1. Legal system of Suriname

1.1. Constitutional history of Suriname
Suriname gained its political independence from the Kingdom of the Netherlands in 1975. But the process of independence started more than a century earlier after the abolition of slavery in 1863 when the colonizer found the need to make legislation to rule the country. The foundations for the political development were laid by the introduction of the Code of 1865\(^1\). The most important provision of the Code was that Suriname could attribute to the organization of internal affairs of the colony. In a later decision by the Crown\(^2\) the colony Suriname was allowed to a certain extent to issue its own rules and regulations. To assist the government in the making of regulations for the colony an advisory council was established, but more importantly the first parliament was established, named ‘de Koloniale Staten’ (the Colonial Council). This Council represented the nation and consisted of four members appointed by the Governor of Suriname and nine members chosen by the electorate based on census voting\(^3\). In 1936 the amount of members in parliament was extended to fifteen, ten were chosen and 5 were appointed by the Governor.

In 1948, after the Second World War a new constitutional development took place in Suriname. A new Code was enacted in which Suriname received autonomy over internal affairs. This Code prevailed until the enactment of the Statute in 1954 in which Suriname was granted autonomous rule. From this point on Suriname was part of the Kingdom of the Netherlands which consisted of three equal territories: Netherlands, Suriname and the Dutch Antilles. The Queen was at the head of the Kingdom and was also the head of the separate governments of the overseas territories.

With the independence in 1975 Suriname had its own constitution. The Parliament now consists of 51 members whom are chosen by general elections every five years.

1.2 Government and legal system in Suriname
After the independence, between 1975 and 1980, the form of government was a parliamentary system. This meant that the constitutional power lay with the parliament. Suriname has a separation of powers. The parliament (called ‘de Nationale Assemblee van Suriname’ or the acronym: DNA) and the government together have the legislative powers, the government has the executive powers and the Court of Justice is the judiciary.

Between 1980 and 1987 there was a coup d’etat by the military. The parliamentary democracy was rescinded and a state of emergency was declared. During this period Suriname was ruled by decrees. Most of which were converted to acts after the reinstatement of the democracy and the parliament.

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\(^1\) Code on the Policy of the government of the colony of Suriname (Reglement op het beleid der Regering in de kolonie Suriname) enacted by law on 31 mei 1985 (G.B. 1865 no. 55) and promulgated by publication on 27 October 1865 (G.B. 1865 no. 12))

\(^2\) Royal Decree regarding the abolition of the statutory authority of Old Dutch and Roman law and the introduction of new legislation. Royal Decree of 4 September 1868, G.B. 1868 no. 14 (Besluit betreffende de afschaffing van het wettelijk gezag van het oud Hollandsche en van het Romeinse regt en de invoering vvan de nieuwe wetgeving)

\(^3\) Voting by census means that the right to vote is only reserved to those wealthy enough to be able to pay a certain amount of tax.
In 1992 the current Constitution was adopted by referendum. Since its promulgation Suriname is no longer a parliamentary system. In this current system the President has executive powers. But this strong position of the President is somewhat lessened by the declaration that the parliament is the highest constitutional body. Even though the President has certain authorities over his own actions and the actions of the ministers, the government and his subordinates. But the parliament can demand information from the president at all times and can even cast a vote of no-confidence in the president which would result in early elections. Also the president needs the approval of the parliament for his national government policy (The Development Plan). Even though the president is in charge of the foreign affairs he needs the approval of the parliament to declare treaties legally binding for Suriname and give them the force of law. This all brings to the conclusion that the form of government in Suriname can be characterized as a semi-parliamentary system.

Also when looking at the state form we can say that Suriname is a unitary state were all responsibilities concerning the rule of the country lay with the central government in Paramaribo. According to the constitution Suriname is a decentralized unitary state, but this decentralization is not yet apparent. There are 10 districts with each its own district board (Districtsbestuur).

Because of the history Suriname has with the Netherlands the law system in the country is a civil law system.

1.3 Legislative system
In accordance with the Constitution, legislative powers are vested within DNA and the Government. Government agencies vested with legislative powers are the President, Ministers. The District Council has limited legislative powers with regards to their region.

The following table provides an overview of the different types of laws and regulations in Suriname.

| International Treaties (Verdragen) | The approval of international treaties should be authorized and, if required, approved by the President of the Republic of Suriname. The provisions of the international treaties, which may be directly binding on anyone (e.g. Human rights treaties), shall become effective upon promulgation. Legal Regulations in force in the Republic of Suriname shall not apply if such application should be incompatible with provisions of agreements which are directly binding on anyone and which were concluded either before or after the enactment of the regulations. In case the nature of the provisions of the international treaties are as such that they are not directly binding on any one (E.g. instruction norms in most of the environmental treaties which are directed towards the State), they must be transformed into national legislation to be applicable. |
| Constitution of the Republic of Suriname | Highest national law providing for rules regarding the |
sovereignty, principles for freedom, equity and democracy.

Jointly realized by Government and Parliament. However, some of the primary legislation in force is in the form of decrees, since they date from the period of Military rule.

State Order (Staatsbesluit, Landsbesluit) A Government Order containing general binding rules, to implement an act or to regulate a subject not reserved to be regulated by an Act.

Presidential Order (Presidentieel Besluit) A decision by the President as Executive Head of State by virtue of the Constitution.

Presidential Resolution (Presidentiële Resolutie) A decision by the President by virtue of a law.

Ministerial Order (Ministeriële Beschikking) A decision by a Minister, in the execution of a Ministerial task (or by virtue of a law).

District Ordinances (Districtsverordeningen) Limited legislative power given by the Constitution to the District Council to regulate their district, in accordance with their task description.

1.4 Legislation on water resources, biodiversity and climate change in Suriname

There are several pieces of legislation which shape the legislative framework for environmental management in Suriname. Most of the legislation dates from the colonial period, is fragmented and dispersed over various sectors. Some of these laws are the nature conservation act, the forestry Act, the Mining Act, Police Criminal Code, etc. The legislation with regards to water supply does not contain technical standards and both groundwater as well as surface waters are not protected.

In the past decade, a number of Bills have been prepared but have not found their way to parliament yet. Very relevant in this light are:

1. A draft Framework Act on Environmental Management and draft regulations on pollution control en Environmental Impact Assessment
2. A draft Act on the Establishment of an Environmental Authority
3. A Coastal Zone Management Law
4. A draft Act on protection of catchment areas
5. A draft Act on extraction of groundwater
6. A draft Act regarding the quality of drinking water.

The excel matrix provides an overview of legislation relevant to water resources, biodiversity and climate changes. Brief references are made to the draft laws. In order to have distinction between the existing laws in force and the drafts, the parts where a description of the draft laws is provided, is colored.

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1.5 Customary water rights
One of the most contentious issues in Suriname is the issue of land rights and land use claimed by the Amerindian and maroon people in Suriname. These people live in permanent villages and temporary settlements along the major rivers that traverse the rainforest. These rivers have been a source of life for these people. The rivers are being used for bathing, cooking, transport, fishing, etc. Land allocation and settlement, rights to land and natural resources for the Indigenous and Maroon communities are for the most determined by custom rather than by law. It is observed that indigenous people and maroon can remain in unlimited access to water as required for their undisturbed continuation of their lifestyle. However, the increase in gold mining activities near their living areas and the lack of adequate environmental legislation will eventually result in a limitation of access to water.

There are two options when it comes to the recognition of indigenous rights. The government can decide to either recognize the indigenous rights by formalizing it through legislation or they can let it remain a more factual (feitelijke) legal pluralism where the traditional legal order exists but has not been officially recognized by the state.

In Suriname the water rights of indigenous and tribal people have not been formally recognized. There are many discussions on this subject and under the judgment of the Inter-American Court on Human Rights in the Saramaka People vs. Suriname in 2008 the government of Suriname has the obligation to solve issues with its indigenous and tribal communities specifically on land rights. For this moment there are talks between the government and the representatives of indigenous and tribal people in the country, but no concrete steps have yet been taken by the government to formally recognize these rights by law.

1.6 Internalizing Treaties and Hierarchy
The relationship between international law and national law is regulated in the articles 103, 105 and 106 of the Constitution.

Article 103 of the Constitution reads as follows: “Agreements with other powers and international organizations shall be concluded by or with the authority of the President, and far as the agreement requires, shall be ratified by the President.

Article 105 reads: “The provisions of the agreements mentioned in Article 103, which may be directly binding on anyone, shall become effective upon promulgation.”

Article 106 reads as follows: “Legal Regulations in force in the Republic of Suriname shall not apply if such application should be incompatible with provisions of agreements which are directly binding on anyone and which were concluded either before or after the enactment of the regulations.” From the articles cited from the Constitution we may deduce that the provisions of international agreements supersede Suriname law. This rule only applies when the content of
international regulations is directly binding (self-executing) on someone or has a direct effect. The Monistic doctrine is applicable. This means that such an international agreement does not only binds the State but also the citizens.

International agreements are “non-self-executing” when they contain provisions which, by their nature, are not directly applicable in the national legal system. They need to be transformed into national laws. The environmental treaties ratified by Suriname need to be transformed into national law.