DEVELOPMENT, LAW AND GENDER-SKEWING

An examination of the impact of development on the socio-legal position of Indonesian women, with special reference to Minangkabau

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1. Law and development

In sharp contrast to political, social and economic factors, law has remained rather under-exposed in most of the sociological and economic literature on development.[1] Yet, all planned development

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1 There seems to have been a mutual avoidance between sociologists and economists writing about development and lawyers and social scientists writing about law. According to Snyder (1980), scholars studying law have for a long time been unaware of the intimate relationship between law, society and the state. Snyder claims that this is due to a liberal and functionalist conception of law which has for a long time dominated the study of law, in which law is conceived as something independent from power and class relationships. According to Snyder, this has resulted in straightforeward implementation studies. It has been the virtue of dependency theory and underdevelopment theory to make some legal scholars aware of the importance of power relationships to the study of law. But the insights acquired by sociologists and anthropologists of law have as yet hardly come to the attention of sociologists and economists studying development. See also Long 1977, 1989 and Quarles van Ufford et al. 1988.

Quarles van Ufford (1988: 12) formulates a serious critique of the way development is usually studied. He argues that "the relationship between development organizations and their contexts [is] a two-way process." Though he recognizes in general that clients often use development organizations for different ends than the planners had in mind, Quarles van Ufford does not extend this insight to the use of

involves regulations, contracts, decision-making procedures, in short, law. Development may affect the legal position of members of target groups, for example because rights to resources such as land and labour are affected, or because regulations concerning management decisions in enterprises or obligations for the repayment of credit are involved. Development projects often seem to be based on the implicit assumption that there is a simple relationship between the law and human acton: regulations are either adhered to and therefore implemented, or not adhered to and then remain a dead letter. In fact, the relationship between law and action is far more complicated than that. Not all regulations are put into effect and not all have the same effects. Some remain completely obscure and without effect, or are partly implemented in the way they were meant to be. Others may be used in a different way or have other effects than intended, and yet others have effects that may reach far beyond the scope of the project itself. Although there is a considerable body of literature in legal anthropology and sociology of law that deals explicitly with these issues,[2] the mainstream of sociological and economic literature on development studies has in general been rather unreceptive to the insights contained in this literature (compare Snyder 1980). What is true for the study of development in general applies also to the practice of development aid.

A favourable exception is women's studies.[3] The emphasis in that literature has been on substantive rights to such economic resources as labour and especially the control of land (Stoler 1975; Hay and Wright 1982; Dunham 1983, 1985; Rogers 1980: 122ff). Rogers in particular discusses gender-discrimination in the internal organization of international development agencies and mentions in that context several regulations that encourage or support discrimination (Rogers 1980: 48ff). But even she does not raise the more general point that

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legal concepts and procedures. Legal issues remain strikingly absent in his work and that of the other authors in the same volume.

2 See for example Collier 1976; Schott 1980; Snyder 1980; Seidman 1979; Seidman and Seidman 1984; F. von Benda-Beckmann 1983; F. von Benda-Beckmann et al. 1989; Moore 1973; Griffiths 1979.

3 This is probably no coincidence. Gender-discrimination has always been closely related to legal issues. The term implies the unwarranted and fundamentally unjust use of gender as a criterium to deny women rights. Political activists in western industrialized countries are increasingly fighting discrimination with the support of legal institutions. Maybe it is because of this that in most of the studies on women in development the legal aspects have been discussed.

norms regulating the internal organization of any institution, whether international, colonial, national, local or even private, may in different ways contribute to enhance or perhaps decrease gender-discrimination. In general, references to law remain fragmented, even in women's studies dealing with development. This is in particular true for the literature on southeast Asia. In a recent volume on women's studies in Indonesia, for example, legal issues are only occasionally and marginally discussed.[4]

In this article I will try to connect several of the issues raised and discussed in women's studies with insights derived from work in legal anthropology and sociology of law and put them in a framework that allows for a more systematic analysis of the relationship between planned development, law, and gender-discrimination. This framework may help us to analyse the ways gender-discrimination takes place, or continues, increases or decreases, in the context of planned development. At a more abstract level, it may help us to analyse how the position of women may become more or less skewed in comparison to that of men in the process of planned development. Of course, the legal dimension is not the only important dimension of gender-skewing. Yet I think that it has been unduly neglected and that the full scope of gender-discrimination and gender-skewing[5] cannot be understood without taking the legal dimension seriously. Too many projects have failed to achieve their manifest objectives because of failure to understand and take into account the legal situation of the various members of the target group. The existence of indigenous law has been seriously neglected and its nature grossly misunderstood by many development planners and workers.

I shall distinguish four social settings or sets of relationships in which gender-discrimination may take place. 1) The general socio-economic and legal setting in which development plans are to bring change. 2) The institutional setting of a development programme. Usually more than one institution is involved: one or more development projects, departments of the central state administration, departments of lower levels of the state administration, and inter-

4 See Locher-Scholten and Niehof 1987. The volume dealt with images of women, but overlooked the various ways in which law reflects images of women.

5 I use the term 'gender-discrimination' here for the act of making a difference on the mere basis of difference in gender. The term 'gender-skewing' refers to the effect of an increase in discrimination: the position of women becomes less favourable relative to that of men.

national organizations giving development aid. The institutional setting consists of the internal organization of each institution and the relationships between the various institutions. 3) The interaction between development officers and their (potential) clients: members of the target group. 4) The socio-economic and legal setting outside the context of the development project that is directly or indirectly affected by the project. This fourth level parallels the first one, but at a later point in time.

1. Planned development does not take place in a social, legal and economic vacuum, but interferes in a particular historical setting in which social relationships are defined by statuses, rights and obligations. These rights, obligations and statuses may be either based on local indigenous law, national law or religious law. That is, in most countries of the third world the legal order is a plural order. The concrete interpretations of legal concepts and norms may vary according to the specific context in which interaction takes place. Development workers rarely realize that there exist different and often rivaling interpretations of such rights, especially of customary rights. Usually they adopt the interpretation derived from national law and used by (other) state institutions, without even knowing that their clients may use very different interpretations in their other social relationships. Because of the low degree of visibility of the indigenous rights and entitlements of women to land, these rights of women are more often neglected than those of men.[6]

2. Planned development usually involves setting up a (chain of) organization(s) to carry out the project, as well as vesting existing organizations with new tasks. Such organizations have their own regulations concerning decision-making procedures, authority attribution, recruitment procedures, and internal allocation of human and material resources. These regulations consist of concepts and norms which have to be interpreted in concrete interactions between officers of the organization itself but also in the interaction between officers of different organizations involved in the same programme, for example civil servants of various ministries, politicians, management officers at all intermediate levels and field agents within development projects. That is, the various institutions each constitutes a 'semi-autonomous social field' (Moore 1973), that generates its own rules, but which is mutually connected in a more encompassing 'semi-autonomous social field' of the development programme as a whole.

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6 See the contributions of Baerends and Huber in this issue of *JLP*.

Quarles van Ufford (1988) is one of the few development sociologists who has focussed on the complexities of development bureaucracies in the third world and in their relationships to the donor countries. He points to the fact that the complexities of development bureaucracies, with their many intermediate levels, at the same time bar and facilitate the flow of funds and information (1988: 17ff). Though his critique of the state of development studies for overlooking the institutional aspects of development is very relevant, even he fails to discuss the role regulations play in the organizations he is concerned with. Yet from studies of western bureaucratic organizations we know that regultations can be important in the allocation of resources and in the way clients are dealt with (Lipsky 1980).

3. Planned development involves regulations concerning the allocation of human and material resources to members of the target group: a definition of the target group, procedures that select clients, decision-making procedures, etc. These regulations involve concepts and norms that are interpreted and used in interaction between officers and (potential) clients, or between officers within the organization. As has been described by Lipsky (1980) for service bureaucracies in western societies, street-level bureaucrats play a special role as intermediaries between clients and higher levels of the organization. Officers at the lowest level of the organization are influenced on the one hand by the organization, and on the other hand by their clients. In the interaction between street-level bureaucrats and clients rules and regulations are interpreted and applied, often in a way that differs from the interpetations given at the higher levels within the organization. Since in development projects the organization typically depends on its clients for success, some clients may develop strong bargaining positions and manage to elicit interpretations of the regulations that can be quite different from the interpretations originally intended by the rule-maker and usually applied by the officers in other situations (Handelman 1979; see also Long 1989).

Not all regulations and legal concepts used in development programmes are new. In fact, most of these already exist and the project adds only what is deemed necessary to bring about the desired change. For example, most agricultural development projects build upon the existing schemes of land rights and only introduce new types of agricultural tenure if that is considered necessary for carrying out the planned agricultural change. Such changes may be relatively minor. But in large development programmes, such as land reform, a whole new scheme of land tenure may be introduced.

4. The practices of a development project may affect not only the clients but also the legal position of people not directly involved in the development project. Clients are, apart from their participation in a development project, involved in many other relationships, such as households, kingroups, villages, cooperatives, etc. Partaking in a development project often provides access to material resources, such as credit, pesticides, or sowing-seed, under conditions negotiated with or specified by the project officers. This may affect rights to management decisions within kingroups or households. The extent and form of influence is not necessarily in accordance with the aims of the planners or of the lowest level officers. We know from research on the social significance of state court decisions in a village setting, that these decisions, including the rules and norms contained in them, may be re-interpreted in the village context in a very different way from what the judge had intended (K. von Benda-Beckmann 1984: 103-148). It seems likely that similar re-interpretations occur with regard to the decisions and interpretations of development officers.

Gender-discrimination may take place in each of these four sets of relationships and sometimes in more than one. The social and legal setting in which development is supposed to bring about change may itself be skewed to the advantage of men. The regulations of the organization concerned may or may not favour men over women. The norms that regulate the relationship between development institutions and target groups may or may not be more profitable for men than for women. Finally the influence of the project may enhance or decrease an existing skewed situation. At all levels we come across ideological conceptions and stereotypes about gender roles that shape gender-discrimination. Sometimes these ideologies or stereotypes ostensibly permeate the norms and concepts themselves, sometimes they appear only in concrete interpretations. And, of course, a great deal of discrimination takes place outside the legal realm, where the norms and concepts are neutral or even favour women, but are not effectuated for external reasons.

Ideologies about gender roles have changed over time. When the great colonial wave of the 19th century started, Europe was far more male-biased than it is at present. Married women had relatively few public rights: for example, they could neither vote nor be elected to public office. In the Netherlands, married women did not obtain full legal capacity until 1957, well after Indonesia's independence. Until then Dutch married women could not freely dispose of their own bank accounts and could not enter legally enforceable contracts against the wishes of their husbands. Marital community of property, of which the husband as the head of the family could dispose, was the legal

norm. The ideal image of a woman was that of a married housewife with dependent children, staying at home and being subservient to her husband, whose income provided the sole support for the family. Conceptions of modernization did not leave much room for the economic independence of married women.

Of course, many traditional ideologies also put women in a subordinate position. Women often were not allowed to participate in public life in the same way as men, especially at ceremonial and formal political occasions. However, that does not necessarily mean that they were considered incapable or inferior as entrepreneurs. Administrative officers in the colonial period were primarily aware of elite women who remained in the background and ignored the fact that lower class and peasant women fully participated in economic life. They did not meet many of these women and simply took their own ideology for granted. The same ideology has become dominant among the elites in many non-western societies, even though in a country like Indonesia participation of women in public office is considerably higher than in the Netherlands. Many present-day development workers, government administrations and international organizations entertain similar ideas, based upon old-fashioned clichés of role patterns in developing countries. Women are considered weaker, less technically and commercially inclined, often less rational, and 'naturally' subservient to men. Men are considered the 'natural' heads of households and enterprises and more receptive to technical innovation than women. As we will see, the structure and internal procedures of development projects do not stimulate adjustments of these opinions to the advantage of women.

The following discussion will deal primarily with European colonization and present-day development projects in Indonesia, but some references will be made to other countries, mainly to show that Indonesia is not exceptional. In section 2 the expansion of the colonial state apparatus and the development of plural legal systems in colonial states will be briefly sketched. There follows in section 3 a discussion of re-interpretations of indigenous legal terms, procedures and titles, both by the colonial administration and in the context of modern development projects. Section 4 deals with the problems arising from the introduction of new, mostly western, legal concepts, procedures and rights. In section 5 decision-making procedures and channels of information within development organizations and between officers and clients, as well as the influence of these procedures and information channels on gender-discrimination are discussed. Section 6 deals with violations of state legislation in the regulations of development projects and with unintended effects

of legislation that is supposed to support the position of women. Section 7 consists of some concluding remarks.

2. The expansion of the colonial state apparatus and the establishment of a plural legal system

Planned development in most colonies did not really take off until the end of the 18th or the early 19th century, and in many African colonies not until the early 20th century. Before that time, colonial powers had been mainly interested in trading relationships. Control over crucial harbours and treaties with local rulers usually sufficed to set up profitable trading networks. In the 19th century, colonial policies changed and a beginning was made with the economic development of the hinterland. In a sense, colonial administration itself was one of the first and certainly the largest development project ever launched. The colonial development enterprise required two things: an extensive administrative apparatus and a legal system to regulate the administration internally and externally and to provide laws and regulations to govern the life of colonial citizens.

The colonial administration increasingly assumed administrative and judicial tasks on lower administrative levels which had been left alone during the mercantile period. This tendency can be observed in all colonies, although the extent to which the colonial powers tried to penetrate in the hinterland varied and the extent to which they tried to introduce their own legal and administrative system varied as well.

With the introduction of a colonial alternative to existing judicial and administrative arrangements,[7] these indigenous institutions gradually weakened. Sometimes the colonial administrations substituted traditional for new colonial offices. More often, however, they linked existing client systems, which formed the basis of most political systems at the time of colonization, to the colonial administration by investing some local heads and chiefs with colonial offices. These neo-traditional 'recognized' heads and chiefs became brokers between the small number of colonial civil servants and the indigenous

7 A sharp distinction between administrative and judicial tasks was unknown to most non-western societies. It was not drawn sharply by the colonial administration itself. Whereas in Europe different institutions developed for these tasks, many colonial administrative officers also had legislative and judicial tasks.

populations. The colonial administration generally made use of male brokers, since it was hardly conceivable that women could be rulers, chiefs or even heads of a family. The fact, for example, that in West Sumatra women could under certain circumstances be formal family representatives in property affairs (Korn 1941) was probably unknown to officials at the administrative level where decisions were made about the organization of local administration. Had it been known, it is doubtful whether these women would have been accorded a position in the colonial administration.

The incorporation of indigenous rulers and heads meant that their power basis over their subjects became broader. These changes in the authority of local rulers happened both in areas of 'direct' and of 'indirect' rule. In part a result of a shortage of colonial civil servants, such incorporation was also a continuation of common practice in Europe, which also was ruled by small elites. Whereas some local rulers and chiefs who were incorporated into the colonial system thus saw their power basis increasing, others lost authority, because they did not manage to obtain a mediating position in the colonial apparatus. Practically all indigenous functionaries, including those incorparated into the colonial administration, slowly lost their judicial taks in the course of the late 19th and early 20th centuries. In the Dutch East Indies colonial courts were set up to take over these tasks, although in practice the old institutions continued to deal with disputes and were to some extent recognized again in the 1930s.[8] The colonial courts served as alternative institutions to which people who were dissatisfied with the indigenous judicial institutions could turn. Because these courts had means of coercion quite different from those of indigenous institutions, the authority of indigenous judicial officers was challenged and weakened and the social control upon which their authority was based lost much of its compelling force, although even in Indonesia indigenous institutions often remained strong enough to make sure that most cases are brought to them before they were brought to the colonial court (K. von Benda-Beckmann 1984).

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8 In Africa traditional judicial institutions were often incorporated in the colonial judicial system, but even there at the village level traditional judicial institutions continued to operate. For a sketch of the judicial systems in Africa, see Allott 1970, and for Africa and the Dutch East Indies, Hooker 1975. See also K. von Benda-Beckmann 1984: 3ff for the capricious history of the recognition of village justice in West Sumatra.

Both colonial administrative institutions and colonial courts have in many ways contributed to the undermining of traditional legal systems and in particular to the deterioration of the rights of women, as will become clear in the following sections. Yet the courts occasionally offer some people a possibility to improve the inferior position they had according to the legal system of their own ethnic group (Lev 1962; Slaats and Portier 1981:170).

After independence, national administrations usually continued on more or less the same basis as the colonial administration. Present-day development projects are in many respects a continuation of colonial and post-independence national development projects. The similarities between national and foreign development projects in Indonesia is striking. The central administration has developed a kind of rotating system of allocating financial resources for development programmes that allows for distribution among the provinces, districts and villages. Development is organized in relatively small projects that can be strategically distributed over large areas so that every region in turn may get its share of projects. Although this system leads to a fragmentation of development funds which sometimes leads to absurd results,[9] it also reassures the local population that every area will have its turn in sharing in the limited resources. Civil servants who are involved in such projects receive extra income on top of their low regular salaries, for the duration of the project. This system is widely used for infrastructure, such as roads, harbours, etc., but also for various social projects.[10]

Although most colonies were initially taken by force, once domination had been established the instrument of domination par excellence of the colonizing powers was law, backed up by sometimes extremely harsh legal sanctions. The legal systems that existed before western

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9 The idea that Indonesia is administered by way of projects was suggested to me by Peter Bennema, who worked for 5 years in the Provincial Development Office of the Moluccas. He explained the distributive system to me and introduced me to its peculiar consequences. If one district were allowed to build a road between two villages then the next term another district would be allocated exactly the same length of road, which might end in the middle of nowhere. The Provincial Department of Social Affairs started social projects on the basis of a similar rotating funding system.

10 Education and health form perhaps an exception, because in these fields there is more permanent organization and resources flow more regularly.

colonization were not always monolithic. In fact, many societies already had plural legal systems, either because they had been subjugated and incorporated in larger political entities which had left the existing folk law partly intact, or because religious law had already been introduced. To this complex local mixture the Dutch added western law - in the case of the Dutch East Indies, Dutch law.[11] Nowadays Indonesia, like all other former colonies, has a plural legal system consisting of elements taken from western law as it existed at the time of its introduction, later developments during the colonial period, new law made by the various legislative bodies, elements taken from the various folk laws of the ethnic groups incorporated in the state and often parts of religious legal systems that have been introduced over the centuries. With the introduction of foreign aid programmes and present-day development projects, whether governmental or non-governmental, a new source of legal pluralism is being introduced. Such projects are also laid down in a legal form, in international treaties, laws, administrative regulations, terms of reference and private contracts. Very often donor countries insist on using their own law and legal concepts, international law or legal arrangements preferred by the IMF or the World Bank. Since donor countries are often not the former colonial powers, this may mean that yet another element of western law is introduced in the legal system of the receiving country (Sunaryati Hartono 1979: 36 ff, 41 ff).

New laws usually do not fully replace existing law. In some contexts the new rules dominate, but in others indigenous law continues to be used and in yet other contexts new and old regulations can both be invoked. The basic conceptions of colonial law are often incompatible with those of indigenous, local legal systems (Chanock 1978; F. and K. von Benda-Beckmann 1984; Snyder 1981; Woodman 1985). Moreover, both new and indigenous rules can be interpreted very differently

11 Some colonies changed hands in the course of time, which meant that yet another western legal system was introduced. Thus, the Philippines still have law of both Spanish and American origin. Likewise, the former German colonies taken over by France or England after World War I now have a mixture of indigenous, German and French or British colonial law upon which the post-independence legal system has been built. In the beginning of the 19th century the Dutch East Indies were ruled briefly by the British. However, this interregnum left no permanent traces in the legal system.

according to the context in which they are invoked. As a result, all former colonies have extremely complex legal systems.

3. Reinterpretations of indigenous legal terms and rights

Generally speaking, western law has affected the law of the colonized societies in two ways. In some areas the colonial administration tried to abolish large parts of local laws and custom and to replace it with colonial law, but in other areas local law was - at least nominally and to a certain extent - maintained. However, even where the colonial powers had promised to refrain from interfering with local law and custom, or tried to make regulations in accordance with local law, local law was intentionally or unintentionally remodelled. Colonial administrators, being trained in western law and being required to work in the framework of colonial administrative law, interpreted indigenous law in such a way that it became distorted, very often at the expense of the poorer members of the local population and among them especially women. Similar problems occur in present-day development projects, which often confront the local population with procedures and regulations that are at odds with existing rights of members of the target group, notably women. As a result, existing indigenous rights are redefined, transformed or pushed aside.

Changes in land rights affect the economic base of the indigenous populations perhaps most profoundly. At the same time, the colonial powers were especially interested in getting access to land and in changing traditional land rights into a system of private ownership, because they assumed that traditional land rights were an impediment to development. On the whole, western notions of law were thought essential to the realization of economic changes in the colonies.[12]

The European legal basis of land rights is private ownership and its derivatives such as various management and use rights, rights of

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12 This does not imply that economic changes in fact require legal change. Western as well as non-western legal concepts often leave much room for variation in behaviour. Contrary to what economists sometimes implicitly postulate, there are numerous examples of major economic changes taking place without concomitant legal change. For a detailed discussion of the relationship between legal and economic change in Minangkabau see F. and K von Benda-Beckmann 1984: 149-181. Compare Renner 1929.

occupation and cultivation and the right to dispose. Basically the owner is an individual person or - by extension - a legal person, although common ownership is not unknown. European legal systems make a sharp distinction between private rights on the one hand and public rights on the other. This distinction was central to the policy of the colonizing powers. Many treaties concluded with subjected rulers very clearly stated that the colonial administration assumed all public entitlements (see Fisch 1984: 6-18, 284ff, 475ff). In the eyes of the colonial administrations this included all rights to 'waste lands' (a concept entirely foreign to the indigenous legal conception, according to which the community as a whole was vested with allocation rights over such land). What the Dutch called 'waste' land was particularly interesting because it could be distributed to planters and companies, to be brought into cultivation with little cost and much profit both for the administration and the planter. Thus, the Agrarian Decree of 1870 of the Dutch East Indies contained the so-called 'Domeinverklaring', stating that the state had the exclusive right of disposal over all waste land. This declaration was highly controversial among the local population, but also among colonial administrators. Many administrators at the lowest level feared strong popular opposition to such colonial claims. In West Sumatra implementation was for a long time resisted and kept secret (Korn and van Dijk 1946: 26; F. and K.von Benda-Beckmann 1984: 163). However, eventually the Decree was implemented throughout Indonesia with more or less success. Upon independence, the national Indonesian government stepped into these rights. Even today, however, in some areas the local population claims the rights to some of the lands in question.

After independence there was some discussion of the question whether national legislation on land law should be based on indigenous conceptions or on western law. Although the discussion still regularly recurs, the protagonists of western land law have basically won the battle: The Basic Agrarian Law of 1960, although claimed to be based on adat law, in fact reflects to a great extent western legal conceptions.[13]

The introduction of western notions of communal ownership have greatly contributed to what has been described as 'the making of the Asian village', with undifferentiated communal property and strong leadership of the village heads or elders (Breman 1980, 1987; Holtzap-

13 *Undang-Undang Pokok Agraria*, Law 5 of 1960, LN 1960: 104. See, for a discussion of this law, F. von Benda-Beckmann 1979: 212. In 1974/75, this law was hardly implemented at all.

pel 1986:67 ff, 105 ff, 626 ff; F. and K. von Benda-Beckmann 1984: 149-181). The unwarranted but tenacious assumption within the colonial administration that inflexible communal rights existed that were detrimental to development still persists among development workers and in government circles alike (F. von Benda-Beckmann 1983, 1990; Snyder 1980/81; Fitzpatrick 1980). The subversion of traditional rights took place in two ways. In the first place the colonial administrations issued laws that explicitly prohibited the disposition of customary land to persons outside the customary domain.[14] In the second place colonial administrators and judges, taking western ideas of communal ownership for granted, simply assumed that the formal representatives of the community concerned, such as village heads, clan heads, or heads of households, were entitled to dispose of the communal property. They also assumed that the head of the household, family, clan or village, as its formal representative, had the exclusive rights of distribution, exploitation and management. These re-interpretations of indigenous legal concepts in terms of the absolute western notion of 'ownership'[15] have been disadvantagous for both men and women, because they favoured the- male - head of a family or larger kin-group, who thus gained economic power over their kin-groups or villages that they had not had before. But they have been in particular disdavantagous for women, because they led to a denial of internal differentiation and individualization of rights. Communal ownership in fact often meant

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14 The Ordinance Prohibiting the Alienation of Land (*Grondvervreemdingsverbod*) of 1875, *Staatsblad* 1875: 179 "prohibited the alienation of land held under adat law to members of the non-native population groups" (F. von Benda-Beckmann 1979: 211; Gautama and Hornick 1972: 83).

15 Compare Holleman's (1973: 586 ff) striking example of the differences between western notions of property and ownership and Zulu concepts. One day he was discussing the rights to a chicken bought and raised by a young wife but sold by her husband without her consent. It was explained to him that the husband owns his wife, who is as it were his child, and that he therefore owns the chicken of which she is the owner. When Holleman then summarized the explanation, asking whether it is true that the husband thus has the right to sell the chicken without her consent, this was confirmed as being the Zulu law. But when he asked for examples, the men told him that this *never* happens and that it would be like a rogue stealing from his wife. It appeared that while it is true that a husband has such a formal right, he must also always discuss such matters with his wife if he wants to live peacefully with her.

little more than that all members of the group had to agree on matters of outright sale or other forms of disposition. Such a communal right coexisted with independent rights of management, occupancy and usufruct, rights not derived from a concept of ownership but rights *sui generis*, which could be in the hands of different members, male or female. It is precisely such rights that are often neglected or not even noticed.[16]

Among the matrilineal Minangkabau, for example, the rights of members of a sub-lineage, and especially those of the older women, were undermined step by step and over a long period of time by colonial decrees and laws. The Decree of 1853 concerning the 'Certificate of Pusako-Ownership'[17] had provided for registration of immovable property in the name of the oldest living female of the descent group; after her death the names of her daughters were to be entered as new owners and heiresses (Sarolea 1928: 277; F. von Benda-Beckmann 1979: 210). Traditionally, Minangkabau women have a great deal of autonomy in matters of land cultivation, management, usufruct and distribution of the yields. The oldest woman of the kin-group holds such rights and has the greatest say in such matters. The formal representative of the group - generally a man - has no particular say in these use rights and matters of cultivation. The decree of 1853 reflected a recognition of the legal position of women,

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16 See also Dwyer 1982: 96 for similar problems with the western concept of property in Africa, and Steinbrich's article in this issue of *JLP*. Rogers (1980: 135), discussing women's rights to land, mentions John de Wilde, who "argues in fact that usufruct is not a separate category of rights but closely related to ownership, although control may not be absolute as in cases where the right-holder may not transfer the land to outsiders". I am not quite sure what he means by a 'separate category' of rights, but his argument seems to be that usufruct is a right with an 'equal legal status' as ownership and not a derivative of ownership, the difference being that ownership includes the right to transfer the land to outsiders and usufruct does not. The problem with this kind of formulation is that it involves a false comparison, since ownership over land is far from an absolute right in most western legal systems. Even in the most 'advanced' and individualistic legal systems of the western world land cannot always be freely transferred. There are, for example, severe restrictions on the transfer of farmland in Western Germany and the Netherlands.

17 *Pusako-Eigendomsakte* (*Gouvernementsbesluit* 6-3-1853, *Staatsblad* 1853: 14a).

especially the oldest women of a kin-group that owned communal property.

In 1910 the decree was amended. From then on communal land could no longer be registered in the name of the oldest living female, but in the name of the kin-group, specified by the name of its formal representative. It is clear that the administration no longer saw the oldest female but the formal representative as the bearer of communal rights. This change in the registration regulations was, however, less dramatic than it might have been, because hardly any land was registered outside the towns. Even in the 1970s, when I did research in that area, very little land had been registered outside of towns. In the 1980s the pressure on land seemed to have increased and more land has been registered.

The primary significance of such changes in the registration system lies in the way these combine with other aspects of the relationships between the administration and local populations. The change in land registration coincided with the introduction of a tax-system in which it was decreed that sub-lineages were to be the tax-paying units. The formal representative was responsible for the taxes. These regulations were part of a general policy to establish a system of communal ownership in which one person, the formal representative, would be the person with whom the administration would deal in all its capacities, as tax-collector as well as registrar of land and as provider of all kinds of what is now called extension services (F. von Benda-Beckmann 1979: 210; Sarolea 1920: 124, 1928: 273). Rather than having to turn to the oldest woman for some purposes and to the male representative for others, the administration preferred to have one male adressee for all purposes.

The courts have followed this approach. Minangkabau women have the right to manage and exploit land held by the descent group (*harato pusako*). When a dispute arises over family land, traditional village procedures require women to seek the support of the formal representative first. But if he does not act, a woman may go to the lineage head directly and request him to seek a solution. Ultimately she may invoke the village adat council, the highest institution that may deal with property disputes. However, it is impossible for a woman to sue someone for violation of her rights to such land in the state court. Since women are not formal representatives they cannot sue on behalf of their sub-lineage. They either have to convince their formal represenative to go to court or sue him for not taking sufficient care of their family land. The representative usually has no direct economic interest in the dispute, because he himself either

works on the land of his wife or on land which he has acquired personally, and he is not very eager to take the trouble to go to court (K. von Benda-Beckmann 1984: 57). In effect, women hardly have access to state courts in matters of land belonging to their descent group. Because women usually work on family land these restrictions are especially disadvantageous for them.

The Basic Agrarian Law of 1960 brought a new threat to the legal position of women in matters of family land. The law created the possibility to convert traditional land titles into individual ownership. Under this law, communal adat titles may still be registered under the name of the formal representative of the descent group. With the consent of all adult members of the descent group the representative may convert this title into individual ownership. In principle, the owner may be anybody, but in practice this often is the representative himself and is hardly ever a woman. In the 1970s many Minangkabau women categorically resisted registration of lineage land. They feared that if descent group rights were registered under the name of the formal representative only, this would be the first step towards conversion into individual ownership by the representative, in his name and without consultation or consent of the whole descent group. Such a conversion would be illegal, because the consent of all descent group members would be required for such an act. However, it would be very difficult for a registration officer to know whether all members of a descent group had been consulted and had given their consent. If such a converted right were to be sold, women would have great difficulties retrieving it from the buyer, not in the last place because the state courts are in effect barred to them, as we have seen above. Their fears should therefore not be dismissed as unduly suspicious.

Another reason for women's resistance to registration lies in the fact that the economically most important rights, such as the right to distribute the land among the descent group members and the right to cultivation and to decide which crops are to be grown, are in the eyes of administrative officials considered to be derived from (communal) ownership and therefore subject to the authority of the male representative. This may have important economic consequences. With an increasing demand for credit,[18] often encouraged by the

18 Compare Slaats and Portier 1988: For the Karo Batak area there has been a great increase in the need for cash among the agrarian population. Many people see no future for their children in agriculture and invest large sums of money in formal education. In order

state administration and development projects alike , the interpretations of the state will penetrate more and more into group-internal affairs. Banks and agricultural credit programmes require land to be given in security for loans. These institutions adopt the same interpretations of land titles as other administrators, and grant loans to the formal representatives in whose names land is registered rather than to women whose name does not appear on the registration but who may in fact have the right of cultivation. The pressure on the rural population to register land and to enter into credit relations with banks and agricultural projects is increasing. In the worst case, the primary control over the means of production provided by the project is taken out of the hands of women and either put into the hands of the family representative, or of the husband and the highest authority in internal matters concerning family land may be shifted to the husband or male representative.

Often the situation of land titles is highly complicated because men other than the lineage representative may hold rights to usufruct and cultivation. Much family land is pawned, sometimes with money of the wife, but often with money of the husband of a couple that tills the land. Whoever has paid the pawning sum, the husband, the wife or both, has the right to usufruct and cultivation. Development workers, however, usually do not enquire into actual legal entitlements and simply negotiate with men about the project. The officers of agricultural projects conduct negotiations on the conditions of loans, which often involves decisions about what crops are to be grown and whether pesticides and fertilizer are to be used. These decisions obviously affect the internal relationships of the group that owns the land. If these negotiations are conducted without consulting the oldest woman, who according to adat is entitled to make such decisions (Willinck 1909: 391; Korn 1941: 320; Tanner 1971; F. von Benda-Beckmann 1979: 84), her position will be severely undermined to the advantage of the male representative.

Not every country allows, as Indonesia does, for registration of customary land titles, be it with the distorting effects as described above. In Kenya, as in Indonesia, the colonial administration considered customary land tenure an obstacle to agricultural development. It set up a huge programme to replace customary land tenures with a system of individual ownership on the British model. The idea was that all land was to be registered and upon registration would

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to get the money, much land is being sold, pawned or given to banks in security for loans.

lose its status under customary law and be governed by statutory law, so that eventually customary tenure would cease to exist. Coldham (1978) reports that local committees were set up to see to it that customary land rights would be protected and 'translated' into British equivalents. Registration officers, however, were so exclusively interested in establishing 'ownership', that they ignored other customary rights.

As in West Sumatra, land registration may harm both men and women, but in effect women sufffer more than men. Coldham mentions of East Koguta that only 6% of all land is registered in the name of a women, although far more have customary titles. Only widows with small children have a chance to have land registered in their name. If there is an adult son, registration usually will be done in his name and the widow's rights cease to exist as far as the register is concerned. This does not necessarily mean that in practice her rights are extinguished, for the influence of the state administration is limited. However, with respect to further dealings with the administration and related institutions such as banks, her customary title does not count. The courts have by and large supported this process of substitution, be it that they have developed a legal escape in some instances.[19]

4. Introduction of new legal concepts, procedures and rights

Colonial administrations and present-day development programmes often introduce new concepts, procedures and rights, as instruments for the desired change. Such terms often carry the appearance of neutrality but have in effect a biased meaning.

Rogers (1980: 134ff) describes some of the mechanisms through which land registration programmes of the Lilongwe Land Development Programme (LLDP) in Malawi are skewed to the disadvantage of women. The officers of the Programme consider registration important because it enables 'the growers' to obtain credit based on the security of absolute ownership of land. This may look like a sensible regulation until one takes a closer look at what is meant by the term

19 Courts are sometimes willing to construe a 'customary trust', according to which the registered person is considered to hold the land in trust for the customary owner, who usually was a minor at the time of registration. Upon acquiring adulthood the 'true' owner may then claim the trust. See Coldham 1978: 108.

'growers' and how registration is organized. The project officers think of growers as men only. This is all the more surprising, since the same project has produced survey data which show clearly that, as a result of marriage patterns and of male migration, considerable numbers of actual growers are women. In order to provide security land has to be registered in the name of the 'elected family representative'. The Programme does not lay down any election procedure, but it is clear that the elected family head is to be a man, even if this man is not actually present. This is in direct contradiction to the local system of land tenure, according to which only those who are actually present and who work the land may effectuate rights to land.

The interpretation of a seemingly neutral concept with the resulting skewed position of women by the LLDP does not stand alone. Many development projects are based on the implicit assumption that men are the head of the household, the provider of the family and, if there is a family enterprise, the head and owner of this enterprise.[20] I witnessed a striking example in 1980, when a European banker, who was in charge of small credit projects in West Sumatra, expressed great dismay at the irresponsible behaviour of some of the wives of men whom he had provided with a bank loan. He complained particularly about two co-wives who had, in his view, sabotaged their husband's weaving enterprise. At the end of each day they took all the products, sold them, and kept the profits themselves, instead of leaving them to their husband to sell so that he could invest the profits in his enterprise. Had the bank not given the credit to the husband and should the husband therefore not have the right to sell his products? he asked us. We tried to convince him that it was quite possible that the husband was not the owner of the mill, for instance because it stood on the family land of one of his wives. The very thought that rights of ownership to such a means of production could be in the hands of married women was so strange to him that he refused to consider the suggestion seriously. The fact that the husband had come to the bank to ask for a loan seemed to him sufficient proof that he was the owner of the enterprise.

Dunham (1983: 147 ff) describes how a male-biased interpretation of the indigenous word for entrepreneur (*pengusaha*) leads to the exclusion of women from participation in assistance projects of the

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20 See for example Grijns 1987: 116; Dunham 1983: 148; Rogers 1980: 163, quoting Stoler 1975; Stoler 1985: 169ff; and the LLPD in Malawi mentioned above.

Department of Industry in Central Java. Only when enterprises use exclusively female labour are women selected for participation in such assistance projects. When

> family-owned enterprises using a mix of male and female labour [are concerned] women are seldom selected as project participants. This is because the Department of Industry makes the a priori assumption in every case that the father is the head of the enterprise [...] even where there is ample evidence that men and women share management decision and responsibility in family owned enterprises. (Dunham 1983: ???)

She goes on to give examples of a small credit project in ten villages of Central Java. "Seven [...] villages used a mix of male and female labour. Despite this fact, out of 129 loans granted, not a single loan was given to a woman!" Moreover, women who head households (estimated at 20% of rural Javanese households) are very rarely selected as Department of Industry project participants. Similar situations have been described all over the world where rural development projects are carried out.[21]

Such male-biased interpretations are not only found in the purely commercial sector. Recently the provincial Department of Social Affairs in the Central Moluccas started a social programme, which included setting up a number of cooperative enterprises to provide poor people with extra income, so that they would be able to send their children to school. The assumption was that these people lacked the finances and the organizational capacities to start an enterprise without governmental support. The province therefore provided a starting subsidy and a training programme for 'guides', *(pembina)*, who would manage the cooperatives. Theoretically, these guides could be men or women. However, only men were selected and trained for that job. When I discussed the matter with the secretary and asked him why this was so, he had to think a while and then said: "Women could also be a guide, but they do not think themselves fit for that job. They do not want to take such a position." It was very clear that he had in fact never thought of asking a woman to participate (K. von Benda-Beckmann 1988: 467). Some of the women in the project thought they were perfectly capable of being a guide, but indicated that they had never been asked to participate in the training.

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21 See Rogers 1980: 144,162,173, referring to examples from the Philippines, Africa, Latin America and India.

5. The practice of development projects: internal structure and information channels

There is a striking difference in the position of men and women in the information exchange networks and channels between development planners and target groups in most development projects. This difference affects the initiation, the organization and the implementation of projects alike.

Projects can be initiated in three ways: at a high administrative level, without consultation of the target group; at a high administrative levels, but after consultation at 'grassroots-level'; or at the initiative of those for whom the project ultimately is meant. In Indonesia there are still quite a lot of projects planned without any consultation at all in the area in which they will be carried out. The needs of the local population, and of women in particular, do not seem to be of much interest to many planners. But even when there is consultation with 'the field', consultation procedures are hierarchically organized and they rarely really go down to the grassroots-level. Officers from the central government consult officers at the provincial level, who consult with district officers, who may consult 'local' administrators, i.e. sub-district officers (*camat*). Foreign development projects usually are planned at the level of the central government, or at the provincial level, and very rarely with consultation of lower officers. In the implementation phase the development workers then may work closely with lower officials, but by then the general framework and terms of reference have been defined.[22]

The procedures of consultation in the planning phase are such that male officers at the higher adminstrative levels are overrepresented. Even when the village is consulted, this is mainly done with (male) village heads and very little insight in the needs and wishes of poor peasants in general and of women in particular is provided. Village heads tend to represent a male - and often an elitist - view of local society and of what they consider to be the needs of the target group of the project. This may not correspond with the interest of the people for whom the project is set up. The interests and views of the poor and especially poor womens' views tend to be underexposed.

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22 There are rare occasions in which a sub-district officer initiates a project. Development agencies compete viciously to get such projects, because they carry the aura of being initiated at the grass-roots level, with which the agencies can score politically.

There are very few projects set up at the initiative of women. Initiating a project requires a degree of organization and access to the state administration which most women and especially poorer women lack.[23] There are examples of village women who manage to start a project but they are exceptions and the intiators are women who belong to the local elite: in Hila, on the island of Ambon, for example, an active woman who was a successful entrepreneur and religious leader married to the head of the secondary school, managed on her own to obtain funds from the government and to organise the building of a womens' prayerhouse (K. von Benda-Beckmann 1988b).

In Indonesia the male dominance in governmental development projects has lately been reinforced. According to a Presidential Decree of February 1984, groups of women are no longer allowed to set up cooperatives. Afraid that a women's movement may re-emerge, the government now requires women, who in the past organized their own private coopratives, to become part of the state cooperatives (*Koperasi Unit Desa*), which are always headed by men. It has become virtually impossible for women to manage their own cooperatives. Some women have set up 'pre-cooperatives', but these organizations cannot get credit from the banks and are thus severely restricted in their income-generating capacities.[24]

Once the decision to start a project has been made, administrators and development project officers usually negotiate and make contracts only with the representatives of the concerned groups, be these villages, clans, (sub-)lineages or households, and leave it to the head to sort out what are considered 'internal' problems. As we have seen

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23 See, for accounts of attempts to develop projects for the poorest women in Sri Langkese villages, Schrijvers 1985 and Risseeuw 1980 (reports of the Research Project on Women and Development of the University of Leiden). It was extremely difficult to persuade these women to express their wishes, needs and ideas. They also lacked crucial information about legal matters. The village elite, and especially the male village head, tried every legal trick to prevent the project from being successful. It was only because the Dutch development workers had the resources and were able to obtain information about local land rights that they managed to carry through the project against the opposition of the village head.

24 I have not been able to discover the reasons given by the banks for refusing credit facilities. It might well be that such pre-cooperatives are not 'legal persons'. If that is the case, we have again stumbled on the constraining force of legal concepts.

above from the West Sumatran example, such direct interference with matters of cultivation and land management weakens the position of the oldest women of the family branch that owns communal land, unless the project officers negotiate directly with these women instead of with the formal representative.

Field-workers in Indonesia are usually men, with the exception perhaps of 'typically female' projects, such as those of the Indonesian Family Welfare Movement (*Pembinaan Kesejahteraan Keluarga*) in the sphere of home economics (hygiene, sewing, baking and cooking, etc.) and health care. Wherever technical and managerial training is required, when credit facilities are involved, when products must be marketed, i.e. when a project is not merely aimed at improving work in the household but at establishing a more professional business, field-workers are men. Dunham claims that this is true for both governmental agencies and non-government organizations (Dunham 1983: 146). My own experience in Ambon supports this finding for government projects. The social projects set up by the provincial Department of Social Affairs were all managed by men, even a widows' project in which only women participated (K. von Benda-Beckmann 1988). In Java, etiquette forbids "village women to engage in prolonged discussions or interaction with males from outside the village" (Dunham 1983: 146). On Ambon there is no such a rule, but Moluccan women are as much excluded from participation in extension services as Javanese women are.

These tendencies are not unique to Indonesia but exist throughout the Third World. The Lilongwe Land Development Programme (LLDP) in Malawi, for example, provides that boundary conflicts are to be settled by - usually male - village heads, with participation of the - male - family leaders, and ultimately by Village Planning Committees or Local Education Committees, in which women hardly participate (Rogers 1980: 134 ff).

West Sumatran adat land-tenure and conflict-management procedures at first sight seem to fit almost perfectly in this description of the LLDP. But there is one crucial difference. In West Sumatra a formal representative of a sub-lineage or a lineage head (*panghulu*) can in principle be removed when he does not act in accordance with the wishes of his (sub-)lineage members. Women, and especially the older women, have a strong voice in such matters and may effectuate such a removal. There is no procedure for deposing an elected family head in the LLDP. The check on the power of the group representative that is built into the Minangkabau adat system gives women a

leverage to influence (sub-)lineage decisions that does not exist in the LLPD land tenure and registration system.

Brokerage in development seems to be an almost exclusively male business. Most information that the project workers get about the needs of the local population for whom projects are set up, about the legal relations, about working relationships, etc., are therefore mediated through men. Negotiations about the concrete shape of the projects are also carried out by men. As a result, on most important matters only the male view is expressed (Chanock 1978). It is no wonder that projects are planned on the basis of this male-biased information.

A further consequence of the decision-making and consultation procedures is that men usually have prior information and knowledge of all sorts of extension services and inform women about the regulations, credit facilities, training in technical skills and management, marketing-assistance and other possibilities and goals of the projects. Thus they also mediate in the information from the project to the members of the target groups, often eliminating whatever female-bias might have been intended by the development planners.

Women thus become increasingly dependent on men, with respect to access to information and to project facilities. The men who are in a mediating position often are not interested in letting women have access to the resources concerned. It is very difficult for foreign experts to break through these relationships and organize their projects so that women are involved, not only at the receiving end, but at all intermediate levels as well. Many European development agencies entertain clichés about role patterns that are rarely corrected because of the structure and procedures of development projects.

6. Penetration of state legislation supportive of gender equality

The introduction of western law sometimes has improved the position of women. Under the Indonesian Constitution women have acquired full political rights and they can participate directly in public life. Compared to the Netherlands, the participation of women in public positions is high. Labour legislation providing for equal pay has meant an improvement for some women who are lucky enough to have a permanent job (see Dunham 1983: 141; Stoler 1985: 169ff; but cf. Mather 1983; Grijns 1987). Moreover, the new Marriage Law of 1974

has given a married woman more control over the decision whether her husband may marry a second wife, since her explicit consent is required for a valid second marriage. In the field of inheritance the state courts sometimes reinterpret adat law to the advantage of women. Slaats and Portier (1981: 170) describe, for example, a dispute between a Karo Batak woman and her brothers about a claim to the inheritance of their father. The brothers claimed that she had no right to inherit and could only receive part of the inheritance if given it by her brothers. The Indonesian Supreme Court decided that modern notions of equality do not allow a woman to be deprived of her right to inherit. There is no doubt that according to adat law as it was interpreted in the villages, by men as well as women, a daughter had no right to the inheritance and could only ask for a share on the basis of her need (see also Lev 1962).

The question remains whether such decisions and laws are effectuated in practice. There are many examples of court decisions and laws not being carried out in Indonesia (see K. von Benda-Beckmann 1984: 103-148; F. and K. von Benda-Beckmann 1989). We do not know, for example, whether the court decision that granted a Karo Batak daughter the right to inheritance was carried out in that particular instance. And we know even less whether that decision had any wider effect beyond the particular case brought to court. Likewise, we have little information whether the Marriage Law of 1974 has in effect given married Moslim women the power to prevent a second marriage of their husbands. It may for instance simply have resulted in an increased number of divorces and serial polygamy.

Although there have been substantial improvements for women in Indonesian labour legislation, in practice the situation is far less rosy. Of course this is not unique for development projects in Indonesia. The problems of implementing social law are endemic, both in western countries and the Third World. Mather has shown that notwithstanding labour legislation, women are systematically underpaid in the Tangeran Regency in West Java. She compared industrial wages and salaries in Kelompok and showed that women are systematically paid less then men, even though this is prohibited by the law. "Young women are paid only 70% of the wages of young men for comparable work, and they are found doing heavy work such as humping tires from place to place as well as so-called 'lighter', if boring jobs such as packing." (Mather 1983:7) The wages of the young women are so low that they are not even sufficient for their own support. Their families are encouraged to let the young women work in these industries by Islamic leaders, who make sure that the honour of the young women is guarded (1983:13ff). Parents let their daughters do

the work, because "[they] would eat in any case our rice" (1983:9). Thus, the girls' families in effect subsidize these factories.

Wolf (1988) gives a similar account of a cigarette factory which employs mainly young unmarried women who are paid such low wages that they cannot live on their salary. The wages are far below the statutory minimum wage, but there are several reasons why the factories can get away with such a practice. In the first place there is a general agreement among the factory management and the parents that it is the responsibility of the parents to provide for their unmarried daugthers. The wages are considered as a welcome extra income for these parents. However, Wolf shows that in normal times the women hardly contribute at all to the family income, but keep most of their wages to themselves. That is precisely the reason why young women like to work in the factory: it gives them the disposition over cash, which they otherwise would not have.[25]

Violating state legislation is not something that happens in private enterprises only. Grijns (1987) reports violations of labour law by a state-owned tea plantation in West Java. In general, women receive equal pay for comparable work. In this respect the labour laws are adhered to. However, "[t]he managerial staff has stipulated that family benefits, such as medical care, nursery, and kindergarten, are available only if the man works at the estate. That a woman with a regular job has her own rights to benefits for her children does not count." Menstruation leave has been abolished and paid pregnancy leave has been severely limited for the second child and is only allowed without pay for subsequent children. Moreover, legislation requiring equal pay for men and women back-fires on women, who are no longer preferred as low-wage workers; women are being replaced by men, who are thought to need the jobs more as heads of households, providers, etc. The fact that the men who are replacing women are young and unmarried does not seem to trouble the managers. What remains for women are temporary contracts with low

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25 Part of the wages are put in a savings programme. Wolf also describes how in cases of special need these savings were used to support the family and how under these circumstances larger parts of the wages were actually spent on the family. Such periods of hardship changed the relationship between daughters and parents considerably. Most parents had either been sceptical or non-committal about the jobs of their daughters, who had taken them without their parents' consent. After that period the parents had learned to appreciate the work and contribution of their daughters.

pay, few additional benefits and hardly any certainty (Grijns 1987: 114ff). Stoler (1985: 169ff) describes the same process of exclusion of women with dependent children on North Sumatran oil palm estates. Women have been encouraged or pressed to leave their permanent jobs and are now taken on flexible contracts, so that no maternity benefits and other social benefits have to be provided.[26]

7. Concluding remarks

The skewed social and legal position in which many women find themselves is very often not merely a result of the implementation of regulations and contracts but may also lie in the very concepts and norms used in the regulations that organize the projects. Even seemingly gender-neutral concepts such as 'cultivator', 'grower', 'entrepreneur', 'elected family representative' may in fact not be neutral at all but have in practice a biased meaning. Thus, the (legal) terms and the norms, both substantive and procedural, issued and used by legal institutions are distinct elements that should be part of a proper analysis of the way law may affect gender-discrimination. As we have seen, the organization of development projects may have its own skewing effect. The examples from Minangkabau and Malawi registration programmes have shown that it often is a combination of discrimination in the relationships among development officers at various levels and between development officers and potential clients, and of the effects this discrimination has outside the direct context of the project, that makes gender-discrimination particularly tenacious.

As I have illustrated with the example from Minangkabau, one important result is that some traditional land rights are no longer recognized and guaranteed, women's traditional rights to participate

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26 Interestingly enough we see closely parallel developments in western European countries, where so-called 'flexible' labour contracts are becoming very popular. There are far more women than men hired under such contracts, which lack the security of formal labour contracts governed by labour legislation. The labour market in the Netherlands is in many respects a dual market: one governed by the protection of labour legislation and one without that protection. In the latter women are disproportionally over-represented and in the former they are to be found mainly in the lowest salary scales, whereas they are severely under-represented in the higher salary scales.

in decisions are curtailed or denied and male representatives of family groups are accorded an authority they did not have before. Throughout Africa, but also in Asia, women have been and are being pushed away from the better lands situated near the settlements to peripheral and arid lands (Rogers 1980: 138ff; Boserup 1970: 59). Yet women are still mainly responsible for feeding the family; in areas of migration even more than before. Fertile, central lands are now often cultivated by men, very often young and healthy men who have not yet founded a family, who grow cash-crops with a high input of training, fertilizer and high-yielding seed varieties. This marginalization has been documented throughout the world (Boserup 1970; Rogers 1980). There is a parallel to industrial areas, where young unmarried men replace married women in the better paid, permanent jobs (Grijns 1987; Stoler 1985).

Another main result is that men have obtained a central position as brokers in development programmes and receive more aid in the form of credit facilities, advice and education than women. Women often do not directly participate in development projects and development aid and often profit only marginally. Development programmes, governmental as well as non-governmental, are primarily directed towards men, under the unexpressed - and actually wrong - assumption that they are the exclusive owners of the means of production and that they are primarily responsible for the support of the family.

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