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De langstlevende echtgenoot : een vergelijking van de positie van de langstlevende echtgenoot in het Marron-erfrecht met de positie van de langstlevende in het Caraïbisch en het Surinaams erfrecht

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Summary

At the onset of the study about the position of the surviving spouse under Maroon succession law, it became clear that there were no written records of the main aspects of this particular succession law system. There were also no records for the system of succession law for the Caribs, which the Maroon system could be compared with. For this reason, first the main points of the two abovementioned tribal systems were documented. This was done by means of interviews.

Starting point of the comparison of these three systems was the fact that some basic concepts regarding matrimonial and succession law have the same meaning in all three groups (see chapter 3 paragraph 2). In conducting a comparative study of the position of the surviving spouse under Maroon succession law with the position of the surviving spouses under both Caribs succession law and under Surinamese succession rules, the presumption had been that the two systems of succession law of the tribal peoples would have more in common with one another than would be the case with the system of the Maroons and the system according to Surinamese law.

Surprisingly, however, the position of the surviving spouse under the Maroon succession law system showed more grounds for comparison with the position of the surviving spouse under Surinamese succession law. There is a considerable difference between the underlying ideas of the succession law systems of the Maroons and the Caribs. At the end of each chapter more thorough conclusions have been drawn. Because of that a brief summary of the following chapters will be given.

Chapter 1 deals with the question of characterizing the Maroons of Surinam: who they are, how did the tribes come into existence, the composition of the Maroon community and how justice is found. The chapter also discusses methods of finding justice among the Caribs.

Then follows a description of the several stages of the field research such as the pre-research, the interviews and the processing the information that was obtained. Since finding justice in both groups is primarily done by men, an effort was made to interview the women as well in order to establish whether the law applies in practice as well.

Chapter 2 deals with the relationship between Maroon succession law and the Surinamese legal system. The content and application of the contracts closed in the 18th century between the central government and the Maroons are discussed. The sources of Surinamese law and the relationship between these sources and Maroon succession law are also amply discussed, as is the relationship between Maroon succession law and international treaties to which Suriname is a party. The human rights of the Maroons and the enforcement of these rights are also touched upon.

I have come to the conclusion that several economic, social and cultural rights of the Maroons are being violated.

International courts are involved in the enforcement of these human rights. In the *Awas Tingni versus Nicaragua* case, the Inter-American Court for Human Rights had already decided that joint property, as the indigenous people know it, is a specific form of property. This decision was confirmed by the Court in the *Moiwana village versus Suriname* case in 2005. In the *Aloeboetoe* case, Suriname was condemned by the Court to pay compensation to the victims.

Chapters 3, 4 and 5 provide a description of the position of the surviving spouse against the background of matrimonial property and succession under respectively Maroon law, Carib law and under the Surinamese legal system. The main aspects of matrimonial property law are discussed, as are the foundations of the right of succession, hereditary succession, the division of the estate and the position of the surviving spouse concerning property law aspects of respectively the Maroons, the Caribs and under the Surinamese legal system.

The most notable finding in chapter 3 is the fact that the surviving Maroon spouse is traditionally not eligible to any part of the estate. Since the Maroon-man and the Maroon-woman do not live together, the death of one of the spouses seldom gives rise to questions about whom the property belonged to and identifying the heirs of the deceased. If upon marriage, the man takes the woman to his village, after his death the woman loses both the right of use of the land on which the hut stands and of the land that the woman upon conclusion of the marriage had been allotted for agricultural purposes, since she derived her rights from her spouse.

The holder of the right to use the land is the one to who's bee (family) the land belongs. These rights of use, just as the right of usufruct, terminate by death of the holder. The gifts and other effects given to the woman either upon closing of or during the marriage in general cause the Maroon woman's estate to increase. After the death of her husband her estate could decrease, depending on the village she lives in and consequently, the place her plot is located at. The estate of the Maroon man, in contrast, does not increase as a result of marriage or as the result of the death of (one of) his wife (wives).

Chapter 4 shows that the Carib woman does not receive necessary household items as wedding gifts, but that these items are obtained after the marriage has been concluded. These objects are to be considered as household expenses that should be borne by the man. Clothing and jewellery that a man gives to his wife are hers.

The Carib marriage does not create a matrimonial estate: if the marriage were to be dissolved by means of a divorce, there is no division of goods and properties. The question of culpability plays an important role in a divorce. The party that is at fault (that has deserted the other party) has to move and leave behind everything except personal belongings. When it concerns a woman who lives in her own village and now takes another man, she usually leaves everything behind and moves to the village of the new man. The household and the children she leaves behind are taken care of by her family. It is often her sister that assumes her role, since it is allowed for a Carib Indian man to maintain sexual relations with his wife's sister.

If the woman lives in the village of the husband and she takes a new partner, in this case too, she must leave, taking only her personal belongings with her. The children are then brought to the woman's village and are raised by the woman's sister or mother. The man can choose his wife's sister to be his wife and to take over the household. If it is the man who chooses to end the relationship with the woman, he stops visiting her and leaves her with all movable property, including items that were his but that were in the woman's hut.

If the marriage ends because of the decease of one of the partners, matters such as the place where the spouses lived during the marriage, or whether they had children or not are very important in identifying the heirs. If they had children, spouses in principle do inherit from one another. If they had no children, the woman in general inherits from the man, because as a rule the woman stays in her own village. For this same reason, the man generally does not inherit from the woman. As it appears, the position of the surviving Carib Indian spouse is affected neither by marriage nor death.

Although, during the study, the Caribs indicated that they do know private property, I have come to the conclusion that this private property is in fact community property. The community the estate belongs to is rather fluid: it is either the woman's family in case the spouses live in her village, or the new family that the spouses created, or the man's family if the marriage remained childless and the couple lives in the man's village. There is therefore no succession law in the true sense of the word.

In chapter 5, in which the position of the surviving spouse is discussed against the background of matrimonial property law and succession law in the Surinamese legal system, also the differences between the Surinamese and the Dutch matrimonial property law and succession law systems are described. This chapter also includes information on the position of the surviving spouse in Dutch succession law and the factors that have affected this position.

Suriname currently knows a system of legal equality of man and woman in the aforementioned fields. The rules for Surinamese matrimonial property law and succession law govern therefore both man and woman equally. The matrimonial property system for most marriages in Suriname is the joint property of goods. The first group of successors under Surinamese succession law is formed by the next-of-kin in descending line and the spouse.

The surviving spouse is equalled to a child when it comes to the estate of a predeceased spouse. Surinamese law - testamentary succession law - offers several possibilities to provide for the surviving spouse; the usufruct testament is the method that is most frequently used in Suriname. At the end of this chapter the conclusion is drawn that, contrary to the Netherlands, Suriname has (yet) limited need for parental distribution of the estate, because both those who draft the will, as those whom the will is intended for, have no need for a provision by law other than the existing usufruct testament.

In chapter 6 the position of the surviving Maroon spouse with regard to property law is compared to that of the surviving Carib Indian spouse. Both the broad similarities and the specific similarities between matrimonial property law and succession law are discussed, followed by the broad differences between the two systems are then discussed.

The biggest similarity in the position of the surviving Maroon spouse and that of the Carib spouse is that in both systems the community is important. Immovables are community property, goods should stay within the community, the community should provide for its members. This aspect also causes the main difference. With the Caribs, as becomes clear from my research, all property belongs to the community. As a result, there is no matrimonial property law or succession law in the true sense of the word. Because the Caribs traditionally have no private property, there is no common basis between the two systems, which renders further in-depth comparison of these two systems impossible.

Chapter 7 shows the comparison of the position of the surviving Maroon spouse with that of the surviving spouse under the Surinamese legal system. Again, the similarities and the differences in matrimonial property law are first discussed, followed by the similarities and differences in succession law. This chapter is concluded with an article-by-article comparison of Maroon and Surinamese succession law.

In comparing the position of the surviving Maroon spouse with that of the spouse under Surinamese law from a property law point of view, we see that for the Maroons, neither marriage nor death of the other spouse affect the estate of the surviving spouse. Marriage and death, however, do affect the estate of the spouse under Surinamese law, since upon marriage generally the estate of both spouses becomes joint property, which both spouses are entitled to for equal parts, and also because of the fact that the surviving spouse under Surinamese law inherits a child's portion from the estate of the other spouse, and may appropriate the household furniture and effects of the joint residence.

Chapters 8 and 9, wherever possible, provide explanations for the similarities and differences as found in chapters 6 and 7 in the comparison of matrimonial property law and succession law between the Maroons, the Carib Indians and under Surinamese law.

While looking for an explanation of the differences and similarities between Maroon and Carib succession law in chapter 8, I had to conclude that fundamental aspects of Maroon and Carib law are very far apart and that giving a correct explanation of these differences and similarities does not fall within the scope of this study and therefore cannot be further explored.

The main difference between the position of the surviving Maroon spouse and that of the surviving spouse under the Surinamese legal system that is discussed in chapter 7, is that marriage creates no joint property for Maroon spouses but for spouses

under Surinamese law it does, and that under Maroon succession law spouses do not inherit from one another but under the Surinamese legal system they generally do. The explanations for these differences are given in chapter 9 and lie in the fact that the Maroon-man and woman generally do not live together and also that in Maroon succession law the principle of kinship remains intact, so only members of the kinship, where the spouse is no part of, are the inheritors.

Chapter 10 gives an evaluation of the similarities and differences that were found, whereby the most striking difference, namely the fact that women and men in the Maroon legal system are not treated in an equal way, is elaborated upon. Gender-based discrimination, equality and the development of the equality-concept in Western Europe and among tribal people are discussed. The conclusion is that neither the Western nor the tribal equality-concept can be used in ascertaining whether Maroon communities know gender-based discrimination. Within the Maroon community, there exists no such thing as an unjust distinction based on gender. In my opinion it is only possible to work on eliminating the unjust inequality when the community realizes that there exists such an inequality. Within the Maroon community the process of awareness should be started before elimination of a unjust gender-based distinction can be worked at.

The thesis is completed by the conclusions and recommendations that provide guidelines for specific marked areas where Maroon law is enforced. Also conflict rules are proposed for the case of a collision of Maroon and Surinamese law. These recommendations are intended to safeguard traditional Maroon succession law against the overwhelming impact of Surinamese legislative rules on Maroon law.

