenous and Maroon territories are considered to be domain lands and therefore 'easier to take.'<sup>38</sup>

Article 4 of the Resolution explicitly states that protection of traditional rights only applies to the reserves established by the Resolution. Before 1986, however, ten protected areas were established by resolutions which do not contain any reference to indigenous rights. In several places the establishment and implementation of the nature reserve has led to conflicts with the local communities who in most cases were not consulted about the plans, or even if they were, the nature reserve was established despite their objections. The same applies to the protected areas that are currently proposed.

Indigenous and Maroon communities affected by existing and proposed protected areas

Protected Areas established before 1986	Affected communities
Hertenrits Nature Reserve (GB 1972, 25)	unknown
Koppenname Monding Nature Reserve (GB 1966, 59)	unknown
Wia Wia Nature Reserve (GB 1966, 59)	Langamankondre, Christiaankondre
Galibi Nature Reserve (GB 1969, 47)	Langamankondre Christiaankondre*
Brinckheuvell Nature Reserve (GB 1966, 59)	Nieuw-Koffiekamp and other transmigrated Maroon communities
Brownsberg Nature Park (D 3226/69, 14 March 1970)	Brownsweg* and other transmigrated Maroon communities
Raleighvallen / Voltzberg Nature Reserve (GB 1966, 59; expired by Nature Reservation Resolution 1998, SB 1998, 65)	Witagron, Kaimanston*
Tafelberg Nature Reserve (GB 1966, 59; expired by Nature Reservation Resolution 1998, SB 1998, 65)	possibly Kwamalasamutu, Tepu and several Saramaka communities
Eilerts de Haan Nature Reserve (GB 1966, 59; expired by Nature Reservation Resolution 1998)	possibly Kwamalasamutu, Tepu
Sipaliwini Nature Reserve (GB 1972, 25)	Kwamalasamutu, possibly Tepu
<b>Protected Areas established after 1986</b>	
Peruvia Nature Reserve (SB 1986, 52)	possibly Post Utrecht and Cupido
Boven-Cusewijne Nature Reserve (SB 1986, 52)	Bigi Poika*
Kopi Nature Reserve (SB 1986, 52)	Kopi*, Redi Doti, Casipora, Pierrekondre and other Maroon and Indigenous communities in Mapane/Blakawatra area
Wanekreek Nature Reserve (SB 1986, 52)	Maroon communities*, Christiaankondre, Langamankondre, Pierrekondre, Tapuku, Wanshisha (Marijkedorp)
Bigi Pan Multiple Use Management Area	unknown
Central Suriname Nature Reserve (SB 1998, 65)	Kwinti communities of Witagron and Kaaimanston; Kwamalasamutu and possibly Tepu
<b>Proposed protected areas:</b>	
Kaburikreek Nature Reserve	Washabo*, Section*, Apura*
Nani Nature Reserve	unknown
MacClemen Forest Reserve	unknown
Snake-Creek Forest Reserve	unknown
Estuarine Zone Multiple Use Management Area	Langamankondre, Christiaankondre*

\* Source: Molendijk and Kanhai 1993, p. 110.

### *The Central Suriname Nature Reserve*

The most recent reserve, the Central Suriname Nature Reserve, initiated by Conservation International (CI), was announced in New York in June 1998 attracting international media attention. The reserve was officially established by Presidential resolution a month later.<sup>39</sup> The new reserve, 'established to protect and preserve the natural resources in Suriname' (art. 1) comprises the existing nature reserves of Ralleighvallen, Tafelberg and Eilerts de Haan and amounts to approximately 1.5 million hectares (9.7% of the total Surinamese land mass).<sup>40</sup> In the explanatory note the reserve is cited as part of the responsibility of the Government of Suriname to protect tropical rainforests 'in the interest of life on earth in general and of the well-being and welfare of Suriname in particular.'<sup>41</sup> Reference is made to various international environmental protection treaties ratified by Suriname, including the Treaty of Amazonian Co-operation (1978) and the Convention on Biological Diversity (1992).<sup>42</sup>

The Resolution contains yet another variation of the savings clause, providing in article 2 that the villages and settlements of bushland inhabitants living in tribes, will be respected as long as it is (a) not contrary to the general interest or the national goal of the established nature reserve and if (b) it is not provided otherwise.<sup>43</sup> 'As far as is known', the explanatory note reveals, 'the area is uninhabited and there are no settlements.'<sup>44</sup> Further, exploration activities related to the use of natural resources within the reserve may be carried out as long as this is not contrary to the national goal of the nature reserve.<sup>45</sup>

The statement that the area is uninhabited is surprising since the Maroon (Kwinti) communities of Witagron and Kaimanston, whose lands are located within and near the reserve, had recently been involved in discussions with the United Nations Development Programme (UNDP) about upgrading the Raleighvallen reserve.<sup>46</sup> They were not informed about the establishment of the new reserve and expressed their concern that they would not be able to continue their subsistence practices within the area.<sup>47</sup> Similarly, while CI's brochure on the nature reserve features pictures of Trio children, it is silent that the reserve includes a part of the hunting and gathering territory of the Trio.<sup>48</sup> As respect for indigenous and Maroon rights under the Nature Reservation Resolution 1998 only extends to 'villages and settlements' (notably leaving out agricultural areas), it is doubtful whether the Trio or the Kwinti will be allowed to farm in the area.

Suriname recently received a US\$ 9.24 million grant from the Global Environmental Facility (GEF) to fund management and other activities in the Central Suriname Nature Reserve and the Sipilawini Nature

Reserve located on the border with Brazil. While the GEF project document notes that the Trio have asserted ownership rights over the area covered by the latter, it does not provide any mechanism for addressing land rights issues as required by the World Bank's 1991 Operational Directive on Indigenous Peoples.<sup>49</sup>

### *Environment and Biological Diversity: International Obligations*

Suriname has ratified a number of international environmental treaties including the Convention on Biological Diversity (CBD) in January 1996. In the following years, it adopted a National Environmental Action Plan (NEAP; 1996), a National Strategy for the Sustainable Use and Conservation of Biodiversity (1998) and is presently developing a National Biodiversity Action Plan with funding from the GEF. These policy documents identify a number of areas in which attention is urgently needed including:

- developing a framework environmental protection law that requires, among others, Environmental Impact Assessments;
- revising existing legislation to meet the standards set in the CBD and developing sectoral environmental legislation to regulate issues such as access to genetic resources;
- strengthening the capacity of institutions involved in the management, research and sustainable use of biodiversity;
- increasing scope and strengthening management of protected areas;
- raising levels of conservation awareness;
- increasing biological research and monitoring capacities; and
- strengthening national planning and international cooperation in order to protect biodiversity.

In 1997, the Surinamese government established the National Environmental Council (NMR) as a policy making body within the Office of the President. A year later, the National Institute for Environment and Development of Suriname (NIMOS) was established, also under the Office of the President, to be the operational arm of the NMR. NIMOS is mandated to prepare and implement national environmental legislation and monitor compliance therewith. NIMOS and the NMR have jointly received a grant of US\$2 million from the Inter-American Development Bank and the European Union to develop environmental legislation and regulations, including assessment and monitoring, and, to undertake four specific environmental studies. Since its inception, neither the NMR nor NIMOS have produced any appreciable results and Suriname remains without any framework environmental legislation or legislation giving effect to the CBD.

While the CBD contains a number of provisions that are relevant for the purposes of this study, we will focus on only two, articles 8(j) and 10(c). Article 8(j) concerns indigenous and Maroon intellectual and cultural property rights and requires that states-parties 'Subject to [their] national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities... relevant for the conservation and sustainable use of biological diversity...' and, that the application of traditional knowledge should be promoted with the 'approval and involvement' of its originators. With regard to benefits derived from Indigenous intellectual and cultural property, the Convention requires that states-parties 'encourage the equitable sharing of [those] benefits...'

Article 10(c) requires that states-parties: 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.' Although the precise scope and meaning of this article has yet to be officially articulated, it would most likely include Indigenous agriculture, agro-forestry, hunting, fishing, gathering and use of medicinal plants and other subsistence activities and, by implication, should also be read to include a certain measure of protection for the ecosystem and environment in which those resources are found. These observations on article 10 (c) are supported by the analysis of the Secretariat of the CBD in its background paper on 'Traditional Knowledge and Biological Diversity.' In that paper, the Secretariat said the following about the language "protect and encourage" found in 10(c):

In order to protect and encourage, the necessary conditions may be in place, namely, security of tenure over traditional terrestrial and marine estates; control over and use of traditional natural resources; and respect for the heritage, languages and cultures of indigenous and local communities, best evidenced by appropriate legislative protection (which includes protection of intellectual property, sacred places, and so on). Discussions on these issues in other United Nations forums have also dealt with the issue of respect for the right to self-determination, which is often interpreted to mean the exercise of self-government. These conditions may also be considered in the context of incentive measures.<sup>50</sup>

Concerning the phrase "Customary use of biological resources," the Secretariat stated that:

Customary use of biological resources must take into account the spiritual and ceremonial dimensions of such use in addition to the more strictly economic and subsistence functions. Such use may also entail restrictions in accordance with customary laws: such restrictions must be respected as a necessary function of cultural survival. Also, the methods of taking various species have frequently changed as a result of the introduction of new technologies, however, it is the traditional purposes for such taking which should remain paramount in considering customary uses of biological resources and traditional cultural practices.

#### Box IV - The Suriname Biodiversity Prospecting Initiative

For a number of years, the Surinamese government has sanctioned the so-called Suriname Biodiversity Prospecting Initiative which involves obtaining knowledge about traditional medicine, in particular about medicinal plants, from indigenous and Maroon shamans. The initiative is a joint effort of Conservation International Suriname (CI), the BGVS (a state-owned pharmaceutical company), the National Herbarium of Suriname, the Virginia Polytechnic Institute and the transnational pharmaceutical company, Bristol-Meyers Squibb. Activities in the villages are based on agreements with the respective Granmans, which were concluded without meaningful consultation with the communities. During the negotiations, the Indigenous and Maroon parties involved do not have independent legal assistance, but were advised by CI's lawyer.<sup>52</sup>

The initiative seeks to place 50% of the benefits for Suriname (approximately 5% of the total) in a Forest Peoples Fund so that it can be made available to the people of the interior. To ensure indigenous and Maroon participation in disbursement of these funds, a board was established consisting of representatives from the indigenous and Maroon community. However, in 1998, the board had met only once since its establishment and, according to one of the board members (an Indigenous chief and member of the Association of Indigenous Village Leaders) the board members have never received any information about disbursement of the funds.

Should a commercially viable agent be found in the plants gathered in Suriname (and rumours are that there have been several 'hits'), it is most likely that patents will be sought.

In terms of implementing article 10 (c), in consideration of the terms "as far as possible and as appropriate" it would seem appropriate to provide for customary use of biological resources in accordance with traditional cultural practices within national laws.<sup>51</sup>

Implementing legislation developed by NIMOS should include these criteria identified by the Secretariat. This may require that a section of the legislation relate specifically to indigenous and Maroon customary practices and intellectual and cultural property rights or that separate legislation be adopted to account for these issues. Moreover, these issues must be addressed in the context of protections for indigenous and Maroon land rights and rights to manage and control their internal affairs.

### Concluding Remarks

In this chapter we have seen that the historical savings clause found in the early land warrants and present land laws is also present, albeit in different forms, in the forestry and some of the nature conservation laws. While it was found in mining legislation up to 1986, it has been omitted from the present Mining Decree. At most the present mining law may offer indigenous peoples and Maroons, assuming that they can be determined to be third parties, some form of right to compensation or remediation of degraded lands. Mining and forestry legislation do not provide any mechanism to incorporate indigenous and Maroon participation in decision-making about resource exploitation and concessions and permits pertaining thereto are routinely issued without even notifying affected communities. Moreover, the protections afforded by the forestry law are substantially compromised by the language of the relevant provision. This same law provides a mechanism by which forests around indigenous and Maroon communities can be reserved for their subsistence needs and preferential use. However, this provision has not been implemented.

Despite a number of policy statements and the recent creation of environmental policy and administrative institutions, Suriname remains without any form of environmental legislation, framework or otherwise. Coupled with the inadequacy of protections found in the forestry and mining laws, this is highly prejudicial to the rights and well-being of the people of the interior, where the vast majority of resource exploitation is taking place today. Many of these activities are also in contravention of Suriname's obligations under the Convention on

Biological Diversity. This treaty requires, among others, that mandatory environmental impact assessments be conducted and that indigenous and Maroon intellectual and cultural property rights and customary resource management practices be recognized and protected.

Laws pertaining to nature conservation are substantially incompatible with indigenous and Maroon rights as defined by international law and are most likely discriminatory in violation of Constitutional guarantees. The early laws do not contain any reservation for indigenous and Maroon subsistence and other rights. The 1986 law does contain such a provision, however, it is qualified to the point of being virtually meaningless. This same law also contains the assimilationist language found in the L-Decrees. The most recent enactment, that pertaining to the Central Suriname Nature Reserve, is also inadequate in relation to indigenous and Maroon rights.

### Notes

- <sup>1</sup> Mining Decree (*Decreet Mijnbouw*) SB 1986, 28.
- <sup>2</sup> Explanatory note to the Mining Decree, at 53.
- <sup>3</sup> *Ibid.*
- <sup>4</sup> Van Vollenhoven 1916, at 7-8.
- <sup>5</sup> According to Van Vollenhoven the plan was executed in 1905 but not published in the Government Gazette (*Ibid.*).
- <sup>6</sup> Resolution of 30 July 1877, La-11, cited by Quintus Bosz 1980, at 334.
- <sup>7</sup> Quintus Bosz 1980, at 334.
- <sup>8</sup> The governor probably meant the peace accord concluded with the Aucaners in 1760 instead of 1761.
- <sup>9</sup> *Memorie van Antwoord, Delfstoffen verordening, Bijlagen 33e vel, 1881-1882, La. A Ns 1/4, p. 111.*
- <sup>10</sup> *Ibid.*
- <sup>11</sup> *Ibid.*
- <sup>12</sup> See OAS/UPD 1997, footnote 10, at 102.
- <sup>13</sup> *Petition to the Suriname Government Concerning the Situation in Adjoemakondre, September 1998.*
- <sup>14</sup> Explanatory Note to the Mining Decree, art. 46-58, at 72.
- <sup>15</sup> *Ibid.*
- <sup>16</sup> See, also, Nelson 1993, at 42, who reaches the same conclusion.
- <sup>17</sup> Personal Communication Geological Mining Service, 24 August 1999.
- <sup>18</sup> De Vletter 1998, at 411.
- <sup>19</sup> *Moiwana '86* 1995.
- <sup>20</sup> Forest Management Act (*Wet Bosbeheer*), SB 1992, 80.
- <sup>21</sup> Quintus Bosz 1980, at 187, 307.
- <sup>22</sup> art. 5 (1), Timber Ordinance (*Houtverordening*), GB 1947, 42.
- <sup>23</sup> Timber Resolution (*Houtbesluit*), GB 1947, 94.
- <sup>24</sup> Annual Report State Forestry Service, cited by Kanhai 1993, at 75.

- <sup>25</sup> Kanhai 1993, at 73.
- <sup>26</sup> Molendijk and Kanhai 1993, at 114-15
- <sup>27</sup> Nature Protection Act (*Natuurbeschermingswet*), GB 1954, 26 (current text SB 1992, 80).
- <sup>28</sup> Hunting Act (*Jachtwet*), GB 1954, 25 (current text SB 1994, 54).
- <sup>29</sup> Fish Protection Act (*Visstandbeschermingswet*), GB 1961, 44 (current text SB 1981, 66).
- <sup>30</sup> Planning Ordinance (*Planverordening*), GB 1973, 89.
- <sup>31</sup> Molendijk and Kanhai 1993, at 110.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> Article 4 Nature Protection Resolution of 1986 (SB 1986, 52).
- <sup>34</sup> Explanatory note to the 1986 Nature Protection Resolution, at 13.
- <sup>35</sup> *Ibid.*, at 11-12.
- <sup>36</sup> *Ibid.*, at 12.
- <sup>37</sup> *Ibid.*, at 10.
- <sup>38</sup> Molendijk and Kanhai 1993, at 115. For example, the present location of the Copi Nature Reserve was chosen instead of an alternative area with the same ecosystem, but which included allodial land (*idem*).
- <sup>39</sup> Nature Protection Resolution 1998 (*Natuur Beschermings Besluit 1998*), SB 1998, 65.
- <sup>40</sup> See *De Ware Tijd* 18 June 1998.
- <sup>41</sup> Nature Protection Resolution 1998, Explanatory note, at 7.
- <sup>42</sup> *Ibid.*
- <sup>43</sup> Art. 2: To the extent that within the established nature reserve areas are located which have been issued as allodial ownership, leasehold, land lease, rent, use, or concessions, including villages and settlements of tribal bushland inhabitants, the acquired rights will be respected, unless (a) the general interest or the national goal of the established nature reserve is harmed; or (b) is provided otherwise.
- <sup>44</sup> *Ibid.*, Explanatory note, at 9.
- <sup>45</sup> *Ibid.* See, also, art. 3 of the Nature Protection Resolution 1998.
- <sup>46</sup> The meetings were organised by Forum NGOs, a non-governmental organization, to discuss the establishment of a Global Environment Facility (GEF) Small Grants Programme in Suriname for biodiversity conservation projects. See *NGO Koerier*, August 1998.
- <sup>47</sup> Conservation International/Republic of Suriname n.d., at 11.
- <sup>48</sup> GEF/UNDP 1999, at 1.
- <sup>49</sup> UNEP/CBD 1997.
- <sup>50</sup> *Ibid.*
- <sup>51</sup> *Ibid.*
- <sup>52</sup> Personal Communication from Conservation International's lawyer, August 1995.

## THE PEACE ACCORD OF LEYDORP

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The Interior war (also known as the Civil war) began in 1985 with a series of armed robberies carried out by Maroons under the leadership of Ronnie Brunswijk, an ex-bodyguard of military dictator, Desi Bouterse. The military regime reacted harshly burning down houses in Brunswijk's home village of Mungotapoe. A year later the Jungle Commando was formed and sought support from the exile community in the Netherlands. Led by Brunswijk, the mainly Ndjuka Jungle Commando raided the military post at Albina in July 1986 and took twelve soldiers hostage.

The military launched a counter-offensive, indiscriminately targeting Maroon non-combatants in the process and initiating a period of systematic human rights violations not seen in Suriname since the days of slavery. In November 1986, for instance, in a planned military operation, around 50 Maroons were massacred at the village of Moiwana, almost all of them infants, children, women and the elderly.<sup>1</sup> Reports were also made of massacres at the Maroon villages of Morakondre and Moengotapoe and that Maroons were subjected to forced starvation, termination of welfare benefits and 'ethnocide.'<sup>2</sup> Citing a report that placed the number of dead civilians at 200 during December 1986 alone, the Inter-American Commission of Human Rights concluded that 'the most serious violations of human rights covered by this report [1986-87] have been the treatment of the unarmed civilian Maroon and Amerindian populations in the eastern area of the country. These have taken on truly alarming proportions.'<sup>3</sup> The United States Committee for Refugees stated in 1987 that 'several sources allege that the Surinamese Government is not merely seeking to crush the rebels, but that it is committing genocide against the Maroons.'<sup>4</sup> These violations continued into 1990.

120 | The result of this policy of collective reprisals was a massive outflow of refugees to French Guiana and an increase in support for the Jungle Commando. By 1987, they controlled over a third of the country and were threatening the outskirts of Paramaribo. In that same year, other Maroon insurgent forces were formed including the Angula, mainly Saramakas, and the Mandela. Indigenous peoples entered the fray through the Tucayana Amazones which

mainly fought against the Jungle Commando. Attempts to end the conflict were made with the return of civilian government in 1988 at Portal and St. Jean and in 1989 at Portal and Kourou, all of which failed. Although the war was essentially over in 1990, it was not officially concluded until 1992 with the signing of the Peace Accord of Leydorp by representatives of the Government and the leaders of the Indigenous and Maroon insurgents, the Tucayana Amazones and the Jungle Commando, Mandela and Kofimaka, respectively.

In one sense the Peace Accord was a cease fire agreement, however, it also sought to create permanent conditions for the parties to co-operate and addressed development issues, land rights and the status of the traditional authorities in the Interior. This chapter will describe the substance of the Peace Accord and evaluate its legal significance. Most attention is paid to the proposed participatory mechanisms and the provision on land rights. We will begin with the general principles of the Accord.

### General Principles

The preamble to the Accord sets out a number of guiding principles, including: that it is based on the Constitution of 1987 and the organization of the State defined therein (§1); the parties to the Accord must respect the national sovereignty, territorial integrity and independence of Suriname (§5); and, that the parties 'are convinced that respect for human rights... are fundamental values for the whole Surinamese people and must be maintained, respected and protected.' Article 2 defines the overall objectives of the Accord as forging a sustainable peace in Suriname, the realization of sustainable development, and the creation of permanent conditions for cooperation between the parties to undertake, as soon as possible, the implementation of the Accord and normalization of the situation in the Interior.

### Article 4 - The Council for the Development of the Interior

Article 4 provides that the government in co-operation with representatives of the Interior, will establish a Council for the Development of the Interior (*Raad voor de Ontwikkeling van het Binnenland* - ROB). This Council shall include representatives of the Interior and will have an advisory and monitoring role towards the government regarding policy issues. The Accord does not indicate

how the members of the ROB will be chosen nor does it elaborate on its mandate in any detail.

The Peace Accord defines two concrete tasks of the ROB. The first is to carry out a study on the basis of which indigenous and Maroon living areas mentioned in article 10 will be recognized and demarcated. The second is to provide the government with proposals regarding high priority issues (such as energy and water services and reconstruction of damaged villages and infrastructure) within 6 weeks after conclusion of the Accord (Protocol I). The ROB was not established until August 1995 and neither of these tasks have been completed. After its installation, the indigenous representatives refused to participate, demanding that the ROB have its own budget and be placed directly under the authority of the President (instead of the Ministry of Interior Affairs).<sup>5</sup> In April 1998, a new ROB was appointed which differed from the first insofar as the first was composed of persons directly chosen by indigenous peoples and Maroons, whereas in the second, the members were nominated and appointed by the Government. Also contrary to the first ROB, the second has begun to examine land rights issues.

#### Article 10 – the Right to Land

Article 10 reads:

1. The government shall endeavor that legal mechanisms be created, under which citizens who live and reside in a tribal setting will be able to secure a real title to land requested by them in their areas of residence [*woongebieden*].
2. The demarcation and size of the respective residential areas, referred to in the first paragraph, shall be determined on the basis of a study carried out with respect thereto by the Council for the Development of the Interior.
3. The traditional authorities of the citizens living in tribes or a body appointed thereto by them, will indicate a procedure on the basis of which individual members of a community can be considered for real title to a plot of land in the area referred to in paragraph 2.
4. Around the area mentioned in paragraph 2, the Government will establish an economic zone where the communities and citizens living in tribes can perform economic activities, including forestry, small-scale mining, hunting and fishing.

There is considerable confusion about the meaning of this provision. According to an OAS representative present during the negotiations, the then-Minister of Natural Resources, Romeo van Russel, explained the intent of Article 10 by drawing three concentric circles.<sup>6</sup> The inner circle (area no. 1) represented the village which is to be collectively owned and where residents would not be able to secure titles. The second circle (area no. 2) comprised a communal zone where agricultural activities could be conducted and residents could apply for individual real titles. And finally, in the 'economic zone' (area no. 3), villagers could perform economic activities such as forestry, small-scale mining, fishing and hunting.

Whether this in fact represents the official position on the meaning of Article 10 is unknown as the government has not issued any official statement on the Peace Accord. No explanatory memorandums were written up and no agreement was reached on a number of concepts, including the term 'village.' Instead of 'village', the broader term '*woongebied*', indicating the area of residence, was used.<sup>7</sup> It is difficult to see however that the residential area mentioned in art. 10 (1) would comprise both the communal zone envisaged by the Minister as well as the village: art. 10 does not contain a reference to a collectively held zone, but provides for the acquisition of individual real title only in the area defined as the 'residential area.'

In our reading, article 10 refers to two areas in which a different system of rights apply: the first, comprises the village or residential area (paragraph 1) to be demarcated pursuant to a study conducted by the ROB (paragraph 2) and following procedures established by the traditional authorities (paragraph 3). The second area is the 'economic zone' mentioned in paragraph 4, which is to be set aside by the government so that residents may carry out economic activities such as small-scale mining, logging, hunting and fishing.

As noted above, the ROB study has not been completed. The government did establish two commissions outside of the ROB to assess the land rights situation in the Interior; one ceased to function without publishing a report,<sup>8</sup> the other, the *Commissie Domeinland Inheemsen en Marrons* issued a one page summary of an interim-report which was also not made public (see box V).<sup>9</sup>

### Box V The Commission Domainland

The Commission Domainland, chaired by Chas Mijns was established on 11 November 1996 and was required, within a period of three months, to 'make an inventory of the problems of the Indigenous peoples and Maroons regarding subjective rights to domainland in the interior and to provide the Government with concrete proposals and recommendations in order to come to a fundamental solution of this issue.'<sup>10</sup> The Commission formulated the legal issue as follows: 'Do the Indigenous peoples and Maroons have a real right [right *in rem*] to the land on which they have lived for centuries and if so, which right?' Other questions considered by the Commission were:

- What are the legal ideas of Indigenous peoples and Maroons regarding the scope of their area;
- Did the rights of the government regarding the areas in which Indigenous peoples and Maroon live, expire? And with what legal consequences?
- Do the interior peoples have a right? If so, which?
- Should the right of land lease be issued to interior inhabitants? If so, with what kind of modifications and on what basis?
- Should future rights be based on the peace accords?

The Commission concluded that (1) a proper preparation of its task would require meetings in the interior; (2) that Indigenous peoples and Maroons have different concepts regarding land rights; (3) that interior inhabitants are aware of the advantage of a real title; (4) that the government must come up with a proposal for the creation of development poles (concentrations of villages) along roads. Finally, it was stated that the lack of funds and of appropriate legislation were major obstacles to overcome and that three months were not enough to carry out its task.

Attached to the report were summaries of the contributions of three commission members, one of whom (Mr. Leeftang) expressed his concern that land lease titles could never have been intended for the interior and would disrupt tribal relations. In his opinion, the interior inhabitants have more legal security now than if the government would issue land lease titles, as the latter would only demonstrate the right of the government. Another member (Mrs. Playfair) stressed that the customary rights of the interior inhabitants must be respected and that this includes settlement, agriculture, hunting, etc. She proposed transforming the wood cutting permits (HKVs) that are currently granted to indigenous and Maroon villages into communal forests as provided by the Forestry Management Act. Finally, Mrs. Van Dijk-Silos recalled Quintus Bosz' opinion (citing him almost verbatim) that the historical rights and interests should be taken into account.<sup>11</sup>

Aside from the issue of whether the Peace Accord refers to two or three areas, the depiction of indigenous and Maroon communities as consisting of neatly drawn concentric circles seems to have stuck in the minds of many urban-based politicians. Such a construction does not correspond to indigenous and Maroon land use and management practices however. In particular, it presupposes that farmlands are located close to the village (confined to area no. 2 in the Minister's scheme). In reality, farmlands may be located *within* the village or, as is normally the case, up to several days travel by foot and/or boat from the residence of the farmer. The same may be said for the economic activities which are to take place in the economic zone. It is striking that gathering of medicinal plants, fruits, nuts and lianas used for, among others, house building and cassava strainers are not mentioned at all. This constitutes an important activity for indigenous and Maroon communities and often takes place many miles from the village.

With these general comments in mind, we shall examine subsections 1-3, relating to the procedure to obtain land titles, and subsection 4 concerning the economic zone, in greater detail.

#### *Art. 10 (1-3) - Procedure to obtain real titles*

The procedure to obtain a title and the kind of title the Accord refers to are not spelled out. Article 10(3) states that individuals will be able to acquire a title based on a procedure established by the traditional authorities or a body appointed thereby. However, the OAS report states that the ultimate authority to issue land titles would not be the traditional authorities, but the State.<sup>12</sup> According to the OAS representative present at the negotiations, the procedure envisioned during the peace talks was the following: after a plot has been identified by the traditional authorities, the person requesting the land would turn to the Ministry of Natural Resources and follow the legal procedures for applying for title as prescribed by national law (the L-Decrees).<sup>13</sup> It follows then, that the only title to land indigenous and Maroon tribal residents may obtain under the Accord is a lease of state land ('*grondhuur*').

Apart from the discriminatory effect of failing to recognize and conform to indigenous and Maroon land use practices and the cultural relevance of land and land management techniques as well as the violation of Indigenous peoples' and Maroons' human right to collectively hold their lands, the application of land lease titles in the Interior raises several problems:

1. Issuing land lease titles in the interior presupposes that the State owns indigenous and Maroon lands and converts indigenous peoples and Maroons into tenants of the State.
2. The maximum period for land lease is 40 years; extension is possible, but the right to appeal is limited and ineffective should the Minister refuse. Also, if the holders, for whatever reason fail to reapply six months before the title's expiration date, it is automatically terminated (see art. 33 Decree L-2).
3. The holder of land lease must pay rent to the State; failure to pay for three consecutive years leads to termination of the title (art. 32(1)b Decree L-2).
4. Shifting cultivation does not comply with the requirement of full-time cultivation for the duration of title. Therefore, unless the conditions normally applying to land lease titles are modified, the Minister could decide to withdraw title after two to three years when the land is left fallow to regenerate (art. 32(1)b Decree L-2).
5. If official procedures are to be followed a professional surveyor must be contracted to produce a map of the requested land. The costs of doing so, especially when travel expenses are factored in, would far exceed the means of an average interior resident. The consequence may be that only well-off residents (such as those active in gold mining) will be able to acquire titles.
6. Land lease titles are individual titles. Under the L-Decrees, collectives are allowed to apply for land lease titles but only if they are legal persons (art. 2b Decree L-2). Indigenous communities or village councils are not recognized as legal persons under Surinamese law.
7. Land lease titles only apply to residential or farming areas and therefore do not include hunting, fishing or gathering areas or areas of religious or spiritual significance. Introduction of so-called 'economic zones' by the Peace Accord of Lelydorp where villagers may develop small-scale economic activities is one way in which these rights may be protected. However, it is uncertain what exactly this economic zone entails.
8. Land lease is a real title and as such may be used as collateral for bank loans. This is often cited by Government officials and others as the main reason why people in the interior should have individual titles. The problem is that if monthly installments are not paid on time, the bank may take the land. This has already happened in the Maroon village of Santigron. Apart from the fact that less intrusive means are available to ensure access to loans (micro-credit institutions, for instance), the history of forcing indigenous peoples to accept individual titles has historically lead to massive dispossession. Under the General Allotment Act of 1887 in the United States,

- for instance, Native Americans lost a substantial amount of their land base. In Chile, it is estimated that the Mapuche people lost around 99 percent of their lands due to the imposition of individual titles.
9. It is probable that land titles will be registered in the name of men, who are generally viewed as the heads of the households in the Interior. This raises the serious issues of women losing access to and control over land if individual titles are introduced. Instances of this occurring in various regions of the world are well documented.<sup>14</sup> Further, the elderly will experience considerable difficulty if a system of registered titles is introduced. Many of them are illiterate and will face serious problems both traveling to the city and finding their way through the substantial bureaucracy associated with land titling.
  10. Finally, and most importantly, indigenous peoples and Maroons have stated repeatedly that they prefer a system of collective land ownership (see box VI).<sup>15</sup>

**Box VI Resolution no. 1 adopted during the Third Regional Meeting of Indigenous Women at Mata, 28 and 29 November 1998<sup>16</sup>**

We, Indigenous women of Galibi, Marijkedorp (Wan Shi Shia), Mijnzorgweg, Pikin Poika, Casipora, Mata, Pikin Saron, Bigi Poika, Donderskamp and Corneliskondre, present during the Third Regional Meeting of Indigenous Women at Mata in the district of Para on 28 and 19 November 1998, have adopted the following resolutions:

**1. Land Rights of Indigenous Peoples in Suriname**

After extensive discussions we have decided unanimously that:

- we do not want parcelling out [*verkaveling*] of our residential and living areas;
- we want to demarcate our territories ourselves as communities;
- our territories must be recognized as collective property by the Government;
- as communities, we need to be involved in the use of the natural resources that are found in our territories;
- we will publish this resolution in Suriname and abroad through our village leaders who are united in the Association of Indigenous Village Leaders in Suriname (VIDS).

**Art. 10 (4) - Establishment of an economic zone**

Article 10 (4) stipulates that indigenous peoples and Maroons have the right to conduct economic activities including hunting, fishing, forestry

and small-scale mining within the economic zone to be established around their community. There are no criteria to guide the implementation of this provision.

According to the OAS report, article 10 (4) was the subject of lengthy deliberations during the negotiations, especially in connection with mining activities.<sup>17</sup> In discussing mining, the government was apprehensive of being seen to grant mineral rights to indigenous peoples and Maroons and of creating a precedent that might have affected other sectors such as bauxite and oil. However, considering the large number of Maroons working in the gold industry at the time of the negotiations, the Government was strongly urged to recognize 'economic reality.'<sup>18</sup> A compromise was struck whereby article 10(4) was included but explicitly made subject to article 41 of the 1987 Constitution which provides for State ownership of all resources, subsurface and otherwise. Consequently, article 10(4) amounts to a preferential right to engage in small-scale mining within the economic zone, without exempting the holders from obtaining a permit to mine and compliance with other laws and regulations pertaining to small-scale mining. It is unclear whether all parties agreed to this as there are no official records of the negotiations; the OAS report cites only a personal communication with the Chairman of the Peace Commission to substantiate its statement.<sup>19</sup>

In order to comply with indigenous and Maroon rights in international law, at a minimum these economic zones would have to be large enough to encompass the majority of subsistence activities conducted by the communities and would have to include an enforceable right to conduct these activities without interference. At this time this is a moot point as the Government has neither established nor attempted to elaborate a definition of an economic zone (see box V Commission Domainland)

#### **Article 11 – International Labour Organization Convention No. 169**

Article 11 provides that 'the government shall encourage the commencement of a national discussion on ILO Convention no. 169 to thus learn about the feelings of the community on the contents of that convention.' This has never been done and the government has made it clear that it has no interest in discussing let alone ratifying ILO 169.

#### **Article 12 – Representation of the Interior Population**

Article 12 provides that article 61(2) of the Constitution shall be re-evaluated. This article concerns the candidacy of parliamentarians from the districts and requires that these candidates must have their main residence in the Interior. Although this provision was intended to ensure representation of the Interior, objections have been raised by some indigenous persons and Maroons who pointed out that the provision restricts their effective participation in the city-based National Assembly. The domicile requirement reduces the number of candidates to choose from, while it does not in itself guarantee that elected candidates will act according to the wishes of the people of the Interior.<sup>20</sup> The provision has never been re-considered by the Parliament.<sup>21</sup>

#### **Article 13 – Status of the Traditional Authorities**

In article 13, the status of the traditional authorities of the Interior (the Maroon Paramount Chiefs and the indigenous village leaders) is discussed. It stipulates that the legal status, authority and the stipend paid to these authorities must be strengthened and increased and that the government will do so by enacting legal regulations after consultation with those concerned. More than six years later, no draft law or regulation has been proposed or discussed with the traditional leaders or in the Parliament.

To conclude this discussion on the substance of the Peace Accord, it must be stressed that with the exception of the provisions concerning decommissioning of weapons and the establishment (three years later) of the ROB, the Peace Accord has not been implemented. Also, the establishment and functioning of the ROB have not been without problems, particularly concerning the manner in which its members were chosen by the present government. Moreover, even a cursory reading of the provisions of the Accord leads to the conclusion that it is substantially flawed and incompatible with indigenous and Maroon rights in international law. We will now turn to the legal status of the Peace Accord, but the question remains: with all of its flaws and disrespect for indigenous and Maroon cultural heritage, even if the Accord could be enforced, would it be appropriate or wise to do so?

#### **Legal Status of the Peace Accord**

As with the treaties with the Maroons discussed in chapter 2, the primary question that confronts us here is how to legally classify the

Peace Accord. Similar to the Maroon treaties, the government maintains that it has no legal obligations flowing from the Peace Accord, which is a political, not legal agreement. Whether this is a self-serving political statement or a legal opinion is unknown, although the former seems most likely to be the case. After determining the most appropriate legal terminology to describe the Peace Accord, our second question becomes: is it enforceable in a court of law?

The Peace Accord was signed and approved by the National Parliament and President Venetiaan on 8 August 1992. Although the Peace Accord was not gazetted (only printed in local newspapers), the State committed itself to abide by the terms and spirit of the agreement.<sup>22</sup> In terms of classification, the same type of analysis applied to the Maroon treaties in chapter 2 is appropriate. Accordingly, it follows that the Peace Accord is a public law contract: it is a negotiated written agreement between two or more parties, one of which is the government; it contains rights and duties that both parties have expressed their intent to be bound by; and, concerns matters that are primarily of a public law character.

For the State to unilaterally maintain that it has no legal obligations under the Peace Accord stands in stark contrast to the circumstances surrounding its adoption, what we know about the negotiation process and the fact that the State insisted that the provision concerning weapons decommissioning be complied with as a priority matter. The whole discussion pertaining to conflict with the Constitution in the case of article 10(4) leads to the conclusion that the negotiating parties believed that the agreement was legal and binding. The same conclusion can be drawn from the language in art. 1(1) entitled 'fundamental principles' which reads 'Parties solemnly declare that they will implement what is laid down in this accord' and from art. 2, which provides that 'the Accord aims at creating permanent conditions for parties so that they . . . will do everything in their power to implement that which is agreed to in this accord.' To maintain that the State is not bound by the Peace Accord is not only contrary to basic legal principles, it also substantially undermines the credibility of the State with anyone who may wish to enter into an agreement with it.

Following the analysis in chapter 2, and having established that the Peace Accord is a public law contract, the applicable principles are basically the same as those that apply to any contract. These principles include *pact sunt servanda*, good faith, termination only by mutual consent and other rules of construction and interpretation found in the Civil Code. Similarly, principles of good governance must apply; the

State cannot lead people to believe that it has committed itself to a course of action by making an agreement with them and then simply ignore the agreement once it has obtained its part of the bargain.

It may be argued that the Accord may only be enforced by its signatories, not by indigenous peoples and Maroons as a whole. However, the accord clearly was negotiated on behalf of and deals with indigenous peoples and Maroons as a whole. As beneficiaries therefore, any indigenous or Maroon person or leader should have standing to invoke the courts. To construe the Accord otherwise would result in a situation that is obviously contrary to the intent of the parties. However, it should be noted here that there was not widespread consultation in the interior about the Peace Accord and there are complaints that the parties had no authority to negotiate on behalf of all people in the interior.

As with the Maroon treaties, it is difficult to predict how a Surinamese court will deal with the issues raised by such a case should one be brought. Also, the question posed above remains: is it a good idea to enforce the Peace Accord when it is at odds with indigenous and Maroon rights, cultures and most likely long term well being? This question becomes even more apparent in light of Suriname's obligations under international human rights treaties, which by virtue of the Constitution are in large part enforceable through the courts (see chapter 7). On the other hand, the Peace Accord constitutes the most concrete promise from the government to address land rights issues in the Interior. Furthermore, the imprecise and broad nature of its language may offer some room for interpretations that better reflect notions of indigenous and Maroon land use and rights.

## Notes

- <sup>1</sup> The Moiwana massacre is presently the subject of a petition before the Inter-American Commission on Human Rights that was filed by Moiwana '86 Human Rights Organization Suriname in October 1997. The relatives and survivors of the Moiwana massacre presently live a hand to mouth existence in a refugee camp in French Guiana.
- <sup>2</sup> IACHR 1986-87, at 263-65.
- <sup>3</sup> *Ibid.*, at 267.
- <sup>4</sup> Cerquone 1987, at 5.
- <sup>5</sup> See PARS/VIDS 1997.
- <sup>6</sup> OAS/UPD 1997, at 78.
- <sup>7</sup> *Ibid.* The OAS/UPD report translated the Dutch term '*woongebieden*' with 'living areas', but we prefer to use 'residential areas' as this better reflects the

meaning of the term, i.e. areas where people are living. 'Living areas' should be reserved for the broader concept 'leefgebieden' (areas that are used).

<sup>8</sup> De *Commissie Inventarisatie Grondrechten en Concessies van de in stamverband wonende en levende Surinamers*, chaired by Ewald Redan, hence the name 'Commission-Redan' was established on 16 October 1992.

<sup>9</sup> *Commissie Domeinland Inheemsen en Marrons* 1997, at 1.

<sup>10</sup> *Ibid.*, at 1.

<sup>11</sup> *Ibid.*, at 2.

<sup>12</sup> OAS/UPD 1997, at 80.

<sup>13</sup> *Ibid.*

<sup>14</sup> See, generally, Agarwal 1994 (on South Asia); Meer 1997 (on South-Africa) and Fundación Arias 1993 (on Guatemala).

<sup>15</sup> See PARS/VIDS 1997 and Sanomaro Esa 1998.

<sup>16</sup> Printed in Sanomaro Esa 1998.

<sup>17</sup> OAS/UPD 1997, at 76.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, at 102 (note 2).

<sup>20</sup> Personal communication Mr. W. Vreedzaam, former minister of Regional Development, 28 August 1999.

<sup>21</sup> *Ibid.*

<sup>22</sup> That the Peace Accord was not gazetted is not an indication that it was not considered binding. There is a long backlog of treaties and other official instruments to be gazetted.

## CONSTITUTIONAL GUARANTEES

Suriname has had a number of Constitutions throughout its history, the first being the Charter of the Society of Suriname issued in 1682. The first post-independence Constitution was adopted in 1975, but was suspended with the advent of military rule in 1980. The present Constitution was adopted in 1987 after extensive debate about the role of the military in society. The reality of military power, still substantial in 1987, led to a compromise resulting in the inclusion of a variety of powers for the military in the new Constitution. In 1992, the 1987 Constitution was amended to remove most of these powers and reduce military influence to a level considered acceptable in a democratic society.

Neither the Constitution of 1975 nor the 1987 Constitution contain any specific reference to indigenous peoples and Maroons or address indigenous and Maroon rights as do the Constitutions of most other American States.<sup>1</sup> This is nothing new; as early as 1911, Dutch law professor, Van Vollenhoven, chastised colonial legislators for imagining that Suriname was a homogeneous territory, governed by a single rule of law enforceable in every corner of the land. He asserted that a review of the many descriptions of the interior and its inhabitants and official government documents demonstrated that this position was at odds with reality. In particular Van Vollenhoven mentioned the peace treaties with the Maroons and a letter that Granman Djankuso sent via the Dutch government to the League of Nations in 1926.<sup>2</sup> Specifically, he stated that

Law and government gazette pretend as if there is no indigenous government in Suriname, but the bushnegro chiefs... are installed [in Paramaribo], and, if they feel like receiving the artificial treatment they are reprimanded; and through a letter in 1927 [sic] by one of them they are known all the way to Geneva. Is not the fact that we allowed a bushnegro chief to address the League of Nations not enough evidence that we see in him neither a kind of sub-district commissioner, nor a government official that does not exist?<sup>3</sup>

134 | With these introductory remarks in mind, this chapter will focus on the 1987 Constitution, as amended in 1992. We will look at the mechanisms

that exist for participation, the local government system, and any rights of general application that may apply to indigenous peoples and Maroons as well as the efficacy of those rights as guarantees. We will begin with the local government system, which is the only mechanism, outside of general elections, for political participation. In this context we note that indigenous peoples and Maroons have specific rights in international law to participate in decisions that may affect them over and above general participation in the electoral system. These guarantees are completely absent from the Constitution and legislation. We will then discuss a number of Constitutional rights and conclude with a short section on their enforceability.

### The Constitution of 1987

#### *Local Government – the District and Resort Councils*

Although the 1975 Constitution did not mention indigenous peoples and Maroons as such, it did include provisions relating to 'autonomous communities', which could be established and regulated by law.<sup>4</sup> If the government had chosen to do so it could have recognized indigenous peoples and Maroons thereunder. It did not and these provisions are not found in the present Constitution, which established an elaborate system of local councils (so-called district and resort councils) with the objective of decentralizing government and devolving certain powers to the local level. Article 159 provides that a law shall regulate the organization of the regional government system 'in accordance with the principles of participatory democracy and decentralisation of government and regulation.'

To this end, the Regional Organs Act was adopted in 1989 and contains a detailed description of the functions, powers and tasks of the district and resort councils.<sup>5</sup> It provides that the members of the resort councils shall be directly elected and have legislative and executive functions.<sup>6</sup> In practice, however, these organs barely function and rarely meet. This is especially the case in the Interior as members often live far from the meeting points and are not provided with transportation expenses. These councils also have very limited mandates and every decision (in the form of a district resolution) must be approved by the District Council, District-Commissioner (appointed by the government), the Minister of Regional Development, the National Assembly and, finally, the President. In 1992, five years after the system was established, no district resolution has ever been approved and we have found no evidence that any have been approved since 1992.<sup>7</sup>

In most cases the boundaries of the resort councils bear no relation to the areas governed by indigenous and Maroon traditional authorities. This was intentional as article 160 of the Constitution states that the boundaries of the resort councils are not to be based on traditional political structures, but according to population concentration, development potential, manageability (*bestuurbaarheid*) of the area, available infrastructure and location of government offices. This has created tensions within the communities, especially as the resort and district councils are highly politicized and their ability to parcel out government services is dependent upon their perceived loyalty to the government of the day. Moreover, they frequently take decisions without informing the village authorities and in general act and are perceived as a rival source of authority in the village.

The Resolutions of the Second Gran Krutu on the relationship between the district and resort councils and the traditional authorities clearly expresses the dissatisfaction of the traditional authorities with this system. It reads that

From various village leaders we understand that the position, function and competencies of the regional councils, which function within our villages, is very unclear and leads to conflicts with the village council.

We emphasize that all social, cultural or political organizations fall under the authority of the village leader. We therefore demand that the village leaders must agree with all decisions taken by the regional councils in the villages. Before official documents are sent to other government institutions they are to be signed by the village leader.<sup>8</sup>

In sum, the local government system does not provide an adequate means for indigenous and Maroon participation in political life. Whether this is a function of available funds, political will or some other factors, or any combination thereof, rather than any inherent flaw in the system itself is possible. Whatever the reason, the majority of decision making affecting indigenous peoples and Maroons is still taken by a few officials in the central government without any formal or informal consultation.

The traditional authorities have made it clear that their status must be recognized in the law so as to clarify their relationship to both central and local government. Again as stated in the Gran Krutu resolutions 'As part of our right to self-determination, in particular the right to freely determine our own administrative forms, we demand from the

government that the status of our traditional dignitaries be included in law. The Highest Authority of the Interior will appoint a commission for this purpose, which will bring forward proposals for the concrete completion of such a law'.<sup>9</sup> This proposal has been discussed in the ROB without result.

The Highest Authority of the Interior was established at the first Gran Krutu held in 1995 and is comprised of the Maroon Granmans, the village leaders of the southern indigenous communities (Trio and Wayana) and the Chairman, Vice-Chairman and Secretary of the Association of Indigenous Village Leaders in Suriname (VIDS). The Second Gran Krutu resolutions urged 'the government to recognize the Highest Authority of the Interior as the legal representative of the indigenous peoples and Maroons and as interlocutor in all discussions concerning our situation and rights, in particular our lands rights.'<sup>10</sup> As with the other resolutions of the Gran Krutus, this was ignored.

### Constitutional Rights

In this section we will look at several important constitutional rights found in the 'Basic Rights' section of the Constitution (chapter V), specifically the right to equal protection (art. 8) and freedom of religion and beliefs (art. 18). Other rights found in other sections will also be discussed: right to education (art. 24); the right to health and health care (art. 36), right to culture (art. 38), right to property (art. 31) and right to natural resources (art. 41). The distinction between the basic rights and other sections is important as rights not defined as basic rights are non-justiciable.<sup>11</sup> With the exception of the prohibition of discrimination and religious freedom, none of the other rights discussed here fall in the basic rights chapter and therefore, are not subject to judicial review. As there are no explanatory notes to the 1987 Constitution, only to the revisions made in 1992, we will analyze the constitutional provisions by comparing them with those found in the previous 1975 Constitution.<sup>12</sup>

#### *The Right to Equal Protection/Non-Discrimination*

The prohibition of discrimination and the right to equal protection of the law are extremely important concept for groups who because of their race, ethnicity, gender or beliefs have been historically disadvantaged. It is entrenched in most Constitutions in the world, is one of the fundamental principles of the United Nations and the Organization of American States and is based on the principle that all humans are equal in dignity and must be treated with equal respect.<sup>13</sup>

The right to equal protection and the prohibition of discrimination are guaranteed in article 8 of the Constitution, which reads that

1. All who are within the territory of Suriname have an equal claim to protection of person and property;
2. No one may be discriminated against on the grounds of birth, sex, race, language, religious origin, education, political beliefs, economic position or any other status.

Other non-discrimination provisions included in the Constitution are article 35 (the equality of women and men before the law and the right of children to be protected against any form of discrimination) and article 18 (freedom of religion).

Article 8(2) of the Surinamese Constitution is broader in scope than the corresponding provision in the 1975 Constitution, not only because article 8(2) contains more grounds upon which discrimination is prohibited, but in particular because the list of prohibited discrimination is open-ended ('any other status').<sup>14</sup> The 1987 Constitution which seems to be modeled on article 2 of the Universal Declaration of Human Rights, does not define 'discrimination' and there is little jurisprudence on this issue.

According to the UN Human Rights Committee, discrimination is defined as

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>15</sup>

A similar definition of discrimination can also be found in the Surinamese Criminal Code (art. 126). It is important to note that not all distinctions are considered discriminatory and that *intent* is not required for different treatment to be considered discriminatory. In other words, acts or omissions of the State that have a discriminatory effect are equally offensive as acts that are intentionally discriminatory. Further, for discrimination to be established, distinctions in treatment must be unreasonable. This is the case when (a) there is no legitimate aim and (b) there is no proportionality between the aim and the means employed to realize the aim.<sup>16</sup>

In practice, this means that the law must provide equal protection for indigenous and Maroon property and other rights and ensure that indigenous and Maroon forms of land tenure are protected by the law to the same extent as non-indigenous and Maroon forms of land tenure. Failure to do so simply because they cannot produce a piece of paper issued by the State is discriminatory as there is no valid reason for maintaining this distinction, especially, as discussed in chapters 1-4, indigenous peoples and Maroons have never been part of this system. Moreover, it is racial and/or ethnic discrimination as the primary difference between indigenous peoples and Maroons and others is race and/or ethnicity. Also, if protecting indigenous and Maroon land tenure requires measures that may be different from those applied to others that account for their different forms of land use and tenure, provided these measures are reasonable and the means are proportional to the aims, this will not constitute discrimination. Such measures have long been introduced for the Asian indentured labourers brought to Suriname since 1873; marriages based on hindu and muslim beliefs are recognized under legislation known as the Asian marriage laws.

As shown here, equal protection and non-discrimination are essentially two sides of the same coin, albeit approaching the same issue from different angles. We have used the example of land ownership here, but the same analysis can also be applied to linguistic rights, education, cultural rights and a range of other subjects.

#### *Freedom of Religion and Beliefs*

Apart from the general non-discrimination provision above, religious freedom is also protected under article 18 of the Constitution. The 1975 Constitution stated that freedom of religion not only includes the right of everyone to practice his or her religion or beliefs alone and in community with others, publicly and privately, it also extended protection to 'all religious and philosophical communities.'<sup>17</sup> The collective aspects of the right to freedom of religion, which are of special importance for indigenous peoples and Maroons, were omitted from the 1987 Constitution, which states that 'everyone has the right to freedom of religion and beliefs.' Also omitted was the right to teach one's religion and beliefs guaranteed by article 5(1) of the 1975 Constitution.

This right must be read to account for indigenous and Maroon religious practices and the deep spiritual connection that indigenous peoples and Maroons maintain with the total environment of their lands, not simply to the protection of recognized religions. As stated by the World Council of Churches, which has actively supported indigenous land rights since the early 1970s,

There is one unifying factor and one distinguishing characteristic of indigenous people that has been recognised by the ecumenical movement: no matter where they live or what their political or social culture beliefs may be, they all view land as being the basis of their survival. It is this world view more than anything else that distinguishes them from minority or other racially oppressed people... While other groups suffer from landlessness, they do not have the same affinity to the land as indigenous peoples, their pursuit of land is basically for economic survival, while for indigenous people land is for cultural, religious and economic survival, not only for the present generation but to maintain it in safe keeping for future generations.<sup>18</sup>

Within the UN system, the Special-Rapporteur on Religious Intolerance was mandated by the Commission on Human Rights in 1996 to include indigenous land rights within in his or her reports on State compliance with the Declaration on the Elimination of All Forms of Religious Intolerance. The Commission requested the Special-Rapporteur 'to take into account the spiritual relationship that Indigenous communities have with the land and the significance of traditional lands for the practice of their religion, and to examine the history of events which are responsible for the violation of these communities' right to freedom of religion and religious practice.'<sup>19</sup>

#### *The Right to Education*

Under article 24, education is one of the basic needs for which the State must provide adequate resources. Additionally, article 38 includes the right of everyone to free education and cultural expression. It also contains more programmatic principles such as article 38 (4) which reads: 'the state shall promote the kind of education... that will contribute to a democratic and socially just society.'

Article 39 restates the right to education and sets out the specific duties of the State. These include: the duty of the State to guarantee obligatory and equal primary education free of charge; to eradicate illiteracy; to enable all citizens to attain the highest levels of education, scientific research and artistic creations within their capacities; and, 'in phases,' to provide free education at all levels. Access to education is also mentioned in the section on 'Youth' as one of the economic, social and cultural rights of young people that requires special protection (art. 37).

In a recent newspaper article Pater Toon, a prominent Catholic priest, called on politicians and parents in the Interior to pay attention to the alarming state of education in the Interior.<sup>20</sup> The problems are too

numerous to discuss here at length, but a few points will be made. Most of the schools in the Interior are run by Roman Catholic and Moravian churches. The State pays the teachers' salaries and an allowance of Sf 26.50 (or US\$ 0.05) per student per year for maintenance of the buildings and school materials. The poor financial situation of the churches slowed reconstruction of the schools destroyed during the Interior war and the level of education provided is of an extremely poor quality. The schools not only lack adequate materials, but are mostly understaffed with under qualified teachers.<sup>21</sup> Moreover, some villages do not have schools at all.

There are no entrance or school fees, but Catholic and Moravian schools require parents to pay an annual contribution per child. Since 1997, this contribution has been raised from Sf 125 to Sf 3,500 (from approximately US\$0.30 - 8.75) per child and in 1998, to Sf 5,000 (US\$ 12.50) per child. By contrast, in 1996, State-run schools require only a registration fee of Sf 500 (US\$ 1). For people in the Interior who do not have regular incomes, these fees present a substantial obstacle, especially as families in the interior are in general larger than in the city. This stands in stark contrast to the State's duty to guarantee free primary education in conformity with article 39 and clearly discriminates against indigenous and Maroon children.

A special problem is the large group of children (now young adults) who were deprived of education during the Interior war in the eighties. To-date there have been no special literacy programs initiated for this group. Furthermore, the draft initial report of Suriname on the Convention of the Rights of the Child points out that as a result of the current gold and timber rush in the Interior the number of boys who do not attend schools in order to work in gold and timber areas is rising.<sup>22</sup>

Concerning the duty of the State to provide education at all levels, it must be noted that, with one exception, there are no secondary schools in the Interior and access to secondary school in Paramaribo is extremely difficult for indigenous and Maroon children. If the child is able to pass the entrance exam, the costs for boarding and school fees far exceed the means of most people in the Interior. Moreover, these children are forced to leave their families, their communities and their cultures in order to obtain secondary education. A recent study in three indigenous communities found that the poor quality of primary education and the lack of access to secondary education constituted one of the main reasons why community members migrate to Paramaribo.<sup>23</sup> Once educated in Paramaribo few indigenous and Maroon youth return to their communities due to lack of work and because they have

often become too alienated from their cultures to re-adjust to life in the Interior.

During the Third Annual Meeting of the Association of Indigenous Village Leaders in 1996, indigenous women from 13 communities called on their village leaders to encourage education of their children in their own languages and to provide children with education in agriculture.<sup>24</sup> This is a reaction to the fact that education in the Interior is conducted in Dutch only and is based on the same curriculum as in Paramaribo. The lack of culturally appropriate and bi-lingual education is contrary to the rights of indigenous peoples and Maroons in international law (see, especially the section on the Convention on the Rights of the Child in chapter 7).

To conclude, the education policy of the government of Suriname is discriminatory, in violation of Constitutional and other guarantees and probably amounts to a policy of forced assimilation, which is prohibited under international law.

#### *The Right to Health and Health Care*

Article 36 provides that the State shall encourage the maintenance of general health care and guarantees that everyone has the right to health. Health care for indigenous peoples and Maroons is provided by the Medical Mission (a coalition of Christian churches that have traditionally worked in the Interior), funded by the government and international donors like UNICEF. Presently, there are insufficient health clinics to provide adequate health care to everyone in the Interior. This is partly related to the fact that many clinics were destroyed during the Interior war and the inability of the State to finance rehabilitation efforts.

According to article 42 of the Constitution, the law shall guarantee that 'the mode of exercise of trade and industry is not contrary to... health...' The Constitution also guarantees the rights of workers to safe and healthy working conditions. The negative health effects caused by the upsurge of the mining and logging industries during the past years have been repeatedly reported, but with the exception of a malaria campaign in 1997, the government has not taken any serious or constructive action to mitigate the negative effects. Instead, 15-40,000 Brazilian small-scale miners have been licensed to work in Suriname further contributing to environmental health problems.

142 | As the majority of mining takes place in Maroon and indigenous areas, aside from the miners themselves, they are the most affected by

the health problems associated with uncontrolled mining. These include mercury poisoning (an estimated 20 tonnes of mercury were dumped into the environment in 1998 alone), diarrhoea, epidemic malaria and sexually transmitted diseases including HIV/AIDS, as a result of prostitution in mining camps.<sup>25</sup> Neurological diseases related to mercury have already been reported among the Wayana in French Guiana, who live on and use the same river as the Wayana in Suriname.

#### *Cultural Rights*

Considering the ethnic and cultural diversity of the Surinamese population, it may come as a surprise that the Constitution only devotes one section to cultural rights. Article 38 recognizes the right of everyone to cultural enjoyment. It also provides that the State will stimulate the 'democratization of culture' by encouraging cultural creations and the access of all citizens to these creations. As article 38 makes clear, the protection of cultural rights under the Surinamese Constitution is very limited. Culture is seen only in the context of scientific and cultural creations which are produced by cultural specialists and is therefore, only protected if they relate to manifestations such as scientific knowledge, art works, songs, etc.<sup>26</sup> This is a reflection of the views of Surinamese nationalists who seek to develop a uniform 'Surinamese' culture that will replace, or rather integrate and assimilate, the cultures of the constituent peoples of Suriname into a national culture or identity.

For indigenous peoples and Maroons, their survival as distinct groups within the Surinamese society, depends on the extent to which they are able to enjoy and develop their own culture in accordance with their own traditions and values. Protection of their cultural rights concerns not only 'cultural creations,' but also relates to preserving and developing languages (including the ability to educate their children in their own language), traditions and economic systems. It is well known that Indigenous peoples' beliefs and customs, their cultures, are integrally related to their relationship with the total environment of their territories. Protection of their traditional land, creeks, rivers and forests are therefore considered to be fundamentally related to cultural rights under international law. The Surinamese Constitution's limited construction of culture does not come close to meeting this standard.

#### *The Right to Property*

The right to property is found in article 34. With the exception of the first sentence, which now states that 'Property, both of the community as well as individual property, fulfills a social function,' this provision is an exact copy of article 15 of the 1975 Constitution. Article 34 further provides that 'everyone has the right to the peaceful enjoyment of his

property subject to the restrictions prescribed by law.' This is not the right to *own* property, but only the right to enjoy existing property rights. Sub-section 2 provides that in the case of expropriation, prior compensation must be made. Compensation is also guaranteed if the exercise of the right to property is restricted by a competent public authority, which is only allowed in the general interest and in cases prescribed by the law. The Expropriation Act (1904) contains the procedures for expropriation and provides that expropriation is only allowed for public works or in the case of emergency measures.<sup>27</sup> It prescribes among others, that the decision to expropriate land is framed in an Act approved by Parliament (art. 2); that the interested parties have been able to express their objections (art. 5); and that the government's decisions to expropriate property are published well in advance (art. 6).

In practice, the Surinamese government uses a far simpler procedure to expropriate land. As discussed in chapter 3, most land titles in Suriname are either land lease (*grondhuur*), leasehold (*erfpacht*) or allodial ownership (*allodiale eigendom*). These are titles issued by the State (on State land) and based on certain conditions (such as the payment of a fee and the requirement to cultivate the land). The different instruments regulating these titles all include provisions that allow the State, as land owner, to reclaim the title in the general interest.<sup>28</sup> Whereas prior compensation is guaranteed by these instruments, reclaiming land in the general interest does not require - as the Expropriation Act does - an Act approved by Parliament, nor is 'general interest' limited to public works or emergency measures. This means that the procedure for expropriation of land lease, leasehold and allodial ownership is much simpler for titles other than absolute ownership.<sup>29</sup>

Although the preceding seems to be accepted practice - to the best of our knowledge it has never been challenged - this clearly violates article 34 of the Constitution. Possibly, the use of the Dutch word '*eigendom*' has led to the belief that article 34 only applies to allodial ownership and absolute ownership (*BW-eigendom*). However, in international human rights law the term 'property', although not clearly defined, is certainly not limited to absolute ownership. The European Court of Human Rights for instance, held that it covers both immovable and movable property, including immaterial rights, such as contractual rights, economic interests and goodwill.<sup>30</sup> Indigenous and Maroon rights are not considered to be property rights, as that term is presently understood in Surinamese law, and therefore, fall outside the scope of this article.

#### *Rights to Natural Resources (art. 41)*

An important provision that directly curtails indigenous and Maroon rights is article 41, which provides that:

Natural riches and resources are property [in Dutch: *eigendom*] of the nation and shall be used for the economic, social and cultural development. The nation shall have the inalienable right to take complete possession of the natural resources, in order to apply them for the needs of the economic, social and cultural development of Suriname.

Article 41, which is found in chapter VI entitled 'The Economic Order. Tasks of the State in the Economic Order', has no equivalent in the 1975 Constitution. The only provision in the 1975 Constitution which related to land or resources was article 130, which prescribed that ownership or lease rights to domain lands must be regulated by law. Clearly, article 41 is a major obstacle for the adequate protection of indigenous and Maroon rights. Complete and inalienable ownership and control of all resources in Suriname is vested in the State, including those that have been managed and used by indigenous peoples and Maroons for hundreds of years. The only restriction on State control of natural resources is that resources should be used for 'the national development.' This is not only an ill-defined concept, it is also highly doubtful that a judge would overrule a decision of the government that a given activity does not comply with this requirement.

Also relevant to indigenous peoples and Maroons is the issue of rights to their intellectual and cultural heritage. According to article 48, the manufacture and trade of biological and pharmaceutical products is monitored by the State, which is presumably the owner of such biological resources under article 41. In recent years, international attention has turned towards the medicinal plants of the rainforest and, in particular, indigenous peoples and Maroons' knowledge thereof. Without recognition and proper regulation of the intellectual and cultural property rights of Maroons and indigenous peoples, these activities may lead to conflict in the future.

#### **Limitations of Fundamental Rights and Freedoms**

In addition to limitations on individual rights and freedoms found in the respective provisions, all rights and freedoms guaranteed in the Constitution are subject to a general limitations clause contained in article 23. Pursuant to this article, all constitutional rights may be

restricted in case of war, emergency, public order or based on moral grounds. The restrictions must be prescribed by law, be limited to a certain period, depending on the situation and should be in accordance with relevant international provisions.

### Enforceability of Fundamental Rights and Freedoms

If the State violates the constitutional rights and freedoms of an individual or a group of persons, the Constitution prescribes three means of seeking redress. The first is the right of petition. Article 22 states that everyone has a right to submit written petitions to the competent authority and that the law will regulate procedures concerning the treatment of the petition. Not included is the corresponding duty of State authorities to respond to the petition nor the right to a reasonable hearing as was guaranteed under the 1975 Constitution.<sup>31</sup> Also, the law that is supposed to provide the procedure has never been enacted. Presumably, the right to petition is governed by the general rules on good governance, which require that the competent authority should respond to the petition in a timely manner.

The second is judicial review; bringing a case before a judge based on article 1386 of Civil Code (unlawful act or a tort; in Dutch *onrechtmatige daad*).<sup>32</sup> Article 135 provides that judges may declare the application of a certain law or parts of a law impermissible if application of this law would violate one of the rights enumerated in chapter V of the Constitution. The decision of the court is limited to the specific case at hand, and application of the law may only be declared inadmissible in relation to the injured party.

Finally, the constitutionality of formal laws (laws enacted by the government and the National Assembly) and decisions of State organs may be reviewed by the Constitutional Court under article 144. Apparently, the Constitutional Court was introduced in the 1975 Constitution to fill the void created when Surinamese citizens could no longer file complaints with the European Court of Human Rights in Strasbourg after Suriname's Independence in 1975.<sup>33</sup> The provisions pertaining to the Constitutional Court are repeated in the 1987 Constitution. It may: (1) decide on the constitutionality of formal laws (whether laws are in conformity with the Constitution); (2) decide whether formal laws are in accordance with agreements concluded with other States or inter-governmental organizations and; (3) decide whether decisions taken by State organs are in accordance with the basic rights guaranteed in chapter V. If the Court finds these laws or decisions incompatible with

the Constitution or international agreements, the Court may declare them to be invalid (*onverbindend*).

While some have pointed out that the Constitutional Court is needed to protect minority rights, which are presently left entirely to the mercy of the dominant ethnic groups represented in the Parliament and the government, the Constitutional Court has not been established either under the 1975 or the 1987 Constitution.<sup>34</sup> A proposal for its establishment was circulated in 1997. This proposal sought to have the Constitutional Court function as an advisory body without any direct authority of its own. The separation of powers was cited as one of the prime arguments for why the court could not rule on formal laws. While the precise powers of the Court in relation to the other branches of government are clearly important considerations, it is difficult to see why it would prevent a Court from reviewing the constitutionality of legislation. Neither the executive nor the legislature are above the Constitution and must abide by its terms. While judicial review may be conceived of in different terms in different countries, almost all have some form of judicial check on the powers of the other branches of government. Moreover, as the recent Constitutional crisis in Suriname has demonstrated, a Court that can act as final arbiter in disputes concerning the Constitution is desperately needed.<sup>35</sup>

### Concluding Remarks

The present Surinamese Constitution is the outcome of power struggles that took place in the eighties and early nineties between the military and civil organizations (including trade unions and political parties). Even so, and despite the amendments made in 1992, the Surinamese Constitution seems to be more a policy document than an effective legal instrument protecting the rights of Surinamese citizens. One of the main problems is that many provisions are not implemented or respected, in particular, the provisions pertaining to remedies for violations of constitutional rights such as the Constitutional Court and the petition procedure of article 22. Also, the majority of rights found in the Constitution are non-justiciable even if a corresponding remedy could be accessed.

From the perspective of indigenous and Maroon rights, their fundamental rights as indigenous peoples and Maroons and as Surinamese citizens, are not adequately protected. As mentioned above, they are completely invisible in the Constitution, despite the fact that (in the case of indigenous peoples) their existence predates the establishment

of the colonial and post-colonial State and that (in the case of both the Maroons and indigenous peoples) the government has explicitly recognized their political autonomy in peace treaties concluded at different times in history, most recently in the 1992 Peace Accord of Lelydorp.

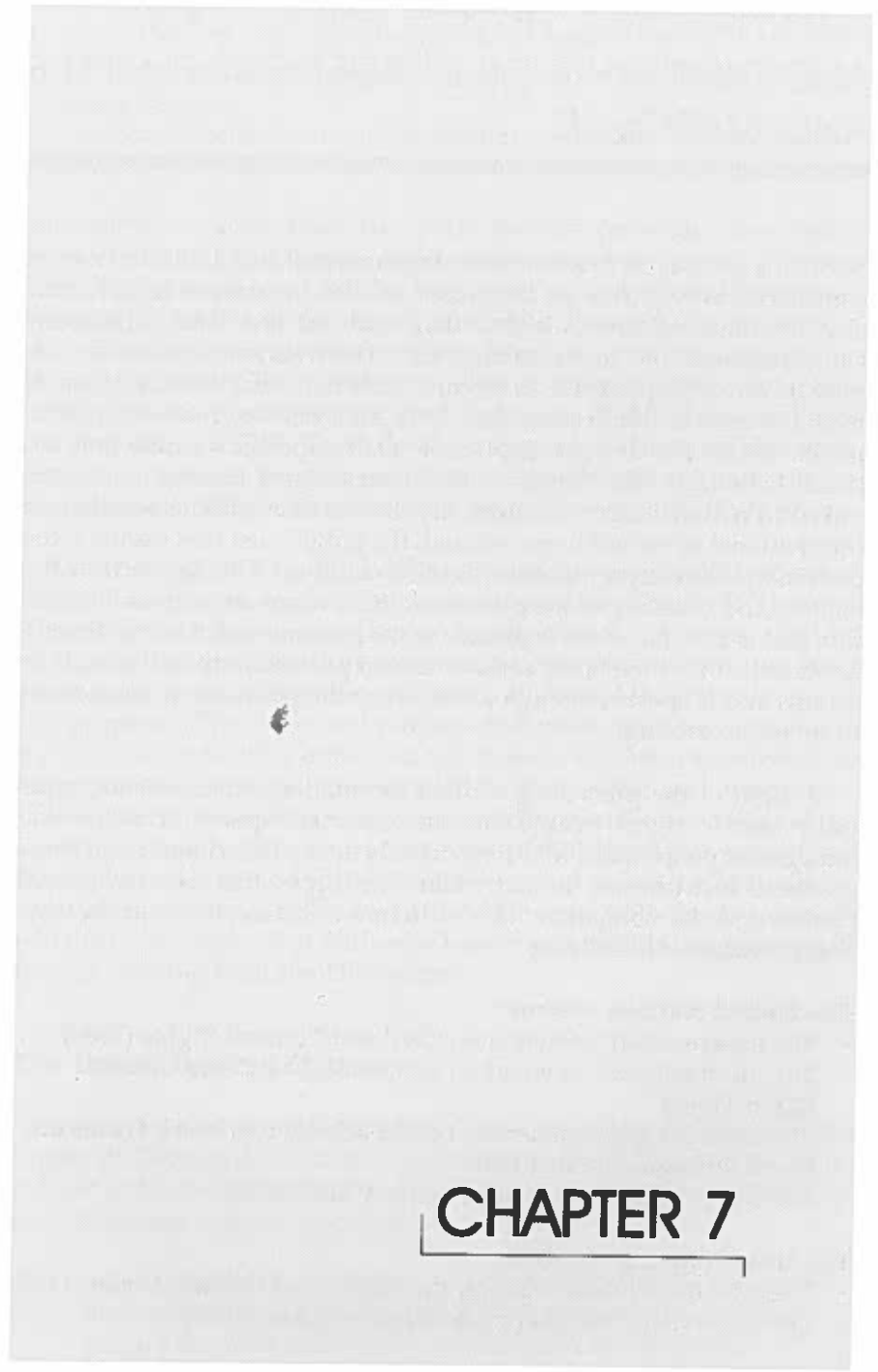
One of the main obstacles to the effective protection of indigenous and Maroon rights is article 41 which provides that all natural resources are property of the nation. The lack of effective Indigenous and Maroon participation in the policy-making structures of the State leaves the government (which remains dominated by coastlanders) with almost complete freedom to do as it pleases with the natural resources. Since the majority of these resources are found in or near indigenous and Maroon territories, they are the first to suffer the consequences of the current policy of uncontrolled resource exploitation. Despite promises made by the government in the Lelydorp Accord they are also the last to benefit from the positive aspects of such activities.

### Notes

- <sup>1</sup> See, for instance, Colombia Const. 1991; Brazil Const. 1988; and, Canada Const. 1982.
- <sup>2</sup> Letter dated 23 November 1926, in, Scholtens 1994, at 85.
- <sup>3</sup> Vollenhoven 1916, at 7. He also mentioned the postholders employed by the government (see chapter 2) and plans made in 1894 by the government to establish a boundary that was supposed to run east-west cutting through the districts, 'south of which the Maroons could freely take away timber, gather forest products and balata, make forest plots and extract minerals' *Ibid.*, at 8.
- <sup>4</sup> See, arts. 151 and 152 (in Chapter VII: 'administrative organization and autonomous/independent communities') of the 1975 Constitution.
- <sup>5</sup> Regional Organs Act (*Wet Regionale Organen*), SB 1989, 44.
- <sup>6</sup> See, art. 159-175 of the 1992 Revised Constitution.
- <sup>7</sup> Mitrasingh and Mitrasingh 1992, at 75.
- <sup>8</sup> PARS/VIDS 1997, Resolution 10, at 34.
- <sup>9</sup> *Ibid.*, Resolution 7, at 32.
- <sup>10</sup> *Ibid.*, Resolution 6, at 31.
- <sup>11</sup> 1992 Amendments to 1987 Suriname Const., art. 137.
- <sup>12</sup> Munneke used a similar approach, see Munneke 1990.
- <sup>13</sup> Article 1, Universal Declaration of Human Rights.
- <sup>14</sup> Article 1 (2) of the 1975 Constitution did not include the grounds of birth, language, creed, education, economic status and social circumstances.
- <sup>15</sup> General Comment no. 18 (37) on article 2(1) ICCPR, UN Doc A/45/40 at 174, para.7, 45 UN GAOR, Supp. (No. 40), 1990. Similar definitions can be found in the Racial Discrimination Convention (article 1 para. 1) and the Women's Convention (art. 1).
- <sup>16</sup> See generally McKean 1983; Bayefsky 1990; European Court of Human Rights, *Belgian Linguistics case*, judgement of 23 July 1968; Inter-American Court of Human Rights, *Proposed Amendments to the Naturalization Provisions of the*

*Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984, para. 57 and Human Rights Committee, *Case of Broeks v. The Netherlands*, 9 April 1987.

- <sup>17</sup> Suriname Const. 1975, art. 5.
- <sup>18</sup> World Council of Churches 1989, at 7.
- <sup>19</sup> Commission on Human Rights Res/1996, *Religious Freedom of Indigenous Peoples*
- <sup>20</sup> Pater Toon, 'Special Education Bushland on the Verge of Breakdown.' In: *De West* 3 September 1998.
- <sup>21</sup> To teach in the Interior, only a special 'Bushland Diploma' is required; candidates do not require a secondary degree and only one year of additional training. These lower requirements are partly aimed to attract more teachers to the Interior. Because of the lack of facilities (including adequate schooling for their own children) and the low salaries, few teachers in Paramaribo are willing to move to the Interior.
- <sup>22</sup> Government of Suriname 1997/1998, at 60.
- <sup>23</sup> Sanomaro Esa 1997, at 41.
- <sup>24</sup> Resolution of the Indigenous Women Present at the Third Indigenous Village Leaders Conference at Galibi, 1996. In: PARS/VIDS 1997.
- <sup>25</sup> Annual Report Medical Mission 1995, at 18, 66; Government of Suriname 1997, at 60, and; for an overview of newspaper articles concerning health issues associated with mining: Van der Kooye 1997.
- <sup>26</sup> See Stavenhaven 1995, at 66.
- <sup>27</sup> Art. 1 Expropriation Act (*Onteigeningswet*), current text GB 1935, 80.
- <sup>28</sup> For land lease this is art. 31 Decree L-2 (SB 1982, no. 11); for leasehold: art. 12 Agrarian Ordinance (1937). In the case of allodial ownership, the procedure is called 'nadering.' See also, chapter 3.
- <sup>29</sup> See Quintus Bosz, *Commentaar op de Eigendomsbeschouwingen*, 1993.
- <sup>30</sup> See Krause 1995, p. 150. The right to property as a human right is included among others in the Universal Declaration of Human Rights (art. 17), the American Convention of Human Rights (art. 21) and the Racial Discrimination Convention (art. 5 (d)v).
- <sup>31</sup> Suriname Const., 1975, art. 4
- <sup>32</sup> The authority of a normal judge to hear a case against the government is based on article 1 of the Regulations on the Surinamese Judiciary. See, Hoever-Venoaks and Damen 1996, at 202, 206.
- <sup>33</sup> Bruijning and Voorhoeve 1977, at 259.
- <sup>34</sup> Fernandes Mendes 1994, at 10-11.
- <sup>35</sup> In 1998-99, a Constitutional crisis arose over the appointment of judges. The judiciary claimed that the President had violated the Constitution by failing to seek the advice of the high court judges when appointing a new Chief Justice. This sparked off widespread demonstrations and protests among political parties, the judiciary, the bar associations and the general public. The President refused to reverse course which among others led to a non-confidence vote against him by the Parliament. He lost the vote but refused to step down. The result is a chaotic situation at the Court, since most personnel refuses to work with the unlawfully appointed Chief-Justice. See, 'Situation at the Court Untenable', *De Ware Tijd*, 4 September 1999 and 'Chaos for the new year of the judiciary complete', *De Ware Tijd*, 6 September 1999.



**CHAPTER 7**

## INTERNATIONAL HUMAN RIGHTS LAW AND THE RIGHTS OF INDIGENOUS PEOPLES AND MAROONS

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Suriname is a monist State in which international and domestic law are considered to be part of an integrated whole. In terms of legal hierarchy, international law is higher than national law. The Surinamese Constitution of 1987 provides that ratified international treaties 'which may be directly applicable to anyone shall have this binding effect as from the time of publication' (art. 105), and, that international instruments which are directly applicable shall supercede conflicting national laws (art. 106). These ratified international treaties can be invoked in national courts as authority. Before determining whether an international norm has been violated, the judge must first decide if the provision is directly applicable (or self-executing). This depends on the content and meaning of the provision. If the norm contains an instruction that is directed at the legislator or the government, it is not directly applicable. But if the norm seeks to afford protection to individuals or groups and is specific enough in its terms, the provision is considered to be self-executing.

In light of the preceding, ratified international instruments, especially human rights treaties, are an important source of rights that indigenous peoples and Maroons can rely upon. This chapter will focus on these instruments, in particular, the rights that are recognized therein and the obligations the Surinamese State contracted thereby. These instruments include:

### **The United Nations system:**

- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The Convention on the Rights of the Child (1989)

### **The Inter-American System:**

- The American Declaration on the Rights and Duties of Man (1948)
- The American Convention on Human Rights (1969)

152

Although they are not ratified treaties, we will also mention:

- The CARICOM Charter on Civil Society (1997)
- The Proposed Inter-American Declaration on the Rights of Indigenous Peoples
- The Draft United Nations Declaration on the Rights of Indigenous Peoples

The chapter is divided into two parts; the first provides a descriptive overview of the rights pertaining to indigenous peoples and Maroons found in the treaties ratified by Suriname; the second, analyzes those rights in the context of the present situation in Suriname. In the process, we will refer to the decisions of the Inter-American Commission on Human Rights (IACHR), the United Nations Human Rights Committee (HRC) and the Committee on the Elimination of All Forms of Racial Discrimination (CERD). These decisions concern the human rights situations of indigenous peoples in various countries and are authoritative interpretations of the substantive provisions of the respective instruments.

We will begin with a brief description of the general obligations of States in respect to ratified international treaties. Article 31(1) of the Vienna Convention on the Law of Treaties reads: 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in light of its object and purpose.' The object and purpose of human rights instruments 'is the effective protection of human rights and... the interpretation of all its provisions must be subordinated to that object and purpose...'<sup>1</sup> These general principles are supplemented by specific provisions in the treaties ratified by Suriname, that require that the rights recognized therein be implemented without discrimination and that effective remedies to enforce those rights be instituted in law.<sup>2</sup> With this in mind we will turn to the rights that Suriname has obliged itself to implement and respect, starting with the UN system.

### **The United Nations System**

Suriname ratified the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (IESCR) on the 28<sup>th</sup> of December, 1976, without reservation. Common article 1 of the Covenants states in part that

1. All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue the economic, social and cultural development.

153

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources... In no case may a people be deprived of its own means of subsistence.

Although arguably redundant, this right was explicitly applied to indigenous peoples by the United Nations Working Group on Indigenous Populations and the UN Sub-commission on the Prevention of Discrimination and Protection of Minorities in 1993 and 1995, respectively, when these bodies approved the draft UN Declaration on the Rights of Indigenous Peoples. The right of all peoples to self-determination has both procedural (*determining* political status and *pursuing* economic, social and cultural development and the right to give or withhold consent) and substantive aspects, among others, the right to autonomy and self-government and the right to ownership of and control over lands, territories and resources. It has been described as 'a fundamental human right the enjoyment of which is an essential precondition for the enjoyment of any other human rights and fundamental freedoms.'<sup>3</sup> Some scholars and a major UN study conclude that the right to self-determination is a peremptory norm of international law or *jus cogens*, and therefore, non-derogable<sup>4</sup>

That the right applies to indigenous peoples is clear from the decisions of the HRC, the body charged with monitoring State compliance with the International Covenant on Civil and Political Rights (ICCPR). In its concluding observations on Canada's fourth periodic report, it stated that 'With reference to the conclusion by RCAP (Royal Commission on Aboriginal Peoples) that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (article 1(2)). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.'<sup>5</sup>

154 Article 27 of the ICCPR applies to minorities and recognizes, among others, an individual right to enjoy one's culture in community with other members of the cultural collective. The HRC has interpreted this article to include the 'rights of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong'<sup>6</sup>. In reaching this conclusion,

the HRC recognized that Indigenous people's subsistence and other traditional economic activities are an integral part of their culture, and interference with those activities can be detrimental to cultural integrity and survival.<sup>7</sup> By implication, the land, resource base and the environment thereof also require protection if subsistence activities are to be safeguarded.

In *Kitok vs. Sweden*, the HRC made reference to *Lovelace vs. Canada*,<sup>8</sup> in which it stated that 'a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and be necessary for the continued viability and welfare of the minority as a whole.'<sup>9</sup> Therefore, any restriction upon a member of an indigenous community to practice and enjoy their culture, especially as related to subsistence practices and their relationship to land and territory, must comply with the test above.

The HRC further elaborated upon its interpretation of article 27 by stating that

one or other aspects of the rights of individuals protected [under Art. 27] - for example to enjoy a particular culture - may consist in a way of life which is closely associated with a territory and its use of resources. This may particularly be true of members of indigenous communities constituting a minority... With regard to the exercise of the cultural rights protected under Article 27, the committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specifically in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them... The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole...<sup>10</sup>

Employing language consistent with article 27 of the ICCPR, article 30 of the Convention on the Rights of the Child should be interpreted in conformity with the views of the HRC above and with the decisions of the IACHR discussed below. It reads: 'In those states in which ethnic,

linguistic or religious minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right in community with other members of the group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.' This requires a recognition of and respect for the right to participate in the cultural life of the collective, especially as it relates to subsistence practices, relationship to land and territory and their educational and religious significance to the indigenous and Maroon child. States-parties have affirmative obligations to facilitate the enjoyment of these rights by, among others, recognizing, respecting and enforcing rights to land, territory and resources and all aspects of productive organization. Article 30 and ICCPR article 27 embody one manifestation of the general norm of international law relating to the right to cultural integrity.<sup>11</sup>

Other provisions of the Children's Convention also explicitly protect the rights of indigenous and Maroon children, for instance, article 17 (d), which calls on States to "encourage the mass media to have particular regard to the linguistic needs of the child who... is indigenous' and article 29 (d) which, among others, promotes, among the aims of education, the preparation of the child for responsible life in a spirit of understanding and friendship among all people, including persons of indigenous origin. Also, article 20(3), stresses the need to pay due regard to the child's ethnic, religious, cultural and linguistic background when deciding on measures of alternative care for children deprived of family environment, as a means of ensuring continuity in the child's upbringing. Article 8 addresses the question of the identity of the child, emphasizing the importance of preserving the elements of such identity, which are clearly not to be limited to the child's nationality, name and family relations. Finally, the Committee on the Rights of the Child has consistently taken into account the general principles of non-discrimination (art. 2), best interests of the child (art. 3), right to life, survival and development (art. 6) and participatory rights (art. 12) when dealing with issues relevant to indigenous children in the framework of its monitoring activities.<sup>12</sup>

Suriname ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) without reservation on 15 March 1984. Under CERD, States-parties are obligated to, among others, respect and observe the right 'to own property alone as well as in association with others,' without discrimination (art. 5(d)V).

In a 1997 General Recommendation, the Committee on the Elimination of Racial Discrimination elaborated on State obligations and indig-

enous rights under the Convention. The Committee called upon States-parties to 'ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent'<sup>13</sup>. Additionally, to 'recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.'<sup>14</sup> Interpretations of CERD carry additional weight given that the prohibition of racial discrimination has acquired the status of *jus cogens* under international law, and therefore, will void any law or practice found to be in violation of the norm.<sup>15</sup>

**Box VII General Recommendation of the Committee on the Elimination of Racial Discrimination XXIII (51) concerning Indigenous Peoples**  
Adopted at the Committee's 1235th meeting, on 18 August 1997  
(CERD/C/51/Misc.13/Rev.4)

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.
2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous People commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.
3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against, deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States parties to: (a) recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation; (b) ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity; (c) provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; (d) ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent; (e) ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs, to preserve and to practice their languages.
5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.
6. The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

#### The Inter-American System

In 1972, the IACHR issued a resolution entitled, *Special Protection for Indigenous Populations, Action to Combat Racism and Racial Discrimination*.<sup>16</sup> This resolution stated, among others, 'That for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states.'<sup>17</sup> The need for special protection for indigenous peoples was recently reaffirmed by the IACHR in its 1997 *Ecuador Report*. Specifically, the IACHR stated

158

that 'Within international law generally, and Inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.'<sup>18</sup>

Although dated, the IACHR's *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin* is illustrative of State obligations under the American Convention. It states that

...special legal protection is recognized for the use of [the Miskito's] language, the observance of their religion, and in general, all those aspects related to the preservation of their cultural identity. To this should be added the aspects linked to productive organization, which includes, among other things, the issue of ancestral and communal lands. Non-observance of those rights and cultural values leads to a forced assimilation with results that can be disastrous... In the opinion of the Commission, the need to preserve and guarantee the observance of these principles in practice entails the need to establish an adequate institutional order as part of the structure of the Nicaraguan state. Such an institutional organization can only effectively carry out its assigned purposes to the extent that it is designed in the context of broad consultation and carried out with the direct participation of the ethnic minorities of Nicaragua, through their freely chosen representatives.<sup>19</sup>

The IACHR has noted previously that the right to life of Indigenous and tribal peoples is seriously compromised by conditions that make it difficult to resist the encroachments of colonists and others who occupy their lands and territories.<sup>20</sup> In 1985, the IACHR examined the rights of the Yanomami people in the context of the construction of the Trans-Amazonia highway in Brazil, the invasion of their territory by small-scale gold miners and devastating illnesses brought in by the miners.<sup>21</sup> The IACHR found, due to Brazil's failure to take 'timely measures' to protect the Yanomami, that violations of, among others, the right to life and the right to preservation of health and well-being under the American Declaration had occurred.<sup>22</sup> In reaching this conclusion, the IACHR reiterated the widely held conclusion that the right to life has broad application beyond intentional or arbitrary deprivation of life.<sup>23</sup> It also requires that governments take affirmative steps to protect life by ensuring environmental integrity and promoting policies that guarantee basic survival of persons subject to State jurisdiction.<sup>24</sup>

159

In 1997, the IACHR revisited the Yanomami situation and concluded that while their land rights had been legally recognised, 'Their integrity as a people and as individuals is under constant attack by both invading prospectors and the environmental pollution they create.'<sup>25</sup> It recommended that Brazil remedy this by instituting 'federal protection measures with regard to Indian lands threatened by invaders... including an increase in controlling, prosecuting and imposing severe punishment on the actual perpetrators of such crimes, as well as the state agents who are active or passive accomplices.'<sup>26</sup>

In its *Third Report on the Situation of Human Rights in The Republic of Guatemala*, the IACHR found Guatemala responsible for acts and omissions detrimental to indigenous 'ethnic identity and against development of their traditions, their language, their economies, and their culture.'<sup>27</sup> It characterized these as 'human rights also essential to the right to life of peoples.'<sup>28</sup> Note that this is stated as a right of peoples, as opposed to individuals, and therefore a collective right. Persistent and pervasive violations of these rights are generically referred to as ethnocide or cultural genocide which is prohibited by international law. This is supported by other instruments and documents which assert: that ethnocide results when a group is unable to live and develop in its unique way;<sup>29</sup> that ethnocide is a serious violation of international human rights law;<sup>30</sup> and that

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources...<sup>31</sup>

Sub-paragraph (b) quoted above directly relates rights to land and resources to the prohibition of ethnocide. Contrary to genocide, which requires proof of intent, this article also prohibits actions, and presumably also omissions, that have the 'effect' in addition to the intent of causing ethnocide.

In its *Ecuador Report*, IACHR directly relates the right to life to environmental security stating that 'The realisation of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated.'<sup>32</sup>

The *Ecuador Report* also recognized that State policy and practice concerning resource exploitation and land use cannot take place in a vacuum that ignores its human rights obligations. In doing so, it related human rights concerns to the regulatory framework and monitoring capacity of the State. Specifically, the Commission stated that it 'recognizes that the right to development implies that each state has the freedom to exploit its natural resources, including through the granting of concessions and acceptance of international investment. However, the Commission considers that the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms may create serious problems with respect to the environment which could translate into violations of human rights protected by the American Convention.'<sup>33</sup>

Building upon principles adopted at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro (1992) and various articles of the American Convention, the IACHR highlighted the right to participate in decisions affecting the environment.<sup>34</sup> An integral part of this right is access to information in an understandable form. Emphasizing procedural guarantees and State obligations to adopt positive measures to guarantee the right to life, the IACHR stated that, 'In the context of the situation under study, protection of the right to life and physical integrity may best be advanced through measures to support and enhance the ability of individuals to safeguard and vindicate those rights. The quest to guarantee against environmental conditions which threaten human health requires that individuals have access to: information, participation in relevant decision-making processes, and judicial recourse.'<sup>35</sup>

According to the IACHR, the preceding rights are guaranteed by articles of the American Convention: Access to information, article 13 (right to freedom of thought and expression), article 23 (right to take part in the conduct of public affairs) and article 25 (right to judicial remedies) read in conjunction with article 8 (right to due process) and generic obligations under articles 1 and 2 (implementation without discrimination and effective remedies for violations of rights recognized in the Convention).

With regard to land rights, the IACHR stated

The situation of indigenous peoples in the [Ecuadorian Amazon] illustrates, on the one hand, the essential connection they maintain to their traditional territories, and on the other hand, the human rights violations which threaten when these lands are

invaded and when the land itself is degraded. For many indigenous cultures, continued utilization of traditional collective systems for the control and use of territory are essential to their survival, as well as to their individual and collective well-being. Control over the land refers to both its capacity for providing the resources which sustain life, and to 'the geographical space necessary for the cultural and social reproduction of the group.'<sup>36</sup>

The rights defined in the preceding sections on the UN and Inter-American systems have been further elaborated upon and contextualised to account for the rights of indigenous peoples in both systems by the development of declarations setting out those rights: in the case of the UN, the UN draft Declaration on the Rights of Indigenous Peoples, presently under consideration by an open-ended, inter-sessional working group of the Commission on Human Rights, and in the Inter-American system, the Proposed Inter-American Declaration on the Rights of Indigenous Peoples that is scheduled to be submitted to the OAS General Assembly for approval in the year 2000. These instruments will be briefly discussed below. They are important indicators of contemporary thinking about indigenous rights and should be referred to when evaluating Suriname's responsibility under ratified treaties as the oversight mechanisms have and will look to these instruments when rendering decisions on both specific and general human rights situations. Before looking at these instruments, however, we believe it necessary to mention indigenous rights as defined under the CARICOM Charter of Civil Society of 1997.

#### **The CARICOM Charter of Civil Society**

The CARICOM Charter is a non-binding, regional human rights declaration that Suriname has expressed its intent to comply with. Article XI provides that

The States recognise the contribution of the indigenous peoples to the development process and undertake to continue to protect their historical rights and respect the culture and way of life of these peoples;

and in Article XXVII that 'The States declare their resolve to pay due regard to the provisions of this Charter.' When read together, these articles commit Suriname to protect Indigenous peoples' historical rights, which include, among others, rights to lands historically occupied and used and self-government, as well as to respect Indigenous

peoples' cultural integrity in all its manifestations. According to Article XXV, Suriname should have established a National Committee or other body that is competent to review and remedy perceived violations of the Charter; this has not been done.

#### **The UN and OAS Declarations on the Rights of Indigenous Peoples**

Established in 1982, the UN Working Group on Indigenous Populations<sup>37</sup> most notable achievement has been the completion of a draft Declaration on the Rights of Indigenous Peoples. This instrument, drafted with substantial indigenous participation, is the most comprehensive treatment of indigenous rights drafted to-date. The OAS Proposed Declaration, started in 1989, was in part inspired by developments within the United Nations and the adoption of ILO Convention 169 in 1989. It was approved by the IACHR in 1997 and, subsequent to a review by governmental experts meetings in 1999 and 2000, will be submitted for adoption by the OAS General Assembly in the year 2000.<sup>38</sup> Its use by the IACHR in interpreting State obligations under other Inter-American instruments may be its greatest significance.

Both the UN Draft and OAS Proposed Declarations build upon existing standards and attempt to redefine prevailing political, economic and cultural relations between indigenous peoples and States.<sup>39</sup> They do so by recognizing rights in three main areas: 1) self-determination, autonomy and self-government; 2) lands, territories and resources; and; 3) political participation rights. These rights are all in some way related to fundamental guarantees of non-discrimination and cultural integrity, which are also elaborated upon by the instruments in question. Both also recognise the inherent nature of indigenous rights. Osvaldo Kreimer who was substantially involved in drafting the OAS Declaration explains that one of the main principles behind the Declaration is 'The inherent nature of indigenous rights: Indigenous peoples, because of their preexistence to contemporary States, and because of their cultural and historical continuity, have a special situation, an inherent condition that is juridically a source of rights.'<sup>40</sup>

The UN Draft Declaration states in article 3 that, 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' This language is consistent with common article 1 of the ICCPR and ICESCR, which includes the right

to be secure in the means of subsistence, rights to the requisite resource base and the right to development in accordance with indigenous priorities, cultures and needs.<sup>41</sup> It also includes the recognition of and respect for indigenous governing institutions and legal systems, which is also explicitly provided for in both the UN and OAS instruments (OAS, art. XVII; UN, arts. 4, 33 and 34).

The OAS Proposed Declaration includes the right to autonomy and self-government in article XV(1), which provides that

States acknowledge that indigenous peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development, and that accordingly they have the right to autonomy and self-government with regard to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, the environment and entry by non-members; and to the ways and means for financing these autonomous functions.

Recognition of and respect for the right to self-determination has been the most prominent demand of the indigenous rights movement.<sup>42</sup> It is viewed as the mechanism by which indigenous peoples can enjoy all other human rights and ensure their cultural integrity and survival, and can broadly be defined as the right to freely determine the nature and extent of their relationship with the State and other peoples. As stated in a landmark UN study on indigenous rights: 'Self-determination, in its many forms, is thus a basic pre-condition if indigenous peoples are to be able to enjoy their fundamental rights and determine their future, while at the same time preserving, developing, and passing on their specific ethnic identity to future generations.'<sup>43</sup>

Territorial rights are integral to Indigenous peoples' right to self-determination and recent normative developments relating to indigenous lands, territories and resources are expansive, requiring legal recognition, restitution and compensation, protection of the total environment thereof, and various measures of participation in extra-territorial activities that may affect subsistence rights and environmental and cultural integrity. Article 26 of the UN Draft Declaration, for instance, provides that

164

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal sea, sea-ice, flora and fauna and

other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by states to prevent any interference with, alienation or encroachment upon these rights.

The OAS Proposed Declaration, while not as broad and detailed as the UN Draft Declaration, also provides a substantial measure of protection.<sup>44</sup> Both recognize and require protection of Indigenous peoples' unique relationship with their lands and resources. Article 25 of the UN Draft Declaration, for instance, states that

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

The UN and OAS instruments include a right to restitution of indigenous lands, territories or resources which have been 'confiscated, occupied, used or damaged' (OAS art. XVIII(7); UN, art. 27). If restitution is not possible, then compensation is to be provided. Recall the General Comment on CERD, which also called upon States to provide restitution or compensation when impossible to do so. They also include articles providing for a right to environmental protection (arts. XIII and 28, respectively). The OAS Proposed Declaration includes many of the elements identified by the IACHR in its *Ecuador Report* and elsewhere - relationship to the right to life, measures to ensure effective participation and the right to information and remedies.

Due to the importance attached to indigenous cultural, spiritual and economic relationships to land and resources, relocation is treated as a serious human rights issue. Strict standards of scrutiny are employed and free and informed consent is required before relocation may take place. Additionally, relocation may only be considered in extreme and extraordinary cases. The implicit statement contained in these standards is that forcible relocation is prohibited as a gross violation of human rights.

In conformity with rights to self-determination, autonomy and self-government, standards relating to Indigenous participation are expansive and strong.<sup>45</sup> This is due to the recognition that indigenous peoples

165

will undoubtedly be affected by the larger policies and actions of the State despite their status as autonomous, self-governing entities. Free and informed consent is required by the UN Draft Declaration before States may enact or implement legislative, administrative or other measures that may affect indigenous rights or interests (art. 20). In connection with this, indigenous peoples have the right to determine their representatives in accordance with their own procedures.

Informed participation in decision-making processes concerning resource exploitation, especially sub-surface resources, is required. Article XVIII(5) of the Proposed OAS Declaration requires that states 'must establish or maintain procedures for the participation of the peoples concerned in determining whether the interests of these peoples would be adversely affected and to what extent, before undertaking or authorizing' operations on indigenous lands. It also requires that the affected peoples or communities share in any benefits and that compensation be rendered for damages sustained. The UN Draft Declaration goes even further, requiring that States obtain indigenous peoples' 'free and informed consent' prior to authorizing exploitation of indigenous lands and territories. It states that

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that states obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

The preceding is consistent with the observations of the UN Centre for Transnational Corporations in a series of reports requested by the WGIP that examine the investments and activities of transnational corporations (TNCs) in indigenous territories.<sup>46</sup> The fourth and final report concluded that 'TNCs' performance was chiefly determined by the quantity and quality of indigenous peoples' participation in decision making' and 'the extent to which the laws of the host country gave indigenous peoples the right to withhold consent to development, and on the degree to which indigenous communities themselves were fully informed, and effectively organized for collective action.'<sup>47</sup> With regard to land rights, the report concluded that 'TNCs find it easier to involve indigenous peoples in decision-making when indigenous peoples' rights to their lands are secure' and, in general, that 'land rights are a necessary precondition for effective participation.'<sup>48</sup> This report goes on to say that land rights alone are not sufficient for the purpose of partici-

pation, indigenous peoples also require all relevant information about the TNC, the industry in which it works and the specific project proposed if participation is to be truly effective.<sup>49</sup>

As illustrated by the preceding discussion, indigenous rights are receiving detailed and progressive treatment by intergovernmental human rights bodies. These standard setting exercises are also having an impact upon interpretations of indigenous rights under general human rights instruments, such as CERD and the American Convention.

Having outlined the international obligations pertaining to Suriname, we shall now apply these standards to the situation in Suriname. Rather than attempt a comprehensive analysis, in the interests of space, we will focus only on self-determination, participation rights, land and resource rights, discrimination and cultural rights.

### Land and Resource Rights

In 1997, the UN Commission on Human Rights authorized the appointment of a Special Rapporteur on indigenous land rights.<sup>50</sup> In her first report, Special Rapporteur Daes identified a series of problem areas relating to indigenous land rights, the most fundamental of which is 'the failure of States to recognize the existence of indigenous use, occupancy and ownership, and the failure of States to accord appropriate legal status, juridical capacity and other legal rights in connection with indigenous peoples' ownership of land.'<sup>51</sup> With regard to the former, she states that

Countries in many parts of the world are unaware or ignore the fact that communities, tribes or nations of indigenous peoples inhabit and use areas of land and sea and have done so, in many cases, since time immemorial. These areas are typically far from the capitals and other urban areas of the country and, typically, countries regard these lands and resources as public or 'crown' lands. Although the indigenous people concerned regard themselves, with good reason, as owning the land and resources they occupy and use, the country itself disposes of the land and resources as if the indigenous people were not there.<sup>52</sup>

In connection with the second aspect, the failure to accord legal status to indigenous lands, she states that 'In some countries, indigenous communities do not have legal capacity to own land, or do not have the capacity to own land collectively. Where the indigenous peoples or

group is not recognized as having juridical status or existence, it cannot hold title to lands or resources nor take legal action to protect those property interests.<sup>53</sup>

The other problem areas are listed as follows: 1) discriminatory laws and policies affecting indigenous land rights, including according indigenous land rights second class or inferior status and unilateral abrogation of treaty rights; 2) failure to demarcate and failure to enforce or implement laws protecting indigenous lands; 3) problems concerning land claims settlements or return of lands; 4) expropriation of indigenous lands in the national interest, particularly in the name of development; 5) removal and relocation; 6) other policies or programmes including: allotment of lands to individuals and State control of sacred or cultural sites; 7) failure to protect the integrity of indigenous territories, and; 8) the failure to recognize and respect indigenous control of their territories as part of the right to self-determination.<sup>54</sup>

If we compare the preceding to the situation in Suriname, both legal and factual, it is clear that all of the problems areas identified by Daes are highly relevant and exist in Suriname. While all the categories are apparent, in recent years the expropriation of indigenous and Maroon lands in the name of development has been an acute problem. On this subject Daes observes that

The legacy of colonialism is probably most acute in the area of expropriation of indigenous lands, territories and resources for national economic and development interests. In every sector of the globe, indigenous peoples are being impeded in every conceivable way from proceeding with their own forms of development, consistent with their own values, perspectives and interests.<sup>55</sup>

Much large-scale economic and industrial development has taken place without recognition of and respect for indigenous peoples' rights to lands, territories and resources. Economic development has been largely imposed from outside, with complete disregard for the right of indigenous peoples to participate in the control, implementation and benefits of development.<sup>56</sup>

International standards state that indigenous peoples and Maroons have the collective right to own, use and peacefully enjoy their traditional lands, territories and resources, to freely dispose of their natural resources and to be secure in their means of subsistence. States have a corresponding duty to recognize these rights by, among others, titling, demarcating and ensuring the integrity of these lands and territories.

In Suriname, this has not been done and these rights are routinely violated both by act and omission. In the case of the former, by issuing permits to logging and mining companies and small-scale miners, who operate on indigenous and Maroon lands with impunity, normally cause severe environmental degradation and destroy vital subsistence resources; by converting indigenous and Maroon lands into protected areas without their consent, and; by granting indigenous and Maroon lands to outsiders. In the latter, by failing to title, demarcate and guarantee indigenous and Maroon land rights. Not only are indigenous and Maroon resource rights not recognized in the law, the 1987 Constitution explicitly states that all resources belong to the State, which has the inalienable right to exploit those resources.

Subsistence rights (hunting, fishing, agriculture, gathering) are especially vulnerable in areas issued to mining and logging interests. Some communities have reported that they have to import water in mining areas due to pollution and can no longer catch fish or frequently catch fish that are unfit for human consumption. Others report that river water makes them sick. Farming areas are frequently destroyed and game animals are depleted in these areas because of human disturbances, habitat loss and over hunting by miners and loggers.

Environmental degradation and the attendant loss of subsistence resources cause serious health problems, especially affecting the young and elderly. Diseases like malaria have reached epidemic proportions due to a substantial increase of mining activities and mobile miners. The vast amounts of mercury that are routinely dumped throughout the Interior have already caused neurological diseases among the Waiyana and can be expected to have affected others as well. The State has done nothing to regulate or mitigate the impact of these activities. To the contrary by licensing Brazilian miners and others to work in the Interior without supervision, it has actively facilitated these impacts and the attendant human rights violations. In severe cases, this may amount to violations of the right to life.

Indigenous and Maroon intellectual property rights are not recognized in the law and compensation for their exploitation or expropriation is not required. Sacred sites and other sites of cultural significance are also not protected in any way. These sites are frequently disturbed and sometimes destroyed in violation of religious freedom and privacy rights. The treaties with the Maroons and the Peace Accord are dismissed by the State. Communities can also be relocated at will and, as discussed below, indigenous peoples and Maroons suffer from pervasive discrimination that is particularly evident in connection with land

and resource rights and they have no rights to participate in decisions that affect their lands and resources.

### **Self-determination**

The right to self-determination is a framework right that has both substantive and procedural aspects. It encompasses land and resource rights, cultural rights and political rights and recognizes the right of the holder to freely pursue their economic, social and cultural development and to freely determine their political status. It also requires that the collective be recognized before the law. As we have seen, neither indigenous or Maroon peoples nor communities have legal personality in Suriname. This is a gross violation of fundamental human rights as the communities/peoples are legally incapable of holding and defending their rights. It also fails to recognize indigenous peoples and Maroon's own distinct forms of socio-cultural and political organization and forces them to adopt alien organizational structures in order to obtain title to their lands.

The political and administrative division of the State makes no attempt to account for indigenous and Maroon governmental institutions and legal systems and neither are otherwise formally recognized by the law. These institutions also have no formal say over or input in deciding the nature and extent of development activities in the territories and activities classified as development frequently have detrimental effects. We will address cultural rights below.

### **Participation Rights**

Surinamese law does not provide any mechanism by which indigenous peoples and Maroons can participate in decisions affecting them. This applies in general and in connection with resource exploitation, where concessions are handed out without even informing the communities in or near the concessions. It could be argued that the ROB and the local government system provide access to decision making, however, neither function well and neither are privy to decisions relating to natural resources which are mostly made within the Ministry of Natural Resources and its various departments. At best the District Commissioner, a political appointee, is informed about concession grants. Access to information about the environment, the past performance and origin of the companies involved and other important issues is non-existent. Both the UN and Inter-American instruments ratified by Suriname

require at a minimum that indigenous peoples and Maroons participate in decisions that may affect them and that a mechanism be established through which that participation shall take place. The instruments adopted at UNCED in Rio de Janeiro contain similar provisions. Participation rights also extend to legislative, administrative and other measures that may affect indigenous peoples and Maroons.

International standards require that indigenous and Maroon participation be obtained through representatives freely chosen by them in accordance with their own procedures. The members of the ROB were appointed by the President, with minimal input from indigenous peoples and Maroons and therefore, even if it were functioning, the ROB would be lacking in this respect. The Highest Authority of the Interior has been designated by indigenous peoples and Maroons as the institution to interact with the government. This should be respected and measures put in place to establish the mechanisms by which the Highest Authority will participate in decision making.

### **Non-discrimination/Equal Protection**

Even a cursory overview of the situation of indigenous peoples and Maroons in Suriname, demonstrates that they are subjected to multiple forms of discrimination. This discrimination is particular evident in connection with land and resource rights, education, health and government services in general. That indigenous and Maroon forms of land tenure are not recognized as property and ownership rights is especially discriminatory as this accords an inferior status to indigenous and Maroon property that does not apply to other Surinamese. Also, that indigenous and Maroon land rights, what little that exist, are limited by language in the L-Decrees - i.e. that their protection will apply only during a 'transitional period in which the forest population will be gradually incorporated into the total socio-economic life...' - and the 1986 and 1998 Nature Protection Resolutions is also discriminatory for the same reason. Indigenous and Maroon land tenure and use and management practices are different from coastal practices and this must be accounted for in the law. Failure to do so applies an unreasonable and unjustifiable standard to one segment of the population based solely upon its race and ethnicity.

In health and education, there is a gross disparity between the level of services enjoyed by indigenous peoples and Maroons and their coastal counterparts. The level of training for teachers in the Interior is far lower than that for coastal teachers, most Interior schools lack even

basic supplies and equipment and some villages do not have schools at all. The same can be said about health care. It is one thing to relate a lack of adequate services in these important areas to a lack of resources, but such a visible and disproportionate difference in services cannot be justified.

### Cultural Rights

With the possible exception of certain elements of material culture (crafts, art, dances etc.), Surinamese law does not recognize the cultural rights of indigenous peoples and Maroons. Indeed, its primary aim appears to be the assimilation and integration of indigenous peoples and Maroons into some fictitious national identity and economy. Indigenous and Maroon culture appears to be valued only in the context of attracting tourists to Suriname.

This position is somewhat similar to that contained in International Labour Organization Convention No. 107 Concerning Indigenous and Tribal Populations of 1957. The stated aim of ILO 107 is the integration and assimilation of Indigenous and Tribal peoples into the States within which they live. This emphasis on the assimilation and integration of Indigenous and Tribal peoples generated considerable criticism. Because of its lack of respect for indigenous and tribal culture and identity, the Convention became an 'embarrassment' to the ILO, and, in 1986, it was decided that it should be revised according to the principle that indigenous peoples should 'enjoy as much control as possible over their own economic, social and cultural development.'<sup>57</sup> It was replaced in 1989 with the adoption of ILO Convention No. 169, which seeks to fully 'recognize the principle of respect for the identity and wishes of the peoples concerned and to provide for the increased consultation with, and participation by, these populations in decisions affecting them.' Surinamese law and policy clearly needs to move in the same direction.

As noted in the decisions of the HRC, IACHR and CERD, indigenous and Maroon cultural rights cannot be separated from their land and subsistence rights. Therefore, the discussion above pertaining to land rights is equally relevant when discussing cultural rights.

Indigenous languages have not been recognized and there has been no provision for bilingual or bicultural education in indigenous and Maroon areas. In many cases, this places indigenous and Maroon children at a substantial disadvantage to coastal children. Also, due to

the lack of secondary education in the Interior, indigenous and Maroon children are forced to leave their families, communities and cultures if they want to benefit from higher education. Many are unable to adapt and drop out, others who stay in school often do not return to their communities due to lack of employment and cultural alienation.

### Concluding Remarks

Suriname has definite and substantial obligations under international human rights law to recognize and respect indigenous and Maroon rights. These rights are found in both customary international law and in ratified conventions which Suriname has voluntarily agreed to implement and comply with. Comparing these obligations with Surinamese law and practice reveals that the vast majority have not been implemented, that the vast majority are not recognized in law and that domestic remedies are substantially inadequate or unavailable. Additionally, the basic rights of indigenous peoples and Maroons – to be free from discrimination, to own and enjoy their lands and resources, to participate in decision making, to practice their cultures, etc., - are routinely violated in policy and practice, through, among others, assimilationist policies and laws, issuing logging and mining concessions without any consultation, environmental degradation, dispossession, and by ignoring legal agreements, such as the Maroon treaties and the Peace Accord.

### Notes

- <sup>1</sup> Inter-American Court of Human Rights, *Cayara Case, Preliminary Objections*, Judgment of Feb. 3, 1993. Series C No. 14, para. 37; and *Velasquez Rodriguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, para. 30.
- <sup>2</sup> Arts. 1 and 2, American Convention on Human Rights; art. 2, ICCPR and; arts. 2 and 5 of CERD.
- <sup>3</sup> WGIP 1992, at para 71. Also, see Gros Espiell 1980, at para. 50.
- <sup>4</sup> See, Brownlie 1990, at 513; Parker and Nelson 1989, at 440 and; Gros Espiell 1980, at para. 74.
- <sup>5</sup> *Concluding observations of the Human Rights Committee: Canada. 07/04/99*, at para. 8. UN Doc. CCPR/C/79/Add.105. (Concluding Observations/Comments) (1999).
- <sup>6</sup> Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada, *Report of the Human Rights Committee*, 45 UN GAOR Supp. (No.43) at 1, UN Doc. A/45/40, vol. 2 (1990).
- <sup>7</sup> Ibid. See, also, Kitok vs. Sweden, *Report of the Human Rights Committee*, 43 UN GAOR Supp. (No.40) at 221, UN Doc. A/43/40 (1988).
- <sup>8</sup> Lovelace vs. Canada (No. 24/1977), *Report of the Human Rights Committee*, 36 UN GAOR Supp. (No. 40) at 166, UN Doc. A/36/40 (1981).
- <sup>9</sup> *Kitok v. Sweden*, at 230.

- <sup>10</sup> *General Comment No. 23 (50) (art. 27)*, adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994. UN Doc. CCPR/C/21/Rev.1/Add.5 (1994), at 3.
- <sup>11</sup> Anaya 1991, at 1, 15; Prott 1988, at 93.
- <sup>12</sup> Price Cohen, *International Protection of the Rights of Indigenous Children*, 1998.
- <sup>13</sup> *General Recommendation XXIII (51) concerning Indigenous Peoples Adopted at the Committee's 1235th meeting, on 18 August 1997*. UN Doc. CERD/C/51/Misc.13/Rev.4., at 1.
- <sup>14</sup> *Ibid.*
- <sup>15</sup> Brownlie 1990, at 513.
- <sup>16</sup> IACHR, *Annual Report 1972*, at 90-1.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*, 1997, at 115. See, also, IACHR, *Report on the Situation of Human Rights in Brazil*, 1997, at 111, in which the IACHR stated that 'Security guarantees that every state should provide for its inhabitants and which, in the case of the Indian peoples of Brazil, require special protective measures, are insufficient in terms of preventing and finding a solution to the ever-continuing usurpation of their possessions and rights.'
- <sup>19</sup> IACHR, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, 1984, at 81.
- <sup>20</sup> IACHR, *Annual Report 1973*, at 27.
- <sup>21</sup> *Yanomami Case*, Case 7615, IACHR 24, OEA/Ser.L/V/11.66, doc.10 rev.1 1985.
- <sup>22</sup> *Ibid.*, at 33.
- <sup>23</sup> Ramcharan 1985.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> IACHR, *Report on the Situation of Human Rights in Brazil*, 1997, at 112.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> IACHR, *Third Report on the Situation of Human Rights in The Republic of Guatemala*, 1986, at 114.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> UNESCO, *Declaration on Ethnocide and Ethnodevelopment*. San Jose, 1981.
- <sup>30</sup> *Revised and Updated Report on the Question and Prevention and Punishment of the Crime of Genocide* 1985, at 17. This report indicates wide-spread support for the view that acts that destroy the rainforests and threaten the existence and well-being of forest-dwelling indigenous peoples should be considered as ethnocide whether the acts are deliberate or negligent and supports the view that ethnocide is a crime against humanity. *Ibid.*
- <sup>31</sup> *The UN draft Declaration on the Rights of Indigenous Peoples*, UN Doc. E/CN.4/Sub.2/1993/29, Annex, 1993, at art. 7(a & b).
- <sup>32</sup> IACHR *Ecuador Report*, 1997, at 88.
- <sup>33</sup> *Ibid.*, at 89.
- <sup>34</sup> *Ibid.*, at 92-5. For instance, the Rio Declaration on Environment and Development adopted at UNCED states in Principle 10 that:  
Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-

making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Specifically addressing indigenous peoples, principle 22, states:

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

<sup>35</sup> *Ibid.*, at 93.

<sup>36</sup> *Ibid.*, at 115.

<sup>37</sup> The Working Group was established by Economic and Social Council Resolution 1982/34 of 7 May 1982. Its mandate is two fold: 1) to review developments pertaining to the rights situations of indigenous peoples and, 2) to give special attention to the development of international standards on the rights of indigenous peoples.

<sup>38</sup> Kreimer 1998.

<sup>39</sup> Daes, *Explanatory note* 1993; Daes, *Some Considerations on the Right of Indigenous Peoples to Self-Determination*, 1993; Barsh 1994.

<sup>40</sup> Kreimer 1998, at 69-70.

<sup>41</sup> Both the UN and OAS instruments provide explicitly for subsistence rights and the right to development. See, UN Draft Declaration articles 21 and 23 and OAS Proposed Declaration articles VII(3) and XXI. UN Draft Declaration, art. 21, for instance, provides that:

Indigenous peoples have the right to maintain and develop their political, economic and social systems, and to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Concerning the right to development, OAS Proposed Declaration, art. XXI(1) states:

The states recognize the right of indigenous peoples to decide democratically what values, objectives, priorities and strategies will govern and steer their development course, even where they are different from those adopted by the national government and other segments of society. Indigenous peoples shall be entitled to obtain on a non-discriminatory basis appropriate means for their own development according to their preferences and values, and to contribute by their own means, as distinct societies, to national development and international cooperation.

<sup>42</sup> Barsh 1994; Anaya 1996 and 1993, at 132, 147; Sambo 1993, at 13.

<sup>43</sup> Cobo 1987, at para. 269.

<sup>44</sup> With regard to rights to lands, territories and resources, article XVIII of the OAS Proposed Declaration states that

1. Indigenous peoples have the right to the legal recognition of the various and specific forms of control, ownership and enjoyment of territories and property.

2. Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands and territories they have historically

occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.

3. Where property and user rights of indigenous peoples arise from rights existing prior to the creation of those States, the States shall recognize the titles of indigenous peoples relative thereto as permanent, exclusive, inalienable, imprescriptible and indefeasible. This shall not limit the right of indigenous peoples to attribute ownership within the community in accordance with their customs, traditions, uses and traditional practices, nor shall it affect any collective community rights over them. Such titles may only be changed by mutual consent between the State and respective indigenous people when they have full knowledge and appreciation of the nature or attributes of such property.

4. The rights of indigenous peoples to existing natural resources on their lands must be especially protected. These rights include the right to the use, management and conservation of such resources.

<sup>45</sup> UN Draft, arts. 4, 19 and 20; OAS Proposed Declaration, art. XV(2).

<sup>46</sup> The Center reported to the Working Group four times: proposing methodology, and a draft questionnaire for distribution to indigenous Peoples ( UN Doc. E/CN.4/Sub.2/AC.4/1990/6); a preliminary report (UN Doc. E/CN.4/Sub.2/1991/49); a report focusing on the Americas (UN Doc. E/CN.4/Sub.2/1992/54) and; a report focusing on Asia and Africa, summarizing the findings of all reports and making recommendations 'to mitigate the adverse impacts of TNCs on indigenous peoples' lands, and increase indigenous peoples' participation in relevant government and TNC decision-making.' (UN Doc. E/CN.4/Sub.2/1994/40).

<sup>47</sup> UNCTC 1994, *Ibid.*, at para. 20.

<sup>48</sup> *Ibid.*, at para. 22.

<sup>49</sup> *Ibid.*

<sup>50</sup> Commission on Human Rights, Decision 1997/114 of 13 April 1997.

<sup>51</sup> Daes, *Indigenous people and their relationship to land. Preliminary working paper* 1997.

<sup>52</sup> *Ibid.*, at para. 27.

<sup>53</sup> *Ibid.*, at para. 30.

<sup>54</sup> *Ibid.*, at paras. 25-67.

<sup>55</sup> *Ibid.*, at para. 49.

<sup>56</sup> *Ibid.*, at para. 50.

<sup>57</sup> Berman 1988, at 48-9.

## CONCLUSIONS AND RECOMMENDATIONS

This final chapter summarizes the main findings of the study and offers a number of concluding comments and recommendations.

This study has attempted to throw some light on the legal situation in Suriname as it relates to the rights of indigenous peoples and Maroons. The rights of these peoples have not been systematically addressed in this context before nor have they been the subject of extensive litigation and academic research as they have in other countries. With the possible exception of Indonesia, the same may also be said of the legal principles applied by the Dutch to their other colonies. This has been a major obstacle to overcome in completing this study, which has mostly relied on primary sources, the writings of Quintus Bosz and a comparative approach to the subject. While further research is needed on many of the issues discussed herein, we believe that this study provides a good starting point for constructive discussion on the rights of indigenous peoples and Maroons that hopefully will lead to a long overdue and full recognition of their rights in Suriname.

We are fully aware that many of our conclusions differ from the orthodox position of the State and many in the legal profession in Suriname and readers should know this. Basically, the State's position holds that indigenous peoples and Maroons are permissive occupiers of privately owned state lands and that whatever rights they may have will always be superceded by the larger interests of the state. Further, these rights are simply temporary protections conceded by the state during a transitional period in which Indigenous peoples and Maroons are to be assimilated into the larger, and inherently superior, Surinamese society and economy. This is largely based upon the writings of Quintus Bosz, which, while impressive, nevertheless suffer from a number of defects including selective use of materials to support his arguments, substandard legal analysis in places and unsubstantiated, and in many cases, discriminatory conclusions that are unacceptable in the 1990s.

This orthodox position is not only at odds with Surinamese legal history and the present Constitution, it is also repugnant to international human rights standards that recognize the value of indigenous and Maroon cultures and ways of life *per se* and the inherent nature of

their rights to, among others, their lands and resources, to determine and control their internal affairs and development choices and to participate in all decisions that may affect them. In this sense, this study demonstrates that Suriname has concrete and specific legal obligations in international human rights law to fully recognize and respect indigenous and Maroon rights. These obligations include adopting or modifying and implementing domestic Constitutional, legislative and administrative provisions and policies to guarantee indigenous and Maroon rights. These legal reforms must also provide indigenous peoples and Maroons with access to effective remedies to enforce their rights.

### Conclusions

The dominant (State) view of legal relations between indigenous peoples and the State described above rests upon the conclusion that the state is the private owner of all land in Suriname, except for the small percentage that has been unconditionally alienated as *BW eigendom*. First officially elaborated in the 1982 L-Decrees, the legal justification for the domain principle has never been convincingly set out. The legal history of Suriname, as described in chapters 1-3, demonstrates that this position cannot be maintained and that, while the state holds public law title to all of Suriname, its private law rights are limited to the plantation area and do not, and never did, include the territories of indigenous peoples and Maroons. Converted into the Dutch legal terminology employed in Indonesia, and to a certain extent also in Suriname, there are two distinct kinds of domain land in Suriname: free domain and unfree domain. Unfree domain corresponds to public law title, while free domain corresponds to private law title vested in the state. The primary distinction between the two relates to the powers and rights of the state; in unfree domain the state has jurisdiction and the power of eminent domain: in free domain, the state acts as private owner of the land with all the powers normally associated with such status.

The rights of indigenous peoples and later Maroons were explicitly guaranteed by the *Ordre van Regeringe*, the indigenous and Maroon treaties and the various guarantee clauses included in land warrants and logging and mining permissions. These rights are ownership rights, even though title was not issued by the state. To describe these rights otherwise, especially as an inferior class of rights, violates the prohibition of discrimination and the right to equal protection of the law found in the Surinamese Constitution and the various human rights treaties

ratified by Suriname. These rights are arguably norms of public customary law that the state is bound to respect. Moreover, the state has positive (it must do something) legal obligations under international law to respect these rights. Because of historical factors, including aboriginal title and treaty relations, in general, indigenous and Maroon ownership rights may be described as a unique form of property that requires recognition by the state.

In Chapter 2 we analyzed the treaties concluded between the Dutch and indigenous peoples and Maroons. Although we do not have the text of the treaties with indigenous peoples, secondary sources indicate that they recognized rights to be free from slavery and to an autonomous self-governing existence and reaffirmed indigenous peoples' rights to their territories and resources. The treaties did not confer rights on indigenous peoples, rather, they recognized and affirmed pre-existing rights. Finally, according to the norms of international law existing in the 17<sup>th</sup> century when the treaties were signed, they were agreements between sovereign nations, which expressed mutual rights and duties and both parties considered themselves bound by thereby. Evidence of this is found as late as 1781 when the Dutch issued a law referring directly to their obligations under the treaties.<sup>1</sup>

We concluded that the treaties with the Maroons may be international treaties, but that this issue requires further research, in particular to determine what status the Maroons may have had under international law at the time the 18<sup>th</sup> and 19<sup>th</sup> century treaties were made. Without prejudice to the ultimate conclusion reached on this issue, we further concluded that the treaties are binding domestic public law contracts, which, in principle at least, may be enforced in Surinamese courts and include the right to the ownership and autonomous administration of their territories.

Finally, and perhaps most importantly, the legal significance of the treaties must be fully informed by the Maroon perspective and not simply in accordance with the mechanical application of legal principles. The Maroons consider the treaties to be sacred, immutable compacts that guarantee their freedom in personal, collective, political, territorial, spiritual and cultural terms and the culmination of over a century of struggle by their most powerful ancestors. Without a full understanding of this perspective, a court of law cannot do justice to the importance of these treaties. The jurisprudence of the courts in the United States, Canada and Aotearoa-New Zealand is especially instructive in this respect as is the report of the United Nations Special Rapporteur on Indigenous-State treaties and the draft

OAS and UN Declarations on the rights of indigenous peoples cited in Chapter 2.

A modern variant of the historical treaties, the Peace Accord of Lelydorp, was discussed in Chapter 4. This Accord concluded the interior war of 1986-1992 and contains a series of promises made by the state to address indigenous and Maroon rights and concerns and to establish a representative body through which they could participate in policy formulation and other matters that may affect them. With the exception of the provisions relating to the decommissioning of weapons and the Council of the Development of the Interior, the state has failed to honour any of these promises. Moreover, in the case of the ROB it is very doubtful that the state has complied with the original intent of the Accord. This is particularly true of the second incarnation of the ROB, whose members were not chosen by people in the interior, and in no way functions as an effective participatory mechanism.

The Peace Accord has essentially the same legal status as the historical treaties with the Maroons; it is a public law contract that presumably can be enforced in a court of law. However, the Peace Accord suffers from a number of substantial defects that ultimately render it of limited utility and is in large part incompatible with indigenous and Maroon rights in international law. This is particularly so in connection with the language pertaining to individual leasehold land titles (and the nature of those titles) found in article 10. The proposed economic zones may also carve up once contiguous territories into a series of isolated islands of indigenous and Maroon lands. Experience in other countries, neighbouring Guyana for example, has shown that the effects can be devastating as resource exploitation operations move into the spaces between communities wreaking havoc on the environment that communities depend upon for their basic subsistence needs. Having said this, however, the state has never issued an official position on the meaning of the various articles of the Peace Accord and, therefore, it could be interpreted differently from that found herein.

Chapters 3 and 4 address land and resource laws. They show that Surinamese land and resource laws have historically guaranteed and saved indigenous and Maroon land and other rights. While these guarantees have been omitted from the mining law and some of the nature conservation laws and have been reduced in scope over time, they remain firmly entrenched in the forest laws and the L-Decrees and recognize indigenous and Maroon customary rights to their villages, settlements and agricultural areas. These customary rights, which should be interpreted as something analogous to aboriginal title or pre-exist-

ing rights, are not considered to be ownership rights as that term is presently used in Suriname. Ownership refers only to rights founded upon titles issued by the state. The L-Decrees and the nature conservation law both contain assimilationist language that is incompatible with indigenous and Maroon rights in international law and in general impose limitations on these rights that do not apply to other Surinamese and are therefore discriminatory.

The level of protection accorded to Indigenous and Maroon peoples in Surinamese logging and mining legislation is substantially inadequate. Neither require any form of consultation, let alone agreement, and concessions are routinely issued without even informing the affected communities. In some cases, these communities have been forced off their lands in the name of development, while others – Nieuw Koffiekamp - presently face the threat of forcible relocation. The absence of environmental regulations and monitoring capacity is especially disturbing given the substantial increase in resource exploitation in recent years, especially in the small-scale mining sector. While legislation of this kind is planned, it may come too late to provide any meaningful guarantees for affected indigenous and Maroon communities and Suriname's rainforests.

In Chapter 5 we looked at the 1987 Constitution and concluded that it does not offer adequate and effective guarantees for indigenous peoples and Maroons and appears to be functionally irrelevant to many of the pressing social and human rights issues facing Suriname today. The absence of an authoritative Constitutional Court to interpret the Constitution and provide a meaningful check on abuses of power by the Executive is especially disturbing. While many of the guarantees found in the Constitution are non-justiciable or effective remedies are otherwise lacking, it does provide the mechanism by which ratified international human rights treaties are made enforceable in Surinamese law. This has important implications for many of the laws reviewed throughout this study and may ultimately render some of their provisions, particularly those that are blatantly discriminatory, null and void.

In Chapter 6, we described the obligations that Suriname has accepted by ratifying or acceding to international human rights treaties. The vast majority of the provisions discussed are directly applicable under articles 105 and 106 of the 1987 Constitution and as such represent binding legal authority that may be invoked in Surinamese courts. These obligations include the recognition of and respect for: the right to land, territory and resources based upon historical occupation and

use; the right to practice and enjoy culture in all its manifestations; the right to participate in and consent to all matters that may affect indigenous peoples and Maroons; the right to bilingual and bicultural education and access to education of at least the same quality as that enjoyed by coastal Surinamese; the right to a healthy and productive environment; and, many others. That the state has failed to implement these rights in the law does not change their mandatory character.

In general, and to sum up, Surinamese law offers more protections, especially if we count international treaties therein, than are conceded by the official position of the state. Nonetheless, these protections are still substantially lower than international standards require and the state is obligated to ensure that its laws and policies rise to the level set by its international obligations. In the next and final section, we will offer a number of recommendations that may aid in achieving these goals.

### Recommendations

In her second progress report, the UN Special Rapporteur on indigenous land rights describes positive measures that have been implemented by states in order to resolve indigenous land issues. She describes these measures as a retreat from the denial of indigenous rights 'towards a modern human rights programme that is beginning to embrace the values, perspectives and philosophies of indigenous peoples.'<sup>2</sup> These measure include: judicial mechanisms, mechanisms for negotiation, Constitutional reform and framework legislation, Indigenous peoples' initiatives and human rights standards.<sup>3</sup> She also makes a series of recommendations for addressing indigenous land rights concerns.

As with the problem areas identified in Chapter 6, all of the preceding are relevant to the present situation in Suriname.<sup>4</sup> There is a desperate need for legal, including Constitutional, reform to recognize indigenous and Maroon rights and to provide adequate and effective remedies for violations thereof. These reforms must be based upon human rights standards if Suriname is to comply with its international legal obligations. Similarly, if solutions are to be mutually acceptable and sustainable there is a definite need to establish mechanisms by which indigenous peoples, Maroons and the state can negotiate settlements to the many problems existing in the interior of the country. These settlement agreements must be enforceable; the state cannot simply opt out of implementation as it has done with the Maroon treaties and the 1992 Peace Accord.

Indigenous peoples and Maroons have designated the Highest Authority of the Interior to be the mechanism by which they wish to communicate with the state. An appropriate first step in making further progress on indigenous and Maroon rights would be for the state to initiate formal dialogue with this body and seek to establish the ground rules for further discussions and the mechanisms by which issues can be addressed and resolved. A national discussion on the possible ratification of ILO Convention 169, as promised in article 11 of the Peace Accord, may be one of the first issues that can be addressed. Development and enactment of framework legislation that accounts for indigenous and Maroon rights must also be among the first issues dealt with. In this context, it is important to bear in mind that indigenous peoples in Suriname trace their rights to rights that predate colonial intervention, while the Maroons base their rights on their understanding of the treaties concluded with the Dutch in the 18<sup>th</sup> century. Both of these perspectives should be accounted for in legislation and Constitutional provisions.

Existing legislation and Constitutional law cannot be cited as a barrier to recognizing indigenous and Maroon rights. Laws and Constitution can be, and frequently are, changed to account for human rights and other issues. In this respect and given that indigenous and Maroon rights are a relatively recent subject in Suriname, it would be advisable to seek technical support from international organisations, for instance, the Inter-American Commission on Human Rights or the United Nations Centre for Human Rights, to review and draft new legislation and administrative measures. The international donor community, both private and multilateral, are receptive to initiatives that seek to account for indigenous rights and can be approached to fund the activities needed to adequately undertake this process.

On a more practical level, it is very important to establish a participatory process by which indigenous and Maroon land rights can be evaluated, titled and demarcated. Land rights cannot be evaluated by only looking at maps in Paramaribo; field work aimed at identifying the areas occupied and used, both historically and presently, is required. In connection with this, indigenous peoples in many parts of the world have conducted mapping projects that show their occupation and use of their territories. A similar process could be employed in Suriname. This not only drastically reduces the expense of mapping indigenous and Maroon lands, but also results in maps that are accurate and, subsequent to discussion, mutually acceptable. Many states have also established procedures to review and resolve indigenous land and other issues. While these procedures differ in form and employ different

methods of gathering information, they may all offer possible models for the establishment of a similar mechanism in Suriname.

With respect to land claims settlement procedures, the United Nations Expert Seminar on Practical Experiences regarding Indigenous Land Rights and Claims, made the following recommendations

5. Governments should recognize the land rights and titles of indigenous peoples and implement effective and appropriate procedures and mechanisms, including constitutional, legal or treaty agreements.
6. Throughout the whole process, the procedures for the recognition of these rights should provide for the effective representation and informed participation of indigenous peoples as equals. Without this, whatever legislation or treaty on this matter constitutes an imposition and not an enduring agreement.
7. States should make best efforts to guarantee access to land of indigenous peoples deprived of land or who lack sufficient land and depend upon it for their survival, in order to guarantee their cultural and material development. Mechanisms such as land funds support a claim settlements process, where they exist are encouraged.
8. The recognition of rights of indigenous peoples to specific lands which they occupy cannot be separated from the recognition of other rights, within larger areas necessary for their material and cultural development.
10. The existence of a fair constitutional and legal system, including a fair judicial system, able to guarantee due process of law is an important framework for the success and implementation of land settlement processes. In some countries experience has shown that the establishment of fair judicial processes for the implementation of treaties, agreements and other constructive arrangements with indigenous peoples has been a useful means towards the respect of such agreements and the education of the indigenous and non-indigenous communities.
11. Experience has shown that the equitable and fair conclusion and implementation of treaties, agreements and other constructive arrangements relating to land between states and indigenous peoples can contribute to environmentally sound and sustainable development for the benefit of all.
15. Where land agreements are intended to protect the way of life or cultural integrity of indigenous peoples, social issues should be given equal emphasis to economic and resource issues.
16. Political will, in the form of a genuine commitment on the part of Governments, to partnership, in decision making is essential to the

success of co-management regimes, and to the avoidance of adversarial relations between the parties to such regimes.

17. Land rights settlements should be freely negotiated, in good faith and not imposed unilaterally by legislation or negotiated under duress or threat.
19. Principles or guidelines for land selection or demarcation of indigenous lands should be jointly negotiated in a fair and equitable process and without the imposition of arbitrary criteria.
20. Governments, with indigenous peoples, should establish fair procedures for reviewing situations and for taking corrective action in situations in which indigenous land or resources have been taken or extinguished through processes which are claimed or are found to be fundamentally unfair or discriminatory.
21. Governments have a responsibility to ensure indigenous peoples have access to adequate resources to research and negotiate their claims so that settlements are equitable, just and enduring.
22. The structure, mandate, objectives, representation and accountability of members and mode of operation, including funding, of co-management structures should be determined through a process of negotiation with the indigenous parties to support the principal of equal participation.
23. It is important that practical effect be given to the spirit and intent of treaties and land agreements. This requires a willingness by the parties to act as partners, not adversaries as well as a clear understanding of the spirit and intent of treaties and land agreements by all parties.
24. Parties should negotiate on a basis of equality acknowledging indigenous leadership, structures, languages, social and legal systems in all aspects of the negotiations and implementation. For example, every effort must be made for agreements relating to land rights to be drafted in the language of the indigenous peoples concerned and for the indigenous language version to have equal status to the state language versions.
25. Interim protection measures, such as moratoriums on land transfers and on implementation of proposed development projects, should be taken, as necessary to protect indigenous lands or lands claimed by indigenous peoples from environmental degradation and alienation to third parties. Such measures would contribute to an atmosphere of good faith and constructive spirit in the negotiation process.
26. Effective measures for implementation, dispute resolution, amendment and enforcement of land settlements and agreements should be provided.
27. There is serious need for training, education and the required resources so that indigenous peoples may enter negotiations pro-

cesses fully informed and technically equipped about the whole spectrum of implications of land rights negotiations. Training and education should also figure prominently in settlements implementation.

28. The equal participation of indigenous women should be reflected in all aspects of negotiation and implementation of land agreements.
29. There is a need to inform the non-indigenous public about the significance of indigenous land rights for the very survival of indigenous peoples and the respect of their human rights. Land agreements are a way of building new constructive relationships between indigenous and non-indigenous communities.
30. Governments are urged to consider the establishment of impartial mechanisms to oversee and facilitate fair and equitable conclusions to land claims processes and the implementation of land agreements, including international mechanisms as necessary.<sup>5</sup>

The Expert Seminar also recommended that 'Governments should review their laws and policies in order to address the concept of the inherent rights to self-government and self-management of indigenous peoples.'<sup>6</sup> These rights have long been recognized in Suriname. It is only recently that the state has begun to encroach upon and deny their existence. Indigenous peoples and Maroons, for the most part, still maintain their own forms of administration and authority. These powers should be reaffirmed and explicitly recognised in the law. Indigenous and Maroon self-government need not mean that they are states within a state, as they were historically, but rather that they are free to make decisions about their own lives within the Constitutional and legal framework of the Surinamese state. In Colombia, these rights have been implemented through the Constitutional recognition of Indigenous Territorial Entities, which are equal in status to local government organs. There is no reason why the same system cannot be implemented in Suriname, particularly as it is the *de facto* situation now, and would substantially improve upon the present local government system.

Another UN Expert meeting, this time on indigenous autonomy and self-government, concluded that 'Self-government, self-administration and self-management of indigenous peoples constitute elements of political autonomy. The realization of this right should not pose a threat to the territorial integrity of the State.'<sup>7</sup> Its recommendations and conclusions added that

4. For indigenous peoples, autonomy and self-government are prerequisites for achieving equality, human dignity, freedom from discrimination and the full enjoyment of all human rights.

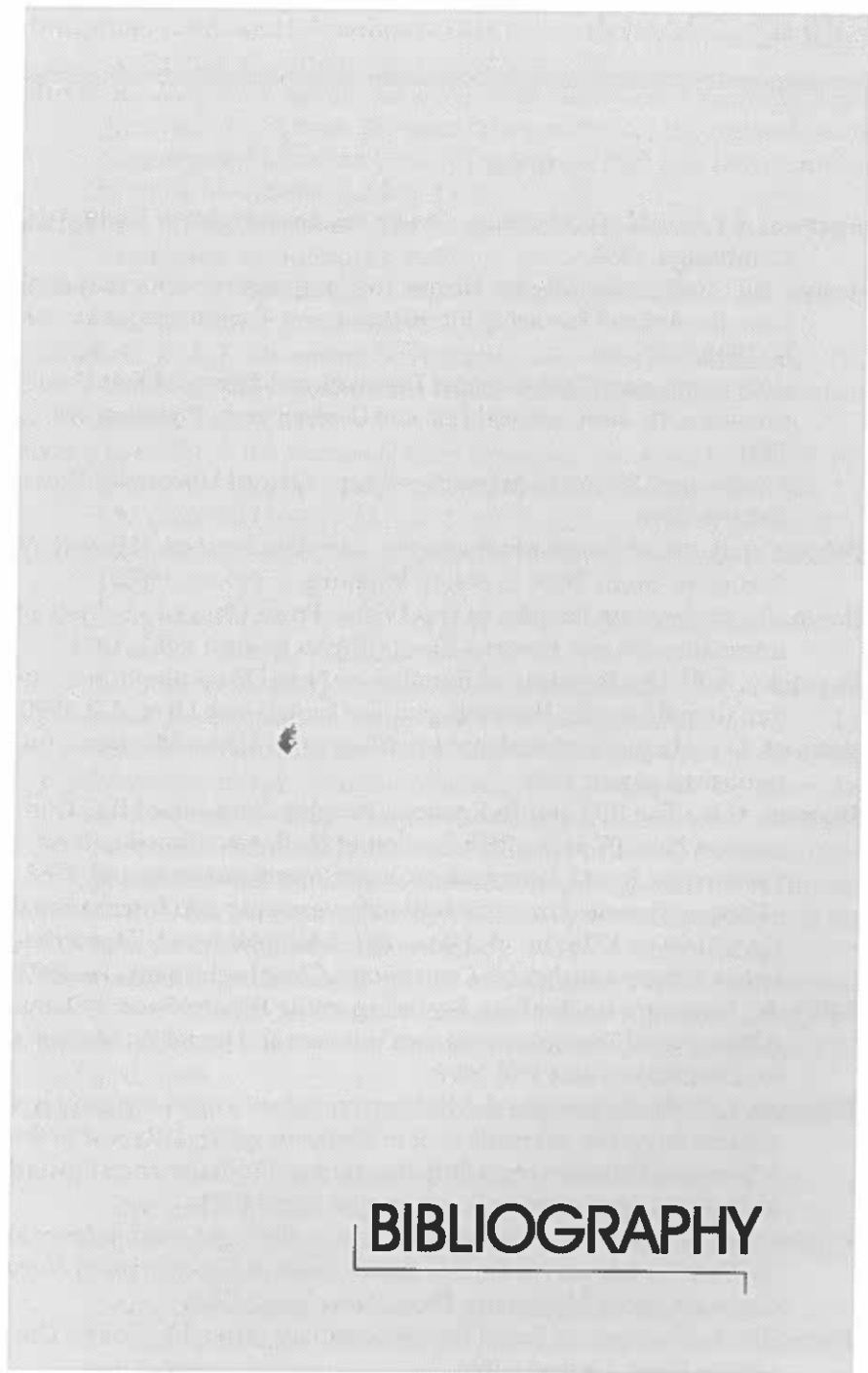
5. Indigenous territory and the resources that it contains are essential to the physical, cultural and spiritual existence of indigenous peoples and to the construction and effective exercise of indigenous autonomy and self-government. This territorial and resource base must be guaranteed to these peoples for their subsistence and the ongoing development of indigenous societies and cultures. Where appropriate the foregoing should not be interpreted as restricting the development of self-government and self-management arrangements not tied to indigenous territory and resources.
6. The autonomy and self-government of indigenous peoples are beneficial to the protection of the natural environment and the maintenance of ecological balance which helps to ensure sustainable development.
7. Indigenous autonomies and self-governments must, within their jurisdiction, assure the full respect of all human rights and fundamental freedoms and popular participation in the conduct of public affairs.
8. Autonomy and self-government can be built on treaties, constitutional recognition or statutory provisions recognizing indigenous rights. Further, it is necessary for the treaties, conventions and other constructive arrangements entered into in various historical circumstances to be honoured, in so far as such instruments establish and confirm the institutional and territorial basis for guaranteeing the right of indigenous peoples to autonomy and self-government.<sup>8</sup>

As can be seen from the preceding the issues of territorial rights and autonomy and self-government are fundamentally related. Future efforts to deal with these issues in Suriname must account for both aspects.

Finally, indigenous and Maroon cultures and cultural integrity are guaranteed by international human rights law. The international community has roundly rejected assimilation and integration as acceptable modes of relating to indigenous peoples and has come to value cultural diversity and pluralism. In some states, like Suriname, pluralism is a fact of life and should be embraced as a strength rather than a weakness to be eradicated. Indigenous and Maroon cultures are not only important *per se*; they are also an integral and fundamental part of Surinamese cultural heritage. The state should focus on supporting Indigenous peoples and Maroons to maintain and develop their cultures through, among others, bilingual and bicultural education and ensuring that the general curriculum positively reflects the contribution of these peoples to Surinamese history and culture.

## Notes

- <sup>1</sup> See text accompanying note 14, Ch. 2, *supra*.
- <sup>2</sup> Daes 1999, at 24, *Human Rights of Indigenous Peoples. Indigenous people and their relationship to land. Second progress report on the working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/1999/8.
- <sup>3</sup> *Ibid.*
- <sup>4</sup> See text accompanying notes 51-57, Ch. 6, *supra*.
- <sup>5</sup> *Report of the United Nations Expert Seminar on Practical Experiences regarding Indigenous Land Rights and Claims, held at Whitehorse, Canada, from 24 to 28 March 1996*. UN Doc. E/CN.4/Sub.2/AC.4/1996/6, at paras. 5-8, 10-11, 15-17, 19-30.
- <sup>6</sup> *Ibid.*, at para. 9. See, also, *The Report of the United Nations Expert Seminar on Indigenous Autonomy and Self-Government 28 September 1991*. UN Doc. E/CN.4/1992/42.
- <sup>7</sup> *The Report of the United Nations Expert Seminar on Indigenous Autonomy and Self-Government 28 September 1991*. UN Doc. E/CN.4/1992/42, at para. 3.
- <sup>8</sup> *Ibid.*, at paras. 4-8.



**BIBLIOGRAPHY**

## BIBLIOGRAPHY

- Agarwal, B.:** *A Field of One's Own. Gender and Land Rights in South Asia*, Cambridge, 1994.
- Anaya, S.J.:** Indigenous Rights Norms in Contemporary International Law. In: *Arizona Journal of International and Comparative Law*, vol. 8, 1991.
- Contemporary Definition of International Norm of Self-Determination. In: *Transnational Law and Contemporary Problems*, vol. 3, 1993.
- *Indigenous Peoples in International Law*, Oxford University Press, Oxford, 1996.
- Bakker et al.:** *Geschiedenis van Suriname. Van stam tot staat*, [History of Suriname. From Tribe to State], Walburg, Zutphen, 1993.
- Barsh, R.:** Indigenous Peoples in the 1990's: From Object to Subject of International Law, *Harvard Human Rights Journal*, vol 7, 1994.
- Bayefsky, A.F.:** The Principle of Equality or Non-Discrimination in International Law. In: *Human Rights Law Journal*, vol. 11, no. 1-2, 1990.
- Bennett, G.:** *Akawaio and Arekuna Land Claims in Upper Mazaruni*, unpublished paper, 1996.
- Berman, H.R.:** The ILO and Indigenous Peoples: Revision of ILO Convention No. 107 at the 75th Session of the International Labour Conference. In: *41 International Commission of Jurists Rev.* 48, 1988.
- Perspectives on American Indian Sovereignty and International Law, 1600 to 1776. In: O. Lyons & J. Mohawk (eds.), *Democracy, Indian Nations and the U.S. Constitution*, Clear Light, Santa Fe, 1992.
- Bilby, K.:** Swearing by the Past, Swearing to the Future: Sacred Oaths, Alliances and Treaties among the Guianese and Jamaican Maroons. In: *Ethnohistory* 44:4 Fall 1997.
- Blécourt, A.S. de:** *Rapport aan de Minister van Koloniën inzake het recht van allodiaal eigendom en erfelijk bezit in Suriname geldend* [Report to the Minister of Colonies regarding the right of allodial ownership and hereditary possession in Suriname], 8 April 1922.
- Brown Scott, J. (ed.):** *The Freedom of the Seas or the Right which belongs to the Dutch to take part in the East Indian Trade, A Dissertation by Hugo Grotius*, Oxford University Press, New York, 1916.
- Brownlie, I.:** *Principles of Public International Law* (4th ed.), Oxford University Press, Oxford, 1990.
- Bruijning, C.F.A. and J. Voorhoeve (eds.):** *Encyclopedie van Suriname* [Encyclopedia of Suriname], Amsterdam, 1977.
- Buve, R.:** *De positie van de indianen in de Surinaamse plantagekolonie gedurende de 17e en de 18e eeuw* [The position of the Indians in the Surinamese Plantation Colony During the 17th and 18th century], unpubl. MA thesis, Leiden, 1977.
- Cerquone, J.:** *Flight from Suriname: Refugees in French Guiana*, United States Committee for Refugees, 1987.
- Chin, H.E. & H. Buddingh:** *Surinam: Politics, Economics and Society*, Frances Pinter, London, 1987.
- Clinebell, J. & J. Thomson:** Sovereignty and Self-Determination: The Rights of Native Americans Under International Law, *Buffalo Law Review*, Vol. 27, 1978.
- Cobo, J.:** *Study on the Problem of Discrimination Against Indigenous Populations, Conclusions, Proposals and Recommendations*, UN Doc E/CN.4/sub/2/1986/7/Add. 1-3, UN Sales No. E.86.XIV.3, 1987.
- Colchester, M.:** *Forest Politics in Suriname*, International Books, Utrecht, 1995.
- *Guyana: Fragile Frontier. Loggers, Miners and Forest Peoples*, Latin America Bureau/WRM, London, 1997.
- Commissie-Radier, *Rapport van de Commissie benoemd bij de Resolutie van Z.E. den Minister van Koloniën d.d. 19 maart 1913, afd. B, no. 13, om te dienen van advies omtrent de door de Suriname-Commissie bepleite herziening van de Surinaamsche wetgeving betreffende het beheer der domeinen en de uitgifte van gronden en om c.q. de vereichte voorstellen in verband daarmee in te dienen* [Report of the Commission appointed by the Minister of Colonies to provide advice on the reform of Surinamese legislation regarding the management of the domain and the allocation of land], 's Gravenhage, 1914.
- Conservation International/Republic of Suriname:** *The Central Suriname Nature Reserve/Het Centraal Suriname Natuur Reservaat*, n.d.
- Crawford, J. (ed.):** *The Rights of Peoples*, University of Oxford Press, Oxford, 1988.
- Crawford, J.:** *The Creation of States in International Law*, Oxford University Press, Oxford, 1979.
- Daes, E-I:** *Explanatory note concerning the draft declaration on the rights of indigenous peoples*, by Erica-Irene Daes, Chairperson of the Working Group on Indigenous Populations, UN Doc E/CN.4/Sub/2/1993/26/Add.1, 1993.
- Some Considerations on the Right of Indigenous Peoples to Self-Determination. In: *Transnational Law and Contemporary Problems*, vol. 3, 1993.

- *Human Rights of Indigenous Peoples, Indigenous people and their relationship to land*. Preliminary working paper prepared by Mrs. Erica-Irene Daes, Special Rapporteur, UN Doc E/CN.4/Sub.2/1997/17, 1997.
- *Human Rights of Indigenous Peoples. Indigenous people and their relationship to land. Second progress report on the working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/1999/8, 1999.
- Dayala, M.:** *Enige Aspecten van het grondhuurrecht* [Some Aspects of the Land Lease Law], unpubl. MA thesis, University of Suriname, 1984.
- Dragtenstein, F.:** *Indiaanse opperhoofden rond 1700* [Indian Leaders Around 1700]. In: *Oso*, no. 2, October 1993.
- Eide, A., C. Krause & A. Rosas (eds.):** *Economic, Social and Cultural Rights*, Dordrecht/Boston/London, 1995.
- Fernández Mendes, H.K.:** *Toetsingsrecht in Suriname* [Judicial Review in Suriname]. In: *Surinaams Juristen Blad*, February 1994.
- Fitzmaurice, G.:** *United Nations Yearbook of the International Law Commission*, 1958.
- Forest Peoples Programme:** *In Search of El Dorado, Again: Mining and Tribal Peoples in Suriname*, Information Update, Moreton-in-Marsh, 27 January 1997.
- *Indigenous People in French Guiana Contemplate Legal Action to Protect Their Land Rights*, Information Update, Moreton-in-Marsh, 14 January 1997.
- *Mining Companies Covet Area Proposed for Nature Reserve in French Guiana*, Information Update, Moreton-in-Marsh, 25 April 1997.
- *Canarc and Placer Dome Sign Deal to Extract Gold Deposits in Benzdorp Concession*, Information Update, Moreton-in-Marsh, 7 October 1997.
- Fundación Arias para la Paz y el Progreso Humano Agrupación de Mujeres Tierra Viva:** *El Acceso de la Mujer a la Tierra en Guatemala* [Women's Access to Land in Guatemala], San José, 1993.
- Gerbenson, P. & N.E. Algra:** *Voortgangh des reches. De ontwikkeling van het Nederlandse recht tegen de achtergrond van de Westeuropese cultuur* [Development of Dutch Law against the Background of the West-european Culture], fifth rev. ed., Tjeenk Willink, Alphen aan den Rijn, 1983.
- Gopalrai, S.:** *De Houtsector en Duurzame Ontwikkeling van Suriname* [The Timber Sector and Sustainable Development of Suriname], Paramaribo, 1998.
- Government of Suriname:** *Country Report of the Republic of Suriname. Initial Report on the Convention of the Rights of the Child*, 1997.

- Grol, G.J. van:** *De Grondpolitiek in het West-Indische Domein der Generaliteit* [The Land Policy in the West-Indian General Domain], part I, 1938.
- *De Grondpolitiek in het West-Indische Domein der Generaliteit* [The Land Policy in the West-Indian General Domain], part II, 1942.
- Gros Espiell, H.:** *Special Rapporteur, The right to self-determination. Implementation of United Nations resolutions*, UN Doc. E/CN.4/Sub.2/405/Rev.1, 1980.
- Harlow, V.T., (ed.):** *Colonising Expeditions to the West Indies and Guiana 1623-1667*, Hakluyt Society, London, 1925.
- Hartsinck, J.:** *Beschrijving van Guiana of de Wilde Kust in Zuid America* [Description of Guiana or the Wild Coast in South America], 1770.
- Heshuyzen, F. van:** *Memoire sur les Indiens à Surinam*. In: *West Indische Gids* 7.
- Hoever-Venoaks and Damen:** *Surinaams Bestuursrecht* [Surinamese Administration Law], Paramaribo/Amsterdam, 1996
- Hoogbergen, W.:** *The Boni Maroon Wars in Suriname*, E.J. Brill, Leiden, 1990.
- IACHR:** *Annual Report 1972*.
- *Annual Report 1973*.
- *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26., 1984
- *Third Report on the Situation of Human Rights in The Republic of Guatemala*, OEA/Ser.L/V/II. 67, doc. 9, 1986.
- *Annual Report 1986-87*.
- *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 doc.10, rev.1. 1997.
- *Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97 Doc. 29 rev.1, 1997.
- 'sJacob, E.H.:** *Landsdomein en adatrecht* [Domain land and Adat Law], diss. Utrecht, 1945.
- Jennings, F.:** *The Invasion of America: Indians, Colonialism and the Cant of Conquest*, WH Norton, New York, 1976.
- Kanhai, I. & J. Nelson:** *Strijd om grond in Suriname. Verkenning van het probleem van de grondenrechten van Indianen en Bosnegers. Met bijdragen van A. Hoekema, M. Molendijk en J. Vernooij* [Struggle for Land in Suriname. Exploration of the Problem of the Land Rights of Indians and Bushnegroes], Paramaribo, 1993.
- Kooye, R. van der:** *Porcknocking in de Media* [Porcknocking in the Media], unpubl. paper, Academie voor Hoger Kunst en Cultuur Onderwijs, Paramaribo, 1997.
- Krause, C.:** *The Right to Property*. In: Eide, Krause and Rosas (eds.), *Economic, Social and Cultural Rights* 1995.

- Kreimer, O.:** The Future Inter-American Declaration on the Rights of Indigenous Peoples: A Challenge for the Americas. In: C. Price Cohen (ed.), *Human Rights of Indigenous Peoples* 1998.
- Kunst, A.J.M.:** *Recht, Commercie en Kolonialisme in West-Indië* [Law, Commerce and Colonialism in the West Indies], De Walburg Pers, Zutphen, 1981.
- Latin American Mining Monitoring Programme:** *Mining in Venezuela*, London, 1998.
- Lindley, M.F.:** *The Acquisition and Government of Backward Territory in International Law*, 1926.
- Macleod, W.C.:** *The American Indian Frontier*, Alfred A. Knopf, New York, 1928.
- Martens, G.F. von:** *Summary of the Law of Nations, Founded upon the Treaties and Customs of the Modern Nations of Europe*, trans. W. Corbett, Thomas Bradford, Philadelphia, 1795.
- Martínez, M.A., Special Rapporteur:** *Study on treaties, agreements and other constructive arrangements between States and indigenous populations. First progress report*, UN Doc. E/CN.4/Sub.2/1992/32, 1992.
- *Special Rapporteur, Study on treaties, agreements and other constructive arrangements between States and indigenous populations. Final report*, UN Doc. E/CN.4/Sub.2/AC.4/1998/CRP.1, 1998.
- McKean, W.:** *Equality and Discrimination under International Law*, Oxford University Press, Oxford, 1983.
- McNeil, K.:** *Common Law Aboriginal Title*, Oxford University Press, Oxford, 1989.
- Medische Zending:** *Jaarverslag* [Annual Report Medical Mission], Paramaribo, 1995.
- Meer, S. (ed.):** *Women, Land and Authority. Perspectives from South Africa*, Oxford, 1997.
- Menezes, M.N.:** The Controversial Question of Protection and Jurisdiction Re the Amerindians of Guyana. In: *SWI FORUM*, Vol. 9 Nos. 1 & 2, 1992.
- Miranda, M., A. Blanco-Urbe, L. Hernández, J. Ochoa and E. Yerena:** *All that Glitters is not Gold: Balancing Conservation and Development in Venezuela's Frontier Forests*, World Resources Institute, Washington DC, 1998.
- Mitrasing J.C. & F.E.M. Mitrasing:** *Compendium van het Surinaams Regionaal Recht. Historische en hedendaagse ontwikkeling en de Wet Regionale Organen, met enig commentaar*, [Compendium of Surinamese Regional Law], Paramaribo, 1992.
- Mohan, L.:** *Rapportage van de Inleiding met paneldiscussie betreffende Allodiale Eigendom en Erfelijk Bezit* [Report of the Lecture with Panel

Discussion Regarding Allodial Ownership and Hereditary Possession], Stichting Juridische Ondersteuning Suriname-Nederland, Paramaribo, 1997.

- Moiwana 86 Mensenrechtenorganisatie:** *Nieuwsbrief* [Newsletter] 1/26 1989. - Press release, September 1995.
- Molendijk M. & I. Kanhai:** Overheid, Grondenrechten en Natuurbescherming [Government, Land Rights and Nature Protection], in: Kanhai & Nelson (eds.), *Strijd om Grond in Suriname*, 1993.
- Muinck, M. de:** *Onteigening in de Nederlandsche Koloniën* [Eminent Domain in Dutch Colonies], diss. Groningen, 1911.
- Munneke, H.:** *De Surinaamse Constitutionele Orde sinds 1975: de Grondwet van 1975, een staatsrecht overzicht anno 1985 en de Grondwet van 1987 voorzien van staatsrechtelijk commentaar* [The Surinamese Constitutional Progress since 1975: the Constitution of 1975, a Legal Summary from 1985, and the Constitution of 1987 with a Legal Commentary], Ars Aequi, Nijmegen, 1990.
- Nassy, D. I.C. de:** *Historical Essay on the colony of Suriname 1788*, New York, KTAV Publishing House, [1788] 1974.
- Nelson, J.:** Recht en Grond [Right and Land]. In: Kanhai & Nelson (eds.), *Strijd om grond in Suriname*, 1993.
- O'Connell, D.:** *The Law of State Succession*, Cambridge University Press, Cambridge, 1956.
- OAS/UPD:** *Natural Resources, Foreign Concessions and Land Rights: A Report on the Village of Nieuw Koffiekamp*, Unit for Promotion of Democracy, General Secretariat, Organization of American States, Washington D.C., 1997.
- Parker and Nelson:** Jus Cogens: Compelling the Law of Human Rights, *Hastings International and Comparative Law Review*, vol. 12, 1989.
- PARS/VIDS:** *Report of the Gran Krutu at Galibi 20, 21 and 22 November 1996*, Paramaribo, 1997.
- Price Cohen, C. (ed.):** *Human Rights of Indigenous Peoples*, Transnational Publishers, Arden, New York, 1998.
- International Protection of the Rights of Indigenous Children. In: Price Cohen, *Human Rights of Indigenous Peoples* 1998.
- Price, R.:** *Saramaka Social Structure. Analysis of a Maroon Society in Suriname*, Institute of Caribbean Studies, University of Puerto Rico, 1975.
- *First-Time. The Historical Vision of an Afro-American People*, Johns Hopkins, Baltimore, 1983.
- *To Slay the Hydra. Dutch Colonial Perspectives on the Saramaka Wars*, Karoma, Ann Arbor, 1983.
- *Alabi's World*, Johns Hopkins, Baltimore, 1990.

- Scrapping Maroon History: Brazil's Promise, Suriname's Shame. In: *New West Indian Guide*, vol. 72 no. 3 & 4, 1998.
- Prott, L.V.:** Cultural Rights as Peoples Rights in International Law. In: Crawford, *The Rights of Peoples* 1988.
- Quaye, C. O.:** *Liberation Struggles in International Law*, Temple University Press, Philadelphia, 1991.
- Quintus Bosz, A.J.A.:** *Drie Eeuwen Grondpolitiek in Suriname* [Three Centuries of Land Policy in Suriname], Paramaribo, 1980 (original diss. Groningen 1954).  
- *Grepen uit de Surinaamse Rechtshistorie. Verzamelde Werken van Prof. Mr. A.J.A. Quintus Bosz* [Elements of Surinamese Legal History. Collected Works...], Vaco N.V., Paramaribo, 1993.  
- Commentaar op eigendomsbeschouwingen van de Surinaamse Juristenvereniging [Comments on reflections on ownership by the Surinamese Jurist Association]. In: *Grepen uit de Surinaamse Rechtshistorie*, Paramaribo, [1982] 1993.  
- De Rechten van de Bosnegers op de Ontruimde Gronden in het Stuwmeergebied [The Rights of the Bushnegroes to the Evacuated Lands in the Reservoir Area]. In: *Grepen uit de Surinaamse Rechtshistorie*, Paramaribo, [1965] 1993.  
- De toepassing van het uit Indonesië geïmporteerde desa-model in Suriname [The implementation in Suriname of the desa model imported from Indonesia]. In: *Grepen uit de Surinaamse Rechtshistorie*, [1981] 1993.
- Ramcharan, B.:** The Concept and Dimension of the Right to Life. In: B. Ramcharan (ed.), *The Right to Life in International Law*, Oxford University Press, Oxford, 1985.
- Ramsoedh, H.:** *Suriname 1933-1944: Koloniale Politiek en Beleid onder Gouverneur Kielstra* [Suriname 1933-1944: Colonial Politics and Policy Under Governor Kielstra], Arnhem, 1990.
- Roberts-Wray, K.:** *Commonwealth and Colonial Law*, 1966.
- Sambo, D.:** Indigenous Peoples and International Standard Setting Processes: Are State Governments Listening? In: *Transnational and Contemporary Problems*, Vol. 3, 1993.
- Sanomaro Esa:** *Verslag van de Derde Regionale Bijeenkomst Inheemse Vrouwen te Mata van 27 t/m 29 november 1998* [Report of the Third Regional Meeting of Indigenous Women at Mata on 28 and 29 November 1998], Paramaribo, 1998.  
- *Indigenous Rights, Women and Empowerment in Suriname*, Paramaribo, forthcoming 1999.
- Schalkwijk, M.:** *Colonial State Formation in Caribbean Plantation Societies. Structural Analysis and Changing Elite Networks in Suriname, 1650-1920*, unpubl. diss. Cornell University, [1994] 1998.
- Schiltkamp, J.A. & J.Th. de Smidt:** *West-Indisch Plakkaatboek: plakaten, ordonnantien en andere wetten uitgevaardigd in Suriname: deel I 1667-1761* [West-Indian Placard Book: placards, ordinances and other laws issued in Suriname part I 1667-1761], Amsterdam 1973.
- Scholten, B.:** *Bosnegers en Overheid in Suriname. De ontwikkeling van de politieke verhouding 1651-1992* [Bushnegroes and Government in Suriname. The Development of the Political Relationship 1651-1992], diss. Nijmegen, Afdeling Cultuurstudies/Minov, Paramaribo, 1993.
- Stavenhagen, R.:** Cultural Rights and Universal Human Rights. In: Eide, Krause & Rosas, *Economic, Social and Cultural Rights* 1995.
- Trelease, A.:** *Indian Affairs in Colonial New York: The Seventeenth Century*, University of Nebraska, Lincoln, 1997.
- Tuinstra, G.A.:** *Grondhuur en andere zakelijke rechten op domeingrond in Suriname* [Land Lease and other Real Rights to Domain Land in Suriname], unpubl. M.A. thesis, University of Groningen, 1997.
- United Nations:** *Revised and Updated Report on the Question and Prevention and Punishment of the Crime of Genocide*, UN Doc. E/CN.4/Sub.2/1985/6, 1985.  
- *Report of the United Nations Expert Seminar on Indigenous Autonomy and Self-Government 28 September 1991*. UN Doc. E/CN.4/1992/42, 1992.  
- *Report of the United Nations Expert Seminar on Practical Experiences regarding Indigenous Land Rights and Claims, held at Whitehorse, Canada, from 24 to 28 March 1996*. UN Doc. E/CN.4/Sub.2/AC.4/1996/6, 1996.
- Van Laer, A.J.F. (ed.):** *Documents Relating to New Netherlands, 1624-26, in the Henry E. Huntington Library*, San Marino, Calif., 1924.
- Vletter, D.R. de:** The Geological and Mining Service (GMD) of Suriname. In: Th.E. Wong, D.R. De Vletter, L. Krook, J.I.S. Zonneveld & A.J. Van Loon (eds.), *The History of Earth Sciences in Suriname*, KNAW & Ned. Inst. Toegep. Geowet TNO, Amsterdam, 1998.
- Vollenhoven, C. van:** *Politieke Contracten met de Boschnegers in Suriname* [Political Contracts with the Bushnegroes in Suriname]. In: *Verspreide Geschriften*, part 3, 1916.  
- *Staatsrecht Overzee* [State Law Overseas], Leiden / Amsterdam, 1934.
- Wekker, J.:** *Indianen en Pacificatie* [Indians and Pacification]. In: *Oso*, no. 2, October 1993.  
- *Het Indiaans Erfgoed* [The Indian Heritage]. In: J. Wekker, M. Molendijk & J. Vernooij (eds), *De Eerste Volken van Suriname*, Stichting 12 October 1992, Paramaribo, 1992.

- Archiefdocumenten verhalen over Indianen [Archival documents talk about Indians]. In: *SWI FORUM*, Vol. 9 Nos. 1 & 2 ('Indianen in de Guyana's'), 1992.
- WIGP:** *Discrimination Against Indigenous Peoples, Report of the Working group on its tenth session*, at para. 71. UN Doc. E/CN.4/Sub.2/1992/33, 1992.
- Wijk, Van H.D. & W. Konijnenbelt:** *Hoofdstukken van Administratief Recht* [Chapters of Administrative Law], Lemma, Culemborg, 1988.
- Wijnholt, M.R.:** *Strafrecht in Suriname* [Criminal Law in Suriname], Kluwer, Deventer, 1965.
- Williams, R.A.:** *The American Indian in Western Legal Thought. The Discourses of Conquest*, Oxford University Press, Oxford and New York, 1990.
- Williamson, J. A.:** *English Colonies in Guiana and on the Amazon 1604-1668*, Clarendon Press, Oxford, 1923.
- World Council of Churches:** *Land is Our Life. WCC Programme to Combat Racism*, Geneva (1989).
- World Bank:** Caribbean Country Management Unit, Latin America and Caribbean Region, *Suriname - A Strategy for Sustainable Growth and Poverty Reduction*, Country Economic Memorandum, unpubl. draft, 1998.
- World Resources Institute:** *Backs to the Wall in Suriname: Forest Policy in a Country in Crisis*, Washington DC, 1995.

ANNEX: INDIGENOUS AND MAROON RIGHTS IN SURINAMESE LAND AND RESOURCE LEGISLATION			
Date	Applied to	Provision relating to Indigenous Peoples or Maroons	Provisions relating to 'Domain'
Ordre van Regieringe 1629	Dutch colonies in West-Indies	art. 14: 'the...Naturals of the land who subject themselves to the government and obedience of the lords States-General will keep their <i>ingenios</i> , lands, houses and other goods and will remain and protected in the free possession and use thereof...'	art. 18: 'The lands that are unman-aged or wild, remain unsettled and which can be cultivated, shall be ... issued to the Colonists.' art. 19: 'Hunting, Fishing and Bird catching shall be free to all Inhabit-ants and Subjects, provided that the Council will [see to it that game does not become extinct].'
Articles of Capitulation Crijnsens / Byam 1667	Surinam; territory between Marowijne and Saramaca river		art. 3: 'all persons whatsoever & what nacion soever ... that at present... personally inhabit Surynam... shall have reserved and confirmed unto them, their Estates, Lands Goods, of wat nature and conditions, to enjoy, inherit and possess them to themselves and their heirs forever, without the least op-position, molestation or hindrance...'
Land warrants issued between 1667-1820	allodial, leasehold titles and timber permission letters	'that he shall not be allowed to undertake anything to the disadvantage of the [Free] Indians or any Prior Concessions.'	

Model warrant provided by KB 1820	allodial and leasehold titles	no savings clause in allodial and leasehold titles; clause was maintained in timber per-mission letters.	
Land warrants issued after 1860	allodial titles outside 'cultivated area' and per-mission letters for timber	'should there be Indian [or Bushnegro] settlements in the area granted, the con-cessionair will always respect those, with-out ever disturbing said Indians, even less forcing them to move.'	
Government Regulation 1865	Suriname		art. 152: 'granting of ownership or lease-hold and the management of the domain lands and forests...are regulated by law or in the absence thereof by colonial or-dinance'
Surinamese Civil Code 1869	Suriname		art. 576: 'Lands and immovable goods that are unmanaged or have no owner... belong to the State.'
Resolution of 30 July 1877	leasehold titles for gold mining	'No concession or its effects may violate rights of bushnegroes and indians to their villages, settlements and agricultural plots which may be located within the allocated parcel of domain land.'	
Gold Ordinance 1882	concessions for gold mining	art. 35: 'No rights of Bushnegroes and In-dians to their villages, settlements and ag-ricultural plots shall be violated.'	

Balata Ordinance 1914	concessions for <i>balata</i> (natural rubber)	art. 24 (1): 'The concessionholder...shall respect the rights of bushnegroes and indians on their villages, settlements and agricultural plots which may be located within the area.'	
Revision of Gold Ordinance ('Mineral Ordinance') 1932	gold concessions	art. 35: 'no concession or its effects may violate the rights of Bushnegroes and indians to their villages, settlements and agricultural plots, which may be located within the granted parcel of domain land.'	
Agrarian Ordinance 1937	leasehold for cultivation and occupation	art. 1 (1): 'the allocation of domainland...shall be carried out while respecting the lawful rights and entitlements of third parties, including the rights of Bushnegroes and Indians on their villages, settlements and forest plots.'	
Timber Ordinance 1947	timber concessions	art. 5 (1): 'the holder of a permit for the exploration or exploitation of timber shall respect the rights of Bushnegroes and indians to their villages, settlements and agricultural plots which may be located within the allocated terrain.'	
Nature Protection Act 1954	nature reserves	no provision on indigenous peoples or Maroons.	art. 1: 'the President may allocate lands and waters which belong to the State Domain as nature reserves.'

L-Decree on Principles of Land Policy 1982	and lease, lease hold and allodial ownership	art. 4 (1) and (2): 'In allocating domain land, the rights of the tribal Bushnegroes and Indians on their villages, settlements and forest plots will be respected, provided that this is not contrary to the general interest. General interest includes the execution of any project within the framework of an approved development plan.'	art. 1(1): 'All land to which others have not proven their right of ownership, is domain of the State.'
Nature Protection Resolution 1986	Nature reserves issued in 1986	art. 4: 'the forest inhabitants who live in or near the nature reserves will maintain their traditional rights and interests.'	
Mining Decree 1986	mining concessions	art. 25 (1b): 'concessionair must indicate tribal settlements within concession; third parties and claimants must be compensated for any damage arising out of mining operations.'	art. 2(2): 'All minerals are property of the State; art. 46 (a) private land is land owned by others than the State, or domain land issued under a real of personal title.'
Forestry Management Act 1992	logging concessions	art. 41 (1a): 'the customary rights of the tribal bushland inhabitants to their villages, settlements and agricultural plots will continue to be respected as much as possible.'	art. 1 (f): 'Domain land is all land on which no real use right has been established / art. 1(n): community land is land on which tribal bushland dwellers have established villages or settlements or land that they have cultivated or may cultivate.'
Nature Protection Resolution 1998	Central Suriname Nature Reserve	art. 2: 'To the extent that within the established nature reserve areas are located which have been issued as allodial ownership, leasehold, land lease, rent, use, or concessions, including villages and settlements of tribal bushland inhabitants, the acquired rights will be respected, unless (a) the general interest or the national goal of the established nature reserve is harmed; or (b) is provided otherwise.'	

LIST OF ABBREVIATIONS AND ACRONYMS

CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CI	Conservation International
DC	<i>Districts Commissaris</i> [District Commissioner]
FAO	United Nations Food and Agricultural Organization
HKV	<i>Houtkap vergunning</i> [wood cutting permit]
HRC	United Nations Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
IESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
LBB	<i>Dienst 'sLands Bos Beheer</i> [State Forestry Service]
NGO	Non Governmental Organisation
NIMOS	National Institute for Environment and Development in Suriname
NMR	<i>Nationale Milieu Raad</i> [National Environment Council]
OAS	Organisation of American States
OEA	Organisation of American States
PARS	<i>Platform Amazone Regenwoud Suriname</i> [Platform Amazonia Rainforest Suriname]
RCAP	Royal Commission on Aboriginal Peoples
ROB	<i>Raad voor de Ontwikkeling van het Binnenland</i> [Council for the Development of the Interior]
SJB	<i>Surinaams Juristen Blad</i> [Suriname Legal Journal]
TNC	Trans National Corporation
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Education Science and Cultural Organization
VIDS	<i>Vereniging van Inheemse Dorpshoofden in Suriname</i> [Association of Indigenous Village Leaders in Suriname]
VOC	<i>Verenigde Oost-Indische Compagnie</i> [United East India Company]
WGIP	United Nations Working Group on Indigenous Populations
WIC	<i>West Indische Compagnie</i> [West India Company]