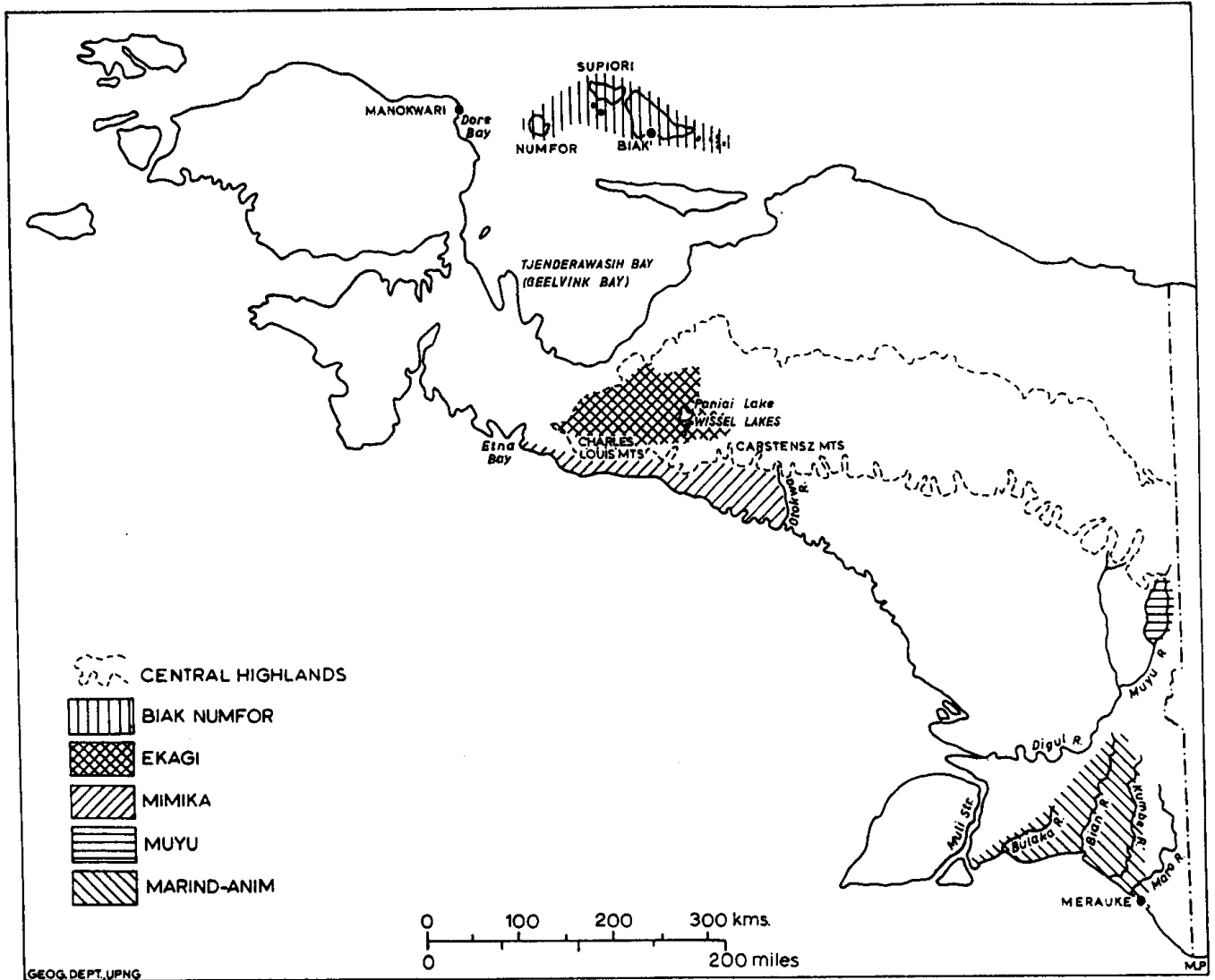


LAND TENURE IN WEST IRIAN

NEW GUINEA RESEARCH



Map 1. West Irian

NEW GUINEA RESEARCH BULLETIN

Number 38

LAND TENURE IN WEST IRIAN

Land tenure in the Biak-Numfor area by K.W. Galis

Ekagi land tenure by J.V. de Bruyn

Mimika land tenure by J. Pouwer

Muyu land tenure by J.W. Schoorl

Marind-anim land tenure by J. Verschueren

December 1970

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Foreword

The papers published in this Bulletin were originally written in Dutch. On the initiative of Dr R.G. Crocombe, then Field Director of the Research Unit, they were translated (for which I take responsibility) and prepared for publication. The alterations made to the original manuscripts are mainly of an editorial nature; introductory notes have been added to three of the papers, and footnotes where necessary to explain the text more fully.

During the final stages of editorial work and while I was still corresponding with him, the author of the paper on Marind-anim land tenure, Father J. Verschueren M.S.C., died. He had lived and worked among the Marind from 1931 to mid-1970, combining his missionary work with anthropological study. His death is a great loss both to the mission, for which he worked long and devotedly, and to anthropology, which he enriched with data on a most fascinating culture. He had published a series of papers mainly on the Marind, and most recently he collaborated with Professor J. van Baal, whose lengthy book Dema: Description and Analysis of Marind-anim Culture (1966) incorporates a wealth of data and comment supplied by Verschueren. Although several queries concerning Verschueren's paper were unresolved, I decided to republish it, partly because Verschueren had written to me that the original version contained a serious error which he wanted to correct. Moreover, from references made by van Baal in Dema to his own correspondence with Verschueren while preparing the work, I was able to formulate tentative answers to my queries. These are added to the original text in footnotes.

The spelling of words in the vernacular has been adapted for the English reader. The authors employ three diacritical marks, ' ` ', ' ^ ' and ' v ', which indicate respectively an open, closed and central vowel.

Four of the five authors use the same theoretical framework to analyse their data. This theory was formulated in the early 1900s by a Dutch lawyer, C. van Vollenhoven, in order to analyse indigenous legal systems in what was then the Netherlands East Indies. It proved extremely valuable and it remained in use even after Indonesia became independent in 1949. To clarify some of the concepts used by the

authors, the theory is briefly outlined in the following paragraphs, using some of van Vollenhoven's publications¹ and ter Haar.²

In analysing Indonesian land tenures van Vollenhoven distinguishes between what he calls the beschikkingsrecht (translated in the following five papers as 'disposal right' or 'right of disposal'), held by a community and the rights held by members of the community to use or possess land to which the community holds the disposal right. Ter Haar (1948) also uses the term 'disposal right', while the land over which a community is entitled to exercise this right is called the 'disposal area', a straightforward translation of van Vollenhoven's beschikkingskring. Here I use the term 'territory'. The term 'disposal right' does not indicate that a community holding the right can dispose of its land. Van Vollenhoven (1909:19-20) distinguishes six characteristic features of the disposal right. They are, first, that the community and its members are freely allowed to use the virgin lands of their territory. Secondly, outsiders are allowed to use these lands only after they have been granted permission by the community; use without permission is an offence. Thirdly, compensation or tribute for such use must be paid by outsiders and in some cases by members of the community. Fourthly, the community always retains some control over the cultivated tracts of its territory, and fifthly, it is responsible for all events taking place on its territory, and must bear costs associated with these when a wrongdoer remains unknown. Finally, the community cannot permanently alienate its disposal right. Although in the following five papers the concept 'disposal right' is used approximately in van Vollenhoven's way, its use may differ in some respects. For example, Dr de Bruyn reports that among the Ekagi an individual need not obtain the permission

¹ van Vollenhoven, C., 1909. Miskeningen van het adatrecht, Leiden.
 - 1917-21. 'Grond (rechten op den)' and 'Indonesië', Encyclopaedie van Nederlandsch-Indië, 2nd ed. later published in Het adatrecht van Nederlandsch-Indië, vol.3, Leiden, 1933, pp.405-20, 446-7.
 - 1921. 'Families of language and families of law', Illinois Law Review, vol.15, pp.417-23, later published in Het adatrecht van Nederlandsch-Indië, vol.3, Leiden, 1933, pp.599-606.

² ter Haar, B., 1939. Beginnelen en Stelsel van het adatrecht, J.B. Wolters, Groningen and Djakarta.
 - 1948 (English translation of the above). Adat Law in Indonesia, edited with an introduction by Hoebel, E.A. and Schiller, A.A., New York. In their extensive introduction the editors discuss the place of indigenous Indonesian systems of law under the Dutch Administration, while ter Haar, drawing on van Vollenhoven's work, deals with the content of the indigenous law systems. (The term adat, of Arabic derivation, refers to the unwritten laws both of the Indonesian peoples and of east Asian residents in Indonesia.)

of his community to transfer the land he has been cultivating to an outsider.¹

In some areas of Indonesia a community official is charged with administering the powers of disposal vested in the community (ter Haar 1939:69, 1948:91). Van Vollenhoven and ter Haar (1939) refer to this official as 'grondvoogd', here translated as 'land trustee'. This term approximates more closely the meaning of 'grondvoogd' than the term 'land supervisor' used by ter Haar (1948), because holding the disposal right should guarantee the present and future members of the community the use of their land, and the official administering this right is thus a trustee rather than a supervisor.

Individual rights, the second category distinguished by van Vollenhoven, regulate the use the members of the community can make of their territory. Although these rights are referred to as 'individual', both van Vollenhoven (1917-21, 1933:414) and ter Haar (1939:74, 1948:95) recognise that they may be vested in sub-groups of the community holding the disposal right, or in the community itself. Ter Haar (1939:73-7, 1948:95-7) distinguishes several types of individual rights. First, the right of possession, referring mainly to the right to cultivate fields a number of times or to use a plot as a residential site. Secondly, the right of usufruct which theoretically is exhausted by a single harvest, but which may be renewed annually after each harvest; it can be held by community members and outsiders. Thirdly, the right of preference which entitles the holder to cultivate a field in the future; for example, a man may establish a right of preference to a piece of land by putting identification marks on its boundaries, and the cultivator of a field may also have a right of preference over the adjacent plots. Fourthly, the right of exclusive option which entitles the person who holds it to buy a piece of land for the price offered by another prospective buyer. Finally the right of utilisation which is held by individuals as members of a kin group holding the right of possession; this derivative character distinguishes the right of utilisation from the right of possession. Both rights primarily concern the use of tracts of land for economic or residential purposes. This list is not exhaustive, and other types of individual rights are described in the papers presented here.

Van Vollenhoven felt that most indigenous systems of law in what was then the Netherlands East Indies and in some of the neighbouring areas sufficiently resembled each other while differing from other systems of law, to be regarded as forming what he called the Indonesian 'law tribe'. This could be divided into a number of 'circle laws' which could be further divided into 'law dialects' or 'parish laws' (1921:417). Although he believed that West Irian did not belong to the region of the Indonesian law tribe (1917-21, 1933:447), the mainland of Netherlands

¹ See pp.18-19.

New Guinea and the islands in Geelvink Bay were subsequently designated a separate law circle in the Indonesian law region (ter Haar 1939:257, 1948:9). This was probably done for administrative reasons.

Van Vollenhoven formulated his theory to describe communities which were often politically centralised, while the indigenous communities in West Irian tend to show a great diffusion of power and authority. Accordingly the office of land trustee either does not occur, or carries only limited rights and obligations. On the other hand, rights of individuals are highly developed, particularly among the Muyu where a communal disposal right does not occur. Schoorl therefore considers Vollenhoven's formulation is not applicable and he uses the terms 'ownership' (eigendom) and 'owner' (eigenaar) instead of 'right of possession' (bezitsrecht) and 'possessor' (bezitter).

Acknowledgment for permission to republish is gratefully made to the authors of the five papers who also supplied me with much additional information. The Board of the Instituut voor Taal-, Land- en Volkenkunde approved the republication of Dr de Bruyn's paper, earlier published in the Adatrechtbundel no.45; and van Gorcum and Comp approved the republication of part of Dr Schoorl's paper 'The anthropologist in government service' in Anthropologists in the Field, ed. D.G. Jongmans and P.C.W. Gutkind, 1967. I wish to thank also Mrs M. Ploeg, cartographer of the Department of Geography, University of Papua and New Guinea, who drew the maps and Mr M.J.E. Coode of the Department of Forests, Lae, who supplied me with the Latin names of several botanical species.

Anton Ploeg