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DILEMMAS OF AN EXPERT WITNESS IN THE AMAZON

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DILEMMAS OF AN EXPERT WITNESS IN THE AMAZON*

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ABSTRACT

This article discusses two affidavits submitted to the Inter-American court system. The first is concerned with Suriname's refusal to recognize indigenous land rights despite its international obligation to do so. The second addresses problems associated with indigenous land titles in Guyana. Comparing the two cases permits observations about ethnographic research conducted for expert witness reports, including the need to make affidavits legible to three different audiences, each with its own frame of reference: the legal system, communities seeking recognition of their rights, and anthropology (Paine 1996). I also consider the narrative choices in these affidavits, the political dilemmas of being an expert witness, and the compromises of short-term ethnography.

RESUMEN

Este artículo examina dos informes periciales presentados ante la Comisión y la Corte Interamericana de Derechos Humanos. El primero, sobre la negativa de Surinam a reconocer los derechos a la tierra de los pueblos indígenas, a pesar de sus obligaciones internacionales. El segundo, sobre títulos de tierras de población indígena en Guyana. Comparar ambos casos me permite hacer observaciones sobre la investigación etnográfica a corto plazo para peritajes antropológicos, incluyendo la necesidad de hacer que estos informes resulten comprensibles en tres marcos superpuestos: el de los abogados y el sistema legal, el de las comunidades en lucha por sus derechos, y el de la disciplina antropológica. Además, considero las elecciones narrativas adoptadas en los informes, los dilemas políticos de ser perito experto y los desafíos de la etnografía a corto plazo.

In August 2014, I visited the Amerindian village of Isseneru on the Middle Mazaruni River in Guyana. The lawyer representing the people of Isseneru had asked me to conduct research and write an expert witness report for the Inter-American Commission on Human Rights on the problems associated with their land title, which was granted by the state in 2007. During a preliminary meeting with community members to discuss the project, I explained that the state claimed that Isseneru was “not a traditional Akawaio community” because its members intermarried with outsiders, spoke English in the village, were engaged in artisanal mining, and received a percentage of the gold extracted by non-indigenous miners working on their land (Government of Guyana 2013: 11, 22). The state also disputed their claim to be the traditional landowners of Isseneru because they had relocated there from the Upper Mazaruni River in the 1970s (Government of Guyana 2013: 22).

Unsurprisingly, the people at the meeting responded very strongly to these claims, saying that they were “extremely upsetting to hear.” They also objected to being asked to explain themselves to me, saying: “Yet another visitor who would like to know who we are,” and noting that they had already been interrogated about “how we live, where we come from, who we got our land title from.” They added: “We know this land is ours, and that’s why we live here,” and “our grandparents [and ancestors] lived, farmed, and hunted on all of these lands.” Feeling somewhat chagrined by their response, I acknowledged the validity of their objections and reiterated that I was there to help document their legal claim rather than to judge their decisions.

This article is concerned with two expert witness reports submitted to the Inter-American Commission on and Court of Human Rights regarding indigenous land rights in the neighboring countries of Suriname and Guyana. The first case was concerned with the detrimental consequences of Suriname’s refusal to recognize the legal personality of indigenous peoples, including their rights to land, despite its international obligations to do so. The indigenous claimants approached the court after exhausting all possible domestic remedies, as required by the Inter-American system. The second case addressed the problems associated with indigenous land tenure in Guyana under the Amerindian Act of 2006, which established the procedures through which the state assigns land titles to indigenous communities. The request to participate in these projects came from Fergus MacKay, senior counsel for the Forest Peoples Programme in the United Kingdom, who represented the indigenous complainants in both cases. MacKay had previously asked me to contribute to an independent review of a proposed bauxite mine in the

Bakhuis Mountains in west Suriname (Goodland 2009; Kirsch 2009). Before agreeing to participate in these cases, I had the opportunity to read through various reports, affidavits, and preliminary rulings, and to discuss the legal proceedings with MacKay. He did not provide me with instructions about the form or content of the expert witness reports, although he suggested questions to ask and provided comments on several drafts.

In what follows, I present summaries of the expert witness reports I submitted in the two cases. I also briefly describe the hearings on the Suriname case and the final judgment; the results of the Guyana case are still pending. But the goal of the paper is to consider the ways in which my role as expert witness affected the data I was able to collect and how I interpreted it. This included the need to ensure that my reports were legible to three different audiences, each of which has its own frame of reference: lawyers and legal systems, but also communities seeking recognition of their rights, and the discipline of anthropology (Paine 1996: 63). I also consider some of the constraints associated with short-term ethnographic research conducted for the purpose of writing such reports. For example, readers will note that I present structural accounts of the two land tenure systems because I do not have enough information to describe how actual practices may diverge from their general organizing principles.

Finally, I discuss the narrative choices I considered in composing these texts. I also provide several examples of political dilemmas that arose in the context of conducting this research and writing these reports, including my concerns about the use of mercury to amalgamate gold by artisanal miners from the Akawaio village of Isseneru in Guyana. In addition, I consider whether these affidavits can be considered “good enough” ethnography (Scheper-Hughes 1989: 28). Thus, the article reveals some of the “backstage” processes associated with the production of expert witness reports by anthropologists. This includes their interactions with communities and the influence of legal proceedings on the findings of the researcher and on how they are presented.

CASE 1: INDIGENOUS LAND RIGHTS IN SURINAME

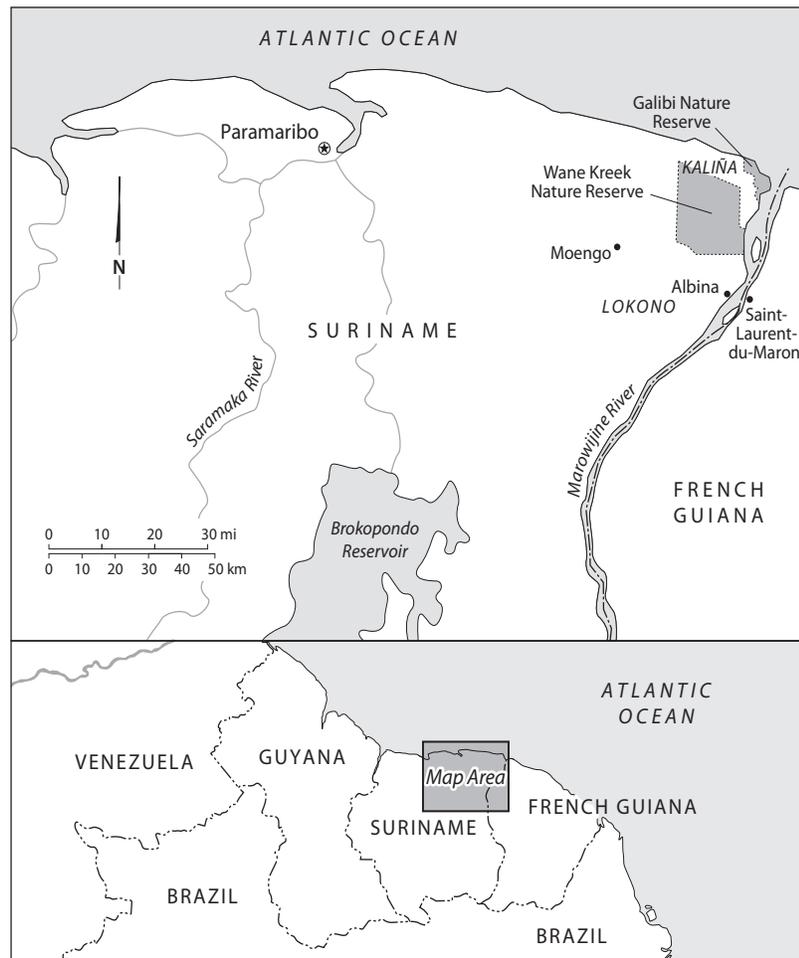
The first case examines the negative consequences of the state’s refusal to recognize the juridical personality and land rights of the Kaliña and Lokono peoples of the Lower Marowijne region of

Suriname.¹ Their territories have been progressively reduced and degraded by mining, logging, and the expansion of the town of Albina onto indigenous land. The state has also established several nature reserves on their land without their consent. The case followed efforts by the Saramaka Maroons, who as the descendants of escaped slaves, sued to force Suriname to recognize their land rights, which resulted in a precedent-setting judgment in the Inter-American Court of Human Rights (*Saramaka People v. Suriname* 2008).² However, with the exception of monetary penalties, the court lacks the power to enforce its judgments on states. Consequently, Suriname has failed to implement the Saramaka decision requiring it to recognize the juridical personality of the Maroons, who currently number more than 20 percent of the population. Suriname also refuses to recognize the legal personality and land rights of its indigenous population, which make up less than 4 percent of the 560,000 people living in the country.

Six years before Suriname acquired its independence from the Netherlands in 1975, Dutch colonial authorities established the Galibi Nature Reserve to protect the coastal area where several endangered species of sea turtles come to lay their eggs. Neither of the elected village leaders, or captains, were able to read the documents they were asked to sign and both thought they were authorizing research on the turtles. Some of the agricultural plots and houses in the village were located inside the boundaries of the nature reserve, leading its officials to force them to relocate. While several community members have developed successful ecotourism businesses that operate during the turtle egg-laying season, they do not see this as adequate compensation for the taking of their land. Both the Kaliña and their neighbors initially hoped that the post-independence government of Suriname would recognize indigenous rights to land and resources, which thus far the state has refused to do. Since the 1970s, the Kaliña have consistently demanded restitution of all of the lands incorporated into the Galibi reserve and remain aggrieved that an integral part of their territory was unilaterally taken from them.

¹ The Kaliña are a Carib language-speaking community and the Lokono are an Arawak language-speaking community.

² The Inter-American Court decision recognized that the Maroons had rights equivalent to those of tribal or indigenous communities. For additional information, see *Rainforest Warriors*, Richard Price's (2011) account of the Saramaka case.



Map 1. Lower Marowijne River, including the Galibi and Wane Kreek Nature Reserves, Suriname. Map: Bill Nelson.

The captains of the Galibi villages also believe the state is not doing an adequate job protecting sea turtle populations, some of which are in decline. They argue that the most significant threat to the long-term survival of the turtles comes from fishing boats in the Marowijne River estuary that use long drift nets, which kill sea turtles when they become entangled in the nets and drown. Most of these boats are from the capital of Paramaribo, although the state exerts little control over them (Kambel 2002: 143). The Galibi Nature Reserve continues to impose strict conservation rules on the Kaliña despite their traditional taboo against eating turtles, although in the past they harvested turtle eggs for consumption and sale. As

Captain Ricardo Pané of Galibi told me, “We don’t need a nature reserve to protect the animals, because we have traditional knowledge that is very old to protect them. Although the government has not succeeded in protecting biodiversity . . . indigenous peoples have been protecting biodiversity since before the Spanish conquistadores came to South America.” Consequently, Captain Pané asks why sea turtles have land rights, but the indigenous people of Suriname do not.

Another significant taking of indigenous land in the lower Marowijne region occurred with the establishment of the Wane Kreek Nature Reserve in 1986 (VIDS 2009: 49). This action has had more destructive consequences than in the Galibi reserve, where land is protected from development. In contrast, Wane Kreek has become an industrial zone for resource extraction, including a bauxite mine operated by Suralco and BHP Billiton.

In the late 1970s, Dutch colonial authorities conducted an ecosystem inventory of the country’s coastal plains. Because of extensive development along the coast and the comparatively intact ecosystem of Wane Kreek, the area was chosen as a nature reserve. The project was established despite preexisting mining rights allocated by the Dutch colonial administration to Suralco, the local subsidiary of the Aluminum Company of America (Alcoa), as well as preexisting logging concessions. The irony that the state expropriated indigenous lands for a conservation project—precisely *because* those communities had a long track record of sustainably managing the resources there—and later allowed the area to become an extractive zone is not lost on the Kaliña and Lokono.

In the past, the indigenous peoples of the lower Marowijne regularly went hunting, fishing, and camping at Wane Kreek and the adjacent Wane Hills. They told me that Wane Kreek was “home to a large number of plants and animals.” The people living there also told me they “do not need nature reserves to protect biodiversity” because they have rules, taboos, and limits on consumption and extraction, which “in practice leads to the protection of the area and animals and plant species” (CLIM 2006: 113). As one person explained, “We are people of nature; we live with it and by it. But the people who made the decision [to establish the nature reserve] don’t live in nature, they work in offices, and they made the decisions without us. They are using the knowledge of indigenous peoples [to protect the forest] against indigenous peoples [by setting up a nature reserve on our land].”

When Suralco began to mine for bauxite in the Wane Hills in the mid-1990s, it became apparent that the Wane Kreek Nature Reserve would be extensively affected. Bauxite deposits are generally shallow and located close to the surface, so extraction typically entails strip-mining large areas. A significant portion of the Wane Kreek Nature Reserve has been cleared of forest covering, displacing the animals that used to live there. The red laterite that remains after strip-mining for bauxite is inimical to forest regrowth, and rehabilitation efforts by the mining company have had limited efficacy. Although bauxite mining in Wane Hills is nearing completion, the wide roads constructed by the mining company have opened the area to other extractive activities, including legal and illegal logging, sand and gravel mining, and most recently, kaolin mining. Land taken from indigenous peoples to establish a nature reserve has been converted into a de facto open-access system.³

The Kaliña and Lokono also attest to the impact of development and environmental degradation on their subsistence practices, requiring them to participate more extensively in the monetary economy. As one person told me: “Before it was okay if you didn’t have money, but now we need money [to survive].” They are no longer able to feed their families by hunting, fishing, and agriculture. A community leader informed me that participation in the monetary economy is fine for those individuals who are successful, but not all of their community members have the skills needed to earn a living wage. Moreover, they share food among themselves when they hunt and fish, but not when they earn money. Consequently, the failure of the state to recognize indigenous land rights has forced them to contend with new structural forms of inequality.

The Kaliña and Lokono also describe how these economic and environmental changes have affected their ability to reproduce their own culture. Many of the practical skills associated with subsistence production are no longer taught by fathers to their sons or mothers to their daughters. As one person told me: “In some families there are no elders to teach them these things. And even to obtain the materials needed . . . you can no longer find them locally because of logging but have to travel long distances.” However, new markets for Amerindian products—including cassava bread and beer, known as *kasiri*, agricultural produce, and various wild fruits—have recently emerged in Suriname and the town of Saint-Laurent-du-Maroni, across the

³ Feeny et al. (1990: 4) define open access as “the absence of well-defined property rights. Access to the resource is unregulated and is free and open to everyone. Many offshore fisheries before the twentieth century, or the global atmosphere provide examples.”

river from Albina in French Guiana. Participation in these markets provides the Kaliña and Lokono with an opportunity to improve their standard of living using traditional skills and knowledge. However, the continued viability of these practices is at risk due to encroachment on their land and environmental degradation from mining and logging.



Figure 1. Indigenous produce for sale in St. Laurent-du-Maroni, French Guiana. Photo: Stuart Kirsch.

In focus groups and interviews that I conducted with the Kaliña and Lokono in the Lower Marowijne region, the most striking element of our discussions about the importance of indigenous land rights was their invocation of freedom. People told me they only feel free on their own land, where they are able to do as they please. Without land rights, they emphasized, one is not truly free, because “anyone can show up with a piece of paper and say they own our land.” Many people described freedom in terms of their ability to hunt and fish in the rain forest. When I asked young men about their future, they told me they wanted to stay on their own land because: “We love this place. We want our own place where we can live. We like to be free.” Today, however, they are “not free enough [because] other people are coming into our territory.” When describing the nature reserve established on their land, they expressed their criticism in terms of constraints on their freedom: “Before we were free to go there, but now someone is imposing rules on us.” Many people brought up stories about “no trespassing” signs on houses built on land alienated from indigenous peoples.

In February 2015, I attended hearings of the Inter-American Court of Human Rights on the Kaliña and Lokono case in San Jose, Costa Rica. Captains Ricardo Pané and Jona Gunther testified before the court on the consequences of the state's refusal to recognize indigenous land rights. Captain Pané explained to the court: "We are here to continue our struggle in a just way to have legal recognition of our land rights." In response to a question from the state, he responded that they have suffered physical and emotional suffering that amounted to trauma. When Judge Vio Grossi asked him: "Do you feel like a Surinamese national?" Captain Pané responded: "I don't feel like that as long as my rights have not been respected." When the judge asked him whether he felt like a citizen of Suriname, he replied: "No."

Several expert witnesses were also asked to present evidence at the hearings. Jérémie Gilbert, a professor of law at the University of East London and an expert on indigenous rights, testified that indigenous land rights are fully compatible with biodiversity conservation (see Colchester 2004). Best practice in circumstances in which indigenous peoples have been displaced by nature reserves, he observed, involves land restitution and subsequent negotiation of co-management plans for protecting threatened environments and endangered species (see African Commission 2010). The UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, also provided testimony on the contributions of indigenous peoples to biodiversity conservation. In his final summation, lawyer for the complainants Fergus MacKay argued that Suriname's failure to recognize the legal personality of indigenous peoples or establish a legal framework for granting land tenure to indigenous peoples violated their human rights and contravened the obligations of the state under various treaties and international agreements.

The state's response to these allegations was that it was not ready to implement new laws recognizing indigenous land rights, as the resulting redistribution of land ownership might exacerbate political tensions between ethnic groups in Suriname.⁴ During a break in the proceedings, one of the lawyers for the state told me that he expected to lose the case but was hoping to "buy more time" for the state to address these issues. In contrast, the judges on the Inter-American Court expressed frustration with Suriname for its failure to implement its decision in *Saramaka People v. Suriname* (2008) eight years earlier.

⁴ The state also contested a number of factual claims presented by the complainants, including the assertion that the establishment of the nature reserves limited the access of the Kaliña and Lokono to their territories.

On November 25, 2015, the Inter-American Court of Human Rights ruled that Suriname's refusal to recognize the legal personality and territorial rights of the Kaliña and Lokono peoples, including their rights to collective property, political rights, and rights to judicial protection, violated the American Convention of Human Rights (*Kaliña and Lokono Peoples v. Suriname* 2015). The court directed the state to grant the Kaliña and Lokono collective title to their traditional territories along with the resources necessary for their demarcation. The judgment included restitution of lands improperly granted to non-indigenous parties. The court also instructed the state to undertake the steps necessary to ensure that the Kaliña and Lokono have access to, use of, and the right to participate in the management of their lands in the Galibi Nature Reserve and Wane Kreek Nature Reserve as well as to ensure that activities within these areas do not have negative impacts on them. The court also found active violations of their rights in relation to bauxite mining carried out by subsidiaries of Alcoa and BHP Billiton without the participation of the Kaliña and Lokono, even though the mining occurred on land that was both an indigenous territory and a nature reserve. Consequently, the court instructed the state to rehabilitate the mine-affected areas within the Wane Kreek Nature Reserve (*Kaliña and Lokono Peoples v. Suriname* 2015). These activities are currently underway.

The judgment also seeks to ensure these events would not be repeated by ruling that the decision applies to all indigenous and tribal peoples throughout Suriname rather than only the people of the Lower Marowijne (*Kaliña and Lokono Peoples v. Suriname* 2015). The judgment affirms the claims and requests of the complainants in almost every instance. But given the state's failure to implement the court's decision in *Saramaka People v. Suriname* (2008), it remains to be seen how robustly the new judgment will be implemented.

CASE 2: INDIGENOUS LAND RIGHTS IN GUYANA

In November 2014, I visited Guyana to prepare an expert witness report on the land title granted by the state to the Akawaio people of Isseneru village under the country's Amerindian Act of 2006. Despite the Akawaio having legal title to this land, the area has been invaded by small-scale gold and diamond miners deploying environmentally damaging technology, including river dredges and the use of mercury in the amalgamation of gold. However, the indigenous community also mines for gold to support its own economy, posing challenging questions for me

as a long-standing critic of the detrimental environmental impacts of mining (Kirsch 2014). Indigenous control over territories where there is gold mining is also seen to compete with the economic interests of people living in coastal areas (Hilson and Laing 2017a), a situation in which the indigenous 10 percent of the country's population is seen to claim more than its share of the nation's land and resources.



Figure 2. Dredge mining by outsiders near Isseneru village, Guyana. Photo: Stuart Kirsch.

In 2007, the state granted title to approximately 260 square kilometers of land to Isseneru village. This decision followed requests from the community to the state for land title in 1987 and 1994, both of which were ignored. Concerned about the proliferation of gold and diamond miners operating dredges on the Mazaruni River, the village made another unsuccessful request for title to their lands in 2003. After the passage of the Amerindian Act of 2006, the minister for Amerindian Affairs formally invited the Akawaio to apply for the title to their land. Although their submission outlined an area of approximately 1,000 square kilometers, the minister arbitrarily reduced the size of their land title to a quarter of their request. Moreover, the title excluded a large number of areas previously allotted to outside parties for mining concessions. When Isseneru tried to appeal the minister's decision, they were ignored. When they tried to stop miners from the coast and Brazil from working on their land, the miners sued the village and the court upheld their permits. When Isseneru sued other miners for operating on their land without

permits, the courts ruled in favor of the miners, but never responded to Isseneru's appeal.⁵ After years of frustration, and with no hope of domestic redress, the people of Isseneru filed a petition for precautionary measures with the Inter-American Commission.



Map 2. Middle and Upper Mazaruni River, including Isseneru village, Guyana.
Map: Bill Nelson.

⁵ Although the Court of Appeals held a hearing three weeks after the state was notified of the submission to the Inter-American Commission on Human Rights and dismissed the appeal on the grounds that the miner was no longer working in the disputed territory (Fergus MacKay pers. comm., 2018).

In response to the government's claim that Isseneru was "not a traditional Akawaio community" (Government of Guyana 2013: 22), the people living in the village acknowledged that there have been changes: "Today, yes, it is changing." "In the early days," one man said, "We did not live in fancy houses, like you see today." But the elected village head, or *toshao*, asked rhetorically, "Have we done something wrong to build these houses?" They also blamed the government for some of the changes: "For the government to claim that we are not Akawaios, when they introduced the schools, which do not teach our history or language," is hypocritical. Another added, "We know that we are losing our culture by teaching [our children] English alone. With development comes changes." But others asserted, "We are not forgetting our traditions."

With regard to the involvement of the village in mining projects, one man explained, "Because we want to be independent as a people, we want to grow our own food, and we are growing our own food. But there is also a need for money. After searching for alternatives, we turned to mining . . . But . . . the government is coming in with [its] laws and making it difficult for us." Several other people also explained their decision to mine for gold. One said, "With this many people in the village, we have to mine." Another noted, "Many outsiders are mining on our land. It came to the point that we decided to use these resources for ourselves."

People from the coast and Brazil first began to mine for gold and diamonds in the Middle Mazaruni in 1904. In the 1950s, they began to employ large dredges to mine along the riverbanks. Since the 1990s, the people from Isseneru have also mined on their land using diesel pumps and pressure hoses, a process known as hydraulic mining or, locally, as jet mining. The work crews are composed of people from the village and other laborers from the coast. They begin each project alongside a creek, using pressure hoses to dissolve the area to be mined. The muddy water is forced into a pit and then pumped through a shaker box. The last step in the process is to amalgamate the gold using mercury. Crew members are paid a percentage of the final take and everyone witnesses the opening of the shaker box and the weighing of the gold after amalgamation. This practice is crucial as mutual verification is what maintains trust among the members of the ethnically mixed workforce.



Figure 3. Hydraulic mining by people from Isseneru village, Guyana. Photo: Stuart Kirsch

The people from Isseneru report that there is not much difference between the way villagers and outsiders mine, although the outsiders do not always backfill the excavated pits as the people from Isseneru do.⁶ The village council has issued 25 permits to people from Isseneru to mine on their lands, although only seven of them were active during my visit. The *toshao* expressed concern that mining on a regular basis might have detrimental consequences for their health, but also recognized that mining will not last forever.

The people from Isseneru were living near the current location of their village and close to their contemporary cassava farms in the 1950s, when gold and diamond miners began dredging the river. To avoid potential conflicts, many of the Akawaio from this area relocated to the Upper Mazaruni River to live with their relatives. They were encouraged to do so by the British colonial administration, which established schools and a health clinic in the Upper Mazaruni. In the early 1970s, the state proposed building a large dam and hydroelectric plant on the Upper Mazaruni River (Colchester 2005). The project would have flooded all of the Akawaio villages in the area. Consequently, the people from the Middle Mazaruni decided to move back to their own land and founded the present-day village of Isseneru.

As they emphasized to me, they were not moving to an unfamiliar place; they were returning to their own land, where their parents and ancestors previously resided. As one woman

⁶ The damage to the landscape from hydraulic mining is readily visible from the air when flying from Georgetown to Olive Creek in the Middle Mazaruni.

told me: “The place names here are in our language. For instance, what is called Apikwa [a Brazilian mining outpost] is really Abak Ekwa [in Akawaio language]. [The place name] Haimara Ekwa comes from the aimara fish in the creek.” Such toponyms confirm the antiquity of their land claims. Both migrations were made in response to colonial policies: initially to avoid the influx of miners and subsequently to escape flooding from the proposed dam, which would have left them without a place to live. Their stay in the Upper Mazaruni did not extinguish their land rights in the Middle Mazaruni.

Before submitting their petition for land title to the state, the village council prepared a map of their traditional territory, which included the resources needed for the maintenance of the community and its way of life.⁷ The petitioners explained that they cannot grow crops in the mountains where the soil is rocky or on swampy ground. Only some land is suitable for growing cassava, which provides their staple food and beverage, and because they practice shifting cultivation, they need to rotate their gardens after two or three consecutive harvests. Other resources are only available in certain portions of their territory, such as the purple heart trees that only grow to the south of the village, the bark from which was traditionally used to make canoes.

The mucru plants used to make the long, narrow “squeezers” used to process bitter cassava only grow at higher altitudes to the north. The flint used to make cassava graters is only available in the mountains. Large fish, including the aimara (*Hoplias aimara*), can only be caught downstream from the village. Many of these essential resources were excluded from the land title granted by the state.

In contrast to capitalist economies, where people meet their needs by selling their labor to purchase commodities, the Akawaio require access to several different kinds of land to support their traditional economy. But the people living in Georgetown and other coastal areas of Guyana do not understand the needs of the Akawaio and other Amerindian peoples. As a senior lawyer from Georgetown explained to me, they tend to view indigenous land claims as a “massive land grab.” These views are influenced by the high levels of poverty and inequality in the country.

⁷ Writing about lowland Ecuador, Suzana Sawyer (2004: 48) describes the difference between land rights organized around individual ownership and use, on the one hand, and collective rights to territories, on the other. The latter refers to “an ancestral space of indigenous sociality” as well as an alternative mode of production based on access to collectively held land and resources.

The Akawaio have a collective land tenure system, which means that the land is owned by the community as a whole rather than by individuals. If someone wants to make a new garden, he or she is free to clear the land as long as it is not already in use. They are free to hunt and fish anywhere on their communal lands. If strangers wish to use their land and resources, they must seek permission from the community to do so.

My arrival in Isseneru coincided with the planting season for cassava, and I accompanied a communal work party to their new gardens. The tall trees had already been felled and the underbrush partially cleared. The work party chopped up the felled trees and stacked them with the other dried plants to burn. We also began to dig holes and plant cassava branches for the new garden. After finishing their work in one plot, the communal work group repeated the process in the next. The work continued for several weeks until every new plot in the village was ready for planting.

Their collective labor can be seen as an expression of their communal land tenure system. As one man told me while we were clearing brush from a cassava plot: “When I work by myself, I feel selfish. But when I work with others, I feel like I am doing something worthwhile.” His assertion that the highest value of labor is achieved through collaboration differs from understandings in capitalist societies that emphasize the creation of private property through the application of individual labor to nature (Locke 1947 [1689]). Among the Akawaio, labor is valued most for its contribution to the community rather than for individual accumulation. Their practices of communal labor continue today as strongly as they did in the past (Griffiths 2003: 206). They can also be contrasted with the individualism of wage labor that dominates urban life in Guyana.

The Akawaio were surprised when the title they received from the state excluded land previously granted to mining concessions. The mining claims were protected by a clause in the title deed that recognized indigenous land rights “save and except” those lands already allotted to miners. As their petition to the Inter-American Commission of Human Rights argues, this contravenes international principles, which recognize that indigenous land rights pre-exist the state. The Akawaio argue that they should not be deprived of their property as a result of the state’s long delay in recognizing their land rights. The title to their land should also have been granted by the state without restrictions or encumbrances. The mining claims may predate the official land title, but Akawaio land rights pre-exist the mining claims by centuries. This is why

several people from Isseneru told me that the Amerindian Act, which was supposed to protect their rights to land and territory, “betrays us.”



Figure 4. Akawaio cassava farm near Isseneru, Guyana. Photo: Stuart Kirsch.

There have been concerns about mercury levels in the middle Mazaruni River since the 1980s, before the people from Isseneru began mining. They have been advised not to consume too much fish, although they lack another viable source of protein. Some people say that they have tried to “ease up a bit” on fish consumption because of health concerns. Pregnant women in particular have been discouraged from eating very much fish, although one woman asked me: “What’s the alternative?”

At present, the people of Isseneru have limited influence on the level of mercury use in the Middle Mazaruni region. The “save and except” clause in their title deed not only interferes with the ability of the Akawaio to control their territory, but also encourages all of the actors in the region to treat the Middle Mazaruni as a de facto open access zone. Research on common property systems, including collective land ownership, has shown that participants in open access systems lack sufficient incentive to conserve resources or protect the environment (Feeny et al. 1990; Ostrom 1990), which can result in a “tragedy of the commons” (Hardin 1968). In contrast, individual or collective property rights that include the power to exclude other users are more likely to result in behavior that reduces negative environmental impacts.



Figure 5. Hydraulic mining by outsiders near Isseneru village. Photo: Stuart Kirsch.

As long as outsiders continue to have open access to their land, the Akawaio are unable to limit the harmful effects of gold mining and mercury use. This provides them with little or no incentive to restrict their own mining activities despite their concerns about the impact of mercury on their environment and health. The state has given no indication that it will reduce access to the area in the future and continues to grant new mining concessions despite its awareness of the problems caused by the release of mercury into the environment. In the absence of new measures by the state, recognition of indigenous land rights may be the only way to achieve better management of mercury use, even if it does not completely eliminate the problem. Legal recognition of indigenous land rights, including the power to exclude other miners from their land, may encourage the people from Isseneru to develop an effective program for restricting mercury use in the Middle Mazaruni, with the potential to reduce its catastrophic effects on humans and the environment.

INTERPRETIVE FRAMES AND KEY THEMES

In both cases, the expert witness reports needed to be made legible to multiple audiences, including the three overlapping but sometimes incommensurate frames of reference employed by lawyers and the legal system, the communities seeking recognition of their rights, and other anthropologists (Paine 1996: 63). An example of the first frame of reference from my expert witness report is my invocation of “cultural survival,” which is recognized as an important objective by the Inter-American Court of Human Rights even though anthropologists rarely use

the expression except in the context of advocacy.⁸ An example from the second frame of reference is my discussion of the Akawaio claim to have occupied their territory since “time immemorial,” which is a perfectly legitimate way to refer to the distant past, prior to archaeological or historical evidence, even though it is not a concept ordinarily employed by anthropologists. With regard to the third frame of reference, expert witness reports are not necessarily the place to review larger theoretical debates on the subject at hand, such as the consequences of the juridification of indigenous rights (Seider 2010; Kirsch 2012), or ontological debates about “equivocation,” or comparison, between alternative perspectives (de la Cadena 2010, 2015; Li 2015), although it may be useful to draw selectively from such discussions.

In order to meet the expectations of all three audiences, I chose to emphasize a prominent theme that emerged in the course of conducting my research. Focusing on a topic of importance to community members enhanced the legitimacy of the affidavit for them. By presenting a narrative arc that was greater than a summary of the facts, I also sought to make the affidavits compelling and persuasive, which anthropologists routinely strive for in ethnographic writing. In addition, I hoped that the internal coherence of the argument would help ensure that even if a particular detail was questioned or challenged, it would not significantly affect the overall evaluation of the expert witness report. The focus on a specific theme also had the advantage of raising questions relevant to larger anthropological discussions.

Freedom in Suriname

For the affidavit on land rights in Suriname, the discourse on freedom was an obvious choice. The significance of this issue was independently confirmed by the Surinamese legal scholar Ellen-Rose Kambel (2002: 144–150), who identifies three discourses used by Amerindians in Suriname to challenge the state’s refusal to recognize indigenous rights: (1) the argument that land cannot be owned, which appears to be an older discourse now on the wane given its incompatibility with contemporary political objectives, (2) the reference to historical precedent,

⁸ Cultural “survival” is defined by the Inter-American Court of Human Rights as the ability of indigenous peoples to “preserve, protect and guarantee the special relationships that they have with their territory,” so that “they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected” (Saramaka People v. Suriname 2008, paragraphs 37–39).

that Amerindians were the original inhabitants and therefore have the right to exclude others, and (3) the importance of land rights for preserving their freedom. She notes that only the first two rationales for indigenous land rights have been taken up in national debates (Kambel 2002: 154).

In addition to their references to the freedom to hunt and fish in the rain forest, and the need for land rights to secure their freedom, the Kaliña and Lokono also mentioned their freedom to be indigenous, to possess their own culture and way of life. Kambel (2002) explains that the Kaliña and Lokono are familiar with the provisions of the UN Declaration on the Rights of Indigenous Peoples, including the “collective right to live in freedom, peace, and security as distinct peoples” and the freedom to express “indigenous cultural diversity” without prejudice. In this sense, the freedom to be indigenous implies the right to determine and reproduce important cultural knowledge and values.

The concept of freedom has political resonance across Suriname, a Dutch colony from 1667 to 1975. The majority of the people living in Suriname are descendants of slaves or indentured laborers. Creoles make up 16 percent of the population but are the strongest political faction. The Maroon community is 22 percent of the current population. The largest group of people in the country are the Hindi-speaking Indians whose ancestors were brought to Suriname as indentured laborers after the abolition of slavery, who comprise 27 percent of the population. Another 14 percent of population is made up of the descendants of indentured laborers from Java. About 17 percent identify as mixed or other. Given the historical significance of forced and coerced labor in Suriname, freedom is a powerful unifying discourse among its citizens, including the Amerindian communities, which comprise about 3.7 percent of the country’s population.

In these examples, freedom is a multivalent concept that simultaneously references traditional ideas about persons and social relations; the freedom to hunt and fish in the rain forest; the UN Declaration on the Rights of Indigenous Peoples, which supports the freedom to be indigenous; and freedom in a recently independent country comprised largely of the descendants of former slaves and indentured laborers. Concerns about freedom are neither exclusively indigenous nor modern, and are simultaneously a shared concern of the members of the state as well as the basis of claims to difference.

Collective Land Rights among the Akawaio in Guyana

The central theme of the second expert witness report, about the Akawaio people living in Isseneru village in Guyana, was the significance of their collective land rights as what distinguishes them from other parties seeking to mine for gold and diamonds in the Mazaruni River. My attention to this question was in part the fortuitous result of being present during the cassava-planting season to observe and participate in a collective labor party. The comment about these practices—“When I work by myself, I feel selfish. But when I work with others, I feel like I am doing something worthwhile”—and its difference from classical, liberal assertions about the application of individual labor to nature resulting in the creation of private property, helped to draw my attention to the significance of their collective land tenure system.

My focus on communal land rights was also influenced by the contrast between the Amazon and Melanesia, where I have conducted the majority of my ethnographic research (Kirsch 2006). Since the publication of Bronislaw Malinowski’s (1935: 280) pioneering study of *Coral Gardens and Their Magic* in the Trobriand Islands, anthropologists have recognized that land tenure in Melanesia is “not the either-or” of communal ownership versus private property, “but the relation of collective and personal claims.” Land rights among the Yonggom people living along the Ok Tedi and Fly Rivers in Papua New Guinea, with whom I have conducted long-term research, are held by individual members of a lineage, and no one has the authority to make decisions about another person’s land (Kirsch 2014: 116). The contrast between the significance accorded to individual authority over land that ultimately belongs to the lineage, as familiar to me from Melanesia, and the greater weight assigned to collective ownership among the Akawaio, also drew my attention to this issue. Another key difference between the two culture areas is that people in Melanesia do not expect to have access to all of the resources they need on their own land. In contrast, they value relationships formed by exchange with others, through which they acquire resources not otherwise available to them. Interdependency through exchange relationships is as important to people in Melanesia as collective territorial rights are to the Akawaio.

THE CHALLENGES OF SHORT-TERM ETHNOGRAPHY

The short-term research on which these expert witness reports are based posed several challenges. As alluded to in the introduction, I presented structural accounts of the land tenure systems in my reports rather than examine how actual practices diverge from their general organizing principles. For example, writing about the Upper Mazaruni, the anthropologist Tom Griffiths (2003, 6) found that individuals and families also held certain kinds of land and use rights despite the ideological emphasis on collective ownership.⁹ It is also likely that the communities' historical experience of insecure land rights has contributed to the reification of their communal land tenure system.¹⁰ For the purposes of the expert witness report, however, it was sufficient to describe the general character of these arrangements, especially given my broader mandate to examine the impact of gold mining on land use, the land titling process of the state, and other concerns addressed by their petition to the Inter-American Commission of Human Rights.

Another key difference between this work and more conventional ethnographic research is my reliance on reported speech. Anthropologists recognize that there is a gap between what people say and do. During the course of extended fieldwork, it is generally possible to make the appropriate adjustments through direct observation or independent confirmation by other members of the community. In contrast, I was unable to document specific claims about encroachments on indigenous lands, for example, even though I heard similar reports from multiple parties. Nor did I have the opportunity to supplement oral histories with archival research. Directly reporting on what people told me accorded their comments the same weight as established facts, even though the two are not always equivalent.

Another challenge of short-term research is the difficulty establishing the kind of rapport with informants that ordinarily develops over the course of extended fieldwork. An indicator of the quality of my relationships with people in Suriname and Guyana was that all of our meetings

⁹ “Extensive oral and empirical findings confirm that . . . the collectivity holds superior ownership rights over the total territory . . . whilst village communities, families and individuals possess different levels of subsidiary tenurial and use rights to portions of that territory” (Griffith 2003, 6). See also the work of Audrey J. Butt Colson (2009).

¹⁰ In contrast to the atrophy of ideological commitment to collective land ownership that Gabriela Torres-Mazuera (2016) describes for the ejido system in Mexico, which has resulted in the gradual commodification and privatization of communal lands.

were conducted in public spaces, as I was never invited into anyone's home. Although we had opportunities to "hang out" (see Geertz 1998) at night in the town of Albina in Suriname, or drink Banks beer and dance to Brazilian techno-pop at high volume in a small mining outpost on the Mazaruni River, most of our time together was highly structured. Nonetheless, in both cases I sufficiently earned people's trust that they consented to my request to continue writing about the situation, despite their criticism of anthropologists who have written about them in the past.

Political Dilemmas Facing Anthropologists

Writing expert witness reports in support of legal claims may also pose political dilemmas for anthropologists. One concern is that the arguments in these affidavits could influence the response to future claims about indigenous rights. As Charles Hale (2006: 11) asks: "How does one formulate indigenous land claims and represent them in a language necessary to achieve legal recognition, without portraying them in terms that would reinforce internal rigidities or create criteria that other subaltern communities would be unable to meet?" It is possible, for example, that arguments about collective land rights could be applied as a litmus test for indigenous rights in Guyana or elsewhere, despite the diversity of indigenous property regimes and their flexibility in response to political and economic change. Nonetheless, I chose to focus on communal property rights because it was an issue that people from Isseneru felt defined and differentiated them from other ethnic groups in Guyana.

There is also a risk of political backlash when reproducing essentialized representations of indigenous attitudes towards the environment (Conklin 1997; Redford 1991). In the Suriname case, Captain Pané emphasized the contribution of traditional knowledge and practices to the protection of sea turtles in Galibi despite previous participation in the commercial sale of turtle eggs by some members of the community. Similarly, Jérémie Gilbert and Victoria Tauli-Corpus attested to the compatibility of indigenous land rights and biodiversity conservation despite what anthropologists know about the diverse attitudes of indigenous peoples towards the environment and development (see Kirsch 1997; 2007). The backlash against these stereotypes is evident in the Guyana case, where the Akawaio are criticized for their participation in artisanal gold mining, which has significant environmental impacts. Similarly, the popular claim in Guyana that Amerindians are only interested in extending their land rights where there are proven gold reserves (Hilson and Laing 2017b: 180), cynically reduces the question of indigenous land rights

to a political contest over mining rights. Efforts to justify land claims with reference to the desire to “continue leading traditional ways of life” have backfired against Amerindians involved in gold mining in Guyana, which tends to have negative impacts on conventional economic activities (Hilson and Laing 2017b: 177). However, as I learned during my research, the people living in Isseneru seek to protect their land rights for a variety of reasons, including the importance of collective labor for social relations. They mine for gold, but they also need land to plant cassava and obtain other important resources.

I also needed to reconcile my support for indigenous land rights with my concerns about mercury. Pollution from mercury used in the amalgamation of gold by artisanal miners generates environmental hazards that pose serious risks to human health. When I was in the capital of Georgetown, I interviewed a fishery biologist at the University of Guyana whose first career assignment was to study the impact of the infamous cyanide spill at the Omai gold mine in 1995. That event temporarily extinguished all organic life in the Omai River, a tributary of the Essequibo, the country’s largest river. When I asked him whether he was more concerned about the impact of cyanide or mercury, which are both used to process gold, his answer surprised me. He explained that cyanide breaks down in a relatively short period of time in the tropics, and consequently the rivers were replenished with fish and plants from adjacent waterways more quickly than anyone had anticipated. In contrast, mercury accumulates within the food chain and the process of methylation through which it becomes bioavailable readily occurs in the lowland rivers of Guyana, which frequently flood their banks, stranding shallow pools of water that facilitate these reactions. Consequently, the fishery biologist was far more concerned about the long-term impacts of mercury use in artisanal gold mining despite having been an eyewitness to one of the worst cyanide spills in the history of industrial mining.

I initially assumed that I would have to suspend my personal judgment on the question of mercury pollution to write an expert witness report supporting Akawaio land rights. But in the process of talking with people in Isseneru about these issues, I learned that they shared my concerns about the impact of mercury on their environment, health, and well-being. Eventually I came to the conclusion that only by gaining control over their territory, including the ability to exclude other gold miners, will the Akawaio people living in Isseneru village be able to limit future environmental impacts from mercury.

CONCLUSION: EXPERT WITNESS REPORTS AS “GOOD ENOUGH” ETHNOGRAPHY?

Finally, it is reasonable to ask whether expert witness reports based on short-term research qualify as “good enough” ethnography (Scheper-Hughes 1989: 28). Gaynor Macdonald (2002: 107) argues that instrumental research conducted in support of legal claims is incompatible with the disciplinary ideal of ethnographic texts that are open ended and capable of supporting competing interpretations. However, short-term research projects like the examples discussed here are probably closer to the problem-oriented focus of most contemporary ethnography than either is to the kind of “thick description” (Geertz 1973) that previously dominated the discipline. These projects also have more in common with the work of colleagues doing legal anthropology, studying corporations, or interested in science and technology studies than might be expected given their practical orientation and relatively traditional focus on indigenous peoples. Nonetheless, the ethnographic findings of these short-term projects cannot be separated from the context in which they were produced. What I learned from interviews and group discussions was inevitably influenced by the legal proceedings. Consequently, the ethnographic information assembled for the two affidavits is not sufficiently robust that it can be presented on its own, independent of the contexts in which it was elicited. Nonetheless, the two cases offer valuable, comparative insight into how claims about indigenous land rights are formulated and contested, as well as the forms of adjudication that address such claims, including how discourses like freedom or collective land rights are mobilized by actors in different national contexts. They also suggest the need for greater attention to what happens “backstage” in the production of expert witness reports.

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