INTRODUCTION

to the

LAND LAW

of

NETHERLANDS NEW GUINEA

by Mr. H.G. Verhoeff.

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Indisch Staatsblad and Gouv. blad, which occur frequently in this translation are the Government Gazettes.

**Proprietary rights:** is a right to own buildings on land, or to use land without having any title to the land i.e. Europeans may own buildings, whilst natives own the land.

**Lease of land:** this should be distinguished from mortgage or leasing of land. In this case the land is lent for use by one person to another free of charge.

"General freehold right": this is used to translate the more literal "general right of disposal" in the sense that this right consists of the highest form of right to deal with the land in any manner.

"Title of ownership": is the more complete right over land as distinguished from the proprietary right, which gives a right to own the buildings but not the land.
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In this introduction an attempt has been made to give a short synopsis of the legislation on land law which is in force in Dutch New Guinea and in addition some subjects, which are closely related. Attention is also given to the Bill revising section 39 of the New Guinea Administration Regulation, which is intended as a starting point for a complete revision, and especially to bring about a simplification of the very complicated agrarian legislation.

Although the Bill had already been introduced into the Lower House of the States General (Appendix Hansard, sitting 1955-1956, Omd. 4191) in December 1955, it still has not been possible to fully debate it.

During the preparation of this synopsis certain regulations were difficult to deal with, because, according to the Temporary Provision IBNG, they are officially in force in Dutch New Guinea, yet in fact they have never been used and even now are never applied, e.g. some rent regulations etc. One could not always judge from here (The Hague) which were used and which were not. Therefore we have mentioned them here briefly.

Because a revision of agrarian legislation is on the agenda, this synopsis could be soon out of date. Yet it was thought that it could still be useful, especially for those people who will be appointed for the first time to the Administration in Dutch New Guinea, as it will give them some insight into this difficult subject.

The old textbooks are little suited for this purpose (i.e., Letterie and de Keizer, Agrarian and Closely Related Regulations for the Direct Administration of Regions outside Java and Madura" (1924) and Maasen and Hen, "Agrarian Regulations for the Administration's area of Java and Madura"; these were of great importance for the administration of land law in the former Dutch East Indies.

As far as the indigenous rights of land law are concerned, we have tried to sum up briefly what has become known about them through these, memory and notes. In this area we still have to put up with big gaps in our knowledge. Therefore we want to make an appeal to Administration officials, ethnologists and other public servants to gather as much information as possible about the land law of the indigenous population, in order to gain a clearer insight into this subject.

Mr H.G. Verhoeff

INTRODUCTION

Land is a very important factor in a primitive society. It is more or less the only capital the primitive man has at his disposal; it produces nearly everything for his needs; it is the main means of his existence.

Therefore the control of the land is of great importance; Control and legislation have to have as their aim maintaining the value of the land and increasing its returns, so that as much profit as possible will be gained from it, firstly for the sake of the native population, but even more so to raise the society to a higher level of development and civilization.

When Section 37 B.W.G. says: "The protection of the native population against arbitrary action, whatever may be involved, is one of the most important duties of the Governor"; and when Section 38 goes on to say that the Governor, with all possible means at his disposal, must promote the opening up and economic development of New Guinea, carefully taking into consideration the protection of the native population, then that means in particular the land law of the native population.

Protection of native rights on land has always been the aim of the Government of the former Dutch East Indies. All the agrarian legislation, which was built up over the years and which to a large extent is still in force in Dutch New Guinea, was directed towards that end. But there was an occasion difference of opinion about the nature of those rights and the way in which they were to be protected. How difficult it is to gain a true insight into the character of the native land law is perceived again today in Dutch New Guinea.

In those primitive regions one is faced with a complex of customary law, which governs the relationship of the native population to the land. There are laws of different character, exercised either by groups of people or just by individuals. In earlier days there was a tendency to consider the laws which primitive communities exercise over great stretches of land not as land laws, but as claims (or notices of claim) to have the use of whatever the soil produces within a certain area. This led to the administration granting itself in different areas the ownership of such land, calling it "domainland", "crownland" or "propriété privée", nevertheless acknowledging the rights of usage exercised by the native population.
Gradually we have retreated from this point of view. It is being realized that these laws of the native population in respect of the land, are real rights, which are closely connected with the social structure. The land is for them their ancestral heritage, which is for their exclusive use, but which they have to hand on again to the next generation.

In many primitive areas the sense of justice of the native population makes them feel therefore that the land is inalienable. (1)

The Crown land declarations of the last century infringed on these rights in different areas. This infringement has caused few detrimental effects in practice, because in essence it was directed towards the protection of the native population. It was done in order that sufficient land would be reserved for the native population and also to prevent overcropping, deforestation and erosion, so that in addition surplus land would be released for breaking up and for the cultivation of land with Western plants in the interest of the country's development.
I. LAND RIGHTS OF THE NATIVE POPULATION

In the former Dutch East Indies the main native land laws were the right of transfer and the native right of possession.

The right of transfer is the right of a native community to sell land within a certain area for the benefit of its members, or against payment of a gratuity, for the benefit of strangers.

This community can be a territorial community, for example a village, or a genealogical community, such as a clan. The members of the community have the usufruct of the undeveloped land within the transfer area, which means the right to collect forest products, to cut wood and to hunt; the community engages in the allocation of land, so that it will be open ed up and cultivated by its members.

Prof. van Vollenhoven (1) named six aspects of the right of transfer.

1. The community itself and its members are allowed to use the undeveloped land freely within the specific area where the right of transfer applies (also to clear land, to create a settlement, to gather produce, the right to hunt and graze).

2. Aliens are allowed to do the same, only with consent, and without that consent commit an offence.

3. Sometimes its members, but aliens at all times have to offer a payment or a gratuity for the use of the land. The community keeps more or less some control over the cultivated land within the area where the right of transfer applies.

4. The community is liable for what happens within that area and if something happens for which nobody can be prosecuted it is also liable (e.g. for offences where the offender remains unknown).

5. It cannot permanently alienate the right of transfer. Traces of this right of transfer were to be found nearly everywhere in the former Dutch East Indies; in a few areas only had it practically disappeared because of strong individual rights.

When a member established a bond of a more personal nature with the land, which was given to him my virtue of the right of transfer, for example by building a house or by clearing the land, or by cultivation, then more individual rights were generated, which were called the native right of possession.
The right of transfer was then more limited in its application, but could be applied glibly again, when the land was relinquished and had reverted to its undeveloped state. The character of these native land laws varied in the different legal systems of the Indonesian Archipelago, from the strong right of transfer with weak individual rights to a weak right of transfer with strong individual rights.

In proportion to the development of agriculture amongst the native population individual rights were seen to grow stronger and several aspects of the right of transfer gradually faded away. In some areas it has practically disappeared: West Java, Madura, Atjeh, the savannah on Bali. The native right of possession had become then an oriental ownership right. The person with a land right could sell, rent, mortgage, bequeath, yet he had to take into consideration the rules of the adat-right and insofar the successor did not belong to the native population, the local regulations and administrative directions.

On the death intestate of the person having the right, the right, as a rule, is transferred to his heirs.

However, one should beware not to make the error of designating these rights of the native population by terms borrowed from the European Civil Code.

The right of transfer in native communities cannot be compared — according to van Vollenhoven — with anything in our civil code of law, nor with our rights of sovereignty; for the whole of the Archipelago they are the highest land rights. And in relation to the native right of possession he remarked: "Even between the native right of possession freed from restriction (the oriental right of ownership) on the one hand and our right of ownership on the other, the difference is strikingly great: neither the character of our law on the owner's right of user, nor our rules about ownership of fixtures, plants and crops, nor our rules of neighbouring rights, nor our rules about division of ownership or acquisition of ownership, transfer and loss of ownership, nor our ownership transactions, nor our distinction between ownership and possession with its legal consequences can be traced back anywhere in Indonesia".
The land rights of the native population in Dutch New-Guinea—as far as information is available—show a great variety of form and type, from collective to individual possession; and for that reason it is difficult to obtain a clear insight into them. Also the right to land, which is exercised by a group (e.g., clan or village) within a certain area, is specified by the name of "right of transfer" and the area within which this right is exercised, as "transfer area". It is questionable however whether by that term is meant the same as in the former Dutch East-Indies, as was defined by van Vellenhoven.

Doubt arises, when we read about the Marind–Anim in South Dutch New-Guinea, that the right of transfer is understood to be a (corporate) authority right, a "freehold right" of a group, namely of the beom (clan), sometimes also of a group of clans, which form a village. (J. Verschueren MSc., Landrights of the Marind–Anim, in New Guinea studies, volume 2, number 4, page 244 etc.). Prof. van Vellenhoven pointed out (see above), that the right of transfer is not in any way comparable with our right of freehold. And then Pater Verschueren concludes this article by mentioning that through acculturation the picture of the land rights of the Marind has not become any clearer.

Of the Maju (also in Dutch New-Guinea) Schoorl mentions in his thesis "Culture and Changes of Culture in the Maju Region" (Leiden 1957, page 71 etc) that ownership rights or transfer rights of this ethnic group were not exercised in any connection or circumstance by the group as a whole. "Although a special bond exists between the tribe and the land, which belongs to the tribe, no rights are being exercised over land or a portion of land. There is no special official in the group who has a special function in connection with the land. All rights are individual".

Of the Jajai, also referred to as the Mappiers (district Oka, subdivision Mappi, division South Dutch New-Guinea) mention is made in a note by Dr. P. van Ernst, adapted from data by Dr. J. Boelaars, where one could speak of a "very little pronounced right of transfer of the villages".
There were however few data available. Yet it appears that a specific territory exists around and near the settlements for the benefit of the villagers.

Individual rights can be established through occupancy and cultivation; on fishing ground by use of special appliances (for example fishnets), on trees through the marking of a sign. The conclusion is however that the land rights of the Jaqai, fishing-ground, vegetation etc., give one the impression of being vague and uncertain.

Dr. J. Pouwer in his thesis "Some aspects of the Mimika-culture" (Leiden, 1955, page 137) writes about the Mimika-region, that there is such a great diversity of collective and individual rights of possession that it is not possible to make a sharp distinction between them. Therefore, in his opinion, it is preferable to speak of "shades" of possession rights than of "forms". "These shades are to be found between the poles of collective and individual rights of possession."

One can distinguish between the right of transfer area of the village and the one of the smaller group, called taparu. The rights of transfer of the taparu are subservient to the ones of the village. In some respects, as with the gathering of forest produce, the hunting for game and the use of the beach, one is not limited to the boundaries of the rights of transfer area of one's taparu, but those of the area of the village. Indeed we see in a part of the Mimika region that the right of transfer of the taparu is more pronounced, whereas in another part the right of transfer of half the village, and again in another part the right of transfer of the whole village, where the taparu has lost the general freehold rights with all sorts of transitional modes in between. (Pouwer, t.a.p., page 140).

Collective as well as individual rights can be comprised in the right of freehold, although sometimes it is difficult to draw a sharp line between them. With sagefields collective right of possession is very common. Rights of possession to land, fishing grounds and cultivated land can only be transferred to members of the village.

Around the Bay of Humboldt the land rights belonging to the clan seem to be rather strong. Dr. K.V. galis mentions in his thesis "Papuans of the Bay of Humboldt" (Leiden, 1955) that all important enterprises belong to the clan and as such can be made use of by members of the clan.
And thus the clan possesses land of its own, like fishing ground etc. (page 71). Originally, the clan garden, of which each family was given a part to cultivate, was the only kind of gardening that took place. The clan chief determined where and when they would start a new garden and how the garden would be divided. Later individual (family) gardens were added to it also. It was possible to make gardens on land belonging to another clan of the same village or on land of another village, with the consent of the local head of the clan. Strangers could obtain permission to lay out gardens, but as a rule they were not allowed to be cultivated with plants growing longer than a year. (t.a.p.e. page 110).

The same author writes about the Sentani-region, where each village has an area, where its own right of transfer applies, supervised by the ondoforo (the adat-chief). Such an area is again divided between the clans of tribes (imah) for which the chief, the kaisero, has the responsibility. This one is, as it were, the representative of the ondoforo for his territory. We know of gardens, which the ondoforo ordered to be built (village gardens) or which were ordered to be built by the kaisero (imah gardens), yet we also find individual gardens. The harvest of the communal gardens is brought in in a festive way and divided amongst its members. The chiefs manage the sage-fields in their own area, and on the undeveloped land, where hunting takes place, firewood is collected and other products of the forest are gathered. The wild growing fruit trees and the trees used for building prosa can come into the possession of an individual by his marking them. The adat-chief has to be informed of this, whilst his approval is needed for the cutting of a tree to be used for the building of a prosa (Dr. K.W. Galis, sociographic notes regarding the Sentani-region; Note for the Office of Social Affairs Number 24, page 7/8).

About the island Japen mention is made in an instrument of transfer of Supervisor J.W. van Eek (period 3/6 1952-1954) that the land rights are in the hands of the keret (clan) community. Distinction has to be made according to the kind of land and the existing cultivation. No rights are in existence for virgin forest. Anyone who opens up part of it will gain an individual right over it,
Practically each keret has a piece of land where firewood and less valuable building materials can be collected; people not belonging to the keret community can do this also; however permission has to be obtained from the keret chief and sometimes a payment has to be made in recognition. Sage fields are considered to belong to a specific keret, yet individual rights exist over particular trees.

Further mention is made of a right of transfer of an area of the kampong, where it concerns kopal trees. Each keret of the kampong has a tapping right. Yet here also we come across individual rights over trees.

A note by Ir. M.F. Hofman deals with land rights and rights over vegetation amongst the Naibrat-population in the Ajamuru and Aitinsjeregion. In this he uses as a basis the data by Dr. K.W. Galis and Dr. J. Pouwer. The subclan has a right of transfer belonging to its own area. Within this area members of the subclan are free to clear land. Through the clearing of land and the laying out of gardens an individual right of possession is generated. After the garden has been abandoned a first claim belonging to the original possessor remains in existence for some generations. It seems that in closely populated areas, as along the lakes, where ladang fields are scarce, all fields have rights of possession or rights of first claim pertaining to them. It is also possible that members of several subclans lay out and cultivate a garden together. Strangers belonging to other groups can obtain the right of usage.

In the Nimboran-region (North Dutch New Guinea) each tan (clan) has its own land which is divided between its male adult members. The land, belonging to a male adult would be divided again between his sons, when they married, or after his death.

Each tribe has the right of transfer over a piece of afforested land to build gardens, and a piece of marshland to plant sago.

The tribe had an inalienable right of usage over that land. On the other hand nobody could give his land for usage to somebody else without permission from the chief of the tang (the taram). The person concerned usually would have to make a payment as a recognition of the tribe's right.

A person leaving his village does not lose his right of usage over his part of the land, however long he may remain absent. His gardens will not be taken care of. Nobody has a right to appropriate the land (W.J.H. Kouwenhoven, Nimboran, Thesis, Leiden, 1956).
Dr. J.V. de Bruyn writes in "Short annotations on the relationship terminology and the land rights of the Ekagi; (Ekagi-Wiselmeren). A sharp distinction has to be made between cleared land which was cultivated at some earlier time and undeveloped land, which has not been cleared yet. The criterion here is, whether much labour and energy has been spent on it.

Each toema (clan) exercises within a certain area community rights over undeveloped land. These are with the Ekagi less embracing than comparable rights elsewhere in Dutch New Guinea and the rights of transfer in Indonesia. The six aspects described by van Vollenhoven are not all relevant to the Ekagi. Non-clanmembers and clanmembers alike can, without permission of the toema, hunt, fish, cut wood, and gather products of the forest.

Differentiation between a toema member and strangers belonging to other groups is only made a first when clearing land is concerned. The clanmember can clear land without permission from the toema, whilst the non-clanmembers needs permission from the toema; however there is no need for a payment.

The laying out of gardens in the central highlands demands much labour; amongst other things drainage is a necessary item and heavy fencing needs to be done. A great deal of labour by the man and his family has gone into these gardens. Therefore the right of usage shows a strong individualistic character. When leaving the land the right over it remains in existence.

In the case of the possessor moving elsewhere, the land rights transfer to the father and brothers. When he returns, the land will be given back to him, after he has made a payment as compensation for the planting on it. The possessor can alienate land to clanmembers without permission from the clan; with the Ekagi it can also be alienated to non-clanmembers. The individual rights over the land cannot be lost and show a permanent character. When the possessor dies, the land rights are transferred to his wives, who have helped with the cultivation of the land. When there is no family, the land is inherited by the brother's children; the community rights of the toema do not apply in that case. The same, capable of work, do not inherit gardens in use, as they tend their own gardens; but they do inherit the abandoned ones.
In Dutch New-Guinea, too, we find that the Papuan has a strong attachment to his land, an attachment which is bound up with his social structure and has a magic-religious origin.

In the first place this attachment comes clearly to the fore in the rights which a native community living within a particular area—often vaguely, though sometimes quite sharply defined—exercises over the land there. It became the custom, as in the former Dutch East-Indies, to refer to these rights as general freehold rights (Dutch: beschiktingsrecht) and to refer to the area in which these rights are exercised as the area in which the general freehold rights apply.

This community right usually finds the following expression: a native community, usually a village or a clan, will have exclusive rights over the land belonging to its particular district, and the members of that community may clear this land with or without permission; whilst uncleared land may be used to hunt, gather produce, to fell timber etc. Through clearing of land more individual rights are generated (rights of possession), which generally can only be transferred to members of the clan. These rights of possession take on a more individualistic character, in proportion as the maximum laying out of gardens and their maintenance require more effort, e.g., in the Wesselmeren area.

Permission can be given to members of a different clan to lay out gardens, to hunt, to cut timber, gather forest produce etc., within the community's territory. Permission to lay out gardens in order to grow one season's crop is usually given rather easily, often for the payment of a fee, but for planting of long-term crops it is often more difficult to obtain permission.

Apart from the area of a clan in which the general freehold right applies, one finds also sometimes in some areas—Humboldt, Jotefabay, Mimika—a common area in which the general freehold right applies, belonging to a number of clans, for example those who live together in the same village.

According to some authors, hardly any "no-man's land" exists, while others assume that it does, such as the uninhabited region lying between the areas inhabited by the mountain and coastal population.

Various data indicate the existence of a land custodian whose task it is to regulate the use of land.

Generally one finds between collective possession on the one hand and individual possession on the other hand many gradations, which cannot be clearly distinguished from each other.

In very primitive areas, land rights are mostly little pronounced.
A community will have a certain area, sometimes an area to roam about, which provides it with means of support and which is regarded as their own. When, however, some development takes place and the community sets about to settle in a particular place, then rights of a more individual character are generated, and these become more clearly defined as development progresses. Cultivation of crops requiring longer than a single year for growth, generates stronger individual rights, as has been proven to occur elsewhere as well.

The process of individualisation in British territories in Africa is receiving special attention the last few years.

The East Africa Royal Commission has carried out an investigation in 1953 to discover which means were necessary to lift the standard of living in East Africa and thereby much attention was given to the process of individualisation. According to the Commission, this phenomenon is appearing all over the world. It finds that there are great advantages connected with the individual ownership of land, in that it gives the person concerned a feeling of security and creates an opportunity to rearrange fragmented pieces of land into units, which have better dimensions from an agricultural point of view. There are others, however, who claim that the traditional form of land use by native communities is the most appropriate basis for future farming units.

Land tenure in East and Central Africa also formed a subject of discussion at a conference held at Arusha in Tanganyika. There, too, it was observed that the old common law forms were changing and indeed would have to be changed in forms more conducive to the purposes of economic development. Especially in areas, where land is scarce, communal tenure is seen as an obstacle to land improvement, to introduction of improved agricultural methods, to cultivation of commercial crops and so forth. On the other hand, individual land tenure also has its disadvantages, mainly the possibility of fragmentation resulting from the land being devised to several people and the possibility that the land would be mortgaged to too great an extent.

At the conference in question, the general consensus was finally that individual land ownership should be encouraged in those areas, which were ready for it. This was thought to be the case where the land had acquired an economic value because of increasing pressure of population and scarcity of land; where long-term crops were grown; where permanent economic plants had been set up; where land was increasingly used for industrial purposes; generally, where various circumstances – also erosion for example – were creating the necessity to use the soil more intensively and to take greater care of it.
There are, however, only a few areas left, in which the conditions for individualisation are present. The opinion, at the conference, was very rightly, that one should not attempt to impose individual land tenure from above. One can find all kinds of transitional forms, from strong communal tenure with weak individual rights to a weak communal right with strong individual rights.

Individualisation of land tenure in Africa is also influenced by the strong demand for labour. It does happen that because of long absences on the part of many male workers insufficient labour is available for the heavy work of forest clearing when new land has to be used for the laying out of ladang fields. In some parts this has led to disintegration and the use of old land for the sake of convenience, resulting in a decline of food production (Nyasaland and the "reserved areas" of Kenya and Rhodesia).

The traditional of land tenure has been affected also because of the issue of land to non-natives (concessions of land, which are given to immigrants). In the Belgian Congo and French Equatorial Africa, especially, concessions were initially issued on a large scale, also of land, of which it was thought that it belonged to the "terres vacantes", but over which in reality common law was exercised by a tribe or village. Later the size of area of land issued under concessions, was considerably reduced.

Also, in Dutch New-Guinea, we can expect that an individualisation process will begin as development continues; in the first place there, where the circumstances are favourable, such as in the vicinity of towns and in areas where long-term crops are being grown and small farms are being established. This individualisation, along with the increasing sophistication of the Papuans, the growing away from his community and the growth of the many small communities into a greater community will all contribute to a weakening of the concept of inalienability (translator's note: doubt about the existence of this word, but makes the concept stronger if translated in this way) of land, although it will take several generations before this will come about in the more remote areas.

This process, of course, should not be forced. It happens naturally, and will be fostered by all those measures which contribute to the development of agriculture as well as to the development of the farmer himself, and through education generally.

In this way, the land gradually acquires economic value and it will be well worth while to make possible the acquisition of legal documents evidencing ownership to encourage the use of land as mortgage security in the proper fashion.
11. GOVERNMENT CONTROL OVER LAND

The problem facing any government in non-selfgoverning regions is that of acquiring general freehold rights over land, which it needs to promote the development of the territory.

In view of the strong attachment, which primitive people feel towards their land, an attachment which often has a magical character, a careful approach is desirable. With great patience the authorities must make efforts to acquire general freehold rights, by agreement, over land which is needed. In most cases it happens that way, although the Papuan often objects to a surrender of his land. As a rule he is prepared to make the land available for purposes in the public interest, but in most cases he wants to keep on regarding the land as his own, although it serves no practical purpose for him any more.

As development and the earlier mentioned process of individualisation progresses, it can be expected that, also in this respect, changes will occur and new ideas will become acceptable, which will regard that land as having economic value, which can be definitely disposed of. This will occur first in and around urban centres.

The Beginnings of Agrarian Legislation.

In the former Dutch East-Indies, as a result of extensive agricultural plantations, a complete legislation regarding land law came into existence. Some of the principles of that legislation were laid down in Section 62 of the old Government Regulation and later in Section 51 of the Indische Staatregeling (Constitution).

In the seventies of last century, when interest increased in private agriculture in the Dutch East-Indies, there arose a great need for the opportunity to acquire more permanent rights over land. At this time, two ways were possible for agricultural entrepreneurs, namely, either to acquire a lease over undeveloped land, from the Dutch East-Indies Government (Dutch East-Indies Gov. Gazette 1856 - 64), which gave him only personal rights of limited duration and no right to mortgage the land in question, or to make contracts with native landowners to grow and deliver such crops as he might specify, e.g. tobacco. This latter arrangement, too, had its disadvantages, in that the entrepreneur was dependent on the goodwill of the native farmers.
15.

It was under Thorbecke's second Ministry (1862 – 1866) that Minister I.D. Franssen van de Putte tabled an important Bill, consisting of 61 sections, called the "Plantation Bill" (1865), which was of great significance in the regulation of land rights. Amongst other things, it included provisions concerning the granting of undeveloped land under long-term leases and the leasing of land owned by natives, to non-natives, and specifically granted natives the right of ownership according to regulations derived from the Civil Code instead of the native right of possession according to the adat-law. Adoption of an amendment requiring deletion of this last-mentioned proposal made it necessary for the Minister to withdraw his Bill.

Minister de Waal, in 1869, presented a Bill to complement Section 62 of the Government Regulation with five clauses. This became the Law of the 9th April 1870, Dutch East-Indies Gov. Gazette 55, referred to as the "Agrarian Law". This supplement to Section 62 has two main objects, first to protect native rights over the land, secondly to promote private agricultural enterprises by creating the possibility to release undeveloped land under long-term leases for a period not exceeding 75 years and the leasing of land by natives to non-natives in accordance with regulations prescribed in an ordinance.

The contents of Section 62 of the Government Regulation were, with the exception of a few instructions of minor importance, taken over in their entirety in the Dutch East-Indies Constitutional Regulation (Indische Staatregeling) in section 51 and applied until the transfer of sovereignty to the Republic of Indonesia.

The section reads as follows:

1. The Governor-General is not allowed to sell any land;

2. The above prohibition does not apply to small parcels of land intended to be used for extensions to towns and villages and for the establishment of industrial concerns;

3. The Governor-General may release land under lease in accordance with regulations to be laid down in an ordinance;

4. Land, not included in this, is that land which has been cleared by natives, which as in common use, or which for any other purpose belongs to the villages or desas;

5. According to regulations, to be drawn up in an ordinance, land will be issued under long-term lease for a period not exceeding seventy-five years;

6. The Governor-General shall ensure that under no circumstance shall the surrender of land cause infringement on rights of the native population;

6. The Governor-General cannot exercise control over land, which has been cleared by natives, or which belongs as common pasture or for any other purpose to the villages, other than when it is needed in the public interest, on the basis of
16.
and also in the case of imported plantations, set up by Government
authority, with proper compensation.

7. Land, in possession by natives with an inherited, individual rights
of use, will, upon request of the rightful possessor, be given to him
with the right of ownership with necessary limitations, to be
prescribed by ordinance and to be drawn up in the legal deed,
concerning obligations to the country and the local authority
and the authority to sell to non-natives.

8. Leasing of land or making it available for use by natives to non-
natives takes place according to regulations to be prescribed
by ordinance.

The principles set out in Section 62 Rr., later Section 51 L.S., (Dutch
East Indies Government Regulation are amplified in the first place
in the Agrarian Decree (A.M. v. B. in Indisch Staatsblad 1870 number
118). This applied only to Java and Madura, with the exception of
the native principalities. The last section (Section 20) determined
however, that the provisions of the decree, would, in the case of
the Dutch possessions outside Java and Madura, be drawn up by ordinance
for each of them, if necessary, in accordance with the law and the
basic principles of that decree.

This has resulted in different general ordinances for the
Outer Territories, some of which will be discussed here. Also in
a number of so-called agrarian regulations for some territories
provisions have been made concerning the native rights over land.
This, however, has never been done for Dutch New Guinea.

In self-governing areas the authority to regulate agrarian
matters was vested, in principle, in the self-governing Authority.
However, this authority was subject to some limitations because of
political agreements and as regards the self-governing regions,
whose relationship with the Government was subject to a short
declaration – Self-Government Regulations 1938 (Indisch Staatsblad
1938 number 529). According to Section 16, the East-Indies Government
was authorized to draw up regulations concerning the authority and contro
over land, which can be exercised by the Self-government or its subjects
for the sake of persons, not belonging to the native population of
the Dutch East-Indies; also it was authorized to draw up regulations
concerning the use of land or the making available of land for use,
or long-term crops growing on them, by persons not belonging to the
native population of the Dutch East-Indies. The same Section
also included some provisions concerning the placing of land at the
disposal of the East-Indies Government.
Over the years a number of regulations came into existence regarding the authority and control over land within the territory of autonomous regions. As far as Dutch New Guinea is concerned, these were all rescinded as from 1st June 1950 (Ordinance in Goy. Gazette number 12, 1950), whilst from the same date all general ordinances and other Government regulations would apply (these apply in the directly administered region of Dutch New Guinea) in the former self-governing area.

However, the rights and obligations of persons with rights over land, granted before the 1st June 1950 on the basis of the old regulations within the former self-governing region continue to be governed by those regulations. In accordance with the practice of the former Dutch East-Indies government, the rights and obligations of persons with landrights, granted on the basis of the Civil Code (persons with long term lease, owners of buildings, lessees) are set out in an agreement between the Territory and the person with the right and no change can be made in this agreement by one party, at least not in such a way, that it would entail a heavier obligation for the other party.

The Administration Regulation contains, in Section 39, a number of general principles concerning the management of agrarian affairs. They conform in principle with those in Section 51 of the former Dutch East-Indies constitution, although they are somewhat differently formulated. The sixth clause of the latter has not been taken over, since this has been dealt with already under the section concerning dispossession; the seventh clause (concerning agrarian ownership) was also excluded, because it only applies to Java and Madura and also because it was hardly ever used. The various sections will be discussed later.

Section 39 BNG is not intended to serve as a basis for the complete agrarian legislation; just as it was not the intention with Section 51 Indische Staatsregeling. Important parts of the agrarian legislation came into existence outside the ambit of the above mentioned section and on the basis of the Transition Regulation 1 BNG—and still applies in Dutch New Guinea. Two important principles, which are not based on Section 51 Indische Staatsregeling and Section 39 BNG, are the domain declaration and the prohibition of alienation.
Revision of Section 39 ENG

In the meantime a revision of Section 39 is being prepared for which a Bill has been introduced in the States-General (Sitting 1955 - 1956):0nd, 4191)

The reason for the introduction of this Bill has been the need for the imposition of a "dulplicht" (i.e., a duty to tolerate government incursion), whenever the administration needs the use of undeveloped land in the public interest, yet over which the native population has rights and is not prepared to put the land voluntarily at the disposal of the administration. The administration therefore thought it desirable to draw up a regulation concerning this in the Administration Regulation. This opportunity is used at the same time to improve the definition of some of the principles of the agrarian legislation and to incorporate them in the Administration Regulation, thereby starting a general revision and as possible a simplification of the agrarian legislation.

Protection of the native population.

One of the most important principles of the agrarian legislation has always been the protection of the native population. In the Colonial Constitution this was established in the 5th clause of Section 51, which provided that the Governor-General had to take care that transfer of land would not infringe upon the rights of the native population. This provision has been repeated in the third clause of Section 39 ENG and despite the fact that in Section 37 clause 1 it had already been generally provided for, that one of the most important duties of the Governor is the protection of the native population against arbitrary action, whoever would be involved.

In the Bill dealing with the revision of Section 39 ENG, the legislator has restated in more general terms the principle, that the Governor must ensure that the rights of the native population in relation to land ownership will be respected. On its own, such a provision has no legal consequences and therefore could quite well be left out. The Government, however, considered such a provision desirable to express therewith that the rights of the native population over land will be protected in the same way as Western rights over land. This provision, in view of the misunderstanding and the lack of recognition, which occurred in the past especially in relation to rights of native communities, in the former Dutch East Indies as well as in other non-self governing regions, certainly deserves a place in a section, which deals with matters of agrarian policy; it is one of the most important principles of agrarian policy, especially in connection with what was formulated in Section 73 of the Charter of the United Nations.
The Governor therefore will have to ensure, that the land rights of
the native population — and it is again expressly stated in the
explanatory memorandum, that the land rights of the native communities
are included — shall not be violated and are entitled to the same
protection as Western rights over land. For instance, it will be
impossible to expropriate land for reasons other than those in the
public interest (based on the provision contained in Section 127
BNG), nor can the rights be restricted on the basis of legal regulations.
Despite the fact that this really speaks for itself, it was felt that
it would be useful to add such a provision.

_Duldpllicht_ (Obligation to tolerate Government incursion).

It will be necessary for the development of Dutch New-Guinea
and its population that land, over which the native population has rights,
is made productive, that forests are exploited and appropriate measures
are taken for their preservation; that re-afforestation takes place in
accidented areas, etc. The way to achieve this will be in the first
place by amicable consultation and co-operation with the native population,
and mostly it is possible in that way. But ultimately a way must be found
to acquire the general freehold right over undeveloped land, which is
required for the development of the country, even when it goes against
the will of the communities who have rights over the land. The possibility
is being considered to restrict the rights of native communities over
undeveloped land, by imposing the "duldplicht" (obligation to tolerate
government incursion), yet only by legal means and with the necessary
guarantees. In the second clause of the proposed new section 39 BNG,
a provision is made for this, which reads as follows: "The Governor-
General can, if he considers this necessary in the public interest,
acquire general freehold rights over land, over which the native
population has rights, provided they are not curtilages, gardens, or
permanent agricultural fields or other land to be defined by ordinance,
and can require persons with rights to tolerate the restriction of their
rights resulting therefrom, in accordance with the regulations and
guarantees to be prescribed by ordinance."
Whilst the "duldplicht" (obligation to tolerate government incursion) closely resembles compulsory acquisition, it is more in accordance, however, with the concept of legality held by the native population, who generally know little about permanent dispossession of land, but they usually do not object to making it available for purposes of public interest, as long as the land remains formally in their possession. In the same way as expropriation has been established by ordinance, in which the procedure is set out and the necessary guarantees are prescribed, we will the procedures for the imposition of the "duldplicht" (obligation to tolerate government incursion) and the necessary guarantees have to be established by ordinance.

The draft of the provision only refers to land "which does not include curtillages, gardens, permanent agricultural fields or other land to be defined by ordinance", which means that it is generally limited to undeveloped land, over which, as a rule, no individual rights exist, but only rights of native communities. Under the term "permanent agricultural fields" are also understood areas of land, which will be used for cultivation with intermittent periods in which the land will be lying fallow. Other areas of land may also be excluded by ordinance, for example, burial grounds, areas of religious significance, etc.

The right to assume control over land, as mentioned above, should only be considered necessary when it is done in the public interest. When that is the case is a matter of government policy and is therefore, in the draft of the Bill, left to the discretion of the Governor or the magistrate. The Governor will have to consider each individual case on its own merits and will have to state that a "substantiated case for assuming control" exists. The degree of restriction of rights of native communities can also vary from case to case. In the draft of the Bill, purposely no mention has been made of a (previously guaranteed) compensation", because it is not certain beforehand in each individual case whether payment of compensation will be necessary.

In many cases, the disadvantages which are associated with the limitations of rights will be offset by certain economic advantages. It was noted also by the Agrarian Commission of 1928, that not every imposition placed upon persons with rights will automatically mean that compensation will have to be paid in every instance. Each case will have to be considered on its own merits. In the text as drafted, mention is only made of "guarantees to be specified by ordinance", which is intended to require specifically that in each individual case a detailed investigation has to be undertaken to determine whether payment of compensation is warranted, and if so, what form the compensation should take.
As has been noted above, two important principles relating to land law were not based on section 51, I.S., nor at present on section 39 RNG, namely the prohibition of alienation of land and the declaration of "crown land" which will now be considered further.
III. THE PROHIBITION OF ALIENATION OF PROPERTY.

Realization of the general prohibition of alienation of property.

It is the task of the government to protect the interests of the native population, living in less developed and primitive regions, when they come into contact with outsiders; and the government has to be on the alert that the population, being economically in a weak position, does not lose its land to outsiders, out to make big profits in exchange for goods, which appear attractive, but in reality have no value.

Therefore one of the most important principles of agrarian policy and legislation in the former Dutch East-Indies - and as it is now in Dutch New Guinea - was to prevent the native people, who are socially and economically so much weaker, from being dispossessed of their land by non-natives.

This principle has over the years become embodied in several legal provisions in which the transfer - partly also the non-intentional transfer - of land to non-natives, in areas where native laws are in force, is limited.

The oldest provision of this kind was in the regulation of the agrarian right of ownership (Ind. Staatsbl. 1872, number 117), which applied only in Java and Madura, and which was intended to replace the native hereditary right of individual possession with the right of ownership. Land acquired with this right was not allowed to be alienated to non-natives, subject to voidance, except in a few special cases, where the consent of the head of the region's government was obtained.

Meanwhile it was felt more and more that a general prohibition of alienation of property was needed, which was materialized in an ordinance in Ind. Staatsbl. 1875, number 179 (Engelbrecht, page 2061). This provided: "that the right to use land cannot be transferred from natives to non-natives, and that therefore agreements, which are directly or indirectly intended to transfer this right are legally invalidated."

This prohibition of alienation of property is based mainly on two concepts. In the first place it should be regarded as a supplement to the prohibition of alienation of property, which applies to the agrarian right of ownership. This was done with the same motivation; namely the protection of the native people against possible dispossession of their land. Secondly, it was considered in those days that "the hereditary right of usage" could only be exercised by natives and therefore could not be transferred to non-natives, because non-natives live under a different legal system, in which these native rights do not exist.
The reasoning behind this provision was that native land rights, because of their character, could not be exercised by non-natives; it was not intended to introduce a new kind of regulation but to affirm in legal form, that which had always existed.

The prohibition of alienation of property and the action against illegal occupancy of domainland.

The method of enforcing the law prohibiting the alienation of property is closely related to the action against illegal occupancy of domainland (crownland). For many years action against illegal occupancy of these lands and against contravention of the law prohibiting the alienation of property could only be taken according to civil law. However, the results were very unsatisfactory and it took many years before any improvement could be made. When the illegal occupancy of curtilages and fields assumed ever-increasing proportions, it became more and more evident, that effective action against illegal occupancy of free domainland and satisfactory enforcement of the law prohibiting the alienation of property was only possible by way of a penal provision. Finally this led to the ordinance of 14 February 1912 (Indisch Gov. Gazette, number 177), which is still in force at present in Dutch New Guinea "to counteract the illegal use of land belonging to the domain of the Territory". (Engelbrecht 1956, page 2062). This provided that: "Use of land by non-natives, for whatever purpose, or use of land belonging to the domain of the Territory for their benefit, on which or in respect of which no rights of others can be proven, is prohibited". Contravention can be punished with imprisonment for a period not exceeding three months, or a fine not exceeding one hundred guilders. An explanatory note is to be found in Supplement 7753.

The government took the point of view, that the threat of penalty against the use of free domain land by non-natives was also a threat of penalty against contravention of the law prohibiting the alienation of property. In practice, in effect, it was accepted that with an illegal transfer of land from a native to a non-native, the latter did not acquire any right, but that the native nevertheless surrendered his right.
After such a transfer the land was considered to belong to the free domain land. When a non-native made use of such a parcel of land, then the penal provision in the ordinance in Staatsblad 1912, number 177, applied to him.

**Deficiencies of the law prohibiting the alienation of property.**

The deficient regulation of the law prohibiting alienation of property remained a great hindrance, in spite of the penal provision, with the result that it was evaded in different ways. The deficiencies concerned have been dealt with extensively at the Fourth Law Conference in Batavia in 1936, in the papers of Mr R. Soepeno and Mr W.F.C. van Hattum, prepared for the Conference and also during the discussions ([Supplemente Indisch Tijdschrift van het Recht – East- Indies Law Journal] part 14, page 85 etc., and page 46 etc.; Handelingen page 447 etc.).

It would be beyond the scope of this paper to elaborate on the different deficiencies separately. Mentioning some of the most important will suffice. A way of evading, which occurred frequently, was one, whereby non-natives made use of native go-between or henchmen to acquire land for their use, over which land natives exercised rights. Also in the case of separate transfers of buildings or plantations it could occur, that the real intention behind it was to alienate the land. The same could result from mortgageing buildings and plantations.

**Agreement to purchase.**

An agreement, which is not aimed at illegal transfer of native rights over land to non-natives, is the so-called agreement to purchase. This is the agreement which makes it possible for the native landowner to surrender his rights in exchange for compensation, whereby the land becomes free domain land; the Government then has the opportunity to issue the land with a western proprietary right to a non-native buyer, which according to the law prohibiting the alienation of property is legally void. The natives only surrender their right, or, if they transfer it, they do so to the Government.

The non-native, who has bought the native right on a parcel of land, does not acquire any right over the land, although one speaks in practice of a preferential right of the buyer.
However, he usually occupies the land immediately and behaves as if he is the owner. In essence, he is then culpable of unlawful occupancy of free domain land, and he is then punishable under the ordinance in Indisch Staatsblad 1912, number 177. To legalise this situation in anticipation of the issue of a legal title, a rent agreement can be made with the buyer according to the Government's decree of 24 May 1924, number 30 (Indisch Staatsblad 1924, number 240, explanation in supplement number 10 620).

Legal effects of a void agreement of alienation.

One of the questions at issue concerning the law prohibiting the alienation of property was: which were the legal effects of an opposing and therefore void agreement of alienation of property.

According to both the view of the Government and a jurisprudence of many years, it was accepted that with a void agreement of alienation, the non-native buyer would not acquire any right over the land, but that on the other hand the native seller surrendered his right and the land therefore became free domain land. The buyer, who would still occupy the land, would become guilty of unlawful occupancy and would be punishable, having contravened the ordinance in Indisch Staatsblad 1912, number 177. With the passing of this ordinance the first gislator took the point of view, that the sale of land in conflict with the law prohibiting the alienation of property, creates free domain land.

At the Fourth Law Conference, mentioned above, held in Batavia in 1936 that point of view was defended also by Prof. Legemann, but disputed by Prof. van Hattum. According to the latter the land belongs to the last native who had a right over it, and so it does not become free domain land; the non-native buyer only has a right to reclaim the purchase money. The Raad van Justitie (Criminal High Court) at Batavia has since also opposed that point of view. It was thus not prepared to accept that a regulation in conflict with the law prohibiting the alienation of property and therefore invalid, can make the land free domain land.

Legal transactions other than agreements. Non-intentional transfer.

The law, prohibiting the alienation of property in Indisch Staatsblad 1875, number 179, declares void only those agreements, which are intended to transfer the right to use land, from natives to non-natives. It does not deal with other legal transactions, such as last wills, which were intended for such a transfer. It is not possible therefore to take action against this kind of transfer of native right of possession on the basis of Indisch Staatsblad, 1875, number 179.

Neither does the law prohibiting the alienation of property apply in case of non-intentional transfer of native land rights to non-natives because of succession through death, or change in status (inter alia mixed marriage) or mixed estate. When in any of these ways a legal transfer of native land rights to non-natives has taken place, then it cannot be prevented, that these non-natives again transfer their right to other non-natives, because the ordinance in Indisch Staatsblad 1875, number 179 only prohibits the alienation of property "by natives to non-natives".

Over a period of years one has begun to think differently about the possibility of the native land rights being exercised by non-natives; rights, which were the result of non-intentional transfer because of familial relations in the sphere of personal law and the law of succession. The old concept, that native landrights could not be exercised in principle by non-natives, because they live under a different law system, which does not know these native rights, has generally been abandoned. Different authors are of the opinion, that it is possible for non-natives to exercise land rights. The jurisprudence has also concurred with this, while government and administration have taken the same point of view.

Yet, it is another question, of course, whether or not the adat-law in a particular region permits the transfer of native land rights to outsiders, whether native or non-native. If that is not the case, then it is another impediment for the exercising of those rights by non-natives.
Revision of the law prohibiting the alienation of property.

With the revision of the agrarian section of the R.N.G., which was mentioned earlier, attention was also given to the law prohibiting the alienation of property. As it touched upon an important principle of agrarian policy, the government was of the view that it ought to be included in the law establishing administrative principles, the legislation providing for Government, while the detail legislation could be promulgated by ordinance. In the formulation of this principle an effort has been made to remove the deficiencies which were apparent in the past. In a bill for a new section 39, introduced in the States-General (sitting 1955–1956) ord. 4191, piece number 2), this is defined in the third clause as follows:

"Land, over which the native population has rights, and any buildings, established plantations or forests existing on such land, cannot be used directly or indirectly, by persons not belonging to the native population, except in cases defined by ordinance and in the manner and in accordance with regulations made there under".

As is mentioned in the explanatory memorandum on the above bill and in the memorandum in reply to the provisional report of the Lower House (sitting 1956–1957, ord. 4191E, piece number 5), this provision purposely does not apply to the natives, but to the non-natives. If the prohibition would apply to the indigenous population, then a penal provision, prescribed by an ordinance would hit the natives, whereas the main culprit, as rule, will be non-natives, who usually take the initiative, thereby taking advantage of their economic superiority.

For this reason it has been given such a form, that persons, who do not belong to the native population are prohibited to use land, over which the native population has rights. Framed in this way it will also be possible in the drafting of the ordinance to make punishable not the transaction, but the visible effects thereof, and thus the fact, that the non-native in contravention of the law has the use of native land or the buildings, established plantations and forests which exist thereon, This is thought to be the right form, because to give proof of the transaction would usually be very difficult or impossible. In addition, if the threat of penalty would be tied to the transaction, then no action could be taken any more against the continuance of an illegal situation.

By striking at the illegal situation, the opportunity is created to engage the criminal judge for every new case again, until an end has been made to the situation.

To prevent evading the law prohibiting alienation of property by transaction dealing with the buildings on the land etc.—buildings, established plantations and forests are included in the prohibition, over which the native population has rights.
The prohibition applies to permanent as well as temporary user, and to direct as well as indirect user. It will not be possible therefore for non-natives to make use of land or buildings etc., as mentioned above, by means of a henchman or by entering into a mortgage agreement, with the land, buildings or the established plantation as a security.

Finally it was determined, that the cases in which and the way in which non-natives can make use of such land, buildings etc., will be prescribed by ordinance. As was mentioned in the explanatory memorandum and the memorandum in reply, it is the intention to permit the use of land, buildings, established plantations and forests by non-natives, where these are acquired by succession in case of death, mixed estate, or mixed marriage; but the legal effects will be prescribed by ordinance. Consideration will also be given to the extent to which it is necessary to prepare regulations concerning the grant and use of land and buildings by natives to non-natives.
IV. Domain declaration

Another important principle of the land law, which was not based on section 51 I.S. and at present not on section 39 H.N.G., is the domain declaration. It declares that—excepting the rights of the indigenous population—all land over which right of ownership can not be proven by others, is domain of the Territory.

For Java and Madura the declaration is incorporated in section 1 of the above mentioned agrarian decree (Indisch Staatsblad 1870 number 118). This section has been declared to apply as in the directly governed territory of the Outer Provinces, according to section 20 of that decree—by ordinance of 14th September 1875 (Indisch Staatsblad number 1996 Engelbrecht 1956, p. 2051).

According to the Transitional Regulation 1 H.N.G. (for North and West Dutch New Guinea: the ordinance in Gbl. 1950 number 12) this also applies to Dutch New Guinea. This means that a previously applying principle is being maintained in this case.

The domain declaration does not touch upon any of the land rights of the indigenous population (both communal and individual rights). Where the indigenous population has rights over land, it only applies to Dutch New Guinea. This means that a previously applying principle is being maintained in this case.

The domain right is considered to be the same as the right of ownership in the Civil Code. If the native population has rights over that kind of land, it only includes the "bare" property. Such land is called "unfree" domainland in contrast with "free" domainland, over which the native population has no rights. If the Government wants to acquire the freehold rights over unfree domainland, then compulsory acquisition is necessary.

The domain declaration has over the years caused a lot of misunderstanding, because it concerned land over which the native population had rights. Therefore a so-called Agrarian Commission was formed in 1928 which had the task to advise on the desirability whether or not the domain principle as the basis of the Agrarian Legislation should be abandoned. In the advice, given in 1930, the commission concluded amongst other things that the domain declaration should be abandoned as the basis for the issue of rights over land and advised to consider the gradual introduction of necessary law amendments. At the outbreak of the Second World War the Government still had not taken a definite point of view with regard to the proposals of the commission.

Together with the revision of the agrarian legislation of Dutch New Guinea, the domain declaration was being considered again.
The most important objection against the existing domain declaration is that — as it applies to all land over which the right of ownership is not proven by others — it also concerns land over which the indigenous population has rights derived from adat—law. In the former Dutch East—Indies this caused practically no problems, as the rights and interests of the native population, notwithstanding the domain declaration, were fully protected and no release of land would take place, if the population was not prepared to give up its rights. In Dutch New—Guinea however, this gives easily rise to misunderstanding — and the domain principle, insofar as it applies to so-called "umfree" domain land has little in common with the nature of the rights of the indigenous population, which, according to the sense of justice of the indigenous population in several areas, cannot be transferred neither surrendered. Therefore one wants to take away this objection inherent in the present domain declaration and to restrict it to land without an owner and over which no native rights are being exercised i.e. so-called "no-man’s land" and land over which Western rights apply, which are less embracive than the right of ownership. The difference between "free" and "umfree" domain land will then disappear. Domain land will only be the land which is now referred to as "free" domain land.

For this reason a domain declaration is included in the draft of the law to amend section 39 BNG (sitting 1955—1956, 0nd, 4191) which introduced in the States-General, which reads as follows:

"Land, which is not held in ownership by another person and over which the indigenous population has no rights, is domain of the Territory".

According to the explanatory memorandum, the Government held the opinion that it should not go as far as was proposed by the earlier mentioned agrarian commission, which favoured a complete abandoning of the domain principle. In the latter case, the so-called "no-man's land" would become land without an owner (masterless), which the Government considered far from satisfactory.

From the point of view of order and in the interest of legal authority it was thought better to explicitly formulate the legal situation. In a modern legal system it is perfectly normal that the SxxxyxxoState owns all "no-man's" land and also in other not self—governing territories one finds practically always land, which is indicated as domain of the Government.
V. Release of land, belonging to the free domainland with proprietary and personal rights.

Introduction.

Of old the Government of the former Dutch East-Indies has released land with proprietary and personal rights as prescribed in the Civil Code. The Europeans, who came to the Dutch East-Indies felt the need of a title to land, which provides great legal authority, and as such only those of the Civil Code were satisfactory. For a long time the point of view was held, that a European or a foreign Oriental could not hold a title to land which belonged to another legal system and therefore could not hold indigenous rights over land. When land was released to non-indigenous people the need was felt to protect the indigenous population against expropriation. The population was sometimes easily persuaded to sell their land for a cash-sum of money to the economically much stronger Europeans and foreign Asians. The Government has made restrictions to prevent this and created legal procedures at the same time demanding the establishment of a "legal Title" of the Civil Code. To what extent the protection of the indigenous population played a role in the release of land is evident in section 31, clause 3, of the Civil Code, which has been taken over in section 39, clause 3, B.N.G., in which is laid down that the Governor will take care that no release of land infringes upon the rights of the indigenous population. As mentioned earlier, this is stated in a more general way in the new section 39, clause 1. Earlier doubts had arisen whether for self-governing territory the self-governing body could release land with proprietary rights as described in the Civil Code. In order to take these doubts away the Royal Decree of 6th May 1915 number 23 (Indisch Stbl. 1915 number 474) decrees that, when an indigenous self-government releases a right over land to a person, to whom the regulations of the Civil Code dealing with proprietary rights are applicable, with, from the description of this right, following intent to establish a right, that in kind and extent is equal to one of the rights laid down in the Civil Code, such a right is acquired, provided the title of receipt of the right is made public by writing it into the public registers in the same manner as prescribed for the rights 1 of the Civil Code.
A. Release of land with the title of ownership.

This is the right of ownership of section 570 Civil Code Dutch New Guinea (in principle the same as section 625 Dutch Civil Code). It reads:

"Right of ownership is the right to have the free use and control over a property and have the complete freehold right over it, provided one does not make use of it in conflict with laws or public regulations, prescribed by such an authority, which has the power thereto and provided no interference takes place in respect to other persons' rights; all this, except compulsory acquisition in the public interest against fair compensation, according to legal regulations."

In the former Dutch East-Indies the Governor-General could release small pieces of land with the title of ownership, "meant to be used for the expansion of cities and villages and the establishment of industrial concerns."

He was authorized to do this in section 51, clauses 1 & 2 L.S., section 8 of the Agrarian Decree, applicable only to Java and Madura, and restricted the size of the released land to ten "bouw" (~ 70965 ha). This was also taken as a guideline for the Outer Provinces. In practice however, more than one parcel of land could be released to one person, with the result that the total amount of land released to one person could exceed 10 "bouw". No land was released with a title of ownership for agrarian purposes, occurred.

With the release care had to be taken that no infringement on the rights of the local population. A certificate of registry had to be shown on application. Every application was locally investigated. Inquiries were made whether indigenous people had voluntarily given up their rights and had been paid proper compensation. Apart from this the release was not bound to regulations, except a number of administrative regulations. To Europeans, Asians and indigenous persons alike land could be released with a title of ownership. A sum of money had to be paid to the Territory, according to fixed tariffs. When there were no objections against an application, the applicant was informed in an official document that the Government was prepared to sell him the desired piece of land.

The applicant only became owner by the establishment of the right, i.e., the registering into the public registers (the drawing up of a legal deed in the presence of a thereto appointed official). This could only take place after the purchase money had been paid and after other possible conditions had been fulfilled, which were included in the official contract.
In self-governing territory the release of land with the title of ownership by the government of that territory could only take place in special cases, subject to approval by the Governor-General (according to supplement number 8571). With the introduction of the Government Regulation New-Guinea the release of land with the title of ownership has been changed. Section 39 clause 1 RNG has replaced section 51 clauses 1 and 2 L.S.

This section reads as follows:

"According to regulations to be formulated in a general decree, land can be released with a title of ownership by the Governor. The general decree determines the maximum area of land which can be released with the title of ownership".

The general decree, referred to above has not yet come into effect. Therefore, until now, no land has been released with the title of ownership.

In the draft of the Bill revising section 39 RNG a similar regulation has been incorporated, reading as follows:

"The Governor can, according to regulations drawn up in a decree, release land with the title of ownership".

In the explanatory memorandum it is mentioned that the release of land with the title of ownership will be very restricted in the future. Therefore it is thought desirable that the prescribing of further regulations and also the indication of the cases in which release will still be allowed, will be done in the form of a general decree. Internationally, the permanent alienation of land in non-self-governing areas by non-native persons meets more and more opposition, especially in trust territories. Also in Australian New-Guinea, for a long time no land has been released any more with the freehold right, which right comes closest to our right of ownership.

B. The right mixbuilding to build.

The right to build is a right to own buildings, works or plantations on another person's land (section 711 B.W., Dutch New-Guinea = section 758 Dutch Civil Code). It is further defined in section 712 - 719 B.W., Dutch New-Guinea (mainly the same as section 759 - 766 of the Civil Code) insofar no change is made at the time of the release of the land. Neither the old government regulation, supplemented by the agrarian Bill, nor the Indies Government Regulation mentioned the possibility of the release of domain land with the right to build.
It was accepted, however, that the authority of the Governor-General to release land with the title of ownership included the authority to release land with the less embracing right to build.

The RGG does not mention this right either, but here also it is accepted now that the Governor has the authority to release domain land according to the still applying regulations concerning the right to build. In the above mentioned draft for a new section 39 RGG this has been provided for by defining in the 6th clause:

"According to regulations to be prescribed by ordinance, land can be released with "other civil rights". With "other civil rights" is meant mainly proprietary and personal rights other than the right of ownership, mentioned in clause 5 i.e., proprietary rights to build, long term lease, and use, lease, loan of land and also indigenous rights. The release of domain land with the right to build is formulated in different building regulations, which still apply. They are:

1. the normal regulation concerning the right to build: Government decree of 2nd July 1872 number 16 (Indisch Staatsblad number 124), amended by the Government Decree in Ind. Stbl. 1875 number 180; 1897 number 39; 1932 number 491; 1948 number 150 (Engelbrecht 1956 p. 2066),

2. the special regulation concerning the right to build (a supplement to the one mentioned under sub 1.) Decree of the Government of 11th September 1918 number 28a (Ind. Stbl. 1918 number 649) amended by the decree of the Government in Ind. Stbl. 1932 number 491 (Engelbrecht 1956 p. 2068); explanation in supplement 9120 and 12, 923;

3. the regulation to confer the right to build to poor non-indigenous people over domain which they occupy as residential premises without a title to it, Government Decree of 14th February 1912 number 45 (Ind. Stbl. 1912 number 178) amended by the Government Decree in Ind. Stbl. 1914 number 604 and 1948 number 150 (Engelbrecht 1956 p. 2070) explained in Supplement number 7773.

The authority to decide on requests for the release of land with the right to build, is vested in the Director of Internal Affairs (Government Decree of 16th August 1940 number 21, Ind. Stbl. 1940 number 427, under "2nd" sub 1, letter a. Jo, the decision of the Government of Dutch New-Guinea of 4th July 1951 number 65, Gouv. blad 1951 number 28, amended by the Decree in Gouv. blad 1953 number 45).

Inside the port of Hollandia and Manokwari the Director of Traffic and Energy has the authority to refuse the release of land with the right to build (Ghbl. 1953 number 80, resp. 1956 number 73 in 1952 number 284, to refer to only 1950, 1952, 1953, 1954, 1960).
The right to build can be given either for a place of residence or for industrial concerns, also if these are related to agricultural concerns which specialize in establishing plantations.

Generally, land which is being considered for release with a title of ownership can also be released with the right to build. Each request is also investigated locally to make sure that the rights of the indigenous population are not infringed upon. The maximum extent is also 10 "bouw". Land, over which indigenous people have rights can only be released with the right to build, when the indigenous people with a right over the land have voluntarily renounced their right and are paid proper compensation.

Ad 1. The right to build, given on the basis of the above mentioned regulation in Ind. Stbl. 1872 number 124 is released for a period not exceeding 30 years. The sum, which has to be paid to the Territory for the maximum term of 30 years, amounts to half of what would have to be paid at the release with the right of ownership. In the case of shorter terms this amount is reduced proportionally (for a release of 20 years 2/3 of half, i.e. 1/3 of what would have been due with release of the land with a title of ownership).

The period for which the rights is conferred can be prolonged with another term, not exceeding 30 years. The sum of money to be paid is half the amount due for the release with the right of ownership (addition to Government Decree in Ind. Stbl. 1948 number 150)

Ad 2. In the case of land which has been improved by the Territory for building or residential purposes, for example by raising the land, road building or drainage, the release with the right to build can be given for a period of 75 years. In that case the amount is yearly 6% of the sale value, which the land has as a parcel with the right of ownership without the buildings on it. The amount to be paid is fixed for a period of ten years and revised, if necessary, if the sale value has changed. The yearly amounts are fixed in directives given by the Director of Internal Affairs and published in the "Officiele Nieuwsbald" (Official Newspaper) x)

Ad 3. The regulation sub 3. is one of the measures to counteract the illegal occupancy of domain land. It was introduced at the same time as the penal provision against the illegal occupancy in Ind. Stbl. number 177. It linked up with the regulation on the right to build in Ind. Stbl. 1872 number 124. The maximum-term for the right to build is also 30 years (also with the possibility to extend the term once for a period not exceeding 30 years.)
x) See the felling numbers of Officieel Nieuwsblad.
  Capital Biak: 1957 number 8; Hellandia – inner area Hellandia, Sentani,
  Ifar: 1957 number 9; Capital Fak fak: 1957 number 9; Capital Mereuke;
  1957 number 11; Division West New-Guinea: 1958 number 7; Remee:
  1958 number 10; Capital Manekwari number 10.
The right to build.

An indigent non-native, however, can obtain the right to build, and instead of paying the whole amount at once, it is possible for him to pay yearly 2% of what would be the sale price of the land, if it was transferred with the title of ownership. This is possible only if it concerns crownland (domain land), which is occupied by them for a residential purpose, without having a title to it.

Also in the case of the right to build a temporary permit is given by order of the Director of Internal Affairs, in which the necessary conditions are defined. One of the conditions concerns the obligation, that within a fixed period after the date of registration of the right to build and in accordance with a building license issued by a qualified authority, a building will have to have been erected on that parcel of land. The Director of Internal Affairs has the right to reissue the parcel of land on behalf of the Government if that condition is not fulfilled within a period of two years, after the term expires.

The formal establishment of the right to build also happens, when it is drawn up in a deed after possible registration requirements have been met.

The proprietary right over the building can be used to secure a mortgage. The rights and obligations of the person who has the proprietary right over crown land is subject to the seventh section of the second book of the Civil Code, insofar as changes have been made in the above mentioned regulations and at the time when the right was conferred.

Such a change did take place in connection with sections 712 and 715 of the Civil Code.

Section 712 stipulates inter alia, that he who has the right to build, has the right to transfer it. The right of transfer is subject to approval of the Director of Internal Affairs.

In case the right to build is granted according to the regulation in Indisch Staatsblad 1918 number 649, then, at the time of the transfer, also a documentary evidence should be produced which shows that up to the date of transfer the annual payment due and possible forfeits have been paid.

Section 715 specifies that at the time of the expiration of the right to build, the owner of the land acquires the ownership of the buildings on that land, with the obligation to compensate the value of the buildings at that point in time. The regulations concerning the right to build prescribe, that if the right to build expires, because the period for which it was conferred has expired, and in case the Government is not prepared to reissue the land with the right to build for at least the same period, then at the request of the titleholder either a compensation equal to the value of the building will have to be paid or a compensation for the removal of the buildings or structures.
The surrender of the right to build can only take place with permission of the Director of Internal Affairs (ordinance in Indisch Staatsblad 1900, number 546, jo. the Decree of the Government Indisch Staatsblad 1940, number 427, section 2, sub I, under A and B I and the Decree of the Governor in Governor's Gazette 1951, number 20 and 1955 number 45). In the permission to surrender the right is usually subject to preceding charges in respect of mortgages encumbering the land, at the expense of the interested party.

The surrender can take place in the form of a statement before a public notary (specimen in Supplement number 13383), which should be forwarded to the Director of Internal Affairs, who then sends a copy of the statement to the Registrar of Deeds. At the request of the person with the right, the surrender of the right can also take place by way of a declaration of the Director of Internal Affairs, which a copy is to be sent to the Registrar of Deeds. This declaration specifies that the documents of cancellation of the mortgages which previously encumbered the right be shown to the Director, or the statement that no mortgages encumbered the right as well as a statement that the land-tax was paid up to the time of the surrender and possible fines connected with land-tax.

The officer in charge of the registration and transfer of deeds should record the surrender of the right to build on the deed of the right to build, and in case the right is encumbered with a mortgage it should be recorded on the document of mortgage.

When the right to build is being surrendered, the person with the right is obliged to remove the buildings and to restore the land to its former state within one month after having been notified by or on behalf of the Government. The Government has the right, if this condition is not fulfilled, to carry out the removal of the buildings on the expense of the negligent person, without paying compensation. In case notification to evacuate the land is not given or if the removal of buildings, which was ordered, has not taken place, then the Government is not liable for any kind of compensation for the acquisition of ownership of the buildings.

**Lapse of the right to build.**

The right to build, conferred according to the regulation in Indisch Staatsblad 11918 number 649, can be declared lapsed, if the annual payment together with the forfeits have not been paid to the Government Treasury within two years, after the payment was due.
Steps to declare the right lapsed are not taken, until the person with the right and the mortgage(s) have been notified of the intention to declare the right lapsed in a summons in which a time limit of three months has been given for the payment of any unpaid fees, forfeits and costs of legal notice. The regulations concerning the buildings are in this case the same as in the case of the surrender of the right to build.

In the former self-governing region land with the right to build was granted in accordance with the regulations contained in the Government Decree of 8 January 1916 number 47 (Supplement number 8571), as amended by decrees in Supplement number 8711, 9154, 9242, 9827 and 12640 (the last mentioned amplified in number 12675). The right to build could also be conferred permanently. The payment for the right to build amounted to 6% of the market value of the land as freehold property without the buildings constructed on that land; and this could be reviewed after every ten years. For the rest this regulation contained the somewhat similar provisions included in the above mentioned regulation in Indisch Staatsblad 1918 number 649. It is still in force as far as rights to build are concerned, which were conferred before 1st June 1950 on the basis of that regulation, in the former self-governing area.

The right to build was for mining concessions.

The above mentioned regulations do not apply to the granting of land to mining concessionaires.

Section 22, subsection 1 of the Mining Act in the Dutch East-Indies prescribes that the Governor-General (In Dutch New-Guinea the Governor), gives permission, under conditions which he considers necessary and with due regard to the rights of the third party, for the construction of roads and waterways for development purposes and confers the right to build for the construction of the necessary buildings, installations and workshops. According to the old Mining Ordinance (Indisch Staatsblad 1906 number 434, section 278) land was granted with the right to build in conformity with the general provisions concerning these matters, on the understanding that it could also be granted for a longer period than thirty years. In the present Mining Ordinance of 1930 (Indisch Staatsblad 1930 number 38) such a provision does not exist. Consequently, the Governor is only bound by section 22, sub-section 1 of the Mining Act, and is free to determine the necessary conditions. Also the possibility to confer the right without any payment is not excluded.
C. The (proprietary) right of use.

The right of use is a proprietary right, which on behalf of a certain person, is given over the property of another person, in order to use this property himself, provided he maintains it and uses it according to its purpose, and to have the usufruct thereof if it is fructiferous; however he can only have the usufruct of the amount, which he needs for himself and his family (Asser-Scholten II, 8th edition, page 361).

The right is in the first place subject to what the parties have agreed upon. If no mention is made of the deed which establishes the right, then the sections 821 and further, Civil Code Dutch New-Guinea apply (corresponding with sections 868 and further, Civil Code of the Netherlands).

The right cannot be transferred by the user to another person or leased out (section 823 C.C., Dutch New-Guinea) and cannot be encumbered with a mortgage.

The authority to give permission for the granting of land with the right of use is vested in the Director of Internal Affairs (Government Decree 16th August 1940; Indisch Staatsblad 1940, number 21; Indisch Staatsblad 1940 number 427, under "Secondly", sub. 1, letter A, jo. Government Decree Dutch New-Guinea 4th July 1951, number 65/ Gouv. Blad 1951, number 20 as modified by decree in Gouv. Blad 453, number 45).

Within the port areas of Hollanda and Manokwari the Director of Traffic and Energy has the power to refuse requests for the granting of land with the right of use (gbl. 1953 number 80, resp. 1956 number 73, jo. 1957 number 74; in connection herewith gbl. 1959 number 28 and 30).

The right of use can be conferred:

a, until further notice, when it is not deemed desirable to surrender part of the complete freehold right over the land permanently or for a certain period (for instance, if it can be expected that the land will be required at some time for purposes of public interest);

b, for a certain term, for instance, for ecclesiastical or charitable institutions in order to avoid the higher expenditures which would result from the conferring of the general freehold right over the land or the right to build.

Requests for the granting of land with the proprietary right of use are being dealt with in the same way as requests for the right to build, the only difference being that the handing over of a plan of survey is hereby not required and a precise sketch plan may be sufficient.

The payment is determined separately in each case. For religious or charitable purposes this amount is usually fixed as 1/8 of the amount determined for the granting of land with the general freehold right.

According to Section 819 Civil Code, the person with the right of use, as well as the person who has the right of usufruct in Section 784 C.C., are required to give a guarantee that they will use the property responsibly.
The proprietary right of use is established through the drawing up of a deed in the form prescribed by the Transfer Ordinance.

The proprietary right of use must be distinguished clearly from the transfer of small parcels of land "for use" which can be done for different purposes. This creates a personal right only (this further referred to under letter G).

D. The long term lease.

The long term lease is a proprietary right conferring the full use and enjoyment of a parcel of real estate, which belongs to another person, with the obligation to pay the owner a yearly rent (cannon, be it in money, produce or fruit (Section 720 C.C., Dutch New-Guinea).

It is the most comprehensive proprietary right on the land of another person. The lessee exercises all rights which belong to the general freehold right, yet he is not allowed to do anything which would decrease the value of the land (Section 721 Civil Code Dutch New-Guinea).

The long term lease is in principle subject to the previsions of the Civil Code Dutch New-Guinea (book 2, heading 8, sections 720 – 736 incl, corresponding with sections 767 – 783 incl, Dutch Civil Code). It is possible for parties to depart from this, provided they do not infringe upon the essence of the law. (Section 735 Civil Code Dutch New-Guinea).

In practice, the regulations are sidestepped a great deal in the case of the granting of crown land under long term lease.

Before 1870 the large scale agricultural business could only operate on crown land which it had leased (Indisch Staatsblad 1856 number 64).

In addition, there was also the possibility to enter into contracts with the indigenous landowners for the supply of crops, in accordance with Indisch Staatsblad 1838 number 50. As has been mentioned previously, each of these forms of business had its drawbacks.

A lease agreement with the Government gave the entrepreneur only a personal right over the land, which could not be used to secure a mortgage.

Furthermore, the short term lease, which could not exceed 20 years, did not give the lessee much security for his business. This was a particular disadvantage in respect of the cultivation and plants, taking more than one year to mature.
The main disadvantage of the work-and-supply contracts with the indigenous population was that the entrepreneur was completely dependent on the goodwill of the indigenous landowner.

For a number of years they were trying to find ways which would give the private agricultural industry an opportunity to develop without conflicting with the interests of the indigenous population. This finally led to the earlier mentioned Agrarian Law of 1870 (Ind. Staatsblad 1870, number 55), whereby section 62 of the Ministerial Regulation, which was then in force—which later became section 51 of the Ind. Statutory Rule—was supplemented with five sub-sections. As far as long term leases are concerned, the fourth sub-section provided that the Governor-General could under regulations to be established by ordinance, grant land under long term lease for a term not exceeding seventy-five years. In the Administrative Order New Guinea, this provision has been incorporated in the second sub-section, second paragraph, of section 39.

In the draft of the new Section 39 RNG, sub-section 6 provides that under regulations to be established by ordinance, land can be granted with civil rights other than those of ownership. This includes also the long term leases. A separate provision, sub-section 7, deals however with land which is intended to be used for agricultural enterprises or animal husbandry (i.e., cattle raising or pisciculture). This also includes small properties or farms; in other words, land which is intended to be used for agrarian purposes. And therefore it cannot be granted with the general freehold right or with the right to build.

A proviso is made for parts of land of a relatively small area, to be determined by ordinance. For instance, those parts of the enterprise or farm, which are intended for ancillary buildings or dwellings. For these parts a different right can therefore be conferred, for instance the right to build. The maximum period for long term leases issued for agricultural enterprises or animal husbandry enterprises has been fixed in the draft legislation for 99 years. This corresponds with what is customary in other parts of the Pacific. However, this is a maximum period, and it is of course possible to have a shorter period. In each individual case consideration will have to be given to what would be the most desirable period.

It has further been provided that for agrarian purposes that land cannot be granted with long term leases, which consists of "suitages, gardens and permanent agricultural fields of the indigenous population, as well as other land to be determined by ordinance, except for a few cases, to be prescribed by ordinance and after reaching an amicable agreement."
This means that, in accordance with the practice followed so far, only underdeveloped land can be granted with a long term lease or given in lease, with a few exceptions such as enclaves.

The seventh sub-section therefore does not apply to the granting of land with a long term lease other than for agrarian purposes. This can, insofar as this is necessary, be prescribed by ordinances, as intended in sub-section 6, for instance the so-called urban long term lease.

The principles of the Agrarian Law have been amplified in the earlier mentioned agrarian decree, an Act of 20 July 1870 number 15 (Indisch Staatsblad 1870 number 118), which since has been amended repeatedly. This decree applied only to Java and Madura, with the exception of the Principalities.

The last section (Section 20) provided in a second sub-section that the subjects which were covered in the decree would, for each of the possessions outside of Java and Madura, be prescribed, insofar as this was necessary, by ordinance, in accordance with the agrarian law and the basic principles of the agrarian decree. As a result of the granting of land with long term leases, separate ordinances concerning long term leases were established for different regions. These were replaced in 1914 by a general long term lease ordinance, the "Long Term Lease Ordinance for the Outer Territories" of 25 April 1914 (Ind. Staatsblad 1914 number 367) which came into force 13 May 1914. This has been amended by the ordinances in Ind. Stbl. 1918 number 472, 1923 number 358 and 1938 numbers 370 and 371. (See Engelbrecht 1956, page 2874 ff.). Until the first of July 1950 this ordinance applied only in that part of the territory of Dutch New-Guinea, which was formerly administered directly; since that date it has applied in the whole of Dutch New-Guinea.

A separate regulation was made for the granting of land with a long term lease for small agricultural holdings and market gardens, to be used by indigent Europeans.

For that purpose a Section 18a was inserted by a decree of 31 March 1905 number 61 (Ind. Stbl. 1904 number 325) in the agrarian decree. Although this section, too, applied only to the directly administered territory of Java and Madura, the ordinance in Stbl. 1904 number 326, which was drawn up to implement this section contained "provisions concerning the surrender of land and the provision of financial assistance from the Government for small-scale agriculture and market gardening in the hands of indigent Europeans" and applied to the directly administered territory of the entire Dutch East-Indies.
The ordinance has been amended by ordinances in Ind., Stbl., 1905 number 153, 1908 number 263, 1924 number 578, 1925 numbers 144 and 433 and 1926 number 376 (1).

This ordinance also applied only to the former directly administered territory of Dutch New-Guinea until the 1st of July 1950, but since that date it has been in force for the whole of Dutch New-Guinea.

Regulations for the implementation of this ordinance were drawn up in a Government Decree of 5th August 1904 number 34 (Supplement number 6050), amended by decrees in Supplement numbers 6667, 9968 and Ind., Stbl., 1931 number 373, letter C 4th.

In practice it often happened that land belonging to parcels of land under long term leases was often taken in use illegally by the indigenous population.

The ordinance in Ind., Stbl., 1937 number 560 contains a further provision to enable legal action to be taken against such illegal use.

This evil occurred especially before and during the Japanese occupation. In order to counteract the spread of illegal occupancy the "Ordinance, illegal occupancy of land" (Ind., Stbl., 1948 number 110) was introduced, whereby the illegal use of land, which is part of the free crownland, or the crownland in a self-governing region, or which is part of land under long term lease, or part of land, over which an agricultural concession is given, becomes punishable. However, this ordinance has been declared to apply only to the Negara Seematra Timoer region (Ind., Stbl., 1948, number 111). A policy, concerning the occupancy of land (with a long term lease) by the population, was announced in a circular sent by the Secretary of State of the Department of Internal Affairs: 4th December 1948, supplement number 15 242.

(1) Printed by Maassen and Hens, Agrarian Regulations Volume 11, Supplement 52.

In self-governing areas of the outer provinces, the Government Decree of 8th January 1916, number 47 (Supplement number 8571), as since amended, determined under Part 1, sub 8, that the surrender of land under long term lease should take place with due regard to the separate regulations concerning this, to be determined later. These regulations were established by ordinance in Ind., Stbl., 1919 number 61, the "Ordinance concerning long term leases for the self-governing areas in the provinces outside Java and Madura". The ordinance was amended by ordinances in Ind., Stbl., 1921 number 457, 1927 number 191, 1938 numbers 355, 370, 371 and 590 (see Engelbrecht 1956, page 2158 ff.)
This ordinance has been in force in the former self-governing territory of Dutch New-Guinea until 1st June 1950. (See the ordinance in Gov. Blad 1950 number 12 Section 2). As was pointed out earlier, the rights and obligations of those who had a long term lease over land, conferred on the basis of the provisions of this ordinance, remain still subject to the said ordinance.

Long term leases in connection with large-scale agricultural enterprises.

The above mentioned "Long Term Lease Ordinance for the Outer Territories" (Ind. Staatsblad 1914 number 367, as since amended) concerning the granting of land with long term leases for large-scale agricultural enterprises, entered into force for the whole of Dutch New-Guinea as of the 1st of July 1950. The granting of land with this right is also possible for purposes other than those of agricultural character, such as stock breeding, forestry and mining.

Requests for the granting of land with long term leases are administered by the Director of Internal Affairs (Gov. Decree in Ind. Staatsblad 1937 number 359, fifth, sub-section 2 jo, that in Ind. Staatsblad 1938 numbers 373 and 264 and the decree of the Governor of 4th July 1951 number 65, Gov. blad 1951 number 2o, amended by decree in Gov. blad 1953 number 45).

Within the ports areas of Hollandia and Manokwari, the Director of Traffic and Energy has the authority to refuse requests for the granting of land with long term leases (Gov. blad 1953 number 80, resp. 1956 number 73 jo, 1957 number 74, in connection with Gov. blad 1959 numbers 28 and 30).

Because of a Royal Decree in Ind. Supplement number 302e, only so-called underdeveloped land can be granted with a long term lease. Undeveloped land as defined as "land, which is not cleared by natives and does not serve as a communal pasture and does not belong to any of the villages for any other reason", except for small enclaves. The underlying principle of this is the prevention of expropriation of agricultural land belonging to the population.

In addition to this, certain types of land which are not to be granted with long term leases have been mentioned in Section 1, sub-section 7, namely:

a. land, over which others have a proprietary or personal right;
b. land, which, according to the local country's traditions, is considered sacred;
c. land, which is reserved for public markets or pastures or which, for some reason is reserved for public services;
d. forests and other land, the surrender of which would, for reasons of public or local interest, not be advisable;
As far as this last category is concerned, it may be desirable, that, in view of hydrological, forestry and climatological interests, certain land remains in reserve and thus is not to be released with long term leases. The granting of land can also be undesirable in view of defense interests or because the land is needed for public works.

It may further be necessary to reserve land for the population so that in future they will have land at their disposal needed for the extension of their agricultural land.

The sub-surface is not included in long term leases and the lessee has the obligation to tolerate exploration or mining of the minerals by the authorities, or by those who have been issued with a license or a concession by the Government (section 7, sub-section 1). Contrary to what was prescribed in section 721, sub-section 2, C.C., the second sub-section gives the lessee the right to dig up and excavate for his own use stones, clay and similar soil specimens, which are not the object of real mining exploration.

The granting of land with long term leases is not done for a period exceeding 75 years, for an annual rent (canon) of maximum P. 1,00 per "boer" (7, 996.5 m²), commencing on the sixth year after the registration of the deed of the long term lease has taken place in the appropriate registers. In special cases, especially with parcels of a limited area, the canon can be higher.

Public granting of land, belonging to crownland, with long term lease, is also possible, similarly for a term not exceeding 75 years, and then in parcels not exceeding 3500 ha. (section 1, sub-section 2 - 6, incl.)

Only the following categories are eligible for granting with a long term lease (section 2), i.e. only the following can be lessees:
1. Dutch subjects (hence also natives);
2. Residents of the Netherlands;
3. Residents of Dutch New-Guinea;
4. Registered companies, established in the Netherlands or Dutch New-Guinea;

Persons not residing in and companies not established in Dutch New-Guinea must be appropriately represented there.

The presentation of a plan of survey is only required in regions indicated by the Director of Internal Affairs and further when he deems this necessary on account of the small area of the requested parcel (section 3, sub-section 1).
By order of the then Director of the Internal Administration of 15th January 1934 number A, 6/6/3 (Supplement number 13, 179) supplemented by a decree of 9th March 1937 number A.I, 8/2/25 (Supplement number 13, 828), it is prescribed that, when the deed of the long term lease has been entered in the appropriate registers, a presentation of a plan of survey be required by the Government of the Moluccas, on the understanding that, insofar as the subdivisions North New Guinea (Manokwari) and West and South New Guinea (Pak Pak) of the above districts are concerned, it is sufficient to present at registration a sketch drawing or map, which must, however, be replaced within 5 years after the registration by a plan of survey — except if the extension is granted by the resident of the Moluccas (presently Director of Internal Affairs) — in very special cases — and at his discretion.

The rights and obligations of persons with long term leases are subject to:

a. the eighth heading of the 2nd book of the Civil Code of Dutch New-Guinea;
b. the long term lease ordinance;
c. the general conditions, under which land is granted with long term leases for large-scale agriculture in the Outer Territories (Supplement number 13, 845);
d. the special conditions, which have been included in the deed of the long term lease (see model decree in Supplement number 13, 846, with explanation);

The entering of the deed of the long term lease in the public registers has to be done within one year after the date of the conferring of the right (see model-decree in supplement under number 13, 846)

Permission from the Director of Internal Affairs is required for the transfer of the right, except if the due canon and possible fines have not been paid in advance up to and including the year of registration, or if the obligation for the payment of the canon has not yet been fulfilled (section 11). Permission from the Director of Internal Affairs is also required for the surrender of the right (section 12 jo. Ind. Staatsblad 1937 number 339; 1938 number 373 jo. 264 and Government Decree in Gouv. blad 1951 number 20 and 1953 number 45).

Permission is usually subject to preceding charges in respect of mortgages encumbering the land at the expense of the interested party. The surrender takes place as by way of a declaration in the presence of a public notary, in accordance with the model included in supplement number 13, 383. This document is addressed to the Director of Internal Affairs, who sends a copy to the Registrar of Deeds.
The declaration determining a long term lease by the Director of the Department of Internal Affairs can take place in the following way:

a. in case of "real damage to the property or the gross misuse thereof" (section 733, sub-section 1, Civil Code);

b. if the landrent has not been paid over a period of three years (section 13, sub-section 1, Long Term Leasing Ordinance").

The declaration in the case of under a) can be prevented by the leaseholder, if he restores the property to its original state and if he gives sufficient assurance for this in the future (section 734 Civil Code).

The declaration as intended under b) is a departure from section 733, sub-section 2 of the Civil Code, in which a period of 5 years has been prescribed for default of payment.

Steps to terminate the lease are not taken until the leaseholder or those to whom the right has been assigned, and the mortgagees have been informed by the Director of the Department of Internal Affairs of the intention of a declaration determining a long term lease by a deed in the form of a summons, accompanied by a request to pay as yet the outstanding landrent and possible fines within the next three months (section 13, sub-section 2).

A declaration determining a long term lease can also be issued with regard to the whole or a part of land, when the leasing right is given under the condition that a certain portion of the land will have to be cultivated within a specific period and that condition has not been fulfilled (section 14, the so-called cultivation clause). This declaration determining a long term lease is drawn up in a summons, served upon the leaseholder or upon those to whom the right has been assigned, and in which the reasons are stated (section 15).

Apart from surrendering the right and the declaration determining it, it can also be voided when the period for which it was conferred has expired (section 736 jo, section 718 Civil Code), in accordance with that prescribed in section 732 Civil Code, which reads as follows:

"When the time of the long term lease has expired, it is not automatically renewable, but will continue until further notice".

The leaseholder therefore can continue exercising a long term lease after the prescribed time, but both parties can terminate that right by giving notice (asser-Scholten part II, 8th edition, page 517).

The Director of the Department of Internal Affairs has to be given notice within one month after every transfer of a long term lease and the appointment of a representative to manage the enterprise. Failure to give notice is punishable with a fine not exceeding 100 guilders.
The manner in which requests for long term leases are to be dealt with, is prescribed in the "Instruction to process requests for long term leases in the Outer Provinces", passed in a Government Decree in Indisch Staatsblad 1911, number 265, amended in decree in Ind. Staatsblad 1911 number 353, 1914 number 463, 1920 number 804 and 1937 number 359. Explanations of these are given in circulars in Supplement numbers 7528, 9715 and 10,138.

Requests for an area of land with a long term lease are not to contain a demand for an area larger than 5,000 boew (3.548, 25 ha).

Long term lease over small agricultural and horticultural estates.

In the second place: As from 1st June 1950, the above mentioned regulations are in force in the whole of Dutch New-Guinea, concerning the "surrender of land and the provision of financial aid by the government, for the use of small horticultural or agricultural enterprises in the hands of indigent Europeans" (ordinance in Ind. Staatsblad 190 4, number 326, as since amended).

Only the following are considered for the conferring of this right:

a. low-income Europeans, who are residents of Dutch New-Guinea;

b. as incorporated bodies, in Dutch New-Guinea established charitable institutions (One is thinking of the establishment of agricultural colonies to counteract poverty amongst Europeans).

Applicants, belonging to the category under a) have to accompany their request with a declaration of indigence given to them by the head of the local administration of their place of residence.

In a circular in supplement number 13,112 a further explanation is given as to what is understood under the term "indigent". Generally, a generous point of view has to be taken in that respect.

As far as the personal aspect of the applicant is concerned, attention will have to be given to the fact, whether he is capable and has the intention to take an active part as a "farmer" in the operation and management of the enterprise.

Apart from undeveloped land, land considered for small agricultural and horticultural enterprises and granted on long term lease also "includes that, which has been developed by the native population, or belongs as a common or for some other purpose to the villages, provided the native rightful claimants have surrendered the land and their rights over the land of their own free will". The maximum area, however is 25 boew (17, 74 ha), but in special cases this can be increased, masuas excepted (section 1).
As incorporated bodies, charitable institutions established in Dutch New-Guinea can be granted land, not exceeding 500 bow (35%, 8 ha) on a long term lease for the same purpose, but this has to be undeveloped land.

The granting of land on a long term lease for the purpose of small agricultural and horticultural enterprises takes place according to regulations applying generally to the granting of crownland on long term lease, as mentioned above, insofar as no special rules have been laid down for this.

Section 3 of the ordinance in Ind. Staatsblad 1904 number 326, as amended in ordinances in S. 1908 number 263 and 1924 number 578, prescribes:

a. that the maximum yearly landrent per bow amounts to one guilder;
b. that the granting conferring of this right cannot exceed a period longer than 25 years, under the condition that it is to be renewed every time for not more than 25 years and with not a higher landrent than prescribed in a) if the land is being used for the intended purpose to the satisfaction of the Director of the Department of Internal Affairs;
c. that, if necessary, exemption will be given from payments of costs of surveying and mapping and the costs of transferring the right, from payment of stamp duty for the document and the engrossed document of the registration of a long term lease to be handed over to the interested party and also exemption from the legal fees for the drawing up of the certificate of the long term lease.

In the "Long Term Leasing Ordinance for the Outer Possessions" is under "third" furthermore determined, that the final provision contained in section 1, sub-section 1, as well as sections 10 – 17 incl., do not apply in the case of a long term lease over land used for small agricultural and horticultural enterprises. (Section 1, sub-section 1 end, deals with the possibility to fix in special cases a landrent higher than 1 guilder per bow. Sections 10 – 17 incl. concern the payment of landrent and the liability incurred, the transfer, the surrender and the declaration determining the long term lease.)

The ordinance in S. 1904 number 326 contains a separate section, section 4, about the possibility of determining long term leases, in which some cases are mentioned, in which the Director of the Department of Internal Affairs – subject to the special provisions of that kind defined in the lease document – can determine a long term lease for the purpose of small agricultural and horticultural enterprises.
These cases are:

a. transfer without permission from the Director of the Department of Internal Affairs;

b. sub-division or splitting up of the parcel due to death or for other reasons;

c. non-compliance of obligations to be fulfilled by the person with the long term lease, as a consequence of financial assistance given to him.

As a rule, otherwise, a clause is put in the deed of the long term lease that the long term lease can be terminated in case the land is not being used or not used satisfactorily in the opinion of the Director of the Department of Internal Affairs, for the purpose for which it was conferred.

The determination of the long term lease is made in a writ served upon the leaseholder concerned or on those to whom the right has been assigned, in the form of an order stating the reasons, after he has been notified of the intention also in a writ from or on behalf of the Director of the Department of Internal Affairs.

Surrender of long term leases for small agricultural and horticultural enterprises is regulated in the ordinance in Ind. Staatsblad 1910 number 546. This cannot take place without the permission from the Director of the Department of Internal Affairs (section 1, sub b, jo.

Government decree in Gouw. blad 1951 number 20 and 1953 number 45).
The surrender can proceed in the form of a declaration in the presence of a public notary (example in supplement number 13, 383), which is sent in the form of a legal notice to the Director of the Department of Internal Affairs, who then informs the registrar of deeds thereof. At the request of the leaseholder it can also be confirmed in a decree made by the Director of the Department of Internal Affairs, a copy of which will be sent to the Registrar of Deeds. Possible mortgages would have to be cancelled beforehand.

The government wanted to encourage the establishment of so-called agricultural and horticultural farms by giving credit (section 2 of the ordinance in S. 1904 number 326). The principles applying for that purpose are determined in a Government decree in supplement number 6050, amended in decrees in supplement numbers 6667, 9968, and Ind. Staatsblad 1931 number 373 letter C, fourth. Therein the opportunity is created for the giving of landcredit for the purpose of erecting agricultural and horticultural farms on land, which has been freed of native rights (thus not for farms on undeveloped land), and the opportunity for the giving of building-credit for the purpose of erecting essential buildings for the enterprise, and -- after the need has been proven -- for the giving of businessescredit to supplement private means for the initial establishment and operation of the business.
The manner of dealing with requests for obtaining long term lease for the purpose of small agricultural and horticultural enterprises is generally the same as the one for the purpose of big agricultural concerns. For Java and Madura a separate instruction has been made which is set out in the Government decree in supplement number 13,112, whereas also separate provisos have been laid down in a decree in supplement number 13,113. These, however, do not apply in Dutch New-Guinea.

**The reservation of land to be granted on long term lease.**

There are some possibilities to reserve land for granting on long term lease, also the possibility to grant a right of preference.

a. The so-called "land exploration": Royal Decree of 9 March 1912, number 77, Ind. Staatsblad 1912, number 362.

A right of precedence can be granted to Dutch subjects or limited liability companies established in the Netherlands or Dutch New-Guinea, with regard to the transfer of land on long term lease, belonging to the crownland, situated within areas schematically indicated by interested parties, each not exceeding an area of about 50,000 bouw, this subject to rights obtained earlier by third parties or to requests for land on long term lease by third parties.

The Governor issues a license for land exploration not exceeding a period of three years and against payment of a fixed rate of 2 cents per bouw a month. Special conditions can be attached to the license. The applicants then have the opportunity to select those lots, which for their purpose are the most suitable to be requested on long term lease.

Instructions for administration have been drawn up in the ordinance in Ind. Staatsblad 1912, number 502 and the Government decree in Ind. Staatsblad 1912, number 503.

b. It can be suggested to entrepreneurs, who are prepared to undertake serious exploration, but who fear competition from others, to send in requests for large areas with the premise that these will be held in for a period of one year (with authority of the Governor also for a longer period) to give entrepreneurs in that way the opportunity to choose after exploration the land they definitely want too apply for (circular Acting First Government Secretary 5 Aug. 1926, number 1434/B, supplement number 11,135).
The period of one year can every time be extended by another year, unless no progress has been made with the exploration activities. At the expiration of the term, the original request can be reduced, after which the normal long term lease investigation can follow.

c. In the Government Decree of 15th June 1927, number 21 (Ind. startsblad 1927 number 341), explained in supplement number 11,360, regulations have been made regarding the reservation of land belonging to parcels of land, which earlier had been granted on long term lease and the reservation of other land in special cases. It was the intention in the last instance to proceed with the reserving of land only in case certain circumstances would present themselves in a certain region, which would make the establishment of one or more agricultural enterprises especially desirable.

In practice little use has been made of the above mentioned possibilities.
E. Leasing of Land.

According to Section 51, sub-section I.S. (Ind. Statutory Regulation), the Governor-General can grant leases according to regulations to be established by ordinance. Not included is land, which is "cleared by the natives, used as a common pasture, or which belongs to the villages for some other reason".

This has been substituted by section 39, sub-section 2, first part, of the RNG, which provides, that according to regulations to be established by ordinance, the Governor can grant land on lease for a period not exceeding ten years.

In the draft legislation to revise section 39 RNG, sub-section 6 of the proposed new section, it is prescribed, that according to regulations to be established by ordinance, land can be granted with other civil rights, which includes the leasing of land. In sub-section 7 it is further provided that land reserved for agricultural enterprises and animal husbandry can only be granted on long-term lease or on ordinary lease. This can only be undeveloped land, apart from a few exceptions.

There is no maximum period for the lease, as in Section 39, sub-section 2, which is still in force. It can be established by ordinance.

The leasing of land for large-scale agricultural enterprises has been prescribed by the Royal Decree of 3rd July 1856 (Ind. Staatsblad 1856 number 66, which has been amended by the Royal Decree in Ind. Staatsblad 1864, number 16 and 1877 number 70, Engelbrecht, 1956, page 2082). Provisions for implementation in Ind. Staatsblad 1862 number 56, as well as 1865 number 108.
This regulation, in fact, offered the private entrepreneur the only way at that time to secure land for his agricultural enterprise. However, it only conferred a personal right upon the entrepreneur, a right which could not be encumbered with a mortgage. Moreover, the short period of leasehold of 20 years gave only a limited security to the enterprise. This was a disadvantage, for the cultivation of long-term crops in particular. Only for the cultivation of coconut trees, authority was given by a separate Royal Decree to allow a leasehold period of 40 years.

Since it became possible to be granted land on long term lease, this regulation has not been used very often. However, it is still in force, on the basis that the period of leasehold, as provided in section 39, sub-section 2 ENG, cannot exceed the period of ten years.

In the former self-governing region, a regulation of 1916 concerning the "leasehold and the making available of land for use to non-natives in self-governing regions outside Java and Madura" was in force, which was established by Government Decree in Supplement number 9025, as amended by decrees number 9027 and number 11062. This provided the possibility for the granting of leases over parcels of land not exceeding 10 ha for a maximum period of 20 years, and in special circumstances for 50 years. In addition, a regulation for the leasing of land to non-natives for the purpose of running animal husbandry enterprises was in force, which was recorded in Supplement number 8641, as well as number 9825.

Both regulations were repealed as from 1st June 1950 (ordinance in Gouv. blad of 1950 number 12), and could only be of importance in cases where land was leased according to those regulations and where the leasehold term had not yet expired.

By Government Decree of 16th August number 21 (Ind. Staatsblad 1940 number 427), "secondly" sub II, letter A, the Residents are authorised to make decisions regarding the applications for leases. By Decree of the Governor of Dutch New-Guinea of 4th July 1951, number 65, Gouv. Blad of 1951 number 20, as well as the Gouv. Blad of 1953 number 45, this authority in Dutch New-Guinea is vested in the Director of the Department of Internal Affairs. In exercising this authority "the legal provisions related thereto, the instructions and guidelines issued by the Government and the principles adopted as far" should be taken into account. Leasing contracts can only be entered into "if the land required for leasehold can be granted with a certain legal title, in accordance with the existing provisions or the principles adopted by the Government".
The period of leasehold shall not exceed 10 years (section 39, sub-section 2 RKG). The extent of the land to be leased shall, as a rule, not be larger than 10 ha, but it is possible to depart from this.

Apart from this there are still some special leasehold regulations. The most important of these is the Government Decree in Ind. Staatsblad of 1924 number 240, as amplified in supplement number 10,620. By this decree, which should be interpreted as set out in the decree of the Governor in Gouv. Blad of 1951 number 20, as well as that of 1953 number 45, the Director of the Department of Internal Affairs or the administrators appointed by him are authorized to grant leases over land belonging to crown land, until further notice and on conditions to be determined by them, to non-natives who use that land illegally or who have made it available to be used for their benefit, if:

a. proof can be given that no other person has rights over the land or in connection with it;
b. the land, according to existing regulations or according to the principles adopted by the Government, can be granted to non-natives with the general freehold right or the right to build;
c. the land is not under the control of certain government departments;

According to the explanation of these regulations in Supplement number 10,620 with this land is meant that land, which is granted with the general freehold right or the right to build i.e. land, belonging to the free crownland, or land over which the natives had rights, but which has been acquired by compulsory quantisation and which has been set aside for the extension of towns and villages or for industrial development. Upon refusal to enter into a leasing contract, a prosecution for illegal occupancy of crownland can be instigated (Ind. Staatsblad 1912 number 177). Land, which cannot be granted with a proprietary right and which is set aside for the extension of towns and villages or for industrial development (but this does not include, for instance, land for large-scale agricultural enterprises) cannot be leased on the basis of the regulation in Staatsblad 1924 number 240.

By the Government Decree in Ind. Staatsblad of 1917 number 464, the Director of Public Works (for Dutch New-Guinea — on the basis of the decree regarding land subdivision in Gouv. blad 1959 number 28, and the decree in Gouv. blad 1959 number 30 — this should be: the Director of Transportation and Energy) is authorized to decide on requests for the leasing of land and other property, which belongs to the port installation.
He is also authorized to transfer this authority to the Director of the particular harbour or to the head of the regional administration, or the head of the local government. In the former Dutch East-Indies, use has been made of this opportunity to transfer this authority.

For the port areas of Hollandia and Manokwari, in Dutch New-Guinea, the Director of Transport and Energy is authorized to decide on requests or proposals for the leasing of land and other property within the port area (Government Decree in Gouw. blad 1953, number 80, respectively the one in Gouw. blad of 1956 number 73, as supplemented by the one in Gouw. blad of 1957 number 74; in connection with the decree on land subdivision in Gouw. blad 1959 number 28 and the decree in Gouw. blad 1959 number 30). For the port area of the island of Djoem (Gouw. blad number 61, 1958), the same regulations are considered to apply on the basis of the general regulation in Ind. Staatsblad of 1917 number 46A, as well as the decrees in Gouw. blad 1959 numbers 28 and 30).

The “leasing of areas of land belonging to the free crownland and situated along water pipelines, canals or rivers”, is regulated by Government Decree in Ind. Staatsblad of 1921 number 579 under “Thirdly”, insofar as that land is not under the control of certain specified departments or Government instrumentalities and do not belong to a port installation. They can be leased "to native applicants among the population of nearby villages, who come under consideration for this", with due regard for the established regulations. The authority to grant land in leasehold is vested in the Director of the Department of Internal Affairs.

By Government Decree in Ind. Staatsblad of 1923 number 572, a regulation is made for the leasing of land belonging to crownland, which, at the expense of the Territory, “has been made suitable, or made suitable by land fill, road construction, drainage works or other means for construction and habitation”, as long as that land is situated within the boundaries as defined by the Director of the Department of Internal Affairs; this land can be leased to persons belonging to the native population, taking into account all the established regulations. The authority to grant land in leasehold is vested in the Director of the Department of Internal Affairs.

By Government Decree of 12th January 1939 number 27 (supplement number 14, 168), it is determined, that land needed for the erection of buildings, installations and workshops, for the purpose of mine-exploitation, and over which, in accordance with section 22, sub-section 1 of the Mining Act in the Dutch East-Indies, the right to build could be conferred, can be leased by the Residents to mine-exploitors (explan. in Supplement number 14, 203).
According to Section 1740 of the Civil Code for Dutch New-Guinea, loan is an agreement whereby one party (the lender) gives a property in use, for nothing, to the other party (the borrower), who pledges himself, to return the property, which he borrowed, after use or after a certain time.

Loan is thus a personal right. It can be conferred until further notice, or for a certain period, and on conditions considered necessary for similar purposes, such as those referred to in connection with the proprietary right of use, which has been dealt with under C.

The rights and obligations of the person who borrows the property are determined by the conditions upon which the parties have agreed. These, as a rule, depend on the purpose for which the land was granted in loan, and otherwise are subject to the provisions of the 12th Chapter of the 3rd book of the Civil Code for Dutch New-Guinea (section 1740 etc.)

The authority to decide on requests for the loan of land is vested in the Director of the Department of Internal Affairs (Government Decree 16th August 1940, number 21, Ind. Staatsblad 1940 number 427, under "Secondly", sub II, letter A, as well as the Government Decree Dutch New-Guinea of 4th July 1931 number 63, the Gouv. blad of 1951 number 20, as amended by decree in Gouv. blad of 1953 number 45).

Within the boundaries of the port areas of Hollandia and Manuswari, the Director of Transportation and Energy is authorized to refuse requests for the loan of land (Gouv. blad 1953 number 80, respectively 1956 number 73, as well as 1957 number 74; in connection with the Gouv. blad 1959 number 28 and 30). Yet he is permitted to lease this land.

The processing of applications for the loan of land is the same as the one for the right to build. For the application a plan of survey is not required; a well-drawn sketch plan is sufficient.

The granting of land in loan did take place at times in the former Dutch East-Indies, when the authority was reluctant to grant land immediately with the general freehold right, because it did not have the certainty that the owner would build upon the land within a reasonable period and in a manner considered desirable. In such cases, the land was initially made available on a temporary basis, for example on loan, with the undertaking that the general freehold right would be conferred as soon as the required building conditions had been complied with.
Properties, belonging to the Territory, such as buildings, instruments and other inventory-artécles can be given in loan to private corporations for the benefit of private medical institutions, and training institutes, and out-patient clinics for an indefinite time and free of charge. (section 4 of the ordinance concerning subsidies for medical care, Gouv. blad 1951 number 40). On the basis of this ordinance crownland can be granted in loan to private corporations where medical institutions, out-patient clinics and training institutes are concerned.

6. Other personal rights of use.

In several regulations the possibility has been created to make crownland available for use without establishing thereby a right circumscribed in the Civil Code of Dutch New-Guinea. It can be regarded as a purely administrative provision, which has nothing to do with loan neither with the proprietary right of use.

On account of this, by Government Decree in Ind. Staatsblad 1919 number 802 (as amended by decrees in Ind. Staatsblad of 1921 number 102 and 579, 1925 number 43, 1928 number 191, 1931 number 373 letter C, 20th, 1937 number 333 and 1938 number 374; Engelbrecht 1956, page 2084) several authorities specified in those decrees have been authorized for defined purposes and on conditions to be determined by such authorities to make land belonging to the free crownland available to eligible applicants. The following purposes are mentioned: construction of pipelines, erection of ice-stands, kiosks and similar non-permanent structures, timber stacks and other building materials, depots, sportgrounds, places for drying fish etc. A charge can be made, but the land can also be made available for use, free of charge. In accordance with the decree of the Governor in Gouv. blad 1951 number 2 and also that in Gouv. blad 1953 number 45, the Director of the Department of Internal Affairs is considered to have the authority to make land available for such purposes.

Within the port areas of Hollandia (the Gouv. blad of 1953 number 80), Manokwari (Gouv. blad 1956 number 73, as well as 1957 number 74) and the island Doun (Gouv. blad of 1958 number 61, as well as Ind. Staatsblad of 1917 number 404 and Transition 1 BNG), according to the decrees in Gouv. blad of 1959 numbers 28 and 30 - The Director of Transportation and Energy has the authority to lease land for the purposes mentioned here.

Some regulations give the holder of a license for a construction work the authority to make use of the free crown land needed for such construction. Thus in the regulations applying in the former Dutch East-Indies the construction of rail-and tramways, the owners of rail-and tramways were allowed to use land belonging to the free crownland even when the control of that land was handed over to autonomous regions (ordinances in Ind. Staatsblad of 1927 number 259 section 6, sub-section 1; 1927 number 260, section 3, sub-section 1; as well as 1930 number 387 section 6, sub-section 1; 1927 number 261)
The approval of topographical maps by the Director of the Department of Transportation and Works gave the entrepreneur the authority to use the land, belonging to the free crownland, and indicated on those maps, for needed rail- and tramways.

In the provisions concerning the construction and the exploitation of Industry-tracks, meaning rail tracks serving exclusively as a means of transport for agriculture, forestry, mining, industry or commerce (Industry-track or dinance, Ind. Staatsblad 1939 number 395, as well as 1939 number 38, worked out in the "industry-Track Regulation", Ind. Staatsblad 1939 number 39), Section 3 provides, that the responsible authority (the Resident), who gives permission for the construction and exploitation of the track, can also give permission for the use of land and roads belonging to the crownland, provided the consent of the authority is obtained, which controls the land and roads concerned. No compensation is required for the use of such land, unless expenditure has been incurred for the acquisition of rights or for other reasons, and provided compensation is paid for the value of the existing buildings or plantations. A monthly charge can be claimed from the entrepreneur for the use of roads for the purpose of an industry-track, (Section 4).

However it is assumed, that also in cases where this is not prescribed explicitly, the holder of a license for the construction of a work does not need to ask for a separate license to use land belonging to crownland and required for the construction of such work.

Likewise, the holder of a license for the construction and operation of a transportation telphcr-way (Ind. Staatsblad of 1871 number 102) may consider himself authorized to use land belonging to the free crownland, which is necessary for the construction of supporting structures or other works for the telphcr-way. In 1915 the Dutch East-Indies Government took the view, that it was completely unnecessary to compel the entrepreneur of a telphcr-way to request a proprietary title over the land, which is needed for supporting structures or other works for the telphcr-way. "As in the case with other enterprises operating under concession and occupying crownland (licenses for the construction of power lines, telephone concessions and to a certain extent also tramway-concessions), in no manner can the entrepreneur derive the concession as such, in combination with the approval of the working drawings for the works to be constructed, the right to use the needed crownland and there can therefore be no question of illegal occupancy" (Letter of the Government Secretary of 19th February 1915 number 352, quoted by: Maassen and Hema, Agrarian regulations, Volume 1, page 636).
The holder of a license for the construction of a high tension line (Ind. Staatsblad number 190, as amended last in Ind. Staatsblad of 1932 number 529) can also derive from the concession the right to use the crownland needed. A charge can be made for its use, unless the line has been constructed in the public interest or is of general benefit (section 10 of the quoted regulation).

The holder of a license to use water for domestic purposes, irrigation, generation of power or other industrial purposes (supplement number 5081, 5439, 6185 and 1a, 902) or for the construction of a waterwork (Supplement number 6409) can derive from the license the right to use crownland needed for the construction of those waterworks (Maassem and Henze, Agrarian regulations, volume 1 page 637).

Also anyone, who according to the Government Decree of 12th December 1916 number 36 (supplement number 8417 as amended by the decree in Supplement number 144313), has acquired a license for the construction of a (private) road (for the purpose of private enterprises or country residences), has the right to use the crownland needed for the construction of such a road. According to the decree of the Governor in Gov. blad 1951 number 77, such a license can be issued by the Resident.

Finally, a license for the construction of roads and waterways for the purpose of mining (section 22, sub-section 1 Mining Act in the Dutch East-Indies) is considered to confer tacitly upon the concessionary the right to use the free crownland needed for the construction of the roads and waterways.

Paragraph 2 of the Government Decree in Ind. Staatsblad of 1912 number 178 (Engelbrecht 1956 page 2070) gives the head of the local administration the authority, in accordance with a form attached to that decree, to give a license free of charge and until further notice to indigent non-natives for the use of crownland, which they occupy as a residential plot without any title. According to paragraph 3 the head of the local administration has the power to decide which persons should be considered as "indigent", and which parcels of land should be considered as a "residential plot".
According to the decree of the Governor in Gouv. blad 1951 number 20, as well as the one in Gouv. blad 1953 number 45, this power in Dutch New-Guinea is also vested in the Director of the Department of Internal Affairs.

On the basis of the Government Decree in Ind. Staatsblad 1940 number 427, under "secondly", sub II, letter A, as well as the Decree of the Governor in Gouv. blad of 1951 number 65, and the one in Gouv. blad of 1953 number 45, the Director of the Department of Internal Affairs is authorized to decide on proposals or requests to make land available "for use". This right can only be conferred, however, on individuals belonging to the native population or to native corporate bodies, or to native institutions of public or religious character. The reasons why this right can only be conferred on natives are unknown.

In the Decree of the Governor of 4th July 1951 number 65 (Gouv. blad 1951 number 207, as well as in the Decree in Gouv. blad of 1953 number 45, it has been determined that in the interest of housing and/or small farming or horticultural enterprises temporary licenses for the occupancy of land, on conditions to be established and according to general instructions to be given by the Director of the Department of Internal Affairs, can be issued by heads of the local administration after further endorsement by the resident Divisional Head.

**Native rights:**

Arising from what has been determined under "secondly", sub II, letter A, of the Government Decree of 16th August 1940 number 21 (Ind. Staatsblad 1940 number 427) as well as the Decree of the Governor of 4th July 1951 number 65 (Gouv. blad 1951 number 20) and the one in Gouv. blad 1953 number 45 the Director of the Department of Internal Affairs is authorized to decide on requests or proposals for the granting of land with the indigenous right of possession, with the understanding that this right can only be conferred on individuals belonging to the native population or to native corporate bodies or native institutions of public or religious character.

As far as can be ascertained there are no other regulations concerning native rights over land in Dutch New-Guinea of the kind contained in the Agrarian Regulations for some of the regions in the outer territories of the former Dutch East-Indies.
The prohibition of transfer of the native right of use of land, by natives to non-natives, has been dealt with earlier, as stated in Ind. Staatsblad of 1875 number 179. Furthermore, there are provisions in several regulations for the protection of the rights of the native population, in order to prevent that land, over which natives have right, is granted with a proprietary or personal right to a third party, without adequate compensation for the loss of native rights. According to section 39, sub-section 3 BNG, the Governor must ensure that no transfer of land does not infringe upon the rights of the native population.
VI. Leasing of land or the making available of land for use by natives to non-natives.

The leasing or the making available of land for use by natives to non-natives takes place according to regulations, to be established by ordinance; see section 39, sub-section 4 of the Administrative Order. Section 51, sub-section 8 of the Statutory Regulation of the Dutch East-Indies contains a similar provision. Based on this provision, regulations have been established for several outer territories in the former Dutch East-Indies, regarding the leasing of land by natives to non-natives, in the so-called Agrarian Regulations. As far as Dutch New-G Guinea is concerned, such a regulation does not exist. It is assumed, that because of the absence of these regulations, the leasing of land is permitted if it does not contravene the local adat-law.

In the draft of a new section 39 of the RNI this type of lease comes within the prohibition of the alienation of land. In the third sub-section it is provided that persons, not belonging to the native population can neither directly nor indirectly have the control and use of land, over which the native population has rights, except in the cases, in the manner and in accordance with the regulations to be established by ordinance. According to the explanatory statement it is also thought to use this ordinance for the regulation of the leasing or the making available of land for use by natives to non-natives if this were found to be necessary.

The "Factories-Ordinance" (Ind. Staatsblad of 1899 number 263, as since amended; Engelbrecht 1956, page 2137) is connected with the possibility of leasing of land by natives to non-natives. The ordinance provides for the control and management of enterprises for the production of sugar or indigo, which are wholly or partly operating on the basis of agreements with the native population for the leasing of land or for the purchase of crops. This control is instituted to protect the economic interests of the native population. The ordinance does not apply to sugar or indigo enterprises which operate on such a small scale, that they do not qualify to be included in the above mentioned enterprises.

In the beginning, this ordinance only applied in Java and Madura, but by ordinance in Ind. Staatsblad of 1921 number 740, it has been declared to apply with regard to production of sugar or indigo, in regions with direct rule outside Java and Madura. According to the ordinance in Govt. blad 1950 number 12 the above mentioned ordinance applies to the whole of Dutch New-Guinea, as from 1st June 1950. For the time being however, this is not of practical value.
VII. Establishment of proprietary rights.

The most important way of acquiring ownership of real property is "by deed of conveyance or transfer of possession resulting from a transfer of a title deed deriving from the person holding the general freehold right", (section 564 Civil Code Dutch New-Guinea)

The manner in which this deed of conveyance should be drawn up or the transfer of possession should take place, has been prescribed in sections 616 to 620 of the Civil Code of Dutch New-Guinea, but these sections are still not in force pursuant to section 28 of the Regulations concerning the introduction of, and the transition to the new legislation (Ind. Staatsblad 1848 number 10). Also is hereby provided that the existing regulations concerning these matters remain still in force, until it will be determined otherwise.

With the "existing regulations" was meant the ordinance concerning the transfer of ownership of real property and the registration of mortgages encumbering it (Ind. Staatsblad 1896 number 37, as since amended), in short called the "Transfer-Ordinance" (Engelbrecht 1956 page 810 etc.).

According to section 1 of this ordinance, the right of ownership of real property is not transferred to another person, unless a deed has been drawn up. This is called the deed of conveyance (in contrast with the factual transfer or the act of taking possession of the property), which derived from a person who has the general freehold right over the property. x)

According to section 26 of the Regulations concerning the introduction of, and the transition to the new legislation, this requirement also applies to the establishment of proprietary rights, as intended in Section 696 of the Civil Code (servitudes), Section 703 of the Civil Code (the right to build), section 720 of the Civil Code (long term lease), section 737 of the Civil Code (land rights and tithes), section 760 of the Civil Code (usufruct) and section 816, as well as section 760 of the Civil Code (right of use and domicile).

The deed itself does not prove the acquisition of ownership. The only value of the deed is in the disclosure, because any person can investigate for himself, whether the registered owner is also the real owner and whether he has acquired the real property from a person who had the general freehold right over the property.

x) Without the deed of conveyance the ownership transfers in case of inheritance, legacy, expropriation or lapse of time.
This is the negative system of disclosure. Although one refers to registration in the public registers, real registers, in fact, do not exist, but only files of minutes of deeds.

When crownland is granted with a proprietary right by the Government, i.e., when a deed has to be drawn up for the first time, then for the deed of conveyance an official represents the Government.

The Head of the Section of Land-Registry and Mapping of the Department of Public Works and Construction at Hollandia, assisted by the most senior administrative officer, has to draw up the deeds in Dutch New-Guinea (decree of the Governor of 7th November 1958 number 286; Gouv. blad number 65).

During the war and the disturbances thereafter, many deeds of ownership, proprietary rights etc. were lost. These can be replaced or renewed in accordance with the provisions of the Ordinance concerning emergency provisions for transfer and registration of 1948 (Ind. Staatsblad 1948 number 54, Engelbrecht 1956, page 834 etc.,) with an explanation in Supplement number 15,161. Insofar this applies or is related to real property and mortgages encumbering real property, the regulation entered into force in Dutch New-Guinea as from 1st July 1952 (Decree of the Governor in Gouv. blad of 1952 number 29.) This decree further provides that all minutes of deeds of proprietary rights, transfer and security, and if these have been drawn up pursuant to or, in respect of deeds of proprietary rights, in accordance with the Transfer Ordinance, are subject to renewal. The request for renewal must be submitted within one year after the Ordinance has entered into force (section 15).
VIII. Purchase of land for the benefit of the Country.

In the Government Decree of 1st July 1927 number 7 (Supplement number 11,372) as well as the one of 8th August 1932 number 23 (Supplement number 12,746) comprehensive "Instructions concerning the acquisition of the general freehold right over land needed for the benefit of the Country" are laid down.

If the Country requires the general freehold right in perpetuity - whether or not it is stated in a declaration promulgated by ordinance, that expropriation of real property or a right is necessary in the public interest -, an attempt is made to achieve this objective through amicable agreement with the owners or the persons with rights over the land. A plan of survey is drawn up and a Committee set up to negotiate with the owners or the persons with rights over the land. If the negotiations do not lead to an agreement or if there are too many difficulties connected with a transfer or the surrender of real property or the rights by agreement, then compulsory acquisition can be proceeded with or other measures can be taken. The above mentioned decrees provide further comprehensive instructions on procedures (see Maassen and Hens, Agrarian Regulations Volume II appendix 92).

Pursuant to the Government Decree in Ind. Staatsbladof 1940 number 427, secondly, letter B, sub 1, as well as the Decree of the Governor in Gouv. blad of 1951 number 70 and the one in Gouv. blad of 1953 number 45, the Director of the Department of Internal Affairs is authorized to decide on requests or proposals to acquire the right of ownership on behalf of the Country, provided that - except in special circumstances - such authority is only given on the condition, that before the right of ownership is transferred any unpaid land tax and fines will have to be paid and in advance any roya of mortgages encumbering the real property.
IX. The control and authority over crownland.

When land is required for the performance of the Government's function, it is desirable for the Government to make this available to the authorities responsible in the simplest possible manner.

Corporate management is generally the most suitable for this when Government land is granted, regardless whether the Government function is performed by high ranking or low ranking public corporations or whether it is performed by Government instituted and incorporated bodies, such as Government foundations, public companies with limited liability, public funds etc. In special cases it is sometimes preferable to control land according to Civil Law by conferring proprietary or personal rights as prescribed by Civil Law. Each case will have to be considered on its own merits.

Some regulations about the control of land were prescribed by Government decree in Ind. Staatsblad 1911 number 110, by legislation in Ind. Staatsblad 1915 number 322, 1928 number 191, 1937 numbers 145 and 566, and 1940 number 430. This was followed by a public notice dated 15th September 1951, number 117, issued by the Government secretary which contained some further directives.

In accordance with paragraph III of the above mentioned Decree Transition Regulation L RNG, all real property of the Country to which the crownland also belongs, is considered to be under the control of the department, which carries in its budget the costs of maintenance of that land. It is assumed that the department, which has bought the land or has freed it of its native rights, has then control of the land. This is not the case when the rights have been acquired by a low ranking public corporation, the Royal Navy or Government constituted and incorporated bodies (government foundations, public companies with limited liability, public funds etc.,). In that case the purchased land has to be placed under the control of the authority by a decision of the Director of the Department of Internal Affairs.

The heads of departments can transfer the real property under their control to other departments and independent corporate bodies or they can take over the control from other departments; the Head of the Department of Internal Affairs has to be given the opportunity to express his views in these instances. In the event that they no longer require the land, it must again be put at the disposal of the Department of Internal Affairs.
This authority to transfer real property to other departments is not given to the Royal Navy and to Government constituted and incorporated bodies, such as government foundations. These always have to put the land, which they no longer require, at the disposal of the Department of Internal Affairs, even if another department is willing to take it over.

According to the Decree of the Governor in Ind. Staatsblad 1959 number 28 (the so-called sub-division Decree), the Department of Public Works is responsible for:

- the roads and all works associated therewith;
- the rivers, springs and other natural watercourses, lakes and pools;
- the irrigation, drainage and damworks, watersupplies, sewage disposal and other hydraulic works;
- the government buildings;
- and other matters, not given to other departments.

In addition, by separate decrees the control of land, belonging to the following areas was vested originally in the Director of the Department of Waterstaat and Ophoven (Department for the maintenance of dikes, roads, bridges and the navigability of canals, and Construction), but as from 1st January 1960 in the Director of Transportation and Energy, i.e.

- the port area complex Hollandia (Gouv. blad 1955, number 80);
- the port area of Manokwari (Gouv. blad 1956 number 73, jo. 1957 number 74);
- the port area of the island Djoon (Gouv. blad 1958 number 61);

Insofar as it is not under the control of other government instrumentalities, not in use by the armed services and not occupied by any third party with any right over it.

Government instrumentalities can only dispose of land within these areas after having received advice from the Director of Transportation and Energy, or as far as Hollandia is concerned, from the Advisory Committee for Land Affairs Hollandia.

In a similar way the control of the area, incorporated in the development plan of Remoe is given to the Director of Public Works, insofar as it is not under the control of other Government instrumentalities, not in use by the armed services and not occupied by a third party with any rights over it (Gouv. blad 1958 number 60 jo. 1959 numbers 28 and 30). Government instrumentalities cannot exercise control over parts of that area without having obtained advice from the Director of Public Works. It is assumed that the control of land, belonging to the free crownland, when it is not specifically in the hands of another department, comes under the Department of Internal Affairs.
This authority to transfer real property to other departments is not given to the Royal Navy and to Government constituted and incorporated bodies, such as government foundations. These always have to put the land, which they no longer require, at the disposal of the Department of Internal Affairs, even if another department is willing to take it over.

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This control as such does not include the authority to dispose of the land freely and to grant it for example with proprietary rights. It actually only includes the obligation to ensure that the laws of the country will not be infringed upon.

The control of land belonging to the free crownland, given to other institutions, establishments etc., i.e. independent corporate bodies, has a very different character because of the use intended for this land. They have to ensure that the use of this land is maintained in accordance with the purpose for which the land is made available. When that land is no longer required for that purpose, then it is self-evident that the department, or the institution, or the independent corporate body transfers the control to the Department of Internal Affairs. The control vested in departments other than the Department of Internal Affairs or government institutions with legal identity, or independent corporate bodies as such includes therefore only the authority to use the land for its purpose intended or the responsibility to ensure that the land remains in use for the purpose intended. Further powers do not flow from the control itself, but can be given implicitly.

Thus, Heads of Departments in accordance with the above mentioned decree in Ind. Staatsblad 1911, number 110, par I, letter d, and also in Transition Regulation 1 RNG are authorized to let government buildings and institutes, controlled by their department, for which there is no government use. In accordance with the decree in Gouv. Blad 1953 number 80 iss., in Gouv. blad 1956 number 73 and further those in Gouv. blad 1957 number 74 and 1959 numbers 28 and 30, the Director of the Department of Transportation and Energy is explicitly authorized to administer requests or proposals for the leasing of land, and other matters within the port area of Hollandaia, respectively Manokwari. On the other hand authority to issue permits to use land within road reservations for the construction of pipelines etc., until further notice is, by a Decrease in Ind. Staatsblad 1919 number 802, section 1, letter A, given to the resident Head of the division (for Dutch New Guinea: the Director of the Department of Internal Affairs) and not to the administrator of roads.

The only exceptions were areas under the control of the Department of War and Navy, the former Department of War and Navy, the former Department of Rail and Tramways, regions with their own financial resources and areas which are part of port installations. For Dutch New Guinea the exceptions are therefore: areas under the control of the Royal Navy and those which are part of the port installations.
This control as such does not include the authority to dispose of the land freely and to grant it for example with proprietary rights over it. It actually only includes the obligation to ensure that the rights of the Country will not be infringed upon.

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The authority to control and administer land, belonging to the free crownland, is clearly prescribed in a government decree, in the former Dutch East-Indies. The last time this was done was in the government decree of 16th August 1940, number 21 (Ind. Staatsblad 1940 number 427, Engelbrecht 1956, page 2067), already mentioned several times, which is still in force in Dutch New-Guinea. In it the residents of the outer regions were given authority inter alia to administer requests or proposals to transfer the ownership of land with the right to build, with the right of use; they were given authority to resume the right of ownership on behalf of the Country and to give permission for the surrender of the right to build. They were also authorized, only insofar as it is determined, or will not be determined differently by general ordinance, to administer requests or proposals for the leasing of land, or to have land granted in loan with the native right of possession, or just for use. In addition the residents are authorized to administer requests for the granting of land in long term lease, as provided in the Government Decree of 15th May 1937 number 28 (Ind. Staatsblad 1937, number 339), fifth number 2 jo, that in Ind. Staatsblad 1938 number 373 and 264 (Engelbrecht 1956, page 2056).

For Dutch New-Guinea, however, it is determined by Decree of the Governor of 4th July 1951 number 65 (Gouv. blad 1951 number 20), as waived by Decree in Gouv. blad 1953 number 45 in anticipation of the passing of new agrarian regulations, that the powers and responsibilities given to or vested in authorities, below the Governor-General insofar the existing legal regulations and administrative directives concerning agrarian matters in Dutch New-Guinea need to be applied, are considered to have been conferred on the Director of the Department of Internal Affairs. The powers given to the Resident Heads, in the above mentioned Government Decrees in Ind. Staatsblad 1940, numbers 427 and 1937, number 339 are in Dutch New-Guinea exercised therefore by the Director of the Department of Internal Affairs. With the passing of new regulations this will be further reviewed.

However, to the Decree of the Governor of 4th July 1951, number 65 (Gouv. blad 1951 number 20), has been added that temporary licenses to occupy land can be issued for the purpose of housing and/or the small farmer and market gardener, by the Heads of the Local Government under another authorization of the Resident Head of the Division. Certain conditions can be attached thereto, and the Director of the Department of Internal Affairs is to give general instructions for the issuing of these licenses.
The authority to control and administer land, belonging to the free crownland, is clearly prescribed in a government decree, in the former Dutch East-Indies. The last time this was done was in the government decree of 16th August 1940, number 21 (Ind. Staatsblad 1940 number 427, Engelbrecht 1956, page 2067), already mentioned several times, which is still in force in Dutch New-Guinea. In it the residents of the outer regions were given authority inter alia to administer requests or proposals to transfer the ownership of land with the right to build, with the right of use, to resume the right of ownership in the interest of the Country and to permit the surrender of the right to build. They were also authorized, only insofar as it is, or will not be determined differently by general ordinance, to administer requests or proposals to lease land, to have land granted on loan, with the native right of possession, or just for use. In addition the residents are authorized, to administer requests for the granting of land in long term lease, as provided in the Government's decree of 15th May 1937, number 24 (Ind. Staatsblad 1937 number 339), fifth number 2, and further the ones in Ind. Staatsblad 1938 number 373 and 264 (Engelbrecht 1956, page 2058).

For Dutch New-Guinea, however, it is determined by Decree of the Governor of 4th July 1951 number 65 (Gouv. blad 1951 number 20) as varied by Decree in Gouv. blad 1953 number 45 in anticipation of the passing of new agrarian regulations, that the powers and responsibilities given to or vested in authorities, below the Governor-General, insofar the existing legal regulations and administrative directives concerning agrarian matters in Dutch New-Guinea need to be applied, are considered to have been conferred on the Director of the Department of Internal Affairs. With the passing of new regulations this will be further reviewed.

However, to the Decree of the Governor of 4th July 1951, number 65 (Gouv. blad number 20 1951), has been added that temporary licenses to occupy land can be issued for the purpose of housing and/or the small farmer and market gardener, by the heads of the Local Government under another authorization of the Resident Head of the Division. Certain conditions can be attached thereto, and the Director of the Department of Internal Affairs is to give general instructions for the issuing of these licenses.
In practice, however, the majority of the leasing agreements are being made on the basis of the Government's Decree in Ind.-Staatsblad 1924 number 240. (For other than agrarian matters the Decree of the Governor of 26th October 1954, number 242 — Gouv. blad 1955 number 77 — applies, in which the Resident Heads of the division, each for their own area, are identified as the authorities on whom those powers and duties are considered to be conferred, according to the existing legal regulations and administrative instructions; or they are vested in the Resident Heads insofar as these are not or will not be given to other officials.)
X. COMPULSORY ACQUISITION IN THE PUBLIC INTEREST.

The protection of the right of ownership is one of the landrights Section 4 ENG provides that all persons living in the territory of Dutch New-Guinea have equal claim to protection of property.

This protection has further been amplified in the section which deals with compulsory acquisition, section 127 ENG and in the compulsory acquisition ordinance (Ind. Staatblad 1920 number 57a, since modified, Engelbrecht 1956 page 2840).

Section 127 ENG refers to compulsory acquisition of any property or right. With property is meant a corporeal matter. With "right" is meant European as well as indigenous rights.

Compulsory acquisition can only take place "in the public interest", which has to be defined in an ordinance. Each individual case has to be judged on its merits to see whether the public interest is of such importance, that it compensates for the loss of the special interests of the rightful owner. The public interest ordinance is only an enabling ordinance. It only states something, but does not contain definitive legislation.

The compulsory acquisition can take place in the public interest of Dutch New-Guinea or an independent corporate body belonging thereto (as soon as they will be set up) (section 1 compulsory acquisition ordinance). It can also take place in the public interest for special persons, societies or foundations (for example an electricity company, a water supply company etc section 2 compulsory acquisition ordinance). Compulsory acquisition for the purpose of housing is provided separately (Heading IV section 99 etc). In that case the preceding declaration of public interest is not necessary.

In the public interest ordinance the property, or the right to be acquired has to be clearly defined. The ordinance is not drawn up before the interested parties have had the opportunity to lodge their objections (section 6 compulsory acquisition ordinance).

An essential requirement for the compulsory acquisition is the compensation received or assured beforehand. Apart from the value of the land and buildings to be acquired, also possible trading-loss, costs of removal of the business etc. will be compensated for. For the purpose of compulsory acquisition, those persons are considered owners or persons with a right over the property or a claim to a right, whose names appear in the deeds thereof (section 3 compulsory acquisition ordinance).
A third person claiming to be the owner can intervene in the process of acquisition, but if his claim is disputed and cannot be maintained in the legal proceedings, then he can only seek redress in compensation. Thus in the compulsory acquisition ordinance significance is given to the deed of ownership in case of dispute, whereas otherwise it does not. That deed therefore gives the owner mentioned in the deed complete title and legitimacy and the legal proceedings are conducted against him.

The acquiring party must try in the first place to acquire the property or right by agreement (section 14 compulsory acquisition ordinance). If this succeeds, then the ownership is transferred in the normal manner.

If the parties, however, cannot reach agreement, then the judge will order the acquisition to proceed. The judgment of compulsory acquisition also determines the amount of compensation. The transfer proceeds on the presentation of a copy of the judgment of compulsory acquisition, and a duplicate of the receipt of the compensation paid. (section 66 compulsory acquisition ordinance) The copy of the judgment has to be attached to the deed.

Ownership transfers free of all encumbrances and rights; only hereditary servitudes can remain established with the approval of the acquiring party.

Thus the acquiring party becomes the real owner by compulsory acquisition, even if it would appear later, that the dispossessed party was not the owner. This is called an independent manner of acquisition of ownership.

A special provision applies to the so-called emergency acquisition, namely when war, danger of war, rioting, fire, floods, earthquake volcanic eruption or other urgent circumstances demand an immediate action of occupation. The preceding declaration of public interest lapses them while also no compensation is to be given or to be assured beforehand. (section 127 number 2 BNG) A separate heading of the compulsory acquisition ordinance (heading II as prescribed by ordinance in Ind. Staatsblad 1947 number 96) gives the needed instructions for execution. The taking into possession takes place in those cases upon order of the highest locally available authority. There are also other cases which can be described by ordinance, wherein the declaration of public interest is not required (section 127 number 3 BNG), but the claim for compensation paid, or assured beforehand, remains.
This has been used in the regulation of compulsory acquisition for the purpose of housing in heading IV of the compulsory acquisition ordinance. This acquisition takes place on behalf of a municipality or of organisations or foundations for the purpose of housing in accordance with a decision of the council, to be approved by the Governor (section 99 etc. compulsory acquisition ordinance). When there is not a municipality, this form of acquisition cannot yet be applied in Dutch New Guinea.
XI. USE OF WATER, HYDRAULIC WORKS.

Use of water.

The declaration of land as crownland also applies to the streams, rivers, springs, creeks, lakes, canals and watermains, but the rights of the native population remain unaffected. The Department of Public Works is charged with the responsibility for management (Gouvernementsblad 1954 number 19).

The Government Decree of 10th September 1895 number 8 (Supplement number 5081), as amended by the Decrees in Supplement numbers 5439, 6185 and 10902, contains a regulation concerning the issuing of permits until further notice for the use of water for domestic purposes, irrigation, generation of power for industrial purposes.

For the holder of a long-term lease there are further provisions in section 9 of the Ordinance on Long Term Leases for the Outer Territories. The permit is issued by the Director of Public Works, who consults the Director of the Department of Internal Affairs on any special conditions which should be attached to the permit, and if the permit concerns the use of water for the purpose of domestic water-supply, then the Director of the Department of Public Health is consulted. In cases of private domestic water supplies, where water is supplied to a third party, the Governor gives a concession for a certain number of years.

Permission to use water for domestic purposes and irrigation is required only, if the water is to be used for properties, over which someone has a proprietary right, which has been entered in a public register specially kept for this purpose. Natives, who are not settled on land, which is held in ownership or granted with the right to build or with a long term lease, can make use, without charge, of water for their needs, such as bathing, washing, drinking and irrigation.

The above mentioned permits do not include the temporary use of water for washing soils during drilling operations in search of oil or similar bituminous substances by entrepreneurs of mining exploitation and explorations. The Resident has given such permits until further notice, but not longer than the period of each drilling operation.

Sand and gravel winning.

The only provision concerning the winning of sand, gravel and similar materials from rivers, is given in section 1, letter B, sub IV in the Government Decree in Ind. Staatsblad of 1919 number 892, as supplemented by a Decree in Ind. Staatsblad 1921 number 579.
This deals with the making available of land belonging to the free crownland, including parts of riverbeds, which can be considered to be the natural places for the finding of earth, sand, clay, gravel and other soil types, to local councils for the winning of these materials without charge. This provision cannot be applied at present.

Other provisions concerning the winning of similar materials are lacking. As these provisions — except for the rights of the native population — are a part of the rights which the Government has over crownland, a permit is required for the winning of these materials. In the former Dutch East-Indies there was a policy that for the winning of such materials on a small scale and by manual means a permit of the Chief of the local administration was needed. This permit was given until further notice and had a policing character.

For the winning of the above-mentioned materials on a large scale and by mechanical means a permit of the Governor is needed.

**Artesian wells.**

Pursuant to the ordinance in Ind. Staatsblad of 1912 number 430, as well as the one in Ind. Staatsblad of 1938 number 371, for the withdrawal of water from the soil at a depth exceeding 15 meters and for the undertaking of underground restorations and cleaning of existing artesian wells by drilling to a depth exceeding 15 meters, a written permit of the Governor is needed.

**Waterpower.**

When requests were submitted for the use of water for the generation of power with a capacity exceeding 100 h.p., or which had the aim to provide light and power to a third party, a permit in the form of a concession was given in the former Dutch East-Indies for only a certain number of years (by the Governor-General). Permits for the use of hydro-power with a capacity of less than 100 h.p. and exclusively for personal use were given only until further notice (by the Director of Transportation and Public Works; compare Haassen and Hens, Agrarian Regulations, volume i page 915 ff, see also Vol. II, app. 88, 90, 91).
Hydraulic works.

By Government Decree of 11th January 1906 number 24 (supplement number 6409) the Director of Civil Public Works was authorized to decide on requests by private persons for permission to carry out works for the improvement of the supply and discharge of the damming of water, at their own expense, in the area of their activity, if necessary on condition, that the works after their completion will be handed over to the Territory without charge and then will be managed and maintained by the Administration, provided that the expenses, which result from such a transfer will be assessed at not more than F. 200 – per annum. This authority is vested at present in the Director of Public Works.

With regard to the construction of foreshore protection works, quay-walls or other works along the banks of floatable and navigable streams and rivers, regulations have been established by ordinance in Ind. Staatsblad of 1870 number 119, as amended by ordinance in Ind. Staatsblad of 1895 number 201, 1938 number 371 and 1941 number 383. For the construction of such works and in accordance with the provisions in the Decree of the Governor in Govu. blad 1954 number 77, a permit is needed from the Resident, who beforehand seeks the advice from the district head of the Department of Public Works. If it concerns works within the area of government harbour installations or waters to be designated by the Governor, or works of larger construction, such as large dams, hydro-power works with a capacity of more than 250 h.p., bridges with a free span of more than 50 meters or with a total length of more than 100 meters, landing-stages, also serving traffic from overseas, then a permit is required from the Director of Transportation and Energy, as far as it concerns works inside the harbour installations, whereas in other matters a permit from the Director of Public Works is required, (see section 7, such as it has been formulated according to the ordinance in Ind. Staatsblad of 1941 number 383, as well as the Decree in the Governor’s Gazette of 1959 numbers 28 and 30).

The construction or the possession of landing-stages or other hydraulic works adjacent to, or on the foreshores of Netherlands New Guinea is, without a written permit, prohibited (ordinance in Ind. Staatsblad of 1941 number 382). For the construction or the possession of a landing-stage or other hydraulic works inside the port-area – according to section 2 of this ordinance, as well as the Decrees in the Govu. blad of 1959 numbers 28 and 30 –, a permit from the Director of Transportation and Energy is required. Outside a port-area a permit from the Director of Public Works is required, insofar as it concerns an important project or is intended for traffic from overseas. In other cases, the permit is given by the Resident concerned.
In the two first cases, the permit is not issued unless an agreement on this matter has been reached with the Commander of the Naval Force in Dutch New-Guinea. In cases where the permit is issued by the Resident, a copy is forwarded to the Commander of the Naval Forces.
XII. FORESTRY LEGISLATION.

The crownland right of the Country consists of the authority and control over standing timber and other forest produce, which are present on land belonging to the free crownland, except for the right to collect, which is a right the native population has. The right to collect was prescribed in the different Agrarian Regulations. However, no such regulations existed in Dutch New Guinea. Also for some regions, which again did not include Dutch New Guinea, forest protection ordinances were drawn up.

The legal regulations concerning forestry, which apply at present in Dutch New Guinea, are in the first place those, which were operative in the directly administered area of the former residency of the Moluccas, insofar as they have not been withdrawn; and secondly two regulations of the Government of Dutch New Guinea: the Woodcutting (timberfelling) and Ngase Regulations (Gouv. blad 1951 – 40 and further 1957 – 29) and the Land Protection Ordinance (Gouv. blad 1954 – 73). With the exception of the last ordinance, they principally concern the issuing of forest concessions and timber-felling permits, the issuing of timber-felling permits, forest exploration and damartapping. They mainly concern the exploitation of forests, although an important element of forest protection is included in it. As a basis for consistent control and authority, the regulations are inadequate however. Although at an earlier time an effort was made to draw up a general "Forest Ordinance for Outer Regions", for the area in the outer regions under direct administration (Supplement Hansard People's Council 1954 / 1935, subject 2), it was never passed however.

Regulations of the former residency of the Moluccas, which still apply in Dutch New Guinea are;

a. The Government Decree of 27th August 1904, number 35 (supplement number 6075), as amended since in decrees in supplement numbers 7/80, 7691, 7735, 7865, 8025, 8399, 8903, 9155, 10298 and 14432. In these decrees the conditions under which concessions for exploitation of forests could be issued were prescribed. Authorized to issue those concessions were the Heads of the Regional Government concerned, later the Resident Heads and in Dutch New Guinea at present, the Director of the Department of Internal Affairs. (Gouv. blad 1951 number 20 and further number 45).

A model-authorization was drawn up with general conditions and an instruction. Apart from forestry exploitation in general, for the concession can also be given for timber-felling, for exploitation of certain kinds of trees or for the collecting of natural forest produce. A concession area will generally not be larger than 5000 "boum" or 9700 acres, but more than one concession area can be in one hand.
As concessionaries only the following will be admitted:

Dutch subjects, residents of the Netherlands or of Dutch New-Guinea, and companies belonging to the Chamber of Commerce, registered in Holland or in Dutch New-Guinea.

Some definitions of the general conditions:

- the concessionary does not have the control of the land, but only of the timber and/or the natural forest products (section 4);
- the concession is generally given for not longer than 30 years (section 1)); however in special cases a longer term can be allowed;
- certain trees, over which others have ownership rights or which are pemasli, are not allowed to be felled, except when permission has been obtained from the owners and then compensation will have to be paid;
- timber-felling is not allowed in a certain strip of land around kampengas, which lie within the concession area (section 5);
- the population, which has the right according to tradition, is allowed to collect natural products, firewood and timber within that concession area, but only for its own use (section 6);
- timber-felling without a license is not allowed in a certain zone around springs and along rivers, which usually hold water during the dry season (sections);
- payment of a yearly rate and tax can be claimed from the concessionary (section 10);
- only such buildings and installations can be erected in the concession area, and such roads, railways, stores, warehouses and water supply lines constructed as are necessary for the enterprise, all this to be left to the discretion of the Resident - Head (section 12);
- in case of personal absence, the concessionary will have to be adequately represented (section 15);

b. The Government Decree of 31st October 1922 number 36, supplement number 10,191.

This is the Forest Exploration Regulation.

This regulations authorizes Resident-heads (in Dutch New-Guinea the Director of the Department of Internal Affairs) to give permission to those, who want to undertake forest exploration in an area, indicated by them in sketch form; only for a specified period will they be able to receive licenses for forest exploration in those areas.
This permit is only issued for two years at the most, but can be extended three times for the period of one year. No permits are issued for areas larger than 250,000 acres.

The holder of the concession can be ordered to pay a fixed charge. He can be given permission to cut some wood (at the most 33 cubic yards of each kind of timber) for assessment of its utility, against payment of a rate.

The population can proceed in the usual way with the felling of timber and the collecting of forest produce.

c. The "By-law concerning Forest Exploitation in the form of timber-felling parcels in the directly administered region of the residency of the Moluccas, outside the forest areas, which, if necessary, will be designated as forest reserves", of the Resident-head of the Moluccas of 19th March 1936 (Javasche Courant of 24th July 1936 number 59, extra-supplement number 59), was established on the basis of the ordinance of 12th May 1927 (Ind. Staatsblad 1927 number 283 and further number 471). This is the Timber-Felling Regulation.

In it was prescribed that timber-felling, in areas especially designated for that purpose, can only take place when a special license has been issued for specific timber-felling parcels. The licensee has the exclusive right to cut specific kinds and quantities of timber within the area of that parcel. A payment is required for the timber obtained.

The By-law does not apply in the following cases:

1. The felling of timber for the clearing of land by the native population, provided the timber is intended for their own use or will be used by small enterprises supplying local needs;

2. The cutting, collecting and processing of timber by the native population for its own use or for enterprises which supply local needs (such as the building of native boats, roofing materials etc.);

3. The long term exploitation of large forest areas on the basis of the method of control mentioned under a);

4. Timber-felling within the boundaries of agricultural enterprises and mining concerns, insofar as they have a right over the timber.
The Head of the local administration decides on requests for parcels of less than 5011 acres, and the Resident-head of the division on requests for larger holdings (maximum 12500 acres).

In cases, where it must be assumed that the request concerns an agrarian matter, that the authorities referred to are vested in the Director of the Department of Internal Affairs - on the basis of the Decree of the Governor in Ghld. number 20 and further that in Gouv. blad number 45.

The license is valid for 10 years at the most, but can be extended under certain circumstances.

The licensee is not to interfere with the clearing of land by the native population. The population, which, according to local customs, has a right over that land, is free to collect firewood, timber and other forest produce on that parcel, provided the firewood and timber are only intended for their own use or for small enterprises exclusively supplying local needs. Fruit trees, resiniferous trees etc. over which the population has a right, and trees, which are penea li, are not allowed to be cut down, unless the population gives permission to do so and compensation is paid.

The licensee has to cut a minimum amount per year. If he takes less, then he still has to make a payment for that minimum.

The by-law also contains regulations about the manner in which requests for licenses have to be lodged, obligations of the licensee etc.

d. The by-law of the Resident-head of the Moluccas of 6th January 1936 (Javaansche Courant of 4th February 1936 number 10, extra supplement number 9). This is the "By-law to protect dammar trees and to counteract ineffectively extracting of dammar in the Residency of the Moluccas" (Dammarr tapping By-law —the Moluccas).

With dammar, all kinds of dammar is meant, as it is known under different names in the trade and amongst the people, and the different kinds of kopal.

Under section 2 of the ordinance it is prohibited to start, or to continue tapping dammar trees, which at chest height above the ground, have a circumference of less than 5.00 feet. In addition all kinds of actions which could damage the trees or spoil the dammar are prohibited. Breaking of these regulations can be punished with a fine, not exceeding 10 guilders.
The Resident-head can completely prohibit damar exploitation in a certain region for a period not exceeding one year, if repeatedly offences take place without the offenders being traced.

The following also apply in Dutch New-Guinea:

e. The Timber-felling and Ngasé Regulation (Gouv. blad 1951 - 40, amended in Gouv. blad 1953 - 29).

Under this regulation it is prohibited to cut timber in the forests without written permission, when this timber is intended for export outside the sub-district concerned, unless there is such a right because of a license, issued according to on or the other regulations. The license is issued by the deputy-head of the division concerned, or by a subordinate official designated by him. It can only be issued for a period not exceeding six months for the kind and quantity of timber specified in the license, and for a timber-felling area not exceeding 125 acres (for larger areas the regulations mentioned under a) and b) apply).

Valuable species of timber mentioned by name, such as ironwood and ebony and some other species are forbidden to be cut down, if the trunk has a circumference of less than 5 ft., measured three ft. four ins. above the ground or just above the buttress.

(This regulation originally contained detailed provisions for the payment of a retribution, under the name of "Ngasé", for cut timber and forest-animal-, and marine-produce, which had been collected, but these provisions were repealed in an ordinance in Gouv. blad number 39).

f. The Land Protection Ordinance (Gouv. blad 1954 number 73)

This is a temporary regulation to protect land against deforestation and erosion. The Governor can prohibit in the public interest the clearing of land, or the use of it in another manner, designated by him in a decree, and the burning or removing in another manner of timber and vegetation. Beforehand, the legal position of the land is investigated in order to ascertain whether possible holders of a right will suffer loss and will experience inconvenience from such a prohibition and in what way these problems can be met and compensation be paid for such loss or inconvenience on the basis of regulations to be determined in accordance with general provisions laid down by decree.
By Decree of the Governor of 6th July 1955, number 181, made under this ordinance, land was designated near Hollandia, defined as "Hydrological Forest Reserve Hollandia" (Official Niewesblad 1955 number 4) and by decree of 25th May 1957 number 158 land in the mountain range Ajambori near Manokwari, defined as "Forest Reserve Tafelberg" (Table Mountain - Official Niewesblad 1957 number 11).

Thus three different regulations deal with timber-felling:

1. The one concerning the issue of concessions for forest exploitation mentioned under a); this one concerns fairly long-term forest exploitation (generally not longer than 30 years); in addition it deals with a concession, which is transferable with permission of the administration and in case of death is transferred to the heirs;

2. The Timber-felling Regulation (mentioned above under c)); this is a more accurate regulation than the one under 1, for the purpose of an economic forest exploitation; it deals with short-term timber-felling (10 years at the most) in so-called timber-felling parcels, specifying species and quantities;

3. The Timber-felling and Ngase Regulation (mentioned above under e); this refers to the cutting of small quantities of timber in an area of not more than 25 acres and for a period not exceeding six months.

Only the type of concession mentioned under 1 can also apply to forest produce other than timber. The regulations mentioned under 2 and 3 only concern the felling of timber by virtue of a personal license.

A review of forestry legislation is being prepared and the present thinking is directed towards a forest ordinance to replace all above mentioned regulations. At the same time some regulations will be included, which will have to provide the basis for the administration of the management and control of forests.
XIII. THE PROTECTION OF FAUNA AND FLORA.

Nature reserves.

In the "Nature reserves- and game reserves Ordinance" (Ind. Staatsblad 1932 number 17) provision is made for the setting aside of areas for nature and game reserves and rules are given for the administration and supervision thereof.

"Nature reserves" are defined as those grounds belonging to the crownland, which are specially designated for that purpose by the Governor and over which other people cannot have rights; the maintaining of it in the most possible virgin state is considered desirable in the public interest because of the special scientific or aesthetic value, and the protection of wild life and vegetation.

"Game reserves" are defined as those areas, belonging to the crownland, which for the purpose of the protection of wild life present therein, have been designated by the Governor.

On the basis of provisions (in Ind. Staatsblad 1916 number 278), which were in force at that time, a Government decree in Ind. Staatsblad 1919 number 90 (section 1, sub 10 letter b) designated the Loretz-New Guinea Nature Reserve in Dutch New Guinea as a reserve. However the designation contravened the above ordinance, as the population had rights over the area of the nature reserve. As a result the Governor revoked the designation by Decree in Gouv. Blad number 32.

The ordinance in Ind. Staatsblad 1932 number 17, has been repealed by the Nature Protection Ordinance 1941 (Ind. Staatsblad 1941 number 167), which was intended to take effect from a date to be determined. However, as far as can be ascertained it has never been put into operation. As a result the ordinance as in Ind. Staatsblad 1932 number 17 is therefore still in force.

Animal protection.

The protection of game has been defined in the Animal Protection Ordinance 1931 (Ind. Staatsblad 1931 number 134), amplified in the Animal Protection Regulation 1931 (Ind. Staatsblad 1931 number 266 and further 1932 number 28, 1935 number 513, and 1939 number 733). Thereby it is prohibited to hunt, catch, kill, sell, dead or alive, keep, take overseas or export certain specified species of animals.
It is also prohibited to sell, keep, take overseas or export skins, feathers, and other parts of bodies of certain specified species of animals. In addition it is forbidden to remove, destroy, sell, keep or export eggs or nets of protected species of birds.

The Director of the Department of Economic Affairs can issue a license to take one or more actions, as intended above, concerning certain specified species of animals for scientific or educational purposes and in other cases which qualify, in his opinion, for such actions. If it appears that protected animals cause damage, then the Director of the Department of Economic Affairs can authorize an official designated by him to issue licenses, which allow certain actions, defined by him, against these animals, therefore also to hunt them.

Export of wild, unprotected mammals and birds to the same destination is allowed in the following manner: at the most two specimens of the same mammal and/or four specimens of the same bird at the same time.

In addition the Governor is authorized to grant dispensation from the regulation of the Animal Protection Ordinance 1931 in special cases.

A general regulation on hunting — as was laid down in the Hunting Ordinance Java and Madura (Ind. Staatsblad 1940 number 247, amended 1941 number 51) — does not exist in Dutch New Guinea. Only provisions restricting the hunting of crocodiles have been added in an ordinance in Gouv. blad 1954 number 82 and further 1955 number 68 and 1956 number 48. In accordance with section 3, sub-section 3 Animal Protection Ordinance 1931 and the Decree of the Governor in Gouv. blad 1954 number 77 the Resident head is authorized however to issue licenses for the taking of one or more actions, mentioned above, and therefore also for the hunting of the following protected species of animals: the elephant, the banteng, dwarf buffaloes, the Indian hog, deer, kidangs and dwarf deer. These licenses are only valid in an area designated by the Resident head and for a period not exceeding six consecutive months in respect of the first four species of game mentioned and for a period not exceeding a year in respect of deer, kidangs and dwarf deer.
Hunting of unprotected species of animals is free, subject to the provisions in the ordinance, just mentioned, regarding the hunting of crocodiles.

In accordance with the "Ordinance on Crocodile Hunting" in Gouv., blad 1954, number 82, as amended in the ordinance in Gouv., blad 1955 number 68 and 1956 number 48, it is prohibited to act as crocodile hunter without written permission of the Resident-head. A crocodile hunter is defined as a person who makes it his business or profession to hunt crocodiles on his own account, or to lead a group of people who hunt crocodiles, or buy newly stripped crocodile skins.

To protect the total number of fish an ordinance in Ind. Staatsblad number 396 prohibits fishing with poisonous, intoxicating and explosive materials. The Head of the local administration can grant in writing exemption from this prohibition for a certain period in the interest of science or fish culture.

Furthermore, there are a number of provisions for the prevention of the transmission of infectious cattle diseases (and of plant diseases and pests) from abroad. A discussion of these matters is beyond the scope of this review.
XIV. MINING LEGISLATION.

The mining legislation contains several provisions regarding land
righs, especially in respect of the surface.
In Dutch New-Guinea are in force:

a. The Indische Mijnwet (Indische Mining Act, Ind. Staatsblad 1899, number
214, since amended; Engelbrecht 1956, page 2217 etc.);
b. The Mining Ordinance 1930 (Ind. Staatsblad 1930, number 38, as since
amended; Engelbrecht 1956, page 2231 etc.);
c. The Mining Police Regulation (Ind. Staatsblad 1930, number 341 and further
1931 number 372);
d. The general conditions under which licenses can be issued for mining
explorations and concessions for mining exploitation (Ind. Staatsblad 1930
number 348 and further 1931 number 373; Engelbrecht 1956 page 2270).

In Section 1 of the Ind. Mining Act, the persons with a right over
the surface are explicitly denied the right to have any control over
minerals specified by name.

The right to exploit or exploit those minerals can only be obtained
in accordance with the provisions of that Act.

Section 6, sub-section 2 of the Ind. Mining Act, provides that it
does not apply to the exploitation of minerals by the native population:
a. as long as the exploitation takes place on a small scale and for their
own purpose and benefit, as determined by the Governor;
b. when the exploitation, if belonging to the leased property or for
a different reason, has been provided for separately (compare section 88-
93 incl. Mining Ordinance).

Heading II of the Ind. Mining Act (section 7 – 12 incl.) deals with
mining prospecting, amplified in the second heading of the Mining Ordinance
1930 (section 9 – 26 incl.), licenses for mining prospecting are issued
by the Head of the Department of Mines.

The right to prospect is only given after the person with a right
over the surface has been given the opportunity of declaring his interests;
and then only under the condition that compensation is paid beforehand
for damage caused by the prospecting, or assurance given of compensation
to be paid for damage incurred (section 7, sub-section 1).

The manner in which and the time within which persons with rights
over the land, third parties and all others, whose interests could be
impairing by the issue of a requested license, can declare their interests,
is drawn up in section 21 of the Mining Ordinance.
According to Section 8, sub-section 2 of the Ind. Mining Act, explorations do not extend, within the area of investigation, over land
which are built: fortifications, Government buildings or public buildings, cemeteries, gravesides, public roads, canals or railways; nor areas, which, according to the traditions of the native population are regarded as sacred; a areas where it is prohibited to prospect in the public interest as determined by the Governor; or land within a distance from these areas, to be defined in an ordinance. Section 8, sub-section 3, provides that prospecting does not extend either to that land on which houses and factories are built, the distance to be prescribed by ordinance, unless permission has been given by the people with a right over that land or by interested third parties.

All these matters have been further amplified in section 87 of the Mining Ordinance 1930.

Under Section 9, persons with a right over the land surface and third parties are obliged to tolerate prospecting, as long as the licensee has notified them of his intention and has assured them or paid them the compensation beforehand. This obligation also applies, according to Section 119 of the Mining Ordinance, to the erection of all works and to operations, which are needed for such exploration. Section 9 of the Ind. Mining Act is further amplified in sections 122-126 incl. of the Mining Ordinance.

Heading III of the Ind. Mining Act (section 13-19 incl.) amplified under the third heading of the Mining Ordinance 1930 (section 27 - 49 incl.) deals with the concessions for mining exploitation. They are issued by the Governor.

Concessions are also issued after each interested party has been given the opportunity to declare his interests (section 14 Ind. Mining Act). This is further set out in detail in Section 39 of the Mining Ordinance 1930.

The concession gives the concessionary the exclusive right to mine within the mining area the minerals defined in the concession certificate and the right to construct the necessary works above as well as under the ground.

The concession also provides the concessionary with the right, in accordance with the provision in the Mining Ordinance to have the free right of disposal, for the exclusive purpose of his business, over the mined minerals not mentioned in section 1, Ind. Mining Act (such as clay, lime etc.) and gives him also the right to construct ancillary works outside the concession area (section 16 Ind. Mining Act).
The works, referred to in this section must be related to the proper mining of minerals; the right to construct works does not apply therefore to the processing of minerals, except that the initial processing of the mined product is implied to be part of the mining enterprise. Section 94 and 95 of the Mining Ordinance 1930 contain further provision for the construction of works by the concessionary.

The relationship between concessionaries and persons with a right over the land surface and third parties, is prescribed under Heading IV of the Ind. Mining Act (section 20 – 27 incl.) and amplified in section 120, 125, 126 – 150 incl. of the Mining Ordinance 1930.

Land, which, according to section 8, sub-sections 2 and 3, cannot be included for mining exploration (see above) will also have to be left alone for mining itself (section 20). But the concessionary is allowed to build mineshafts under that land.

If the use of the land is needed for an exploitation for a period not exceeding three years, then the same condition applies as provided in section 9 in respect of exploration, i.e. that persons with a right over that land and third parties are obliged to tolerate exploitation on such land, as long as the concessionary has notified them of his intention and compensation is paid or assured beforehand (section 21, sub-section 1). This part of the section is further amplified in sections 125 – 14+ incl. of the Mining Ordinance 1930.

In case the use of the land surface is needed for more than three years and if the parties cannot come to an agreement about the surrender of the land, then, at the request of the most reasonable party, provisions are resorted to, which prescribe the compulsory acquisition of the land in the public interest, (sections 21, sub-section 2).

This applies not only to land, which does not belong to the free crownland, but also to domainland over which third parties have rights (so-called unfree crownland).

The Governor gives his permission to construct land-and waterways on land, belonging to crownland, under conditions, which in his judgment are necessary, and baring rights of third parties; this for the purpose of exploration and he also confers the right to build for the erections of the necessary buildings, structures and workshops (section 22, sub-section 1).
It is also determined by the Government Decree of 12th January 1939, number 27 (supplement number 14168, explained in supplement number 14203) that land, needed for the erection of buildings, structures and workshops for exploitation and over which, under section 22, sub-section 1 of the Ind. Mining Act, the right to build could be conferred, can be leased by the Resident-head to the mining exploiters. The concessionary, under section 26 of the Mining Act, is required to pay full compensation for all damage caused by the enterprise to persons and interested third parties with a right over the land surface and all that belongs thereto, regardless whether the exploitation operations have taken place under the surface or not. Sections 24—26 incl. of the Ind. Mining Act are further amplified in section 120 of the Mining Ordinance. Under the last section the persons with a right over the land surface are authorized to demand that the land will be restored to its original state within a certain period instead of claiming compensation in the form of money, as long as the enterprise of the prospector or concessionary is not impeded through that action or made impossible. Persons with a right over the land surface or interested parties will have to be satisfied with compensation if the costs of restoring the land to its original state exceed the amount of money for compensation.

The right to dispose of minerals not named in section 1 of the Ind. Mining Act such as lime, limestone, clay etc. is not withdrawn from persons with a right over the land surface. To obtain these materials, which are found in land, belonging to the free crownland, a license is needed. A license for areas not larger than 7.5 acres is issued by the Head of the local administration, if quarrying takes place with manual labour and for the licensee's own use and for his own purpose and benefit; for other forms of quarrying, for example mechanical exploitation, a license is issued by the Resident Head (Government Decree in Ind. Staatsblad 1935 number 42, Engelbrecht 1956, page 2279, and further Decree of the Government in Gov. Blad 1954 number 77). The Governor issues licenses for areas larger than 7.5 acres (Government Decree in Ind. Staatsblad 1926, number 157, second Engelbrecht 1956 page 2279).

A revision of the mining legislation is in course of preparation, and a start has been made with the drafting of a new Mining Act.