

6 State Interventions and Legal Status

State penetration of the region was very slight until the 1960s and remains tenuous even today. The only permanent presence of government agencies in the Upper Caura consists of two hydrology stations at Entre Rios and Guaña, currently manned by Ye'kwana employees, small dispensaries in most of the larger settlements run by Ye'kwana and Sanema paramedics, and primary schools which are also staffed by indigenous teachers. Catholic organisations established mission stations among the Ye'kwana in the Upper Caura from 1955. The first established at Kanadakuni was later abandoned but the mission at Sta. Maria maintained by Les Petits Frères Foucauld remains. Evangelical missions have also been established among the Sanema at Shimadaiña and Majaguaña and among the Ye'kwana at Chajuraña, most of which are served part time by non-indigenous pastors. The Catholic missions, Les Petits Frères Foucauld and Fé y Alegría, have also provided some assistance to establish simple schools among the Sanema of Ayawaiña, Yudiña and Minchöña where there is an absence of suitably qualified Sanema teachers who can gain State recognition and support.

Medical services to the region are slight and the low population density is substantially due to the fact that the whole region experienced massive epidemics in the 18th, 19th and 20th centuries. Tuberculosis and malaria remain major problems in the territory, especially among the more isolated and mobile Sanema communities of the Upper Erebató and Merevari.²⁴ During the 1970s, the Ministry of Health established a *medicina simplificada* programme, which led to the training of young Ye'kwana men with primary school education in simple diagnosis and nursing skills. Small clinics and dispensaries were also established and intermittently supplied with drugs and other medical supplies. A similar system of rural dispensaries manned by *enfermeros* (nurses) remains in place to day, but is now supplemented by a mobile health brigade mainly made up young doctors carrying out their probationary year of practise in rural areas after qualification, who visit the main riverine communities of the region once every three months to carry out immunisations and hold one-day clinics. The programme does not reach many of the more isolated Sanema villages and has had limited success in curbing the main killers – malaria and tuberculosis – or the major chronic, endemic diseases such as leishmaniasis and onchocercosis. The health situation of the Sanema in the Upper Caura remains a serious issue of concern.

Frontier Development

Since the early 1970s, elements in government have promoted a forward policy of frontier development in southern Venezuela, centred around colonisation schemes, industrial development and road-building. These efforts have focused mainly on Amazonas State (where they have been markedly unsuccessful) and other parts of Bolívar State, where they have resulted in several large-scale mining, smelting, hydropower and road-building schemes all of doubtful economic viability. To date the Caura has not been affected by these pharaonic dreams although past maps have shown a proposed road linking Sta Elena de Uairen in the east of Estado Bolívar with San Juan de Manapiare in Estado Amazonas, which would have run right across the Upper River, as part of military plan to increase frontier security. However, commencing in 1976, the government carried out detailed

²⁴ For a detailed but dated review of the health situation and disease ecology see Marcus Colchester, 1985, *The Health and Survival of the Venezuelan Yanoama*. Document 53 of the Anthropology Resource Center, Survival International and International Work Group for Indigenous Affairs, Copenhagen.

feasibility studies for the building of a very large concrete dam across the Para Falls, which would have inundated a number of settlements in the Upper Caura and caused major changes to the ecology of the seasonal swamp forests of the Lower Caura.²⁵ After six years of study, the project was abandoned on technical and cost grounds.

In the early 1990s, the government development agency EDELCA developed detailed proposals for the construction of a very large dam across the Upper Caura (Merevari) just above the mouth of the Chanaro creek, with the aim of diverting the waters into the Paragua river and so increasing inflow to the Guri dam on the Caroni. The project, which would have required the construction of a substantial road into the region from La Vergareña, would have had a major social and environmental impact on the river system. EDELCA's preliminary studies showed that the dam would have caused the displacement of some 3,757 Indians from 40 villages. However, the project was also dropped on technical and cost grounds. It did however provoke a strong reaction from the threatened communities (see below).²⁶

Land Use Planning

Venezuela was one of the first countries in Latin America to have a Ministry of the Environment. Legislation providing for the establishment of protected areas (*Areas Bajo Regimen de Administración Especial* – ABRAE) was passed in the 1960s and was seen as a complement to the ambitious development schemes being proposed at the same time. This top-down approach to land use planning – both conservation and development – quickly led to a proliferation of ABRAE in the region but gave little scope for recognition of the value of local livelihood strategies or customary systems of resource use and management. By the mid-1970s some 45% of Estado Bolívar had been designated as ABRAE including almost the whole of the Caura basin (see map on next page).

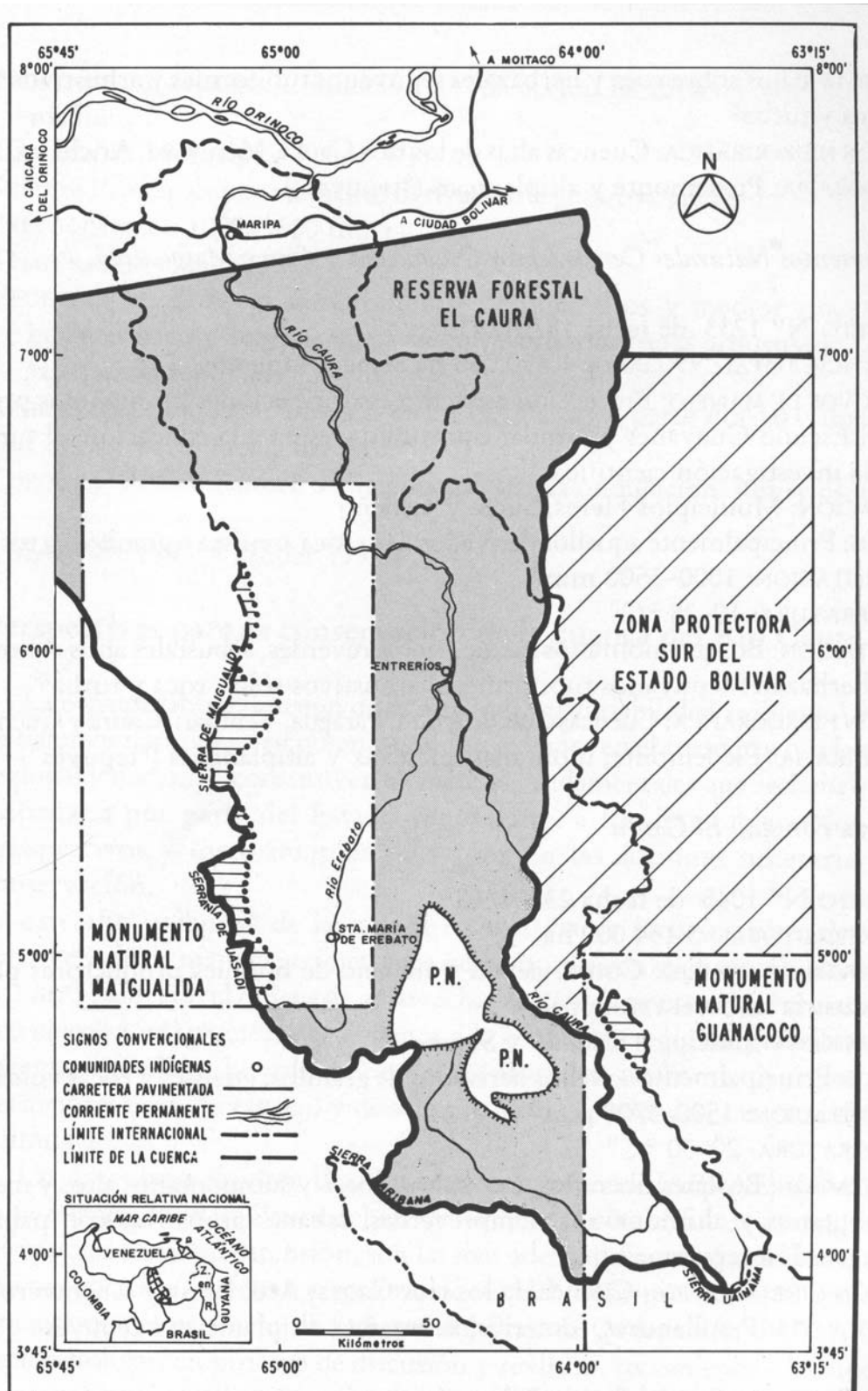
The following ABRAE currently overlap the Upper Caura:

- ❑ Reserva Forestal 'El Caura' established by Decreto 1045 23 January 1968 as a strategic reserve for the sustainable production of timber in accordance with forest management plans.
- ❑ Zona Protectora del Sur de Estado Bolívar established by Decreto 942 on 26 May 1975 in order to regulate colonization of the frontier.
- ❑ Parque Nacional Cerro Jaua-Sarisariñama established by Decreto 2978 on 12 December 1979 to protect the unique ecosystems of these tepuis.
- ❑ Monumento Natural Serranía de Maigualida established by Decreto 1233 on 18 January 1991 to afford strict protection of this highland area.
- ❑ Monumento Natural Cerro Ichun-Guanacoco also established by Decreto 1233 on 18 January 1991 for the same purpose.²⁷

²⁵ Marcus Colchester, 1982, Energy Futures and Venezuela's Indians. Hydro-electric development in Venezuela and its effects on the Indians. *Survival International Review* 40:4-17.

²⁶ Marcus Colchester with Fiona Watson, 1995, *Venezuela: Violaciones de Derechos Indígenas*. World Rainforest Movement, Chadlington.

²⁷ Mariapía Bevilacqua and Jose Ochoa, 1996, Areas Bajo Regimen de Administracion Especial. *Scientia Guianae* (6): 106-112



Technically, the establishment of these protected areas makes indigenous occupation and land use in the Upper Caura illegal. The laws, however, are not enforced and no management plans have yet been developed for any of these ABRAE. To date, there are no records of state agencies interfering in indigenous land use although in the early 1990s, officials of the national para-statal agency charged with administering protected areas, INPARQUES, began to enforce restrictions on travel up the Caura to protect the Monumental Natural Serrania de Maigualida. In the late 1990s, INPARQUES also entered into an agreement with the indigenous organisation 'Kuyujani' recognising the authority of members of Kuyujani to act as unpaid forest rangers and regulate access to the two Monumentos Naturales and the Parque Nacional Jaua-Sarisariñama. In recent months this arrangement has lapsed owing to the high turnover of staff in the agency.

Legal Framework

Venezuela claims jurisdiction over its territory based on Spanish territorial claims established under the Treaty of Tordesillas (1498) and subsequent agreements negotiated with the Portuguese (and later Brazilian), British and Colombian authorities which have established the national boundaries.²⁸ Unlike colonial powers in North America and the Southern Cone of South America, in colonial Venezuela no treaties were entered into with the native peoples and the legality of the process by which indigenous lands were annexed by the colonial state has never been clarified or tested in the courts. It is an assumption of Venezuela jurisprudence that within the national territory, all lands are considered public lands where they have not been allocated to private owners by an act of the State. The whole of the Upper Caura is thus treated as *tierra baldia* (unclaimed public land) under Venezuelan law, although in fact encumbered with the unextinguished customary rights of indigenous peoples.

During the colonial era, indigenous peoples' customary rights in land were not afforded legal protection, except for a limited number of communities, such as the Kariña of Estado Anzoategui, who were granted *titulos coloniales* to small areas around their most long standing settlements. Although Simon Bolivar argued at the time of independence that the land rights of indigenous peoples should be recognised, the land-owners who dominated post-independence politics frustrated this goal, and indeed pressure on Indian lands intensified.²⁹ The government thus continued an integrationist policy towards indigenous peoples, and handed over authority to administer indigenous communities to the religious missions. The 1911 Ley de Misiones (still unrepealed) formalised these powers. However, no missions were established in the Caura until the 1950s (see above).

Article 77 Clause 2 of the, now repealed, 1960 Constitution recognised that the 'law establishes a special system as required to protect the Indians and permit their incorporation into the life of the Nation.' This was given partial effect by the, still effective, 1951 Decreto 250, which prohibits access to (undefined) Indian areas, subject to permit, and which is administered by the *Direccion de Asuntos Indigenas* in the Ministry of Education. The *regimen de excepcion* was also encouraged through Decreto 283 of 1983, which requires the provision of bilingual intercultural educational systems in indigenous communities. As a result of this Decree limited funds have been made available to linguists and university professors to develop teaching materials in Ye'kwana, some of which are still in use in the schools.

²⁸ The boundaries with Guyana and Colombia are however disputed by the Venezuelan Government.

²⁹ Filadelfo Morales M., 1994, *Sangre en los Conucos: reconstrucción ethnohistorica de los indigenas de Turmero*. Fondo Editorial Tropykos, Caracas.

As regards land, Article 2 of the Agrarian Reform Law of 1960 explicitly:

Guarantees and acknowledges to the indigenous population that bit may actually keep its communal or extended family condition, without diminishing the rights which belong to them as Venezuelans, in accordance with the above sections, the right to have the benefit of the lands, woods and waters that they occupy or which belong to them in those places where they habitually dwell, without prejudice to their incorporation into the national life as conforms with this and other laws.

In accordance with this policy of progressive integration, in December 1990, Venezuela formally recognised ILO Convention 107, Article 11 of which explicitly recognised indigenous peoples' collective rights of ownership of the lands they have traditionally occupied.³⁰ In the Caura, however, these legal provisions related to lands were never applied and the indigenous peoples remained without legal protection of their land rights. However, other elements of the Agrarian Reform law were taken advantage of by the Ye'kwana who in the early 1980s established an Empresa Indigena (indigenous cooperative) at Sta. Maria de Erebató, which obtained legal personality in line with the provisions of the Agrarian Reform Law. The cooperative, which received support from the mission, the State government and from the National Agrarian Institute, embarked on a vigorous programme of community development focused on the production for sale in Maripá and Ciudad Bolívar of coffee, cacao and cattle.³¹

New Legal Framework

In March 2000, the renamed Bolivarian Republic of Venezuela adopted a new Constitution which

recognises the existence of indigenous peoples and communities and their social, political and economic organization, their cultures, manners and customs, languages and religions, as well as their habitat and aboriginal rights over the lands which they have ancestrally and traditionally occupied and which are necessary to develop and guarantee their ways of life. The National Executive has the corresponding duty, with the participation of the indigenous peoples concerned, to demarcate and secure their collective ownership rights to their lands, which will be inalienable, unmortgageable, not subject to distraint and untransferable...' (Article 119).³²

The Constitution likewise recognises the right of the indigenous peoples to maintain and develop their identities, cultures, cosmovisions, values, spirituality, sacred sites and languages (Article 121) and to maintain and promote their own economic practices based on reciprocity, solidarity and exchange and their traditional productive activities (Article 123).

In May 2001, Venezuela formally passed a law in the National Assembly adopting the International Labour Organization's Convention # 169 on Tribal and Indigenous Peoples.³³ Among the most important obligations this law places on the State are the following:

³⁰ Marcus Colchester, 1995, *Venezuela: Violations of Indigenous Rights*. World Rainforest Movement, Chadlington.

³¹ Marcus Colchester, 1982, Amerindian Development: the search for a viable means of surplus production in Amazonia. *Survival International Review* 41/42:5-16.

³² *Constitución de la Republica Bolivariana de Venezuela*, 24 de marzo de 2000.

³³ *Ley Aprobatoria del Convenio 169 de la OIT* Published in the Gaceta Oficial No. 37.305, on 17 October 2001. The ILO was officially informed of this ratification in May 2002.

- ❑ Consult indigenous peoples through their representative institutions (Article 6.1a)
- ❑ Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose (Article 6.1c).
- ❑ Respect their right to decide their own priorities (Article 7.1).
- ❑ Take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit (Article 7.4).
- ❑ Apply national laws with due regard to customs or customary laws (Article 8.1).
- ❑ Respect their right to retain their own customs and institutions (Article 8.2).
- ❑ Respect customary systems for dealing with offences to the extent these are compatible with internationally recognised human rights (Article 9.1).
- ❑ Respect the special importance of these peoples' relationship with their lands or territories for their cultures and spiritual values and for the collective aspects of this relationship (Article 13.1).
- ❑ Recognise their rights of ownership and possession of the peoples concerned of the lands which they traditionally occupy (Article 14.1).
- ❑ Take special measures to identify these areas and guarantee effective protection of their rights of ownership and possession (Article 14.2).
- ❑ Establish adequate procedures to resolve land claims (Article 14.3).
- ❑ Safeguard their rights, including their rights of use, management and conservation, to the natural resources in their lands and territories (Article 15.1).
- ❑ Respect customary procedures for the transmission of land rights among members of these peoples (Article 17.1).
- ❑ Establish adequate penalties for unauthorised intrusion upon their lands (Article 18).

In accordance with the new Constitution and in partial compliance with the State's obligations³⁴ with respect to land under ILO Convention 169, in December 2000, the Venezuelan Congress also adopted a law regarding the demarcation and securing of indigenous peoples' lands and 'habitats'.³⁵ The law has the aim of demarcating and securing indigenous peoples' rights to the collective ownership of their lands as enshrined in the Constitution (Article 1). These lands are defined as physical and geographical spaces ancestrally and traditionally occupied and used in a shared manner by one or more indigenous communities and one or more indigenous peoples (Article 2). The authority to oversee this process is entrusted to the Ministry of the Environment (Article 3). The law also establishes a National Commission for the Demarcation of the Territories and Lands of Indigenous Peoples and Communities made up of 8 indigenous persons and 8 representatives of State bodies to review land demarcations and recommend the granting of titles. Taking into account prior community-based land use mapping and demarcation exercises, such as the precedent setting project in the Caura (see below), the law also provides for consideration of advanced projects of self-demarcation in applications for titles (Article 9). Demarcations must take into account the boundaries of ancestral and traditional occupation and use of habitats and lands (Article 11). Once approved by the Ministry, land claims are to be submitted to the Procuraduría General de la República for

³⁴ In further fulfilment of Venezuela's obligations under ILO 169, the National Assembly is also in the process of a second reading of a new Organic Law on Indigenous Peoples and Communities. A bill on Indigenous Education and Use of their Languages is also under consideration.

³⁵ *Ley de Demarcación y Garantía del Habitat y Tierras de los Pueblos Indígenas*. The term 'habitats' was chosen to refer to indigenous peoples' territories as the term 'territories' is already used in Venezuela as an administrative designation applied to areas under the direct jurisdiction of the Federal Government rather than the authority of States, which enjoy a greater degree of self-governance.

the issuance of collective title which is then to be registered in the national land cadaster (Article 12).

In May 2002, the indigenous organisation Kuyujani formally submitted its application for the recognition of its 'habitat' in the Upper Caura in full conformity with the law to the national commission on demarcations. The full submission included the map of the area, a legal analysis justifying the land claim and a summary of the current and historical occupation and use of the territory based on historical sources, indigenous knowledge and anthropological studies. The land claim was the first to be submitted to the Commission and is presently under consideration. On 14th October 2003, the President of the Republic announced that current land claims were to be settled by December 2003. However, this has yet to be achieved.

Venezuela ratified the Convention on Biological Diversity by adopting a Special Law drafted by the executive and agreed by Congress on 12th September 1994.³⁶ In partial compliance with the Convention, Venezuela adopted a National Biodiversity Strategy and Action Plan in April 2001. One of 15 approaches for strategic intervention set out in the Plan is to incorporate indigenous and local communities into biodiversity management, by promoting their engagement in monitoring, control and co-management in their ancestral territories and systematising and disseminating their traditional knowledge of biodiversity.³⁷

In sum the legal and policy framework certainly now exists for Venezuela to fulfil its main obligations under Article 10c of the Convention on Biological Diversity. It only remains for the State to follow through on these laws.

³⁶ *Gaceta Oficial* 4,780 Ext.

³⁷ UNDP, 2002, GEF: Concept Proposal for Pipeline Entry, 'Integrated Management and Conservation of the Caura River Basin'.