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The Protection, Ownership, and Return of Cultural Property: A Surinamese Law Perspective

Abstract: This article explores the ownership of cultural objects within national and traditional customary law in Suriname, with the aim to provide a legal context to the issue of claims for the return of some of these cultural objects from the Netherlands. The discussion of the legal regime for exporting cultural objects examines the National Ordinance of 1952 on Provisions for the Preservation of Objects with Historical, Cultural, and Scientific Value; the Movement of Goods Act of 2003; and the Monuments Act of 2002, which protects immovable objects, objects of archaeological excavations, and discoveries. This is followed by a short overview of the legal regime relating to the ownership of cultural property under the Surinamese Civil Code. Next this article outlines the property law of cultural objects under customary laws of Indigenous and Tribal communities in Suriname and how these may be included in the Draft Civil Code and the Draft Legislation on Rules Concerning the Collective Land Rights of Indigenous and Tribal Peoples. The article concludes that neither the existing legal framework nor the draft legislation provide answers on dealing with cultural objects acquired in a colonial context and the possible repatriation of such objects.

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Keywords: cultural heritage, cultural objects, Indigenous peoples, Tribal peoples, colonialism

Introduction

During colonial times, many cultural, historical, and religious objects were taken from Suriname to the Netherlands. Today, some of these are part of the collections of Dutch museums. In 1667, Suriname became a colony of the Netherlands, and with only two short interruptions remained under Dutch rule until 1975. Slavery was the backbone of the Suriname plantation economy. Slavery as such was officially abolished in 1863, but by law it was only in 1873 that enslaved people were allowed to leave the plantations. After the abolition of slavery, the colonial government recruited indentured laborers from China, India, and Indonesia. First, from 1853 till 1874 Chinese laborers were recruited.¹ From 1873 to 1916, laborers came from India,² and after 1890 also from Java (until 1930).³ The population of Suriname thus came to consist of descendants of Indigenous peoples, Maroons (descendants of escaped enslaved Africans who formed settlements away from the plantations), Indians, Creoles, Javanese, Chinese, Jews, and others.⁴ With a population of 541,638,⁵ a noteworthy characteristic of Suriname is the diversity of cultures of all groups – a diversity reflected in their cultural objects.

The issue of the return of colonial cultural heritage objects is high on the agenda of many European countries. In October 2020, the Dutch Arts Council (Raad voor Cultuur) presented the report *Colonial Collections: Recognition of Injustice*, the aim of which was to provide guidance on the way forward for colonial collections in the Netherlands. The report includes a survey with 115 responses from

¹ See Nationaal Archief, *Chinese contractarbeiders in Suriname 1858-1874* [Chinese Contract Laborers in Suriname 1858-1874], <https://www.nationaalarchief.nl/onderzoeken/zoekhulpen/chinese-contractarbeiders-in-suriname-1858-1874> [accessed: 20.10.2022].

² See Nationaal Archief, *Hindostanen in Suriname 1873-1916* [Indian Contract Laborers in Suriname 1873-1916], <https://www.nationaalarchief.nl/onderzoeken/zoekhulpen/hindostanen-in-suriname-1873-1916> [accessed: 20.10.2022].

³ See Nationaal Archief, *Javaanse contractarbeiders in Suriname 1890-1930* [Javanese Contract Laborers in Suriname 1890-1930], <https://www.nationaalarchief.nl/onderzoeken/zoekhulpen/javaanse-contractarbeiders-in-suriname-1890-1930> [accessed: 20.10.2022].

⁴ Algemeen Bureau voor de Statistiek, *Suriname Census 2012, Vol. 1*, September 2013, p. 77, table 13, <https://statistics-suriname.org/wp-content/uploads/2019/05/Publicatie-Census-8-Volume-1-Demografische-en-Sociale-Karakteristieken-en-Migratie.pdf> [accessed: 26.08.2022]. According to the latest census, Suriname's population mainly consists of 20,344 Indigenous peoples, 117,567 Maroons, 84,933 Creoles, 3,923 Afro-Surinamese, 148,443 Indians, 73,975 Javanese, and 7,885 Chinese.

⁵ Ibidem.

museums, of which 26% indicated they were in possession of cultural objects from Suriname in their collections.⁶ An example of such an object is the Creole Bania, currently on display in the National Museum of Ethnology (Rijksmuseum voor Volkenkunde) in Leiden, which is considered to be the oldest extant example of the early gourd banjo that was taken, between 1771 and 1777, from Suriname by the Scottish-Dutch officer John Gabriel Stedman. The banjo is a centuries-old cultural object with its own historical, cultural, and religious background. How it was acquired is unclear; i.e. whether it was by gift, looting, or other means. The fact remains that the banjo was acquired in Suriname while colonized by the Dutch. Such objects have cultural, historical, and religious value for Suriname. So is it possible to legally claim the restitution of this musical instrument and/or other colonial cultural heritage objects to Suriname?

In order to better understand today's legal status of colonial cultural objects and the possibilities for potential claims for repatriation, this article explores the context and content of the relevant legal framework in Suriname. In this regard, it first discusses the legal regime for exporting cultural objects established by the National Ordinance of 1952 on Provisions for the Preservation of Objects with Historical, Cultural, and Scientific Value and the Movement of Goods Act of 2003. Secondly, it analyses the Monuments Act of 2002, which protects immovable objects, objects of archaeological excavations, and discoveries. Thirdly, the legal regime relating to the ownership of cultural property under the Surinamese Civil Code is analysed. Next the article outlines the property law applicable to cultural objects under the customary laws of Indigenous and Tribal communities in Suriname, and how this relates to the Draft Civil Code and the Draft Legislation on Rules Concerning the Collective Land Rights of Indigenous and Tribal Peoples. The article concludes that neither the existing legal framework nor the draft legislation provide definitive answers on how to deal with cultural objects acquired in a colonial context and the possible repatriation of such objects.

The National Legal Framework Today

The Constitution of Suriname of 1987 provides that the State shall safeguard and protect cultural heritage and stimulate its preservation.⁷ In Suriname, there are different laws regarding the protection of cultural objects. The main instruments are the laws that regulate the illicit export of cultural objects and legislation dealing with objects found during excavations or discoveries. Rules for exporting cultural

⁶ Raad voor Cultuur, *Advies koloniale collecties en erkenning van onrecht*, Raad voor Cultuur, Den Haag 2020, p. 133.

⁷ *Grondwet van de Republiek Suriname*, 30 October 1987, S.B. 1987 no. 116, amended by S.B. 1992 no. 38, Art. 47.

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objects – aimed at controlling the illicit trade in cultural objects – are regulated in the National Ordinance of 1952 on Provisions for the Preservation of Objects with Historical, Cultural, and Scientific Value (“National Ordinance of 1952”).⁸ In addition, the Movement of Goods Act of 2003 also protects antiquities that constitute national artistic property against export.⁹ These regulations are aimed at controlling the export of cultural objects.

Furthermore, the Monuments Act of 2002 provides regulations regarding objects of archaeological excavations and discoveries.¹⁰ Insofar as concerns the transfer of cultural objects under private law, the Civil Code of Suriname (CC) is applicable. The CC from 1869 regulates the transfer of movables and favours good faith purchasers.¹¹

At the same time however, Indigenous and Tribal peoples have lived in the interior for centuries according to their customs and developed a traditional legal system. The laws of the Indigenous and Tribal peoples were not included or acknowledged in either the Constitution, the Surinamese legal system, or legal practice. In order to rectify this vacuum, the government has drafted legislation to guarantee legal protection of the collective rights of the Indigenous and Tribal peoples in Suriname. This draft legislation refers to culture and cultural integrity as a collective right regulating the right of Indigenous and Tribal peoples in Suriname to experience, revive, and strengthen their culture and cultural expressions.

The National Ordinance of 1952 on Provisions for the Preservation of Objects with Historical, Cultural, and Scientific Value

The export of cultural objects is regulated in the National Ordinance of 1952, adopted when Suriname was still a Dutch Colony. This instrument provides for the preservation of objects with historical, cultural, and scientific value. The regulations in the Ordinance concerning the protection of Suriname’s cultural objects against export are based on Dutch legislation and were drafted in line with the concordance principle. This principle, as stipulated in the Government Regulations by Royal Decree of 1865, stated that Suriname’s legislation must correspond

⁸ *Landsverordening houdende bepalingen tot behoud van voorwerpen welke historische, culturele en wetenschappelijke waarde hebben*, 7 February 1952, G.B. 1952 no. 14.

⁹ *Wet houdende nieuwe regelen betreffende het internationale goederenverkeer*, 8 July 2003, S.B. 2003 no. 58, amended by S.B. 2004 no. 121.

¹⁰ *Wet houdende bepalingen inzake het behoud van monumenten en stads-en dorpsgezichten*, 5 September 2002, S.B. 2002 no. 72.

¹¹ *Burgerlijk Wetboek van Suriname*, 28 December 1859, G.B. 1860 no. 4, amended by S.B. 2004 no. 25.

with legislation from the Netherlands.¹² With the attainment by Suriname of independence in 1975 and its new Constitution, transitional provisions were added to the existing Ordinances and regulations.¹³ All National Ordinances remained as existing legislation and were given the status of law.¹⁴

The National Ordinance of 1952 relates to objects with historical and cultural value and objects with mineralogical, petrographic, zoological, and entomological value. According to the National Ordinance, the export of such objects without a permit is prohibited.¹⁵ The Department of Culture of the Ministry of Science, Education, and Culture is responsible for providing permits for the exports of cultural objects. The exporter needs to apply for a permit at the Department of Culture, accompanied by a detailed description of the cultural object(s).¹⁶ Violations of the Ordinance constitute offenses and may be subject to penal sanctions. Importantly, cultural objects can be forfeited if the Ordinance's regulations are violated, regardless of whether or not the violator is the owner. When the object is made of wood, specific procedures are in place under the general rules for the export of wooden products that must be reported to the Foundation for Forest Management and Production Control (Stichting Bosbeheer en Bostoezicht, SBB).¹⁷ Insofar as regards cultural objects, the SBB requires that permission from the Department of Culture be included. This obliges the applicant(s) to request a permit from the Department of Culture.

This Ordinance, adopted in 1952 during the colonial period, is applicable to objects exported between 1952 and 1975. If the cultural objects were exported without a permit between 1952 and 1975, such exports are illicit and constitute a criminal offense. The cultural objects can be forfeited if the Ordinance regulations are violated, regardless of whether the violator is the owner. However, such offenses have a statute of limitation period of two years in Suriname.¹⁸ Since the act was applicable only after adopting the Ordinance in 1952 and only sanctioned

¹² *Het Surinaamsch Regeringsreglement van 1865*, 31 May 1865, G.B. 1865 no. 55, Art. 117; Y. Baal, *Verzorgingsrechten en plichten bij huwelijk en buitenhuwelijk samenleven in het Surinaams recht, Surinamisering, internationalisering en regionalisering van recht*, Anton de Kom Universiteit van Suriname, Paramaribo 2008, p. 45.

¹³ Before 1936, there were Royal Decrees. With the introduction of the Government Regulations of 1936, the terminology "Royal Decrees" was changed to "National Ordinances"; W. Pherai, *Het Constitutioneel Bestel van Suriname gedurende het Militair Bestuur 1980-1987*, Utrecht University, Utrecht 2020, pp. 198 and 202.

¹⁴ *Staatsbesluit houdende publicatie van de tekst van de Grondwet in het staatsblad van de Republiek Suriname* [State Decree Publishing the Text of the Constitution in the Official Gazette of the Republic of Suriname], 25 November 1975, S.B. 1975 no. 2.

¹⁵ National Ordinance of 1952, Art. 2.

¹⁶ *Ibidem*, Art. 2(2).

¹⁷ The SBB aims to promote sustainable, optimal utilization of the forests of Suriname.

¹⁸ *Wetboek van Strafrecht* [Criminal Code], 14 October 1910, G.B. 1911 no. 1, last amended by S.B. 2015 no. 44, Arts. 96 and 79.

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illegal exports for a period up to two years after an object was illicitly exported, this legislation does not provide a basis for a legal claim for colonial takings.

The Movement of Goods Act of 2003

The Movement of Goods Act of 2003 applies to the import and export of national artistic property.¹⁹ The general rule is that historical and archaeological property is prohibited from export, as the export of antiquities is prohibited. The Act further points out that violation of regulations given by or under this Act is regarded as an offense under the Economic Offenses Act.²⁰ The Act, however, only regards antiquities that were exported after 2003. Thus, it does not apply to the export of cultural objects during colonial times.

The Monuments Act of 2002

Another instrument with provisions for cultural objects is the Monuments and Historic Buildings Act of 2002. This Act protects immovable properties and their parts older than 50 years that constitute a common interest because of esthetical and artistic values or scientific, archaeological, historical, or architectural significance for Suriname.²¹ The Act further provides for regulations for objects of archaeological excavations. According to the Act, the State owns objects of (archaeological) discoveries and excavations, provided there is no proof of prior ownership and requires that persons who find objects during discoveries and excavations notify the relevant authorities.²² However, since this Act was adopted in 2002 and only refers to objects after its adoption, the Monuments Act also does not provide answers or solutions with respect to objects taken and removed from their territories and communities of origin in a colonial context.

The Civil Code of 1869

The Civil Code of Suriname has no specific regulations on ownership of cultural objects, but since cultural objects are also movable goods the Suriname Civil Code (SCC) applies. The SCC is based on the Dutch Civil Code of that time and complies with the aforementioned concordance principle.²³ On 1 May 1869 the Dutch Civil Code was adopted in the colony of Suriname. When on 25 November 1975 Suri-

¹⁹ Art. 2.

²⁰ *Besluit Negatieve Lijst 2003* [Decree Negative List for the Import and Export of Goods], 18 September 2003, S.B. 2003 no. 74, Art. 12.

²¹ Art. 1(1).

²² Arts. 20 and 21.

²³ The concordance principle, regulated in Art. 117 of the Surinamese Government Regulations of 1865, stated that Suriname's legislation needs to correspond with legislation from the Netherlands.

name became a newly independent State, the existing Civil Code remained applicable legislation. Regarding the transfer of movables between private owners, Article 1998 SCC states that possession amounts to perfect title and protects the purchaser in good faith against the original owner's claim. Nevertheless, a person who has lost or from whom something has been stolen may reclaim his or her property within three years from the date the loss or theft occurred.²⁴ In sum, the SCC protects the current possessor rather than the original owner, as the possessor is protected by legal principles such as acquisition in good faith and the statute of limitations. Since colonial losses occurred between 1667 and 1975, the provisions of the SCC are not of use for claims to colonial objects.

The Draft Civil Code

Suriname is in the process of adopting a new Civil Code. In the Draft Civil Code (DCC), a purchaser in good faith is also favoured against an owner's claim, just like in the present SCC. However there are new articles in this draft law regarding cultural objects, stipulating that this default rule cannot be evoked if the object is a cultural object, part of a designated monument, an archaeological site, or part of a public collection.²⁵

The explanatory note states that the DCC follows the terminology of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("1995 UNIDROIT Convention")²⁶ regarding cultural property and public collections.²⁷ It is worthy of note however that Suriname has not signed or ratified this treaty, nor is it a party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("1970 UNESCO Convention").²⁸

Article 86a(2) DCC regulates fair compensation for the new possessor only if he or she acted with due care. Article 90 provides that although the possessor in good faith becomes the owner of a movable good after three years of continued possession, this does not apply to movable cultural property that formed an integral part of a monument designated as such or of an archaeological site or formed part of a public collection.²⁹

²⁴ Art. 1998(2) SCC.

²⁵ *Concept Burgerlijk Wetboek van Suriname, Boek 3* [Draft Civil Code, Book 3], Art. 3:86a, [https://www.dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/nieuw-burgerlijk-wetboek/boek-3-vermogensrecht-\(burgwetboek\)/](https://www.dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/nieuw-burgerlijk-wetboek/boek-3-vermogensrecht-(burgwetboek)/) [accessed: 26.08.2022].

²⁶ 24 June 1995, 2421 UNTS 457.

²⁷ *Memorie van Toelichting Concept Burgerlijk Wetboek van Suriname, Boek 3* [Draft Civil Code, Book 3], [https://www.dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/nieuw-burgerlijk-wetboek/boek-3-vermogensrecht-\(burgwetboek\)/](https://www.dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/nieuw-burgerlijk-wetboek/boek-3-vermogensrecht-(burgwetboek)/) [accessed: 26.08.2022].

²⁸ 14 November 1970, 823 UNTS 231.

²⁹ Art. 99 DCC.

The DCC also provides special limitation periods for cultural objects that form an integral part of a designated monument, an archaeological site, or part of a public collection.³⁰ The first period, of five years, only starts after the location of the stolen item and the identity of the owner or holder are known. This period may be time barred if the object was previously discovered by the claimant. However, since the DCC is not retroactive these special regulations also do not apply to objects taken during colonial times.

The Draft Legislation on Rules Concerning the Collective Land Rights of Indigenous and Tribal Peoples

Over the years, the rights of Indigenous and Tribal peoples have garnered significant attention, including their rights to cultural objects removed during colonization. Indigenous objects and objects from the Maroon culture were collected and researched by the Dutch as being of particular ethnological interest. In recent years, The Inter-American Court of Human Rights (IACHR) has issued several judgments in which Suriname is ordered to legally recognize the rights of the Indigenous and Tribal peoples.³¹

Various Indigenous and Maroon communities live in the interior of Suriname, with the four most numerous distinct peoples being the Kaliña, Lokono, Wayana, and Trio.³² In addition, there are small settlements of other Amazonian Indigenous peoples, including the Akoerio, Warao, Apalai, Wai-Wai, Okomoyana, Mawayana, Katuena, Tunayana, Pireuyana, Sikiiyana, Alamayana, Maraso, Awayakule, Sirewu, Upuruy, Sarayana, Kasjoeyana, Murumuruyo, Kukuyana, Piyanakoto, and Sakëta.³³ All told there are around 52 Indigenous villages in Suriname, some on the coast and some in the country's interior.³⁴ Each Indigenous village has a village council headed by a village chief or captain and assisted by one or more *basjas* (assistants). Traditional authority positions in Indigenous groups are normally transferred from father to son.³⁵

³⁰ Art. 310a DCC.

³¹ Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Judgment of 12 August 2008; Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgment of 8 February 2006; Inter-American Court of Human Rights, *Case of the Kaliña and Lokono Peoples v. Suriname*, Judgment of 25 November 2015.

³² The Association of Indigenous Village Leaders in Suriname (VIDS), *Baseline Report of the Situation of Indigenous Peoples in Suriname 2020*, December 2020, p. 7.

³³ Ibidem.

³⁴ Ibidem, see Appendix 1. Registered Villages and Village Leaders at VIDS in 2020.

³⁵ See The Amazon Conservation Team, *Report on the Support to the Traditional Authority Structure of Indigenous Peoples and Maroons in Suriname*, December 2010.

Suriname is also home to non-Indigenous Tribal peoples, known as Maroons, the descendants of African enslaved people who fought for freedom from slavery. The Maroons established autonomous communities along the major rivers of Suriname's rainforest interior and have maintained distinct cultures and traditions. Maroons are communities with their own culture, incorporating many African elements. In Maroon communities, traditional functions are established through the hereditary matrilineal line. The Maroons are organized as follows: a number of relatives (in the female line) form a bee (grand family); a number of bees form a lo (clan); and a number of lo's form a tribe. A government-recognized "granman" (title of the leader) heads this tribe.

According to the latest census, the total number of Indigenous persons living in Suriname is 20,344, and the total number of Maroons is 117,567.³⁶ Although the Indigenous and Tribal peoples have been living in Suriname on land traditionally owned and used, officially they still have no legal title to these lands.

Following the IACHR judgments, Suriname has taken different steps to comply with the Court rulings, resulting in draft legislation – The Indigenous People and Tribal People Collective Rights Act – which protects the Indigenous and Tribal peoples' collective rights.³⁷ It gives the Indigenous and Tribal peoples the right as a collectivity to have the free enjoyment and full disposal of goods they traditionally collectively own or use, including collective property rights over their traditional knowledge and their collective intellectual and cultural property.³⁸

The Indigenous People and Tribal People Collective Rights Act will affect the right of ownership of cultural objects, as it gives the Indigenous and Tribal peoples the right to act as a collective regarding their cultural properties. This act, if adopted, would enable Indigenous and Tribal peoples to preserve and safeguard their cultural objects as these are considered possessions of the community that are not subject to national private law and property law regimes.

While the draft legislation does not provide specific regulations concerning the cultural objects lost due to colonialism, the rights regulated in the draft should not be seen as an exhaustive list of collective rights: other important rights of Indigenous and Tribal peoples are recognized in international law and the draft act only includes the rights that most urgently need to be legally recognized, without prejudice to any other (internationally) recognized law.³⁹

³⁶ Algemeen Bureau voor de Statistiek, op. cit., p. 77, table 13.

³⁷ See the website of the Parliament of Suriname, [https://dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/ontwerp-wet-wet-collectieve-rechten-Inheemse-en-Tribale-volken-\(traditionele-woon-en-leefgebieden\)/](https://dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/ontwerp-wet-wet-collectieve-rechten-Inheemse-en-Tribale-volken-(traditionele-woon-en-leefgebieden)/) [accessed: 01.08.2022].

³⁸ *Ontwerp-wet houdende regels met betrekking tot collectieve rechten van de Inheemse volken en de Tribale volken* [Draft Legislation on Rules Concerning the Collective Land Rights of Indigenous and Tribal Peoples], Art. 3g, [https://dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/ontwerp-wet-wet-collectieve-rechten-Inheemse-en-Tribale-volken-\(traditionele-woon-en-leefgebieden\)/](https://dna.sr/wetgeving/ontwerp-wetten-bij-dna/in-behandeling/ontwerp-wet-wet-collectieve-rechten-Inheemse-en-Tribale-volken-(traditionele-woon-en-leefgebieden)/) [accessed: 01.08.2022].

³⁹ Ibidem.

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In this regard, there are international law instruments – such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) – that specifically address the loss of colonial cultural objects.⁴⁰ Article 11(2) of the UNDRIP prescribes that States shall provide redress through effective mechanisms, which may include restitution developed in conjunction with Indigenous peoples for their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs. Although the UNDRIP is a non-binding international law instrument, the IACHR often refers to its provisions in its interpretation of States' obligations under the American Convention on Human Rights.⁴¹ This was done by the IACHR in two particular cases involving Suriname; namely the *Saramaka People* case and the *Kaliña and Lokono* case.⁴² These cases are of particular importance as they highlight the Court's recognition of Indigenous customary law and the obligation of States to respect Indigenous peoples' customs, traditions, and land rights.⁴³

Views in Suriname on Colonial Cultural Objects

After the publication of the report *Colonial Collections: Recognition of Injustice* by the Dutch Council of Culture, the Director of Culture of the Ministry of Science, Education, and Culture in Suriname, Roseline Daan, stated that the banjo and other objects belong to the history and culture of Suriname.⁴⁴ She pointed out that these objects are important for the identity and self-awareness of the Suriname people, especially for the younger generation, and that she welcomes the conclusions by the committee in the Netherlands recognizing that these kinds of objects must be returned. She further noted that the Surinamese government is to consider her role in returning objects and that the art belongs in Surinamese museums.⁴⁵

Within the Indigenous communities' traditional laws and customs, the entitlement to cultural objects depends on their use. For example, pottery and household utensils are most of the time given from mother to daughter. However, religious objects used by a Pyai cannot be transferred to anyone, and are primarily in custody of apprentices to the Pyai.⁴⁶

⁴⁰ 2 October 2007, UN Doc. A/RES/61/295.

⁴¹ 22 November 1969, 1144 UNTS 123.

⁴² Inter-American Court of Human Rights, *Saramaka People v. Suriname*, op. cit.; Inter-American Court of Human Rights, *Case of the Kaliña and Lokono Peoples v. Suriname*, op. cit.

⁴³ Inter-American Court of Human Rights, *Case of the Kaliña and Lokono Peoples v. Suriname*, op. cit., para. 139, footnote 178.

⁴⁴ N. Jurna, *Reacties uit Suriname: 'Deze kunst hoort hier in de musea'*, "NRC", 11 October 2020.

⁴⁵ Ibidem.

⁴⁶ Personal communication with M. Artist of the VIDS, 26 October 2022 (on file with the author); a Pyai is the priest in the Indigenous community.

The Association of Indigenous Village Leaders (VIDS) is aware that there are cultural objects in the Netherlands that were acquired in colonial times.⁴⁷ To illustrate, VIDS refers to the Manuscripts of Penard. At the end of 2010, during renovation work at the National Museum of Ethnology in Leiden, the long-lost manuscript of the Kari'na encyclopaedia of the Penard brothers was discovered. The manuscripts are unique and they have invaluable cultural information for the Kari'na people. The National Museum of Ethnology and VIDS wish to conduct further research and have entered into a collaboration formalized in a letter of intent signed in May 2022. For the VIDS, it is important that the Indigenous peoples regain their Indigenous heritage; it should not go back to the State of Suriname but to the Indigenous peoples themselves. As Indigenous peoples, they believe they are entitled to such objects, and they want them under their management in order to protect, preserve, and be able to study and transfer them for education purposes. VIDS is currently not equipped to manage this heritage, but is striving for its own "house", a centre where the accommodation of such objects will be possible.⁴⁸

The Tribal Collective KAMPOS – representing the six Tribal communities of the Kwinti, Aluku, Matawai, Paamaka, Okanisi, and Saamaka – is also aware of the fact that objects from their cultures were taken in the colonial period.⁴⁹ The KAMPOS also wants to repatriate these objects so that future generations can have access and gain information from them. For Tribal communities, such as the Matawai community, all such cultural objects are collectively owned.⁵⁰

Concluding Remarks

The existing legal framework in Suriname does not provide ready answers to the question of who is entitled to cultural objects that were acquired in a colonial context. Suriname is not a member of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, but even if it was these Conventions are not retroactive and thus do not apply to exports of cultural property during colonial occupation.

Arguably, colonial cultural heritage objects with cultural, historical, and religious significance should however return to Suriname.

It is of great importance that these objects are made accessible in Suriname and that conditions are in place for conserving and providing access to them – in my view primarily in museums. However, if the cultural objects are taken from Indigenous and Tribal communities, the Surinamese government should closely collaborate with these communities on how to deal with them, as foreseen in UNDRIP.

⁴⁷ Ibidem.

⁴⁸ Ibidem.

⁴⁹ Personal communication with T. Henkie of the KAMPOS, 29 October 2022 (on file with the author).

⁵⁰ Ibidem.

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The Suriname Indigenous and Tribal communities themselves have pointed out that cultural objects should be returned to them. For example, the banjo mentioned in the introduction was taken from the Maroons and is of historical and cultural value to them. In cases like the banjo, where the legal framework might not provide answers, the UNDRIP can provide a basis for working toward solutions. Since it is not known under what circumstances the banjo was taken, its meaning to its former owners should be researched. This will provide insight into whether the loss of the banjo by Suriname falls under the definition of Article 12 of the UNDRIP – which would implicate certain rights by the Maroons. Although the UNDRIP started as a soft law instrument, the IACHR has relied on it in several earlier rulings against Suriname in favour of collective property rights by Indigenous peoples regarding land traditionally owned and used, in order to ensure their particular way of life, their subsistence, traditions, culture, and development as peoples. The Suriname government has now taken steps towards implementing these rulings.

There is little to no academic research focused on the legal and traditional framework of the right of ownership of cultural objects of Suriname. Future studies should offer a more in-depth analysis of this issue, taking into account the laws and customs of the different tribes and communities in Suriname.

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