Land-Law and Landholding in Surinam

By *Harold F. Munneke*[1]

1. Introduction

Surinam is one of the three Guyanas lying at the northern coast of the South American continent.[2] It lies between Guyana – a former British colony – in the west and French Guyana in the east. It is in surface five times the Netherlands. Yet its about 405.000 inhabitants live on a surface half as extensive as the Netherlands, mostly in the coastal area. More than 90 % of the Surinamese surface is still considered as inland. About 50.000 people are supposed to live here.[3]

In colonial times, Surinam was, some intervals of British rule disregarded, under control of the Dutch. Until the end of the 18th century, Surinam was governed by a trade company, which had indirectly received powers of the Dutch Parliament to do so. In the beginning of the 19th century, Surinam stood under direct control of the Dutch Crown whereas, after the constitutional reforms of 1865, the Dutch Parliament was seen as the highest authority in Surinam. In 1955, a new supra-constitutional document for the Kingdom of the Netherlands gave Surinam autonomy. In 1975, Surinam became independent, later facing military coups in 1980 en 1990. Since 1991, civilians are in power trying to diminish the politiccal influence of the army.

As many Caribbean countries, Surinam has a past as a plantation society. In the 17th and 18th century Creole slaves from Africa were used as workers on the plantations while after the abolition of slavery in 1863 Hindustan contract-labourers were attracted from British India. Later on, the workers came from Java in the Dutch East Indies. The abandonment of rights of (free) repatriation in the past led to the present multiracial composition of the

1 The author wants to thank A. Dekker, S. van Hoey Schilthouwer Pompe and J.M. Otto for their comments.

2 For general information concerning Surinam see *Chin, H.E. / Buddingh', H.*, Surinam – Politics, Economics and Society, London and New York 1987; Encyclopedie van Suriname / red. *C.F.A. Bruijning* et al., Amsterdam 1977; *Moerland, J.*, Suriname – Landendocumentatie, Amsterdam: Royal Institute for the Tropics, 1984; *Verschuuren, S.*, Suriname – Geschiedenis in hoofdlijnen, Utrecht 1987.

3 This figure may not be reliable, because in the past decade a civil war in the inland caused an influx of Surinamese inlanders into French Guyana.

Surinamese population or, if that term is preferred in a wider Caribbean context, to a plural society.[4]

Figures from 1986 gave the following picture of the composition of the Surinamese population:

Hindustans	35,0 %
Creoles	32,0 %
Javanese	15,0 %
Maroons	10,5 %
Indians	2,5 %
Chinese	2,0 %
Europeans	1,5 %
Other (Libanese, Anglo-Americans)	1,5 %

The Indians and Maroons are living in the inland in various tribes. The Indians are the descendants of the pre-colonial inhabitants, while the Maroons have runaway slaves as ancestors.[5] These slaves organized themselves socially in tribes and fought from time to time guerilla wars against the plantation-holders and the colonial government. Even in times of peace, these Maroon tribes meant a threat to the planters as they could not always prevent the desertation of their slaves to that tribes.

A permanent deterioration in living conditions in Surinam in the last decades forced many Surinamese to emigrate to the Netherlands. Today one third of all Surinamese (± 180.000) live in Holland. In particular the flight of Surinamese intellectuals under military dictatorship meant a serious brain-drain for Surinamese society.

The main natural resources of Surinam are bauxite, timber, agriculture and fishing. Mining and lumbering are activities characteristic for the inland. Today, the main crops are rice, bananas and palm kernel, while sugarcane has lost the predominant position of past centuries. In the coastal area, agriculture takes place in order to export or to provide the capital of Paramaribo, whereas in the inland agriculture is practiced for reasons of self-reliance. Surinamese fisherman are specialized in the processing of shrimps.

With the above information on Surinam in mind, I will present the central question of this paper. To what extent and under what conditions can land-law contribute to an economically useful landholding in Surinam? Below I will show how the Surinamese land-law has

4 *Smith, L.G.*, The plural society in the British West Indies [reprint collected papers], Berkeley etc. 1974, pp. 10-17.

5 The Dutch called these slaves "Bosnegers", to be translated as "Bush Negros".

developed itself in different forms as a result of an interaction with historical, social and economic conditions.

2. Materials and methods

Before looking into the relationship between land-law and landholding in the past and the present, more light on both subjects is needed. The focus cannot be directed only towards the legislation concerning landholding and the objectives behind it. Information is also necessary about the way in which land is actually used and about the social and economic conditions interacting with the law.

The literature about land-law in Surinam is scarce. In fact the only scholar engaged in land-law was *Quintus Bosz*. His dissertation[6] is the only monograph giving a systematic insight into the history of Surinamese land-law. Due to his outstanding position he has never been challenged seriously by other researchers to defend his legal ideas. That makes it difficult in some cases to see if his opinions about land-law are to be considered as personal views or as common insights. The absence of published court decisions to verify such matters can make such doubts more inconvenient.

Like the knowledge of land-law, that of land-use is fragmented. The tribes in the inland were studies by antropologists. Thus Indian tribes in the Guyanas got attention from *Thoden van Velzen*[7] and *Kloos*[8], while the Maroons were the object of antropological research by *Köbben*[9] and *Van der Elst*[10]. Although these studies focus primarily on matters of kinship, social hierarchy, etc., some insight is given in the use of land. In the past decade the inland has been afflicted by a civil war. Besides that, (inter)national police autorities have a strong feeling that the inland is used as transito territory for drug-traffic. These events must have their effects on the traditional lifestyles of the inhabitants of the inland.

6 *Quintus Bosz, A.J.A.*, Drie eeuwen grondpolitiek in Suriname – Enn historische studie van de achtergrond en de ontwikkeling van de Surinaamse rechten op grond [diss. Groningen], Assen 1954.

7 *Thoden van Velzen, H.U.E.*, Politieke beheersing in de Djuka maatschappij; een studie van een onvolledigmachtsoverwicht (2 delen), diss. Amsterdam 1966.

8 *Kloos*, The Maroni River Caribs of Surinam [diss. Amsterdam], Assen 1971.

9 *Köbben, A.J.F.*, Van primitieven tot medeburgers, Assen 1964.

10 *Elst, D.H. van der*, The Bush Negro tribes of Surinam, South America: a synthesis, Evanston, Illinois, diss. Northwestern University 1970.

With regard to the coastal area, land-use was the object of study for historians and experts in the field of agriculture.[11] Most of this literature is based on statistical data originating either from government sources or from self-collected materials. It must be stated, however, that official statistics in Surinam are not known for utmost reliability and that respondents can be inclined towards giving the most flattering information.

Besides problems of scarcity of materials, one must be aware of the fact that the present Surinam is in a situation of economic and moral decay. Today, the drug-traffic, the black market and smuggling have their attraction on people as a source of easy money replacing interest in risky investments in agriculture or labouring under the tropical sun.

3. Issues

The Dutch Civil Code was almost entirely copied for Surinam in 1869. The question rises if, consequently, Surinamese land-law is in fact to be considered Dutch land-law that in the past has been imposed by Dutch colonial lawyers on the Surinamese. To answer this question, something has to be said about the basic concept of landholding in Dutch law.

The legal system in the Netherlands of the nineteenth century was biassed toward the ideas of economic liberalism. These ideas were incorporated into the legal system by making individual freehold (of land) a central issue. The Dutch Civil Code defined property as the most absolute right of a person to enjoy (un)movable things as desired. At the same time constitutional arrangements made expropriation by the state possible only after laborious judicial procedures in which loss of property had to be judicially sanctioned and adequately compensated.

As we will see, there was no place in Surinam for Dutch liberal legal values as accepted in Europe.[12] In spite of the introduction of the Dutch Code in Surinam, the notion of indi-

11 *Panday, R.M.N.*, Agriculture in Surinam 1650 - 1950 – An enquiry into the causes of its decline, diss. Amsterdam 1959; *Kalshoven, G.*, Patronen van communicatie en hun organisatorisch verband, diss. Wageningen 1977; *Heilbronn, W.*, Kleine boeren in de schaduw van de plantages – De politieke economie van de na-slavernij periode in Suriname, diss. Amsterdam 1982; *Morenc, J.*, Surinaamse kleine landbouw en landbouwbeleid – een structurele analyse, diss. Nijmegen 1988; *Ramsoedh, H.K.*, Suriname 1933 - 1944 – Koloniale politiek en beleid onder Gouverneur Kielstra [diss. Utrecht], Delft 1990.

12 According to De Gaay Fortman (*Gaay Fortman, de B.*, You cannot develop by Act of Parliament, Paper symposium Law and Development, Leiden 1981) law as the basis for development can be seen in the light of four macro-economic models. Applied to land as a production-good we can distinguish:
1. umlimited freehold of land
2. regulation of agricultural prices

vidual freehold was in fact alien to the Surinamese land-law. That law passed over the notion of individuality by the recognition, institution or toleration of collective landholding. It ignored at the same time the idea of freedom to hold the land as desired by issuing prescriptions for the use of land.

The themes of collective landholding and prescribed land-use are sometimes mutually defined sometimes overlapping. Some types of these collective landholdings can be confronted with prescriptions while others cannot. For analytical reasons I will nevertheless present the two themes separately.

4. Collective landholding

To this day, provisions for collective landholding have been a part of the Surinamese legal system. Collective holdings can be seen as a recognition, an incorporation or a toleration of communal structures in the national legal system. The motives behind legal policies concern collective holding in the past and the present can be classified as cultural (4.1), practical (4.2) or ideological (4.3).

The collectivities encountered are of a different nature: a traditional tribe (4.1.1), a legally created village (4.1.2), a legal foundation with contractors and/or employees (4.2.1), a joint property structure (4.2.2) and a legal cooperative (4.3).

4.1 Cultural motives

The collective holding of agricultural lands can be found among Maroons and Indians as well as Javanese.

3. regulation of landuse
4. exploitation of land by the state.
In the Netherlands of the 19th century, the legal system was biassed toward model 1 embodying the ideas of economic liberalism. In Holland today, manipulation of agricultural prices is widely accepted as a result of EEC membership so that model 2 comes in the spotlight. The Surinamese land-law has to be associated with model 3.

4.1.1 Maroons and Indians

The traditional rights of the inlanders[13] as recognized by the authorities are to be seen as collective tribal rights. Legal documents concerning Maroons and Indians are always refering to them as tribal collectivities. A brief explanation will clarify this.

The inland tribes grow subsistance crops practizing what is known as "shifting agriculture". They use for some years certain small plots of land until exhaustion renders these plots unsuitable for further exploitation. Then they burn down sections of the jungle to obtain new fertile land.

If we look back to 1586, we see that the Dutch governor Van Sommelsdijk concluded the first treaty with Surinamese Indians in which he recognized their tribal territorial domain. Afterwards, the Indians were the allies of the Dutch in their fight against the Maroons. In the second half of the 18th century, the pacification of the Maroons took place by means of peace treaties. These treaties were in essence agreements in accordance with international law, and were based on a separation between the colonial domain and the domain of the different Maroon tribes. In the 19th century these treaties were replaced by so-called "political contracts" characterized by the incorporation of tribal authorities into the colonial administration; in turn these authorities recognized the sovereignty of the colonial power.[14]

Following the various contracts, legislation concerning mining and lumbering contained the so-called guarantee-formula. Concession holders were obliged to respect the rights of Maroons and Indians to their villages, settlements and living areas. In the Agrarian Ordinance of 1937 (GB 1937, 53)[15], however, it was stipulated that the allocation of domanial land by the authorities should take place with respect of the rights of third parties, including the inlanders. It is noteworthy that the legal expression has changed from one limiting titles of concessionholders into one prescribing a policy to be carried out by the government.

In the Decree Principles of Land Policy of 1982 (SM 1982, 10), the formula is confined to inlanders living in tribal conditions and to situations in which the public interest does not conflict with the formula. It is stated explicitly that the term public interest includes the execution of any project within the framework of an approved development plan. This explicitness may be seen as the echo of the events in 1963-1965. The Maroons had to be

13 Sympathizers of these rights are found in *Kanhai, I. / Nelson, J.*, Strijd om grond in Suriname – verkenning van het probleem van de grondenrechten van Indinanen en Bosnegers, Paramaribo 1993.

14 *Vollenhoven, C. van*, Politieke contracten met de bosnegers in Suriname, Leiden 1916.

15 The abbreviation for the official gazet containing legislation before independance is GB. After 1975 it becomes SB.

evacuated to so-called transmigration villages because their original villages were planned to disappear under the surface of a huge artificial lake, part of a masterplan for the generation of electricity. *Quintus Bosz*[16] took up the task of legally justifying governmental transmigration policies.

The attitude of policy makers towards the traditional land of inlanders has always been a negative one. This is clear from the negative definition of the concept of traditional rights. Not those rights[17] are the central issue, but rather the willingness of non-inlanders to avoid infringements. This is explicable for various reasons:

- Shifting agriculture does not fit into a structure of registration of proprietary rights on surveyed land when living areas are abandoned in favour of new ones.
- The traditional rights involved are difficult to define in terms of collective or individual rights. We do not know exactly on which level (tribe, subtribe or extended family) the mechanism operates to convert collective landrights into individual rights.[18]
- In course of time the Maroons in particular entered into contractual relationships with the large concession holding companies that penetrated into the interior, or they moved to the city. Traditional legal values are being diluted as a result of contact with "modernity".

4.1.2 Javanese

In the first half of this century, about 33.000 Javanese contract labourers came to Surinam. After the termination of the contract period 75 % of them stayed there. The Javanese have been said to be very community minded. In the case of Surinam it has been added that the Javanese had to maintain themselves among more business-like population groups, which intensified the inward-looking mentality.[19]

16 *Quintus Bosz, A.J.A.*, De rechten wan de bosnegers op de ontruimde gronden in het stuwmeergebied, in: Surinaams Juristenblad, 5, 1965, 14-21.

17 At the time of independence in 1975, the Minister of Justice went so far as to maintain that the idea of traditional rights had lost its sense, since inlanders would have the same rights under the Surinamese constitution as other citizens (*Munneke, H.F.*, Customary Law and National Legal System in the Dutch speaking Caribbean with Special Reference to Surinam, in: European Review of Latin American Studies, 51, December 1991, 91-99).

18 See *Prins*, Vragen inzake bosneger volksrecht, in: West-Indische Gids, 33, 1952, 53-76.

19 According to *De Waal Malefijt*, The Javanese of Surinam, Assen 1963, "rukun" has a central place in the Surinamese-Javanese culture. It must be seen in terms of communal harmony and social balance.

In 1933, *J.C. Kielstra*, a professor in colonial macro economics and an expert in the field of agrarian law[20], was appointed governor of Surinam. At that time he had already a long career as administrator in the Dutch East Indies. Not surprisingly, he proposed East Indian structures to meet the needs of the Javanese in Surinam.[21] *Kielstra* did not withdraw his plans for the introduction of local Javanese village autonomy after accusations by other population groups that the legal unity of Surinam was destroyed. With the support of the government in the Hague, he executed his plans.[22]

The villages were given the domanial lands within their boundaries as collective lands for a term of 75 years. The grounds were to be used for building, living, agriculture, keeping cattle, lumbering for non-commercial purposes and collecting of forest products. Inhabitants could get individual rights of use from the village. The rights for non-inhabitants were severely restricted and moving out of the village led to the loss of rights. It was forbidden for the residents to sell plots of village land (residents did not possess freedom of alienation); these plots could thus not be encumbered with a mortgage.

The last villages have been abolished as legal institutions in the eighties. Most of the villages did not flourish as expressions of Javanese community life. The impact of cultural conditions on their functioning is difficult to measure. One may argue that even in Java the legal construction meant an oversimplification and overestimation of traditional feelings of solidarity.[23] It may be said that a traditional cultural institution such as the Javanese village cannot be transplanted from one physical environment to another.[24] Leaving these considerations for what they are, it must be noted that the village policy had an outcome other than the protection of Javanese communities. The acceptation of outsiders (Hindustans in

20 *Ramsoedh*, see Fn. 11, 43; *Quintus Bosz, A.J.A.*, De toepassing van het uit Indonesië geïmporteerde desa-model in Suriname, in: Surinaams Juristenblad, 1981, 536-545 (536).

21 *Kielstra, J.C.*, Application of Netherlands Indies Agrarian Principles to Suriname (Netherlands Guiana), in: Caribbean Land Tenure Symposium / red. Marshall Harris, Washington, D.C.: Caribbean Commission 1946, 335-355.

22 In spite of political opposition, *Kielstra* realized various legal reforms in Surinam, including some in the field of marriage law (*Munneke, H.F.*, Customary Law and National Legal System in the Dutch speaking Caribbean with Special Reference to Surinam, in: European Review of Latin American Studies, 51, December 1991, 91-99 [95, 96]). An oversight in the variety of moral judgments about *Kielstra* has been given by *Ramsoedh*, see Fn. 11, pp. 1, 2. Following *Ooft, C.D.*, De ontwikkeling van het constitutionele recht van Suriname [diss. Leiden], Assen 1972, pp. 125-133, he gives a description of several clashes between *Kielstra* and the Surinamese Parliament. Meanwhile he underlines that the resistance against *Kielstra* originated from small elite groups afraid that their interests would be undermined (133-150).

23 *Breman, J.*, Het dorp in Azië als koloniale schijngestalte, Amsterdam: Centre for Asian Studies, 1987.

24 *Wengen, G.D. van*, De Javanen in de Surinaamse samenleving, Leiden 1972, 102.

particular) in the villages encouraged not cultural segregation but rather cultural assimilation.[25]

Most villages were not successful as economic production units, but the billages in the Nickerie district in the West were an exception. Here the control of the water level was of vital importance for the rice cultivation, and this brought farmers together in serving a common interest.[26] The inhabitants of other villages were less active, leaving village matters to the village chiefs who were frequently hindered by a lack of managerial capacities and of subsidies of the government.

Even the Nickerie villages gradually were seen as outdated structures, due to credit and marketing problems[27]:

- Individual peasants possessed an heritable user right without freedom of alienation and, therefore, unsuitable to be encumbered with a mortgage. This meant a lack of credit facilities for mechanizing labour and buying seeds, fertilizers and insecticides.
- Legal possibilities for the establishment of small-scale industries for the further processing of local agrarian products were lacking, as these industries were not generally seen as residents in terms of the law. Therefore, villagers could not rely on local sawmills and rice jusking industries as consumers of their products.

4.2 Practical motives

4.2.1 Wageningen polder

The Foundation for Mechanical Agriculture exploitates the most extended polder of Surinam, i.e. the Wageningen polder in Nickerie. It is famous among experts in tropical agriculture for its advanced technics in the field of mechanization and upgrading of varieties in rice.[28] The water-regulation within the polder has been dealt with efficiently by means of drainage and irrigation (utmost important for the cultivation of rice). The sewing and spreading of chemicals against diseases and weeds by means of aeroplanes have been institutionalized in 1964.[29]

25 *Quintus Bosz, A.J.A.*, De toepassing van het uit Indonesië geïmporteerde desa-model in Suriname, in: Surinaams Juristenblad, 1981, 536-545 (541).

26 Ibid., p. 542.

27 Ibid.

28 *Lier, R. van*, Samenleving in een grensgebied – Een sociaal-historische studie von Suriname, Deventer 1971, 308.

29 Encyclopedie van Suriname / red. *C.F.A. Bruijning* et al., Amsterdam 1977, 365.

The Foundation did never parcel out the polder for allocation to individual farmers. The Wageningen project was set up in 1951 with Dutch development aid and Dutch agricultural expertise with the intention to settle Dutch immigrant farmers in the polder. As these farmers never arrived, individual rights of use were never established and the Foundation was converted into a state-enterprise.[30]

As a result of the supply of development funds, the Foundation had not the same credit-problems as other farmers.[31] Commercial risks could thus be taken without fear for bankruptcy.

4.2.2 Lelydorpplan

The Lelydorpplan, designed to be executed in the Paradistrict nearby the city of Paramaribo, was another ambitious project from the fifties aiming at more agricultural diversity than the rice-monoculture in Wageningen.

Lelydorp could not equal the fame of Wageningen. After the start of the execution of the plan, the quality of the soil proved to be deceptioning. Besides that, difficulties arose in finding tenant farmers with expertise concerning the crops the planners wanted to be grown.

The plan was hindered by the juridical obstacle of the common property situation in Para.[32] Property claims of a complex nature had been linked to (almost) all non occupied extended plots. Since the abolition of slavery plantation grounds were acquired commonly by former slaves in allodial property (a term which will be dealth with later). For generations long, these estates have been unparcellated; this caused a huge number of entitled persons not always easy to locate and with only partly documented claims.[33] Even concerning land that

30 *Morenc, J.*, see Fn. 11, 66.

31 In the period 1956 - 1960, each year was closed with a deficit. The Netherlands government did pay the bill (*Kool, R.*, Agricultural planning in Surinam 1950-1960 – An evaluation, Wageningen 1964, 113). In 1961 the Surinamese planning expert *Adhin, J.H.* (Development Planning in Surinam in Historical Perspective [diss. Groningen], Utrecht 1961, pp. 141, 142) warned the Netherlands not to stop subsidizing the Foundation because of its positive influence on the investment climate.
Published information on the situation today is difficult to find. In 1982 the Dutch government reacted to the violation of human rights by the army by cutting off development aid for Surinam. Thereafter, rice cultivators complained in newspapers about the fact that due to the lack of foreign currency the maintenance of the mechanical way of cultivation would become impossible.

32 Welvaartsfonds Suriname, Eindverslag tevens verslag over het jaar 1954, Paramaribo: Gouvernementspublicatie, 1955, 74-79.

33 A comparable situation on the Caribbean island of Carriacou near Grenada is described by *Smith,* see Fn. 4, 221-261.

was supposed to be converted in domanial property, claims of private property were presented.

The central government was reluctant to touch the politically tricky question of parcellation of common land. Time came at help. Bauxitewinning in the sixties urged for alteration of the original plan and for transmigration of already contracted tenants.[34] For the bauxite-industry possessing the proper mining permits the issue of land-rights was irrelevant.

4.3 Ideological motives

In February 1980 a group of sergeants took over civil government whereafter in december 1982 a group of 15 prominent citizens were killed by members of the army. A wave of revolutionary rethoric swept in the interval-period over the country. Leftish groups, which waid to be in struggle against (neo-)colonialism and imperialism, announced regulatory measures in the field of the economy and the stimulation of the formation of cooperatives.[35]

A landreform was executed by the promulgation of a new set of land-regulations in 1982. Section 6.5 of the Decree Allocation Domanial Land (SB 1982, 11) stipulates that applications for allocations that will be presented by persons *united in a cooperative* to cultivate the land or to conduct a business, will be prioritized. Section 5 of the Decree Principles Landpolicy (SB 1982, 10) mentions at the same time the possibility of financial or other support for small peasants who individually or *in a cooperative* grow subsistance crops. The support concerns a.o.:

- providing with credits and lending technical assistance[36];
- price-guarantees regarding products;
- insuring risks being the consequence of unforeseeable and unforeseen circumstances as crop failure, calamities, etc.;
- sales promoting.

The Surinamese government remarks in an Explanatory Statement that this legislation could be a starting point for collective management and cultivation of land. At the same time, it says to realize that collective structures are not widely practized in the agricultural

34 Encyclopedie van Suriname / red. *C.F.A. Bruijning* et al., Amsterdam 1977, 49.

35 *Chin, H.E. / Buddingh', H.*, Surinam – Politics, Economics and Society, London and New York 1987, pp. 142. 143.

36 The Surinamese Department for Agricultural Information is trapped into a vicious circle. Most of the time it lacks financial funds to guide peasants to agricultural innovation. Is it nevertheless successful in contacting peasants, then it can not put them up to investments when credit facilities are out of sight (*Kalshoven, G.*, see Fn. 11, 124).

sphere[37] and that people cannot be compelled to these structures in a pluriform society as the Surinamese. The legislator can thus only create conditions that enable a good start for collective agriculture.[38]

The preferential treatment of cooperatives in the allocation of domanial land caused an increase in popularity for the cooperatives. A conversion to cooperatism was seen as the most easy way to obtain agricultural plots.[39]

5. Land-use with(out) prescriptions

5.1 Code-property

As has been said before, the Civil Code from 1869 formulated property as the most absolute right to enjoy (un)movable things as desired. This property concept left little opportunity for the government to control the owner as it was characterized by the following legal principles:

- freedom of (non-)use as desired
- freedom of alienation
- no financial duties
- expropriation after laborious procedures and only with adequate compensation
- unlimited in time.

Owners in the sense of the Civil Code are very scarce in Surinam. According to the Surinamese government in 1982, no more than 100 small plots are object of code-property while about 90 of these are owned by the parastatal Foundation for People's Housing.[40, 41]

[37] Credit-cooperatives have been more legally institutionalized in the seventies than market-cooperatives (*Morenc, J.*, see Fn. 11, 207). The latter have to function in competition with traders in agricultural products who are eager to split up solidarity within the cooperative. The latter can be realized by offering individual members higher prices than the overarching cooperative (*Morenc*, op.cit., p. 194).
For every type of cooperative, experiences with financial mismanagement in the past are an obstacle (*Morenc*, op.cit., p. 195).

[38] Wetgeving betreffende de landhervorming van 1982 [Textbook for legislation relating to the landreform of 1982, including explanatory statements], Paramaribo: Staatsblad (special issue of the Offical Gazet) 1982, pp. 15, 16.

[39] *Morenc, J.*, see Fn. 11, 242, 243.

[40] Wetgeving betreffende de landhervorming van 1982 [Textbook for legislation relating to the landreform of 1982, including explanatory statements], Paramaribo: Staatsblad (special issue of the Offical Gazet) 1982, p. 14.

There is a noticeable dissimilarity between the reaction of the colonial administration on the introduction of new Civil Code titles at one hand in the Dutch Caribbean islands and on the other in Surinam. On the islands the introduction of new titles on land was seen as a signal for the abolition of older titles.[42] In Surinam, however, the administration continued its practise of allocating land on older titles despite the introduction of the Code. Even after 1869 the government issued new regulations to update the older titles. If these new regulations contradicted the Code, they were seen as special regulations overruling the general rules of the Code. The Code was only applied if these special regulations let issues unregulated.[43]

5.2 West-Indian-property

W(est)-I(ndian)-property is the overarching term for landallocations under the formula "allodial property and heritable possesion". For a better grip on this formula a brief historical excursion is needed.

In 1621 the Dutch West Indian Company got a trade monopoly for the West Indies from the Parliament of the Netherlands. The Company was granted public authority and was a.o. charged with the realization of settlements in unpopulated territories. In course of time, the Company (and as far as concerns Surinam its predecessor and its successor) used different charters in which land was promised to European farmers who were willing to settle in the West Indian colonies on conditions stipulated in contracts. Landallocation in "allodial property and heritable possesion" became the standard after some time. Two features got emphasis. The allocated land was free of special feudal obligations (*allodial*) and the ownership could transfer from a father to his children (*heritable*).[44]

41 According to the Civil Code, property and other titles to land are transfered by transcription of the notarial deed in the public registers. Unfortunately, an exception has been made for the State. For transfer of titles by the State no deed is needed (Sec. 670.2 Civil Code). Lacking a deed it is difficult to see if, in the past, administrators intended to transfer property on code-conditions or property defined by special terms. This causes doubts about the present legal nature of many titles of ownership.

42 Encyclopedie van de Nederlandse Antillen / red. *J.Ph. de Palm*, 2e druk, Zutphen 1985, 517, 518.

43 *Quintus Bisz, A.J.A.*, De weg tot de invoering van de nieuwe wetgeving in 1869 en de overgang van het oude naar het nieuwe burgerlijke recht, in: Een eeuw Surinaamse Codificatie / ed. *Z.H. Carpentier Alting* e.o., Paramaribo: Surinaamse Juristen Vereniging, 1969, 21.
In the Surinamese context, legal terms like property, tenure, leasing or user-rights have to be seen as labels. They can cover a content as defined in the Code; mostly, they will correspond with structures originating from special regulations leaving only a subsidiary role for the Code (see section 11.2 of the Decree Principles Landpolicy [SB 1982, 10]).

44 The study of *Van Grol* (*Grol, G.J. van*, De Grondpolitiek in het West-Indisch Domein der Generaliteit – Deel I en Deel II, Amsterdam 1934, 1942) accentuates the medieval origin of the legal

Individual landallocations were determined by warrants or letters of consent, which contained the conditions for land-use. Similarities in conditions can be noted:

- a duty to use the land as was prescribed in the letter of consent (cultivation duty);
- a duty to keep open transport-possibilities around the allocated plot (communication duty);
- a right of the administration to take over the land if there were plans of sale by the landholder;
- easy way to expropriate;
- often a financial duty to pay recognition.

After the abolition of the system of government by trading companies in the second half of the 18th century and an interval of British rule in Napoleontic times, the Dutch Crown recodified the WI-property for reasons of legal security, like was done some times before by governors of the companies (Royal Decree, December 20th, 1829, GB 1821, 7). Until the landreform of 1982, WI-property was among others titles used as a basis to allocate land; only the period 1937-1951 was an interval in which legislation did not allow such allocation.

In the period before the Civil Code, mortgage on WI-property was a well-known legal phenomenon.[45] After 1869, the Code, in its function as a subsidiary source of law concerning WI-property, confirmed this practise by means of enabling explicitely a mortgage on this property.

Non-compliance with obligations such as prescribed in the letter of consent, could led to a declaration of default to be followed, if an adequate reaction was not given, by a termination of the allocation. Due to the deterioration of the worldmarket for cane-sugar, sugar plantations were abandoned by the owners or, if owners were absentees, by their administrators. The archives with letters of consent were conserved badly so that original owners and their heirs were difficult to trace in order to remind them of their duties.[46] In 1936 a special procedure was created to convert "apparently abandoned land" into colonial domain free for reallocation (GB 1936, 145). In the landreform of the eighties the procedure was simplified and shortened in time (SB 1981, 125).

terminology of the Company. Later *Quintus Bosz* (see Fn. 6) asked attention for the pragmatic use of this terminology to follow landpolicies adapted to the West Indian context.

45 *Oostindie, G.J.*, Roosenburg en Mon Bijou, Twee Surinaamse plantages, 1720 - 1879 [diss. Utrecht], Dordrecht 1989, 425-429.

46 *Quintus Bosz*, see Fn. 5, 357.

5.3 *Long lease, land-tenure and other temporary rights*

Many terms have been used in course of time regarding the allocation of land for a certain period: permission, use, rent, tenure, long lease, etc. For the period after 1869 one may add special adjectives to those terms as a reminder to the fact that they are labels for another content than described in the Civil Code.[47] So does *Quintus Bosz*[48] mention only one allocation on long lease according to the Code.

The so-called long lease (in Dutch:*erfpacht*) had in common with the WI-property that due to the subsidiary role of the Code it was considered as a title to land suitable for a mortgage (*right in rem*). The other means of allocating were seen, however, as establishing contractual relationships[49] between the landallocator – i.e. the colonial state – and the landholder (*right in personam*). In this situation credit secured with a mortgage was impossible.

Therefore, the legislator created in 1911 the possibility of an "agricultural loan under enterprise-connection" (GB 1911, 21). For such a loan the agricultural enterprise served as security. The moneylender was entitled to take over the enterprise if the debtor did not comply with his financial duties.

Until the landreform in 1982, the so-called principle of ascent in rights was practised. If a farmer wanted to acquire an agricultural plot of land above a certain extension, the administration granted him only a right limited in time and legal claims as an experiment for the beginning. If the land-user proved to be successful in the experimental period, the administration could consider the time had come for titles to land as WI-property or long lease.[50]

During the great depression of the thirties, Surinamese district-commissioners discussed the question if a replacement of tenureship by (WI-)property would be a stimulus for small peasants to augment investments in order to increase productivity, *Kielstra* reacted to this in 1937 with the Agrarian Ordinance. Tenants was not given WI-property but a better legal position guaranteeing more freedom. As a result of good experiences in the East Indies, the liberalization included long lease-provisions. These provisions provided a title to land for a

47 See for similar situations in the Dutch East Indies *Rhee, C.H. van*, Particuliere landerijen in Indonesië en het zogenaamde erfpachtsrecht (1836-1912), in: Ars Aequi 40, Nr. 11, November 1991, 973-983.

48 See Fn. 5, 246.

49 *Quintus Bosz* (see Fn. 6, 187-259) mentions the contracts of lease, tenure, and use (in Dutch respectively: *pacht, huur* en *gebruik*).

50 *Ramsoedh*, see Fn. 11, pp. 73-79.

maximum term of 75 years; they became the main basis for landallocation inside and outside settlement-centres (see 6.1 and 6.2).

In practise the restrictions concerning the use of land remained. The letters of long lease provided timeschedules in which the prescribed type of land-use gradually should be expanded over the total surface. Non-compliance with the cultivation duty could lead to a loss of rights.[51]

In 1937, a discussion took place between the administration and the Surinamese Parliament about the (in)alienability of the leaseholding. The administration argued that the government should have full control over the exploitation of domanial land. Thus it proposed a prohibition of alienation without consent of the governor giving while the latter was given the power to stipulate special conditions.[52] Resistance of the Parliament, however, resulted in a freedom of alienation as long as the lessee had paid his rent.

In the landreform of 1982, a new legal terms was created, called land-tenure (in Dutch: *grondhuur*). Tenure is in terms of the Code not more than a contractual relationship. However, according to the new legislation, land-tenure is to be considered as a possible object for mortgage. The land-tenure of 1982 is in essence to be seen as the long lease of 1937 while the legislation has been completed with standard clausulas in the letters of long lease. A practise of leasing for 40 years has been followed by an explicit provision to make the maximum term for land-tenure 40 years.

However, a novelty is the return to the position being rejected by the Parliament in 1937.[53] Section 10 of the Decree Principles of Land Policy stipulates that the transfer of domanial land that has been acquired in land-tenureship, to third parties only takes place with a consent of the State. The State will cooperate to a transfer unless the public interest opposes itself to it.[54] Consent will be given under the condition that a compensation will be paid according to the value of the bare field.

51 *Quintus Bosz*, see Fn. 6, 251, 252.

52 *Quintus Bosz*, see Fn. 6, 253.

53 In 1982 when military dictatorship was at stake, a functioning parliament was lacking so that a repetition of the events of 1937 was excluded.

54 According to section 28.1 of the Decree Allocation Domanial Land (SB 1982, 11), no consent will be given within two years after the acquisition of land-tenureship.

6. Colonial land policies

For a broad outline of colonial legal policies, distinction is needed between land on settlement-centres and on land outside such centres.

6.1 Settlement-centres

In the second half of the 19th century the administration created so-called settlement-centres in the neighbourhood of plantations. The aim was to create a symbioses between the plantations and small-scale agriculture. The government tried to tempt labour forces to establish themselves as peasants near the plantations by giving them small plots of land there. The peasant was supposed to be able to fulfill his basic needs on his own land and to use the existing infrastructure for transports and markets for his own (modest) business. At the same time he was expected to supplete his income by offering (cheap) labour to the plantation.[55]

It proved to be an illusion to keep former slaves near the plantations with this settlement policy. Later on, Hindustan immigrant labourers who had finished the period of contractual duties, became the policy target.[56] In exchange for the denial of their right to be freely repatriated the could acquire small plots of land plus a premium of 100 guilders. Because giving up free repatriation proved to be an obstacle, acquirement of land was made possible without immediate abandoning of repatriation. At the same time, the conditions for establishment of the immigrant labourers were given more flexibility.[57]

Especially concerning the early 20th century, one can call this policy a success if one sees the huge immigration-surplus.[58] But later on, the filosofy behind the settlement-centres (combining the plantation-system with small-scale agriculture) became outdated when the world market for cane-sugar made plantation-agriculture more and more unattractive. Plantations were abandoned and peasants, rich of initiatives, moved out of the settlement-centres to the rice polders. For those who were left behind, keeping alive was more important than commercial success.

55 *Panday*, see Fn. 11, 165-167; *Van Lier*, see Fn. 28, 168.

56 Faster than the English and French administrators in the West Indies, the Dutch realized that the abolition of slavery should be followed by positive arrangements to replace slaves by immigrant labourers (*Panday*, see Fn. 11, 136-137).

57 *Ramsoedh*, see Fn. 11, 74.

58 *Panday*, see Fn. 11, 160.

As a reaction to the reduction of the economic potential of the settlement-centres, the focus of the policy makers shifted towards the outside places.

6.2 Outside places

In West Surinam, the government did support the creation of commercial farming in the thirties. It allocated medium size plots outside the settlement-centres in WI-property for rice-cultivation. In the swampy areas suitable for that cultivation, it created after Dutch model watercorporations as legal administrative entities responsible for drainage and irrigation. At the same time, it supported ricefarmers by measures concerning:
- mechanization of landlabour and rice husking;
- promoting amelioration in rice-varieties and improvements in the consumer-product;
- financial support for analysis of foreign markets.

Productionfigures are illustrating the success of the policy aiming at the medium size riceculture. It laid the base for the large-scale agriculture of the Foundation for Mechanical Agriculture in the fifties.

The twofolded character of the governmental policy must have contributed to its success. At one hand, solid titles were given to the farmer; these titles made credit secured with a mortgage possible an dprovided enough security for long-term investments in irrigation and mechanization. On the other hand, measures were taken to make the farmers internationally enough competetive.

7. Policy options today

Before drawing conclusions about the connections between land-law and landholding in the presence, I have to give a portray of the Surinamese landholder today as he is to be served by the present legislator. According to *Morenc*[59], I use two extremes to explain the economic attitude of the peasant as an element of the Surinamese political setting, of course in the notion that a mixture of these extremes is most likely to be encountered.

7.1 Types of peasants

The first type of peasant is the worker-peasant. He prefers employment in the non-agricultural (in)formal sector. As parttimer he grows rather labour-intensive crops and fruits of

[59] See Fn. 11, 266.

different kind in order to acquire additional income and/or to secure risks of falling back in income originating from the non-agricultural sector.

The second type is the farmer-entrepreneur. He runs a mono-cultural farm that requires little manpower because it is highly mechanized while it complies with hightech standards. His enterprise is highly dependent on investment in expertise, mechanization and technology. That makes him influencible for intermediate traders between him and the (foreign) consumer-market because these traders are able to bridge the gap between him and his needs.[60] Therefore he is inclined to get into coalitions with intermediate traders while he hopes to combine lucrative tradership with farmership after some time.

Both types of land-users are economically rational persons. There is no base to believe that, for cultural or ideological reasons, they will be enthusiastic about agricultural villages or cooperatives as long as they see no direct profit.

7.2 Legal instruments for the worker-peasant

The worker-peasant looks easily to be helped with legal instruments. Deregulation of small-market facilities enables him and his family to sell products on local Sunday-markets, etc. Landallocation facilitates him to grow his products. The type of landallocation is not so important as he needs no large credits to be secured with mortgage. Small investments he finances with his non-agricultural income.

The problem is that the worker-peasant needs agricultural land in the neighbourhood of this (in)formal activities in the city. That land, however, is valuable because it is suitable for urbanization. It is not unlikely that the land allocating administration will give greater priority to speculants with strong ties in political circles than to worker-peasants. Let us nevertheless suppose the peasant has been given land. In that case, there is no guarantee that the peasant will not prefer easy speculation above laborious handwork to get additional income.

The crucial factor is the political will to combat speculation. In absence of political determination it makes no sense to blame the legal instrument of withdrawal of rights in case of neglection of the cultivation-duty, as this instrument has been unused. The Surinamese government of 1982 wanted to replace lon lease by land-tenure because speculation and alteration of the prescribed use had taken place with land allocated on long lease. At the same time it implicitely admits window-dressing stating that failing administrative control

[60] Traders can be the lessors of expensive agricultural machines; they can give short-term credit in the form of payments in advance; etc.

forms the bottleneck.[61] Indeed does the agrarian law of *Kielstra* provide for short shrift to speculants for reasons of not-meeting their obligations to cultivate.

7.3 Legal instruments for the farmer-entrepreneur

For the farmer-entrepreneur enough land is available. His agricultural plots are not necessarily to be situated in urbanization-zones so that in his case the problem of speculation is out of sight.

The entrepreneur has to sell his products in bulk. For him the regular domestic market, however being small, ans especially the foreign market are important.

The government could protect the domestic agricultural market for the farmer using custom-walls to eliminate the import of substitutes. At the same time, it could impose high prices for local agricultural products. The urban consumer would then for example be forced to replace his favourite wheat flour from abroad by more expensive local rice. From a populist point of view such policy will not be considered wise.[62] Even in times of dictatorship, the soldiers in power, reluctant to upset influencial urban traders, did not dare to enforce for farmers attractive prices.[63]

To win foreign markets the Surinamese farmer has to take a lead on international competitors, while staying on that markets asks efforts not to lose position. The Wageningen polder and its environment proved that with the help of the public sector, on its turn supported by Dutch aid and expertise, the Surinamese rice-producers could win foreign markets. Later on, Surinamese politicians were eager to gain profit from the rice-sector instead of investing in it.[64]

It is for a farmer-entrepreneur having bad marketprospect difficult to obtain long-term credit. The moneylender will take a stand-off position even if the farmer is the Civil Code-owner of a beautiful ricepolder which he offers as security. Only a polder which can be made profitable in Surinamese circumstandes has real market-value.

61 Wetgeving, see Fn. 38, 49, 15.

62 *Kool*, see Fn. 31, 121.

63 *Morenc*, see Fn. 11, 270.

64 Foreign currency has been used for consumptive ends instead for the maintenance of the expensive machinery. The term desinvestment is at place here.

8. Concluding remarks

8.1 Land-law as policy instrument

Surinamese land-law can be a useful instrument for agricultural development, for it can provide predictability to the farmer calculating the profit of future investments. Surinamese land-law can be of utmost help, supposed the government uses it to lead the farmer towards growing the most profitable crops, using the most suitable machinery, entering the right markets, etc. A government taking investment-research from farmers shoulders can cause a lead on international competitors with a less helpful government.

A serious obstacle for investments is agricultural law that is applied and enforced inconsistently and selectively. That law brings the farmer the puzzle of finding out which management-failures cause inconsistency and which personal or group-interests in the political arena bring about selectivity. That research can bring him to the conclusion that investments are useless or that efforts to grease the governmental machinery are causing unbearable investment-costs.

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The character of Surinamese politics today worries potential investors. Therefore, in the present situation, a land-law has to be prefered that requires as less as possible interference from the political side.

8.2 Prospects for collective structures

The Surinamese peasant and/or farmer of today thinks economically. He will unlikely join collective structures for cultural or ideological reasons. As he has more utilitarian than ideological motives for cooperative-membership, the prospects for cooperatism are closely connected to two questions:

- Will the policy of preferential landallocation to cooperatives continue when politicians will be put under pressure by political friends to receive preferential treatment?
- Will Dutch development aid[65] be directed towards additional advantages in cooperative-membership in terms of credits, insurances and initiatives for innovations, which are dictated by world markets?

8.3 Policy recommendations

Land-policies should be differentiated according to agriculture insice and outside urbanization zones.

In the non-urbanization zones, replacement of the WI-property by Code-property looks appropriate. WI-property is an antiquity. A farmer cannot be burdened with the research in legal archives to be certain of his rights. At the same time, the cultivation-duty has lost its meaning. It makes no sense to enforce the cultivation of products that have no markets. A government, provided with the necessary expertise, should instead make the farmer more competetive concerning products for which consumers can be found (see 7.2).

For the urbanization zones, acquisition of credits and (long-term) investments are less important than the fight against speculation. A short-term right for the peasant accompanied by the obligation to cultivate products of his own choice should meet the demands of the small-scale agriculture. The name of that right (*erfpacht* or *grondhuur*) is a subordinate matter. The issue is that the adjudication of rights and the enforcement of cultivation-duties should take place without bias and partiality.

65 On Christmaseve in 1990, Surinam faced its second military coup (*Munneke, H.F.*, Surinaamse kerstcoup en grondwettelijk recht of staatsgreep, in: Internationale Spectator, 45-2, March 1991, 164-169). In 1991 elections have been held bringing civilians to power. To reinforce democratization, the Dutch government promised in November 1991 a new start in the overall implementation of its obligations in the sphere of development aid.

in the post-independence period, the government's indigenous policy since the Revolution of 1910/17 has been dominated by the concept of *mestizaje*, which views the assimilation of the Indian into the *mestizo* society as a necessary prerequisite for the achievement of national unity. The government's assimilation policies, however, have subsequently failed to produce any lasting change in the miserable economic and social conditions in which the overwhelming majority of Mexico's indigenous groups have been living for centuries. It was only in 1922 that the pluriethnic composition of the Mexican nation and the distinct character of the indigenous peoples have been officially recognized. Nevertheless, most of the implementing legislation which would give a full meaning to this principle and provide the Indians with a sufficient measure of protection for their economic and political rights has yet to be enacted. Moreover, the Chiapas rebellion has drawn international attention to the fact that the central government for decades has been turning a blind eye on the constant disregard and massive violation of Indian rights by a powerful coalition of local interest groups and corrupt politicians. The success of legal efforts to end discrimination against Indians is thus in no small measure dependent on the success of political reform in general, which would replace the long lasting one-party rule in Mexico with a truly competitive, politically balanced multi-party system based on the effective implementation of the principle of separation of powers.

Land-law and Landholding in Surinam

By *Harold F. Munneke*

The former Dutch colony Surinam has known, from 1869 on, a Civil Code providing for legal titles, which should have been applicable to landholding.
However, special regulations, setting aside Code-provisions have been abundant in Surinamese history. These provisions were much too liberal for Surinamese administrators pursuing agrarian policies. Instead of permitting freehold of land, they allocated – before and after 1869 – plots of land, with requirements concerning crops to be grown. Instead of maintaining a uniform system of individual landholding, structures of collective landholding were accepted to meet the aspirations of ethnic groups or to react to practical problems.
Today, most of the policies to guide landholders have lost their meaning. Contemporary agrarian policies should aim at legal security facilitating agricultural investments. Both part-time peasants living in the city and full-time farmers working in the rural areas should be accommodated.