Abstract

Some multicultural countries, such as Indonesia, that have become parties to international human rights treaties continue to make allowances for personal status of ethnic and religious groups which enable such groups to live in accordance with traditional laws and customs particularly with regard to marriage, divorce, and inheritance, although these traditional rules and regulations are not based on the basic human rights principles of equality and non-discrimination. In this article, the position of Balinese Hindu women is taken as an example to show that by maintaining personal status laws, the land rights of girls and women belonging to the Hindu community are negatively affected and it is very difficult for these women to change this situation themselves as they are caught between their rights and needs on the one hand and their loyalty towards their families, communities, and culture on the other. By accommodating personal status laws, states, including their organs at central, regional and local level, not only violate their international law obligations but are also responsible for undermining women’s right to equality. In order to remedy this, they should take all appropriate measures—both legal and extra-legal—to modify laws, customs and traditions in such a way that they are geared to non-discrimination and equality without harming the cultural identity of the ethnic or religious group. For government officials it will be next to impossible to have an impact on people’s frame of mind. That is why the authorities should actively and financially support campaigns of non-state actors that support equality, such as grassroots NGOs, local authorities, and academics. Because these actors speak the local language and have intimate knowledge of the religion and culture, they are best placed to bring about a change in practice.

Keywords: culture; gender; Indonesia; land; religion

1. Introduction

A particular problem presents itself in states with a multicultural population that ratify international human rights treaties but at the same time want to accommodate ethnic or religious groups by allowing them to maintain personal status law. This entails such groups continuing to apply their traditional rules and customs—in particular marital and divorce law, property law, and inheritance law—mostly to the detriment of the right to equality of the women.
belonging to such groups (Singh 1994: 378). A state party to a human rights treaty has international obligations towards its whole population, however, irrespective of any national arrangements that have been made. To show the effect of personal status law, this article will analyse the land rights of Balinese Hindu women in Indonesia.

The case of Bali is especially interesting because, while women’s land rights are under discussion in many developing countries and some progress has been made (Agarwal 2003; Kambel 1999; Muthoni Wanyeki 2003; Zoomers and van der Haar 2000), in Bali the situation paradoxically seems to have gone backward rather than forward since the fall of the Suharto regime in 1998. In addition, while (women’s) land rights in Bali have been discussed in different contexts, for example of colonialism (Covarrubias 1973), tourism (Astiti et al. 2013), agrarian reform (Lucas and Warren 2013), and equality (Rao 2011) from sociological, cultural anthropological, legal, and political points of departure, they have not yet been examined in connection with personal law status, although this causes a typical legal and moral dilemma for a state that is a party to human rights treaties, as the principles of equality and non-discrimination are at odds with traditional patriarchal ideas, and it creates a predicament for women who have to choose between loyalty to their community and their individual rights and needs.

One of the consequences of Suharto’s fall was far-reaching decentralization and autonomy for the provinces. The Balinese provincial and local authorities used their new-found freedom to ignore national laws and regulations and instead fell back on traditional Adat (customary) law in order to distinguish the island’s Hindu identity from that of the rest of Indonesia.

At face value, the conferral of personal law status only seems to have positive elements since the government shows its respect for the group and pledges not to intrude upon certain aspects of the group’s cultural identity. It also has negative elements, however, because it offers the central authorities an opportunity to justify non-interference in human rights violations and it may give local authorities rather too much power. Moreover, it puts the women belonging to such groups in a very tight spot; the great majority of them want to belong to the group and respect traditions, but on the other hand this means that they have to forego human rights they are entitled to. If they insist on claiming their rights, they run the risk of being accused of undermining the group’s culture and they may be ostracized by their family and community. In addition, customs and traditions may become static and inflexible because the group has an interest in upholding rules that are different from the mainstream so as to identify itself (Shachar 2001: 39, 84–5).

Although the law is but one way to organize society and many other factors also play a role, it is an indispensable instrument to claim one’s rights. Furthermore, in terms of international human rights treaties it becomes clear which obligations states have voluntarily taken upon themselves and to what extent they violate these obligations by maintaining personal laws.
In order to examine the impact of the personal law system in Bali, literature research was first conducted to establish the scope and extent of Indonesia’s human rights obligations. The three most relevant treaties that Indonesia is a party to were studied, particularly in respect of non-discrimination and equality as regards land rights. Furthermore, relevant national and Balinese Adat laws were examined and analysed to assess to what extent these laws are in conformity with international law. Finally, empirical research was done over a period of two months in Bali. Interviews based on prepared questions were conducted in Denpasar (the capital) and in Karangasem, a rural area in the north. The aim was to find out how the existing customary land rights system is perceived by the Hindu population. Different categories of people were interviewed in order to obtain a diversity of standpoints and opinions. Among the interviewees were an official of the province of Bali; two representatives of different non-governmental organizations (NGOs); five academics who are specialized in gender issues, agrarian law, and Adat law; and 20 men and women between the ages of 17 and 75 who were chosen because of their different social backgrounds, place of residence (urban and rural), and various levels of education. The last of these categories provided clear insights into how the rules of the Adat system are experienced by those affected by the law.

On the basis of the research that was conducted, the premise of this article is that maintaining an unaltered personal status law for ethnic or religious groups is not tenable for a country that has committed itself to upholding human rights. In the case of Indonesia, the Balinese Adat law needs to be modified and brought in line with the principles of equality and non-discrimination. In this respect there is a shared responsibility between the central government in Jakarta and the provincial and local authorities in Bali. It should be possible to bring about such a change while ensuring respect for the Hindu identity of the population, since culture is a dynamic concept that will adjust to societal change (An-Na’im 2002: 35). This gives rise to the question of which actors are best suited to bring about the necessary changes and how can they do so.

In the following sections, first girls’ and women’s status in Indonesia and in Bali will be clarified. Next, an overview will be given of Indonesia’s international human rights obligations, as well as the state of affairs in national and Balinese Adat law with a focus on women’s right to equality and

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1 These treaties are the International Covenant on Civil and Political Rights, 16 December 1966 (entered into force 23 March 1976); the International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entered into force 3 January 1976); and the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979 (entered into force 3 September 1981).

2 Karangasem was chosen because of its rural character and the author’s existing contacts there which made it easier to arrange interviews.

3 A list with the names of the interviewees is in the possession of the author; in this article they are indicated by their age and profession.
non-discrimination on the basis of sex in respect of land rights. This is followed by a section on the findings concerning problems and dilemmas faced by Balinese girls and women as regards their land rights and recent developments. Finally, some suggestions will be made and conclusions drawn in respect of how Balinese personal law and practice could be modified and by whom.

2. Girls’ and women’s status in Indonesia and in Bali

Reviewing Indonesia as a whole, the prevailing culture seems to be androcentric; men are regarded as the head of the family, the breadwinner, and the holder of decision-making power. This can also be observed in the public sector where men are in charge of politics and the economy (Cattleya 2010: 2). Compared to the past there is, according to Indonesia’s 2011 report to the UN Committee on the Elimination of Discrimination against Women (CEDAW), an increase in women holding important decision-making positions, although their number still lags far behind that of men (CEDAW 2011: paras 54–6). Furthermore, in rural areas women may not be regarded as suitable persons to take part in a public body; women are said to be easily influenced by bad spirits, their bodies are regarded as impure because they menstruate, and when a woman has given birth it is believed to be best to temporarily isolate her so that other people will not come into contact with the bad spirit (Koalisi Perempuan 2012: para. 35).

As far as employment is concerned, the general situation is that more women work at home or in the informal sector than in the formal sector, and there is a considerable gap in the salaries and other benefits that are earned by men and by women. Though there have been positive developments, women as a group still earn only about a third of the total of wages (CEDAW 2011: paras 97–8, 112).

The educational gap between men and women is decreasing in Indonesia, although there is still reason for concern in rural and remote areas. Son preference is strong, and women may be forced to keep giving birth until there is a son, since only sons are believed to be able to continue the family. Poor families will give priority to their sons’ education over that of their daughters, and early marriage is still a reason why girls’ education is stopped at an early stage (Koalisi Perempuan 2012: 36).

Particularly in communities that are based on religious and traditional laws, such as Bali, women are discriminated against in matters of inheritance and the relationship between husband and wife (CEDAW 2011: paras 188, 191). Because of the autonomy Bali enjoys, local legislation greatly influences Balinese everyday life. As the great majority of the population in Bali adheres to the Hindu religion, Hindu rules and regulations have become part of the Balinese Adat law (Windia 2004: 1). Although according to Hindu teachings in the Manawa Dharmasastra (the Hindu holy book) male and female persons are inherently of equal worth, they are supposed to play different roles in society and therefore are entitled to different privileges commensurate
with these roles. In line with this thinking, the Adat rules in respect of family, marriage, and inheritance are not based on equality, but on equity; a person will have rights and duties that befit his or her gender and status in society.4

The lack of education or job training and the inability to earn an adequate income or to acquire property by way of inheritance all negatively affect women’s property rights over land in practice, despite the formal equality that may be found in some laws.

3. The legal situation

On 17 August 1945 Indonesia declared its independence and shortly afterwards the Constitution was adopted.5 After the war of independence with the Netherlands which lasted until 1949, the country was firmly ruled from Jakarta, first by the authoritarian regime of President Sukarno, and then by three decades of the ‘New Order Regime’ of President Suharto. Suharto’s fall in 1998 and the subsequent reformation (Reformasi) brought two changes that are relevant in this context: a commitment to international human rights law and decentralization.

3.1 International level

Indonesia became a party to the Convention on the Elimination of All Forms of Discrimination against Women (Women’s Convention) in 1984, and to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) in 2006. Since no relevant reservations were made, the provisions on non-discrimination and equality fully apply in respect of the obligations of the state and all its organs, including those at the central, provincial, and local level.6 The monitoring bodies of the three conventions, the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESCR), and the Human Rights Committee respectively, have all further clarified and interpreted the meaning of these principles in General Recommendations and General Comments that are to be considered as authoritative interpretations of provisions of the conventions.

4 Equity appears to be positive for women since it is synonymous to fairness, but it is especially used to distribute assets unequally between men and women in correspondence to unequally valued responsibilities (Charlesworth and Chinkin 2000: 80).
5 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar, 1945), Fourth Amendment of 2002 (further Constitution).
6 ‘The obligations of the Covenant…are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State Party.’ (UN Human Rights Committee General Comment No. 31 (2004): para. 4)
It is important to note that discrimination against women comprises discrimination based on sex—that is, biological, specifically reproductive, characteristics—and discrimination based on gender—signifying the culturally determined roles and stereotypes that put men and women in different socio-economic positions. The roles women are supposed to play are seen as necessary, but inferior to those of men. As a consequence, women’s work is lower paid or unpaid, and many women are put in a dependent and vulnerable position in which their human rights may be undermined and violated. Gendered ideologies also determine men’s choices in life. Adult men are to be head of their families and bear responsibility for the family’s income. While a consequence of this may be that men may miss out on their family life, especially seeing their children grow up, they are still on the receiving end of the equation because as boys they generally get a better education, and as men it will be easier to earn a decent income, to own possessions, and ultimately to be in a position of power.

By addressing discrimination based both on sex and gender, the root causes of discrimination against women can be tackled because the underlying socio-economic conceptions are exposed and thus may be modified. This is in line with article 5(a) of the Women’s Convention which specifies that states parties are obliged to take all appropriate measures to modify the culturally determined patterns and roles that men and women play in society with a view to eliminating prejudice and harmful customs, as well as stereotypes that put women in an inferior position and basically undermine their equal enjoyment of human rights. This is also the view taken by the UN Human Rights Committee (General Comment No. 28 (2000): paras 5 – 7) and the CESCIR (General Comment No. 16 (2005): paras 5 – 8, 11, 18). The Human Rights Committee explicitly states that states parties are obliged to ensure that attitudes that are rooted in culture, religion and tradition are not used as justifications to maintain inequality between men and women (General Comment No. 28 (2000): para. 5). Furthermore, it is pertinent that that Committee has declared that the protection of minority rights in article 27 of the ICCPR is bounded by women’s right to equality (ibid: para. 32).

The right to equality should not only exist in law as formal or de jure equality, but it should also be enjoyed in actual life. That is why de facto or substantive equality should be achieved as well (CEDAW General Recommendation No. 25 (2004): paras 4, 8 – 9; Human Rights Committee General Comment No. 28 (2000): para. 3; CESCIR General Comment No. 20 (2009): para. 8). Formal equality should be realized by abolishing all laws and regulations that

7 In General Recommendation No. 28 (2010: para. 5), CEDAW defines ‘gender’ as: ‘socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women’.
discriminate against women; this includes laws that have been adopted at re-
gional or local level. In addition, new laws should be adopted that promote
equality between women and men (CESCR General Comment No. 16 (2005):
para. 18). Substantive equality entails that the authorities examine the effect
that seemingly neutral laws and policies may have on women and make
certain that all regulations provide for equality for everyone in practice
(CEDAW General Recommendation No. 29 (2013): para. 8). This may
require taking measures to prevent, modify, or abolish attitudes that cause or
support existing de facto inequality. States parties’ obligations thus comprise
equal treatment, equal opportunities and equal results for women when com-
pared to men. The last of these implies that it is sometimes allowed or neces-
sary to treat women and men differently—especially to treat women more
favourably—in order to achieve an equal result.8

Married women have equal rights to own, acquire, manage, enjoy and
dispose of property and there are no justifications to apply discriminatory
laws or customs to them. Marital property that was accumulated during the
marriage should be divided equally between husband and wife upon the dis-
solution of the marriage (CEDAW General Recommendation No. 21 (1994):
para. 32; No. 29 (2013): paras 43–8).

As regards inheritance law, states parties are under an obligation to repeal
all laws and modify any customs that discriminate between men and women
in this respect, and they have to ensure that women and men who are in the
same degree of relationship with the deceased will receive an equal share
(CEDAW General Recommendation No. 29 (2013): paras 49–53; Human
Rights Committee General Comment No. 28 (2000): para. 26; CESCR
General Comment No. 16 (2005): para. 27). Personal status laws that discrim-
inate against women in relation to marriage, divorce, inheritance or other
family law matters are held to be in violation of articles 2, 5, 15, and 16 of the
Women’s Convention and should be abolished.

Land can be regarded as the most important property a human being can
possess since it may mean a place to live, the possibility to grow food, it can be
used for farm and non-farm activities that will provide for a livelihood, it can
serve as collateral for credits and loans, and it may determine a person’s status
in society (UN Human Rights Council 2008: paras 65–9). Generally, women
have fewer land rights and less control over land than men, which may conse-
quently affect the realization of other human rights, especially those in respect
of living conditions (Food and Agriculture Organization of the UN (FAO)
et al. 2004: 10).

8 Article 4(1) of the Women’s Convention allows, and sometimes demands, temporary special
measures in order to accelerate equality between men and women; such measures should not
be regarded as discrimination against men and have to stop when a certain goal has been
3.2 National law

Several of Indonesia’s international human rights obligations have been implemented at the national level.

The principles of non-discrimination and equality are included in article 28 I(2) of the Constitution, but there is no specific attention for discrimination against women. In order to further women’s equality Indonesia has created a State Ministry for the Empowerment of Women and Child Protection that coordinates efforts to enhance women’s position in society, tries to raise awareness of the Women’s Convention, and seeks to educate government officials (CEDAW 2011: para. 2). As yet, it seems that these efforts have been too limited since in-depth knowledge about the human rights contained in the Convention and the state’s corollary obligations is not widely spread among lawyers, judges, and prosecutors (ibid: para. 1). As extensive dissemination among the population is lacking, many women are neither aware of their rights under the Conventions nor know how to claim them (CEDAW 2012: paras 11–12; Human Rights Committee 2013: para. 5).

A complicating factor with regard to access to justice is that it is unclear whether Indonesia has a monist or a dualist system in respect of the relationship between international treaty obligations and domestic law.9 If local authorities and courts understand the system as dualistic they may only take national laws into account instead of directly applying the human rights treaties that Indonesia is a party to. The Constitution does not contain a provision clarifying this matter and much confusion exists because of inconsistencies in respect of the implementation of international treaties. While some scholars think that international rights can only be enjoyed when they have been transposed into national law, the Human Rights Act No. 39 of 1999 in article 7 seems to propagate monism by determining that everyone can use both national and international human rights law—as far as ratified by Indonesia—when his or her rights are violated (Wisnu 2011: 6–7). Article 67 of the Human Rights Act states that it is prohibited for local authorities to ignore international obligations or to give precedence to local law.

The Human Rights Act does not contain all human rights obligations Indonesia has taken upon itself. A few crucial provisions of the Women’s Convention are lacking such as the definition of discrimination against women as well as the obligation to modify stereotypes and harmful traditional practices in line with article 5. The Indonesian government admits that modifying stereotypes remains one of the major challenges in respect of the implementation of the Convention (CEDAW 2005: paras 52–9). Certain efforts are undertaken to change people’s mindsets, particularly those based on

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9 Monists have a unitary view of law: international and national law form one system in which international law takes precedence over national law. Dualists understand international and national law as two separate systems; international law rules must be converted into national law before they can be applied in a court of law (Shaw 2014: 93–5).
stereotyped ideas that are impelled by old religious rules. For instance, school books and curricula were reviewed and media campaigns were held, but it seems that these efforts are especially focused on the Muslim population and traditional Islamic teachings (CEDAW 2011: paras 32–6). In these reports that the Indonesian government submitted to CEDAW, no mention is made of attempts to modify discriminatory Hindu customs or stereotypes that undermine Hindu women’s right to equality.

Besides the Human Rights Act, the Basic Agrarian Law No. 5 of 1960 and the Marriage Act No. 1 of 1974 are relevant. Article 9 of the Basic Agrarian Law takes a formal approach in respect of equality; everyone is allowed to buy land. Although it is important that there is no legal impediment barring women from having property rights over land, such an approach does not take the different socio-economic position of women into account and thus does not contribute to the achievement of equality of result. Indonesia is basically an agrarian state and the majority of the Indonesian population lives in rural areas. Access to and property rights over land are therefore of the utmost importance. However, by and large, titles of ownership over land will be in the name of the male head of the family (Koalisi Perempuan 2012: para. 12).

Article 1 of the Marriage Act acknowledges the equality of husband and wife. Property acquired during marriage is regarded as joint property and consequently both spouses have equal rights to administer it and both are entitled to half of it in case of divorce. However, the object and purpose of article 5 of the Women’s Convention is encroached upon by article 31(3) of the Marriage Act providing that the husband is to be regarded as the head of the household, while the wife is responsible for the household and raising the children.

Besides attention for human rights, another important development at the national level was the decentralization which began in 1999 with the adoption of Law No. 22 on Local Government which gave provincial, district, and municipal governments more autonomy and control over the budget. Regional autonomy was further laid down in articles 18–18B of the Constitution and most recently updated in Law No. 32 of 2004 on Local Government. However, under international law, ultimately the state will remain responsible for all actions by state organs. In cases where local legislation is in violation of international obligations, the central government has the duty to persuade the local authorities to amend this situation, while the local authorities for their part have to meet the international obligations, including human rights obligations, which the state has taken upon itself (Shaw 2014: 161).

10 Koalisi Perempuan, 2012, paras 2–5. For their report the NGO conducted research in 147 villages in 45 districts in ten provinces from April 2011 to May 2012. This included research in Bali, in particular in the districts of Tabanan and Karangasem and the city of Denpasar.

11 Compare Indonesia’s reports to CEDAW (CEDAW 2005: para. 161 and CEDAW 2011: para. 35). While some changes have happened in the six years between the two reports, the traditional division of power, work, and responsibilities within the family has remained the same.
accepted the responsibility for all governmental actions in article 28 I(4) of the Constitution and in article 8 of the Human Rights Act. For women, one of the consequences of the decentralization has been that the realization of their rights, including land rights, is now more than before in the hands of the provincial and local authorities. In many cases, this development has had an adverse effect on the realization of women’s rights (CEDAW 2007: para. 12). Indonesia has confirmed this by stating that many regional laws are discriminatory and in contravention of national law (CEDAW 2011: para. 23).

3.3 Balinese Adat law

Due to tourism, land is very expensive in Bali. For the great majority of people it is impossible to save enough money to buy land and the most common manner in which property rights are gained over land is by way of inheritance. However, the Balinese Adat law on inheritance is patrilineal with in principle no inheritance rights for girls and women. The Balinese law on inheritance was codified by the then Commissioner (Residen) of Bali and Lombok, Frederik Liefrinck in a regulation (Peswara) of 13 October 1900. Women, especially widows, play a very minor role in it. They are not regarded as autonomous persons, but as people who have to be taken care of. The estate will go to the son(s) who will provide for the mother. A daughter has no right to inherit from her father because the heavy responsibilities in relation to religious ceremonies, the forebears, and the temples have to be shouldered by her brother(s). While girls and women also have quite extensive responsibilities these are largely ignored or regarded as less important. Daughters are entitled to the enjoyment of their parents’ property and parents may decide to give certain assets to their daughters while they are alive, but the gifts to the daughter(s) have to be relatively modest since the inheritance of the son(s) should not be endangered (Windia 2010: 146).

The existing inequality in the law is defended by the provincial authorities who claim that they do not have to implement Indonesian national laws because of Bali’s autonomy and the respect that is due for Hindu personal status. The fact that international obligations also call for measures at the provincial level as regards law-making, the judiciary and public policy is not understood. Instead, local authorities seem convinced that such obligations are not their concern.12

As far as legal remedies are concerned, it is easy and cheap to go through the extensive Adat settlement system.13 However, these organs will only apply

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12 Interview with the male Head of the Legal Office of Bali Province in Denpasar, 22 October 2012.
13 In the first instance, a person can approach the banjar (neighbourhood), where a case is heard by a group of elders. If the banjar cannot offer a solution, the case will be heard by the Desa Pakraman (Village Council). The next step is the Majelis Desa Pakraman (MDP) (Assembly of Village Councils), followed by the Majelis Utama Desa Pakraman (MUDP) (Supreme Assembly of the Village Councils) of Bali Province. If parties still have not reached
Adat law, so in many cases it is clear from the outset that the settlement will not be in a woman’s favour. According to NGO representatives, the level of education of Desa Adat community leaders may be very low and in many cases they do not understand that the local interpretation of Adat law (awig-awig) is no longer in conformity with provincial Adat law. It is possible to skip the Adat system and go directly to the District Court, but this is frowned upon because disputes should be settled in harmony, on the basis of kinship and togetherness, and a procedure before the District Court costs money (I Gusti Agung 2010: 151–2). An additional problem is that the District Court may decide to apply Adat law in case of a Balinese Hindu because a representative of the Majelis Desa Pakraman (Assembly of Village Councils) will be invited to be present as an expert witness and his advice will be taken into account (I Gusti Agung 2010: 156). While in theory it would be possible to appeal to a General Court, then to the General High Court, and in the final instance to the Supreme Court, in practice this is a lengthy and very costly procedure that only the affluent can afford. If women lose their case in the District Court, generally they will lack the financial means to take their case any further.

4. The impact of Adat law and recent developments

This section discusses findings that are predominantly based on the interviews with the group of people mentioned in the introduction. It also examines the impact of Adat law and tradition on women’s land rights as well as why it is so difficult for women to bring about change and claim equality. Finally, it pays attention to recent developments that may change the situation for the better.

Hindu tradition is based on son-preference because a son will remain in the family and he bears important responsibilities in respect of religious ceremonies including cremation rites, the most significant ones because of the belief in reincarnation (Covarrubias 1973: 337–8). Because of the custom of female exogamy, a woman who marries leaves her own blood relatives to become part of her husband’s family who are supposed to take care of her. That is why it is considered wasteful to leave part of the most valuable family assets to a daughter (Windia 2010: 136).

Since a son will be a breadwinner, he needs property and money to bear the financial burden for his family and to carry out the family’s responsibilities towards the community and the temples.

This traditional idea of sons and daughters continues to bar daughters from inheriting land and housing from their fathers. Particularly older and rural women still feel that daughters should not inherit because they do not have

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14 NGO representatives in Denpasar, 24 October 2012.
important responsibilities. Especially in Karangasem, where women rise at 4 a.m. to go to the market, work on the land, and perform their daily rituals of praying and offering before they start on their household or other chores, it seems surprising that women’s responsibilities go unnoticed. Also the enormous work women do in preparation for village or family ceremonies—which take place on a regular basis—is largely underestimated and not valued as much as the part that men play in religious rituals. Furthermore, there is a persistent myth that married women no longer perform duties in their own families, while in fact they bear a double burden because they continue their (religious) responsibilities in their own family, and in addition they have to take part in their husband’s family ceremonies. One woman said that she was certain that the status of girls and women would greatly improve if the role played by married daughters in their own families were acknowledged.

Just as daughters cannot inherit from their fathers, widows are excluded from inheriting from their husbands. Since a man’s immovable property will usually belong to his family, his estate will go to his sons, and in their absence to his nephews or other male relatives. This means that for access to housing and land, a widow depends either on her son(s) or on her in-laws. Two widows explained that they could remain in the family home because one of their sons came to live with them. Problems arise if the in-laws want to use the land and housing for themselves or if the widow does not behave in accordance with societal rules, implying that she is involved in a romantic relationship with a man. Though a widow is in principle allowed to remarry, having an affair is considered a faux pas and a reason to evict her from the home and land. In such a case, most women will also be ostracized by their blood relatives. When a widow remarryes, she will move to the home of her new husband.

The fact that women are dependent on a man for land and housing also has consequences for women who are involved in an abusive relationship. According to local NGOs, domestic violence is a huge problem and the primary reason why women want a divorce. However, if women are not economically independent the consequence may be that they become destitute. In line with article 1 of the Marriage Act, the Adat law was changed in 2010 by the Majelis Utama Desa Pakraman Bali (MUDP) (Supreme Assembly of the Village Council) with the adoption of a Decree stipulating that during...

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15 53-year-old business woman in Denpasar, 10 October 2012; 51-year-old female academic, 55-year-old market woman, and 75-year-old widow in Karangasem, 27 October 2012.
16 53-year-old business woman in Denpasar, 10 October 2012.
17 Interviews with 55- and 75-year-old widows in Karangasem, 27 and 28 October 2012.
18 This issue was raised by several women, but especially by a 56-year-old female lecturer in Adat law explaining that the rules are very strict. Denpasar, 11 October 2012.
19 Interviews with representatives of Komunitas untuk Indonesia yang Adil dan Setara (Indonesian Society for Honesty and Equality, KIAS) and the Indonesian Legal Aid Foundation (ILAF) in Denpasar, 24 October 2012.
biasa (normal) marriage, husband and wife have the same status and property rights in relation to the marital community, which consists of property that has been acquired by the husband and wife during the marriage and which is owned jointly by the spouses. Upon divorce, a woman is entitled to half of the marriage community. However, since the Decree has not yet been converted into a provincial law (*Adat Perda Bali*), and its contents have not been widely disseminated or socially accepted, women who relied on this new rule and who filed for divorce were not awarded their share by the District Courts. If her parents are still alive, a divorcée who cannot support herself can return to her parental home with the status of an unmarried girl, which entails that she will resume her obligations towards her own family and will enjoy the same privileges that she had before marriage.

In many cases, mothers will fear that they will lose their children if they file for divorce, since according to Adat law, children born in wedlock will belong to their father’s family and courts will assign them to the father, unless they are still very small (*Windia 2010*: 136). Even if a mother gets custody of her child, it may be hard for her to maintain the child in view of her limited financial means and in many cases inadequate housing conditions. A 39-year-old divorcée explained that she had only dared to ask for a divorce from her abusive husband because she was convinced that she would get half of the marital community. However, the District Court in Denpasar did not award her her share. Although she found a job, her income is so low that she cannot afford a lawyer to appeal. Her ex-husband got custody of two of their three children; she got custody of the youngest child. She now rents one room where she lives with her child because she cannot afford better housing.

Balinese society has been changing in the last few decades due to many influences, among which are democracy, tourism, modern media, and active campaigns by NGOs. Girls participate in education, also at university level. Because of the use of birth control, many families, especially in urban areas, are small, which increases the chance that there will be no son. Many educated people—men and women alike—particularly in urban areas are aware that women are discriminated against. They struggle with the fact that women are in an inferior position as regards property rights and they think that changes are needed. However, the direct influence of women on forming or
changing Adat law is very limited because they are hugely under-represented in decision-making organs. Although there are no formal barriers, women are not represented in local decision-making bodies, and none of the village heads is female.\textsuperscript{27}

Many parents of daughters want to make arrangements for them, but it is not always easy or feasible to give daughters a part of the estate during the parents’ lifetime.\textsuperscript{28} A couple with only one daughter expressed their worry that everything they possessed and had worked for during their lives would go to the husband’s nephew after their deaths, leaving their still single daughter empty-handed. A solution would be to give her their house while they are still alive, however, this will make them legally homeless and dependent on their daughter and future son-in-law.\textsuperscript{29}

Couples who are concerned about what will happen to the wife if she becomes a widow said that they had put property acquired during their marriage in the wife’s name only.\textsuperscript{30} Several women explained that the money they had received from their parents as a wedding gift had been used to secure property in their own name.\textsuperscript{31} Two young men stated that they had urged their respective parents to give their sisters a plot of land while they were still alive since they think it is unfair that they will inherit everything and their sisters will not get anything once their parents have passed away.\textsuperscript{32}

From the interviews that were conducted the picture emerges of a community in which many members are worried about the future of their daughters, wives, and sisters. Different individual solutions are sought, but people, especially women, seem to be very hesitant to make a concerted effort to influence the existing Adat law for fear of undermining Hindu identity. Women are torn between their personal needs and worries and loyalty to their families, communities, and culture.

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56-year-old male CEO of a bank, 39-year-old female general practitioner, 17-year-old male pupil, 28 October 2012.
\textsuperscript{27} NGO representatives in Denpasar, 24 October 2012.
\textsuperscript{29} 54-year-old female lecturer and her husband in Denpasar, 23 October 2012.
\textsuperscript{30} In Denpasar, 54-year-old female lecturer, 23 October 2012; in Karangasem: 49-year-old female kitchen help, 56-year-old male CEO of a bank, 28 October 2012.
\textsuperscript{31} In Denpasar, 53-year-old business woman, 10 October 2012; in Karangasem: 51-year-old female lecturer, 52-year-old housewife, 27 October 2012.
\textsuperscript{32} In Karangasem, 17-year-old male pupil, 28 October 2012; in Denpasar, 31-year-old lecturer, 1 November 2012.
\end{flushright}
Under pressure from (women’s) NGOs and academics specialized in Adat law, the highest authority for Balinese Adat law, the General Assembly (Pasamuhan Agung) of the Supreme Assembly of the Village Council (MUDP), has adopted a Decree to change the position of women in marital and inheritance law. As has already been mentioned above, the Decree stipulates that women who are in a biasa (normal) marriage, are entitled to half of the marriage community, also after divorce. Furthermore, the Decree reiterates the existing custom that if there are no sons in a family it is possible for a daughter to marry nyentana/nyeburin, which means that the woman takes the status of patrilineal kinship, while her husband becomes part of her family and severs his ties with his blood relatives, which also includes that he no longer has the traditional responsibilities towards his own family. This construction ensures that the property will remain in the daughter’s family instead of being passed on to her father’s nephew(s) when he dies. However, when the prospective bridgroom is an only child, his family will be very reluctant to let him enter into a nyentana/nyeburin marriage. That is why a third form of marriage has been devised, the pada gelabang. This form of marriage was also sanctioned by the Pasamuhan Agung in the Decree, and it entails that both marriage partners get a double status and have rights and obligations in respect of both families.

As regards inheritance law, the Decree stipulates that both sons and daughters are entitled to the marital community of their parents. One-third of this property will be deducted and subsequently will be put under the control—not ownership—of the son who will take over the family responsibilities from the parents. The remaining two-thirds of the property will be divided in the following way: each son will get a portion or half of the estate, while each daughter will get half of the estate received by her brother(s). Obviously, this is not in conformity with the principle of equality, but it is progress that, for the first time, daughters are entitled to part of the estate of their parents according to Adat law. Since the law is relatively new and there still is no practice to speak of, parents who want to be certain that their daughter(s) will get any property rights over land and housing take the safe way out and give her (them) assets while they are still alive.

5. Suggestions for improvement and conclusions

Multicultural states that wish to accommodate the different peoples that comprise their population may see decentralization as a solution. Consequently, the regions are allowed to have their own personal law system that will prevail over certain national laws. While a community’s cultural identity is respected

33 In Denpasar, 2 October 2012, interview with Wayan Windia, professor of Adat law, who was present at the meeting of the General Assembly and who wrote an advice for the MUDP Bali.
34 Decree No 01/Kep/Psm-3/MDP Bali/X/2010, MUDP Bali, Denpasar, 15 October 2010.
35 Decree No 01, Chapter III, I (4 and 5), p. 43.
in this way, traditional customary family laws may discriminate against the women of such groups and are thus not in conformity with the state’s human rights obligations. The authorities, both at the local and central level, are responsible for the fulfilment of the human rights of the whole population, notwithstanding regional autonomy.

The example of Bali has shown that personal status law can only be maintained if the traditional laws and customs are adapted to the principles of non-discrimination and equality. Otherwise, Indonesia violates its international obligations and its responsibility towards its population. However, change should come from the inside; outsiders can inform and advise, but cultural change is only possible if the population is convinced of the need for it and is committed to it (An-Na’im 2002: 17).

There seem to be three different categories of actors who can bring about a change in Bali: the authorities in a broad sense including at the national, provincial and local level; civil society, in particular women’s NGOs and academics; and individuals. Each category has its own task and ways to influence existing laws and customs but the authorities, and particularly the central government, have a major role to play since under the human rights treaties they have taken two important legal obligations upon themselves. First, they have to ensure that all legislation is in conformity with the principle of equality and that the laws are also interpreted and applied in accordance with this principle. Second, they have to bring about a change of mentality that will lead to the abolition or modification of customs and traditions that are harmful for women. Since change must happen top-down as well as bottom-up, government officials need to recruit the help of, and work alongside, NGOs and individuals.

Legislative reform is important because a strong legal foundation is needed as a benchmark and basis for women to claim their rights. Legislative organs at all levels in Indonesia have to assess existing legislation and abolish or modify discriminatory laws. The central government in Jakarta not only has the duty to go through this process in order to reform national legislation but in addition has to make certain that the local authorities in Bali do the same. While NGOs’ task in respect of legislative reform cannot be more than that of a watchdog pointing out remaining discriminatory laws and regulations, in Bali a special role can be played by legal academics as regards the reform of Adat law. Academics who return to their kampung or birthplace as part of the social service they are supposed to perform can disseminate knowledge and give advice on how Adat law can be brought in line with human rights principles. Because they are known and respected by the population, they can have a positive influence on local lawmakers. Prof. Windia, an authority on Balinese Adat law, explained that he and his team have for instance managed to

36 Indeed, NGOs already play this part by submitting so-called ‘shadow’ reports to the treaty bodies that monitor compliance with State parties’ obligations under the human rights treaties.
convince local leaders that different forms of marriage are acceptable and that more gender equality will not lead to the downfall of Hindu identity. However, information dissemination only happens in dribs and drabs because more money is needed to organize visits and spread information on any significant scale.

In order to make certain that laws are interpreted and applied correctly, the central authorities have to inform and train the judiciary, including the elders making decisions in the Adat settlement system, about human rights obligations and recent changes in the law.

A specific problem in Bali in this respect is that District Courts sometimes fail or refuse to apply new law that would be in a woman’s favour. Particularly in cases where women are denied their part of the marital community or a share of the inheritance the consequences are dire since the decision may leave the woman penniless and unable to lodge an appeal with a higher court. The legislator could solve this problem by introducing a free-of-charge complaint system leading to a review of a District Court’s decision if it is alleged that the law has not been applied correctly.

For the second obligation, a change in societal behaviour and modification of harmful cultural habits and stereotypes, the authorities are advised to rely on and (financially) support suitable organizations and individuals, since government officials are not the best suited to influence people’s mindsets.

Culture is a very broad and dynamic concept. It determines how a society functions and encompasses aspects as different as language, religion, art forms, norms and values (Cerna and Wallace 1999: 624–5). Adat communities need to be shown that their laws and customs are not set in stone and that it is normal to adjust to societal change. Already NGO representatives who speak the local language and who know the customs visit communities to convince them, and especially the male leaders, that the unique Balinese cultural identity—expressed by ceremonies, traditional clothing, solidarity in families and communities, and art—is not endangered when some rules are modified in favour of women’s right to equality. In particular, the social reality of modern small families is used as an argument to push for changes in respect of inheritance and this is favourably received by people who wish to keep their property within their own nuclear families.

Like academics, local NGOs have made it clear that they need more money to continue and expand their work. It is important that they receive financial support from the Indonesian authorities, as accepting money from international sources would disqualify them in the eyes of the locals.

37 Prof. Wayan Windia, who is employed at Udayana University, is regarded as the most important expert on Adat law in Bali. He was interviewed in Denpasar on 2 October 2012.

38 CEDAW recommends the training of judges, including those sitting in religious courts, prosecutors, and lawyers (CEDAW 2012: para. 12).

39 NGO representatives, Denpasar, 24 October 2012.
One of the ways in which local habits could be influenced and women’s image could be boosted would be by making use of the central role that art plays in Balinese society. Next to traditional plays like the Ramayana in which the perfect woman is depicted as vulnerable and willing to sacrifice herself (Covarrubias 1973: 222), new stories, songs and dances are needed that represent modern Balinese women as persons who can look after themselves and who have responsibilities that are of equal importance to society as those that are shouldered by men. This could be realized by giving subsidies to artists who are willing to create new artistic work.

While individual women can influence culture by insisting on a modern form of marriage or raising their children in the spirit of equality, men especially are in a position to bring about change since they have more power and they attend community meetings. Most women who were interviewed described Balinese men as flexible and supportive of their wives’ and daughters’ wishes. Since also men are dissatisfied with the present situation, there is hope for the future.

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