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RURAL WOMEN'S LAND RIGHTS IN JAVA, INDONESIA: STRENGTHENED BY FAMILY LAW, BUT WEAKENED BY LAND REGISTRATION[†]

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Abstract: In Java, Indonesia, only about one-third of land title certificates reflect ownership by women. This lack of registered land ownership can potentially harm women by depriving them of influence within the household and leaving them vulnerable in cases of divorce or a spouse's death. This Article argues that effective land registration mechanisms and legal and social recognition of women's property rights all play a critical role in protecting women's ownership interests.

Interviews with landowners and government officials in Java reveal that Indonesia's land registration processes do not effectively advance ownership rights granted under the nation's family law. Despite the government's efforts to educate the public about land registration, few women are aware of the registration procedures. Field studies also indicate that confusion regarding co-ownership rights exists even among government officials.

Despite the fact that Indonesia's land registration processes do not reinforce the nation's family law, Indonesian women's property interests are not compromised. First, formal procedures for the transfer of land protect women when land is sold or divided. Second, customary Javanese practices recognize and protect the concept of marital community property. This Article concludes, however, that in other developing countries, incongruence between legal property rights and land registration systems may effectively weaken women's land ownership interests.

I. INTRODUCTION

Globally, women make up a small percentage of all landowners.¹ This is despite their high level of involvement in agricultural production and

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¹ A commonly cited United Nations estimate states that women make up one-half of the world's population and do two-thirds of the labor, but only earn 10% of the world's income and own only 1% of the world's property. *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace*, 20-21st mtg., at 8, A/CONF.94/35 (1980) (held in Copenhagen, July 14-30, 1980). This, however, is only a rough estimate. Exact figures on the percentage of land owned by women are very rarely tracked by national censuses, creating difficulty to state with any precision how much land

dependence on agriculture for their livelihoods.² Rural women, Non-Governmental Organizations (“NGOs”), policy-makers and researchers have become increasingly aware of the multiple benefits possible from granting women secure rights to land. These benefits include drastically enhanced security, increased and dependable income, the ability to access credit and government programs, and more leverage and respect within their households and communities.³ These benefits are especially important to rural women in developing countries where increases in a woman’s income and assets have been shown to directly benefit her entire household, especially the health, education, and well-being of her children.⁴ This is opposed to increases in a man’s income and assets, which do not have such a strong direct impact on overall family well-being. Providing women with secure rights to land is therefore an important component of any rural poverty alleviation program.

Why are there so few women landowners? Some poor rural women belong to households that do not own any land at all. Many rural women, however, belong to landowning households; the women themselves simply do not have any ownership interest in the household’s land. The focus of this Article is on this second group of women—rural women who live in landowning households, but who have no, or only an insecure, ownership interest in their household’s land. It is through the recognition and strengthening of women’s land rights within their households that many women worldwide can become landowners.

How can women be granted ownership over land that their household already owns? One method policy-makers have used to protect women’s property rights (including land rights) is through marriage laws that grant both husband and wife co-ownership rights over property acquired during their marriage (so-called “community property”).⁵ Women have gained

women own worldwide. While the exact percentage of land owned by women is unascertainable, it is clear that women own a much smaller fraction of the world’s land than men.

² *Id.*

³ For an extensive discussion of the benefits of secure land rights for women see CARMEN DIANA DEERE & LEÓN MAGDALENA, *EMPOWERING WOMEN: LAND AND PROPERTY RIGHTS IN LATIN AMERICA* 1-31 (2001); BINA AGARWAL, *A FIELD OF ONE’S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* 27-44 (1994).

⁴ See, e.g., INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE, *WOMEN THE KEY TO FOOD SECURITY* (1995), which synthesizes the current research on the strong association between increases in women’s income, as contrasted with men’s income, and improvements in family health and nutrition.

⁵ The concept of co-ownership of marital property was first devised as a formal legal concept in European civil law. It was created, in large part, to give stronger property rights to women in marital relationships. For a detailed discussion of community property in the United States, see GRANT S. NELSON ET AL., *CONTEMPORARY PROPERTY* 381-89 (1996). While originally a civil law concept, co-ownership by

marital property rights through community property legislation in many countries, including the Philippine Republic, Vietnam, China, and much of Latin America.⁶

However, if a woman's ownership interest in land, as granted in a country's marriage law, is not supported through the country's land law, and more specifically its land registration law, the ownership rights granted under its marriage law may very well be meaningless. This is because ownership, as granted by legislation, may not be known or understood, especially in rural areas of developing countries. In these settings, the actual name on the title or in the registration records may carry far greater significance in terms of perceptions of ownership. Thus, when property rights are granted in national legislation, they may not translate into functional landownership if the physical title or registration records do not also list women's names as co-owners.

This lack of registered ownership rights for women can harm their interests in two ways. First, because such women may not recognize themselves as landowners, the benefits of women's landownership (for example, increased leverage within the household and increased control over family income) will not fully accrue to them. Second, if a woman is not a registered owner, she may be deprived of her land ownership right through a land sale orchestrated by her husband or may be denied her share of the couple's landholding at the time of divorce or widowhood. A woman might lose her land rights through an unauthorized transfer by her husband because officials overseeing transfers, the transferee, and perhaps even the transferring household itself, may not realize that the wife is a co-owner of land who must be consulted and give her approval before land can be sold. Similarly, a woman who is not a registered owner may be deprived of her land right at the time of divorce, as her husband may view the land, which is only recorded in his name, as his exclusive possession.

spouses, or "community property" as it is often termed, has been successfully adopted in common law jurisdictions like the United States.

⁶ See, e.g., FAMILY CODE OF THE PHILIPPINES art. 75 (1987); Marriage Law of the People's Republic of China, art. 17 (2001); TRAN, *infra* note 7, citing Law on Marriage and Family, art. 27 (1986) (Vietnam); and DEERE & LEÓN, *supra* note 3, at 50-51. Several Western European countries, including Spain (where the legal concept originated), France, Germany, Italy, and the Netherlands have property systems that recognize the co-ownership of marital property. ROBERT L. MENNELL & THOMAS M. BOYKOFF, COMMUNITY PROPERTY IN A NUTSHELL 10 (2nd ed. 1988). The system has been adopted in nine of the United States: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 CASE W. RES. L. REV. 83, 183 (1994). Romania, the Czech Republic, and Bulgaria have community property provisions. Emily Stoper & Emilia Ianeva, Symposium: *The Status of Women in New Market Economies: Democratization and Women's Employment Policy in Post-Communist Bulgaria*, 12 CONN. J. INT'L L. 9 (1996).

Both of these harms have affected women in Vietnam.⁷ In Vietnam, Land Tenure Certificates (“LTCs”), documenting a household’s long-term use rights to land,⁸ were originally issued only in the name of the head of the household, which was almost always a man.⁹ This is despite the fact that such land use rights constitute the co-owned marital property of both spouses.¹⁰ One study revealed some of the problems that arose as the result of LTCs only being issued in the name of the head of household.¹¹ This study discovered cases of husbands transferring the household’s land use rights without the consent of their spouses.¹² It also uncovered cases of husbands refusing to divide co-owned land use rights at the time of divorce, claiming it was the husband’s property alone because only his name was listed on the LTC.¹³

Making it clear to both the married couple and to third parties that both husband and wife are co-owners of land will help avoid placing women in vulnerable situations where they might be deprived of their land rights. For example, the Vietnam government, recognizing that women’s rights to land were being ignored because they were not registered as owners, recently declared that all co-owned marital property must be registered in the names of both husband and wife.¹⁴

Indonesia presents an interesting case study of the impact of neglecting to register women’s formal land rights on their functional land rights. Indonesia, like Vietnam, regards property acquired during marriage as co-owned by both spouses.¹⁵ Despite this marital co-ownership law, the

⁷ TRAN THI MINH HA, PILOT STUDY REPORT: ISSUANCE OF LAND TENURE CERTIFICATES BEARING THE NAMES OF BOTH HUSBAND AND WIFE IN THE RURAL AREAS 48-49 (2002) (World Bank Gender and Law Thematic Group Innovation Grant Pilot Study Report).

⁸ In Vietnam, Land Title Certificates (“LTCs”) are issued to signify long-term secure use rights. The government began issuing LTCs in the early 1990s and now LTCs have been issued to most agricultural land. TRAN, *supra* note 7, at 12-17.

⁹ TRAN, *supra* note 7, at 29, 36 & 49, citing Circular No. 1991/2001/TT-TCDC (Vietnam).

¹⁰ *Id.* at 30, citing Law on Marriage and Family, art. 27 (1986) (Vietnam).

¹¹ This study was conducted by Tran Thi Minh Ha, *supra* note 7.

¹² *Id.* at 49-50.

¹³ *Id.* at 49.

¹⁴ All documents registering family assets, including land use rights and house ownership have to be registered with names of both husband and wife. Married couples can apply for new land tenure certificates containing both of their names. Furthermore, Vietnam has undertaken a pilot project to determine the feasibility of reissuing all Land Tenure Certificates. The purpose of this study was to review the pilot project. This study recommends that new Land Tenure Certificates be issued to married couples bearing both of their names. Government Decree No. 70/2001/ND-CP on the Implementation of the Law on Marriage and Family, art 5 (2001) (Vietnam).

¹⁵ Law No. 1/1974 on Marriage (Indon.), reprinted in DEPARTMENT OF INFORMATION, REPUBLIC OF INDONESIA, THE INDONESIAN MARRIAGE LAW 9 (1975) [hereinafter Law on Marriage].

majority of land acquired during marriage is only registered in the name of the male head of household rather than in the names of both spouses.¹⁶

This situation raises important questions. Why have so few couples in Indonesia registered their marital property under both of their names? And more importantly, what has the impact of this lack of registration of women's ownership interests been on women's ability to effectively assert their property rights? Are there cases of women being deprived of their legal land rights because of the registration system similar to the effect in Vietnam? In July 2002, the Rural Development Institute (RDI) partnered with the University of Indonesia and the National Land Agency (Badan Pertanahan Nasional ("BPN"))¹⁷ to seek answers to these questions on the Indonesian island of Java.¹⁸

This Article begins by describing women's land rights as recognized in both formal legislation and customary practices on Java. It then describes Indonesia's land registration process and the reasons that marital property is only being registered in husbands' names. Finally, this Article explores the impact of women's lack of registered ownership on their functional land ownership rights.

II. RESEARCH METHODOLOGY

This research included both desk research and field interviews. First, Indonesian laws and regulations relating to women's property rights, including the Basic Agrarian Law (1960), the Marriage Law (1974), Government Regulation No. 24 "On Land Registration" (1997), the Mortgage Law (1960), the Indonesian Civil Code, and the Compilation of Islamic Laws (compiled in 1991 and used as the basis of decision in religious courts, which have jurisdiction over family law and inheritance matters for Muslims in Indonesia) were reviewed.

Following the desk research, field studies were carried out in Central and Eastern Java. The island of Java was selected for this study because it is home to approximately 60% of Indonesia's population¹⁹ (120.4 million out of a national population of 203.4 million) and because most of the land that

¹⁶ SMERU RESEARCH INSTITUTE, AN IMPACT EVALUATION OF SYSTEMATIC LAND TITLING UNDER THE LAND ADMINISTRATION PROJECT (LAP) 32 (2002), available at <http://www.smeru.or.id>.

¹⁷ BPN is an agency of the Government of Indonesia that reports to the Office of the President.

¹⁸ These research findings were gathered during interviews conducted in Java, Indonesia between July 13-25, 2002 (notes of interviews are on file with author).

¹⁹ *Indonesian Population 203.45 Million: BPS*, JAKARTA POST, Jan. 5, 2001, available at <http://www.jakartapost.com> (providing statistics from the Central Bureau of Statistics ("BPS")).

has been registered in Indonesia is on Java.²⁰ The island is densely populated, ranging from 720 people per square kilometer in East Java to 12,685 people per square kilometer in Jakarta.²¹ By comparison, in Indonesia as a whole, the population density is 106 people per square kilometer.²² The vast majority of people on Java (especially in rural areas) identify themselves as Muslim, but most practice a blend of Islam and traditional Javanese beliefs.²³ Approximately 10% of Muslims are “santris”, who practice a more strict form of Islam.²⁴ We interviewed landowning women, men, and families in six regencies.²⁵ In total, we conducted forty-four interviews with landowning women, men, and families in seventeen villages.²⁶ We conducted the field interviews using the Rapid Rural Appraisal method, according to which interviewees are not respondents to a questionnaire, but active participants in a semi-structured interview. We used a checklist of issues as a basis for questions, but did not necessarily address all questions in each interview and sometimes departed from the basic questions to pursue interesting, unexpected, or new information. We randomly selected interviewees, except for gender considerations. We

²⁰ Anthony Burns, *Land Registration to Improve Security, Transparency, Governance & Sustainable Resource Management*, reprinted in *COMPARATIVE STUDY OF LAND ADMINISTRATION SYSTEMS—INDONESIA CASE STUDY*, 4, 22, 24 (June 2002) (compiled for the World Bank Asia Regional Workshop on Land Policy and Administration) (on file with author); SMERU RESEARCH INSTITUTE, *supra* note 16, at 1.

²¹ SALAHUDIN MUHIDIN, *THE POPULATION OF INDONESIA: REGIONAL DEMOGRAPHIC SCENARIOS USING A MULTI-REGIONAL METHOD AND MULTIPLE DATA SOURCES*, ch. 2 (2002) (Population Studies Series). The high density of population on Java is at least partially due to the island's extremely fertile volcanic soil.

²² *Id.*

²³ Overall, Indonesia is about 87% Muslim, but other religions predominate in some pockets of the country. Other major religions include Hinduism (primarily on the island of Bali, where 90% are Hindu), Buddhism (practiced primarily by the ethnic Chinese, who tend to reside in urban centers on Java and Sumatra), Catholicism (53% of East Nusa Tenggara is Catholic), and Protestant religions (60% of Papua is Protestant). UNITED NATIONS, ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, *WOMEN IN INDONESIA: A COUNTRY PROFILE 10*, U.N. Doc. ST/ESCAP/1767 (1998) [hereinafter UNITED NATIONS COMMISSION]. Field research and discussions with Indonesian academics confirmed that a high proportion of rural people in the areas researched practice a blend of Islam and Javanese customary practices. Interviews with rural farmers, in Indonesia, (July 2002) (on file with author).

²⁴ Interviews with rural farmers, *supra* note 23.

²⁵ A regency is similar to a county. We conducted interviews with landowners in: Solo (two villages, six interviews); Karanganyar (two villages, five interviews); Kabupaten Blitar (one village, four interviews); Kota Malang (four villages, ten interviews); Kabupaten Malang (six villages, eleven interviews); and Sidoarjo (two villages, eight interviews).

²⁶ We interviewed twenty-six women, who were unaccompanied by their husbands, and twelve married couples. We also conducted interviews with two women whose husbands were present, but who did not participate in the interview. Four other interviews involved male property owners unaccompanied by their wives. The majority of village interviews involved a single woman, man, or couple; however we also conducted interviews in four villages with small groups of three to five women. All of the interviewees, except one, were Muslim. Seven of the female interviewees were widowed, one was separated from her husband, and one was divorced. Another interviewee had been widowed once and divorced once.

usually interviewed two or three households in each village visited. Interviews lasted about one hour.

We also interviewed notaries and land deed-making officials ("PPATs") in some of the listed regencies, as well as several lawyers, academics and NGO representatives in the cities of Malang and Jakarta. In every regency visited, we interviewed BPN officials.

III. WOMEN'S OWNERSHIP OF LAND AS RECOGNIZED BY LAW AND CUSTOM

Indonesia's Marriage Law, along with related legislation, provides important protections of women's land and other property rights.²⁷ Specifically, the law provides significant protection for women both during marriage and at the time of widowhood or divorce.²⁸ Importantly, on the island of Java, many of these legal protections are supported and reinforced by Javanese custom.²⁹ This section discusses women's legal rights to land within marriage and after marriage ends, and describes the customary practices regarding women's land rights on Java.

A. Marital Property System

1. Marital Property Rights According to Law

A single marriage law governs all Indonesians, regardless of religion or ethnicity.³⁰ As noted above, Article 35 of the 1974 Marriage Law formally adopts the concept of co-ownership of property purchased during marriage.³¹ Property acquired by gift or inheritance and property purchased prior to marriage are the separate property of the receiving spouse.³²

Each spouse has control over his or her separate property and either spouse can dispose of the marital property, so long as the spouse acts with

²⁷ Law on Marriage, *supra* note 15; DEPARTMENT OF RELIGIOUS AFFAIRS, THE COMPILATION OF ISLAMIC LAW IN INDONESIA (1996/1997) [hereinafter COMPILATION OF ISLAMIC LAW].

²⁸ Law on Marriage, *supra* note 15, ch. VII, art. 35(1); COMPILATION OF ISLAMIC LAW, *supra* note 27, ch. XIII, arts. 96-97, at 27.

²⁹ Interviews with rural farmers, *supra* note 23.

³⁰ Clarification on the Law on Marriage of the Republic of Indonesia Number 9 of the Year 1974, pmb. (1974) (Indon.), reprinted in DEPARTMENT OF INFORMATION, REPUBLIC OF INDONESIA, THE INDONESIAN MARRIAGE LAW 33 (1975).

³¹ Law on Marriage, *supra* note 15, ch. VII, art. 35(1) ("Property acquired during marriage shall become joint property.").

³² *Id.* art. 35(2) ("Property brought in by the husband or the wife respectively and property acquired by either one of them as a gift or inheritance shall be under the respective control of either one of them, provided the parties have not decided otherwise.").

the agreement of the other spouse.³³ The law also allows married couples to execute a pre-marital agreement to create their own property regime, such as maintaining separate property, but these agreements are not common in rural Indonesia.³⁴

2. *Marital Property Rights in Practice*

Nearly everyone interviewed had a clear understanding of the concept of marital property. Respondents knew that marital property is something purchased during the marriage using income from one or both spouses, and that both spouses are owners of marital property. All respondents also understood that inherited property and property purchased before marriage are separate property. Most interviewees said that their understanding is based on Javanese tradition rather than the 1974 Marriage Law. Indeed, the Javanese language even has a longstanding word for marital property: “*gonogini*.”³⁵ Several interviewees were of the opinion that the 1974 Marriage Law simply formalized what has long been customarily practiced among the Javanese.

Most husbands and wives reported that they make decisions related to marital property (such as buying, mortgaging, selling, or using) by consensus. Husbands and wives also said they usually consult with one another before making major decisions on what to do with their separate property.

B. *Inheritance*

1. *Inheritance Rights According to Law*

Inheritance in Indonesia is governed by Islamic Law, in the case of Muslims, and by the Civil Code in the case of non-Muslims.³⁶ Because nearly the entire population of rural Java is Muslim, this analysis is limited to Islamic Law.

In Indonesia, Islamic Law has been codified in a “Compilation of Islamic Law” which is used as the basis for legal decisions made by

³³ *Id.* art. 36.

³⁴ *Id.* ch. V, art. 29 & ch. VII, art. 35; *see also* Interview with Purbadi Hardjoprajinto, SH, Family Law Attorney, in Jakarta (July 25, 2002) (on file with author).

³⁵ Interview with Aniek Agustina Astutiasih, SH, CN of the National Land Agency (BPN), in Indonesia (July 18, 2002) (on file with author).

³⁶ Indonesia Law Digest: Estates and Trusts, 2002 MARTINDALE-HUBBELL INTERNATIONAL LAW DIGEST.

religious courts.³⁷ According to Islamic law, a Muslim can bequeath up to one-third of his or her property by will.³⁸ Remaining property, or all property in the case of intestacy, is governed by Islamic succession rules. When a married person dies, half of any marital property becomes the separate property of the surviving spouse, and the other half of the marital property (the deceased's share) devolves to his or her heirs as if it were separate property per a will or intestacy rules.³⁹

The rules for dividing separate property are somewhat more complicated.⁴⁰ A widower is entitled to one-half of his wife's separate property if the couple does not have children and one-fourth if they do have children.⁴¹ A widow is entitled to one-fourth of her husband's separate property if there are no children and one-eighth if there are children.⁴² If the decedent had one daughter and no sons, the daughter is entitled to one-half of the property.⁴³ If the decedent had more than one daughter but no sons, all daughters are entitled to split two-thirds of the estate.⁴⁴ However, if the decedent had any sons, the share of any daughter and any son is figured such that each son receives a share that is twice as large as each daughter's share.⁴⁵ In general, if, after the decedent's spouse and children get their shares, there is still remaining property, such property passes to the decedent's parents and siblings.⁴⁶

Heirs can agree by consensus to ignore the intestacy rules or the provisions of a will and distribute the property among themselves however they choose, so long as each heir is aware of his or her actual rights under the Compilation of Islamic Laws.⁴⁷

³⁷ There are four types of courts in Indonesia: civil, religious, administrative and military. Mark Cammack, *Islam, Nationalism, and the State in Suharto's Indonesia*, 17 WIS. INT'L L.J. 27, 50-51 (1999) (citing The Basic Law on Judicial Power, Law No. 14, art. 10 (1970) (Indon.)). Religious courts only process family law cases (e.g., divorce and inheritance) for Muslims. In 1985, the Supreme Court, which oversees all four types of courts, issued a joint decision letter with the Department of Religion, which called for the codification of Islamic law based on previous jurisprudence. *Id.* at 57. The Compilation of Islamic Laws was completed in 1991.

³⁸ COMPILATION OF ISLAMIC LAW, *supra* note 27, ch. V, art. 195, at 54.

³⁹ *Id.* ch. XIII, art. 96, at 27-26.

⁴⁰ *See id.* ch. III, arts. 176-182, at 50-51.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ COMPILATION OF ISLAMIC LAW, *supra* note 27, ch. III, arts. 176-182, at 50-51.

⁴⁶ *Id.*

⁴⁷ *Id.* ch. III, art. 183, at 51. Once the heirs agree, they apply to BPN to transfer the land rights into their names. The heirs must submit: (1) the decedent's land title certificate (or in the case of previously unregistered land, a right-evidencing document, such as the *girik* (tax receipt) or a purchase and sale agreement, or a letter from the village leader stating that the decedent had been living on the land in good faith for twenty years); (2) the death certificate; and (3) a "letter of inheritance" listing the decedent's

2. *Inheritance Rights in Practice*

During our field research it became clear that few families follow Islamic inheritance rules. Rather, most families follow traditional Javanese inheritance customs. This is legally possible under the provision above allowing heirs to reach a consensus to divide the property in any manner they choose.⁴⁸

Customary Javanese practice is beneficial to daughters, who inherit on par with sons. Nearly everyone interviewed stated that they follow the customary Javanese tradition of granting all children equal shares of a deceased parent's property rather than following Islamic Law, which gives a larger share to sons.

Families also follow customary practices when deciding what share of property the surviving spouse will inherit. Under customary practice, a surviving spouse generally inherits all marital property and separate property if the couple's children are still young. If the children are adults and the surviving spouse is elderly, all of the decedent's property will usually pass directly to the children. It is generally understood that if the property passes to the children while one parent is still alive, the children remain responsible for caring for their surviving parent.

C. *Division of Property Upon Divorce*

1. *Property Rights Upon Divorce According to Law*

According to the Marriage Law, marital property must be divided at the time of divorce "according to the parties' respective laws," which means according to the religious, customary, or civil law that governs the spouses.⁴⁹

rightful heirs. Government Regulation on Registration, No. 24, art. 42 (1961) (Indon.) [hereinafter Regulation on Registration]. Heirs obtain the "letter of inheritance" from various institutions, depending on their ethnic and religious status. For example, Muslims go to the religious court; ethnic Indonesians who are not Muslim go to the village leader; and ethnic Chinese must go to a notary. Interviews with BPN and PPAT officials, in Solo and Kota Malang, Indonesia (July 15, 17, 2002) (on file with author). If the heirs wish to divide the property (rather than own the inherited property jointly) they must also submit an "inheritance subdivision deed: which describes how they would like the land to be divided." Regulation on Registration, *supra* note 47, art. 42(4)-(5). Notaries draft such deeds, and all heirs must be present when they are created. Interviews with notaries, in Malang, Indonesia (July 18, 2002) (on file with author). Once all of this information is submitted, BPN registers the transfer in the land book and issues new title certificates to each heir for his or her respective portion of the divided land (or one title certificate if the heirs will own the property jointly). Interviews with Officials in Solo and Kota Malang BPN offices, Indonesia (July 15, 17, 2002) (on file with author); Regulation on Registration, *supra*, art. 42.

⁴⁸ COMPILATION OF ISLAMIC LAW, *supra* note 27, ch. III, art. 183, at 51.

⁴⁹ Law on Marriage, *supra* note 15, ch. VII, art. 37.

Under Islamic Law, each spouse has the right to receive half of the marital property and each spouse retains the right to his or her separate property.⁵⁰ Divorcing couples are also free to make their own agreements regarding how to divide marital property.⁵¹

2. *Property Rights Upon Divorce in Practice*

During the field research, it was challenging to identify respondents who had actually divorced, which is not surprising since the divorce rate is fairly low—as of 1990, only 3.1% of all women in Indonesia were divorced.⁵² There are no figures regarding the level of informal spousal separation, but our impression during the field research was that informal separation is also fairly low. We were, nevertheless, able to interview several divorced or separated women. These interviews, combined with discussions with village leaders, helped us understand how marital property is divided at the time of divorce in practice in the villages we visited.

We learned that it is quite common for divorcing Javanese couples to transfer ownership of marital property to their children at the time of divorce, even if the children are still young.⁵³ If the couple does not have children, they generally split the marital property equally.⁵⁴ Divorced couples retained their separate property.⁵⁵

IV. WOMEN'S LAND OWNERSHIP IN INDONESIA UNDER LAND REGISTRATION PROCEDURES

According to law, and also to custom, Javanese women are granted rights to land acquired during marriage.⁵⁶ The question now is whether Indonesia's land legislation and registration process actively recognizes and protects these rights or whether the failure to address these rights weakens them and allows women's land rights to be infringed on, as in Vietnam.

Indonesia's land legislation broadly recognizes the importance of women's ownership of property.⁵⁷ Specifically, the Basic Agrarian Law

⁵⁰ COMPILATION OF ISLAMIC LAW, *supra* note 27, ch. XIII, arts. 96 - 97, at 27.

⁵¹ Interview with Purbadi Hardjoprajinto, SH, Family Law Attorney, in Jakarta (July 25, 2002) (on file with author).

⁵² UNITED NATIONS COMMISSION, *supra* note 23, at 19.

⁵³ Interviews with rural farmers, *supra* note 23.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*; Law on Marriage, *supra* note 15, ch. VII, art. 35.

⁵⁷ Basic Regulations on Agrarian Principles, Act No. 5 of 1960, art. 9.2 (1960) (Indon.) [hereinafter Basic Agrarian Law].

states that, "Every Indonesian Citizen, man or woman shall have equal opportunity to obtain a title of land and enjoy its benefits and its products for themselves or their family."⁵⁸ Many officials interviewed within the BPN cited to this provision of law when asked whether the registration law and procedures adequately protects women's land rights.⁵⁹

In the research, we took a closer look at the registration process to determine if, beyond this broad proclamation about gender equity, it actually does recognize and protect women's land rights as granted under the Marriage Law and complementary laws.

A. *Registration of Land in Indonesia*

Although Indonesia claims to have a title registration system, in practice it functions more like a deeds registration system.⁶⁰ Ownership rights, as listed in the land book, are not conclusive evidence of ownership, but instead serve as "strong evidence" of ownership.⁶¹ BPN issues title certificates to land owners at the time of initial registration of ownership.⁶²

BPN is responsible for registering land rights in Indonesia.⁶³ The Basic Agrarian Law of 1960 calls for the registration of all land, but progress has been slow.⁶⁴ Approximately 25% of land parcels in Indonesia have been registered.⁶⁵ The majority of registered parcels, 62%, are located on Java.⁶⁶ Currently, lands are registered in one of two ways: sporadically, in which an individual owner takes the initiative to register his or her land; or systematically, in which BPN maps and registers an entire village.⁶⁷ The systematic registration process is detailed below.⁶⁸

⁵⁸ *Id.*

⁵⁹ Interviews with BPN officials, in local land offices, Indonesia (July 2002) (on file with author).

⁶⁰ For a detailed discussion of the difference between title registration and deeds recording systems see Tim Hanstad, *Designing Land Registration Systems for Developing Countries*, 13 AM. U. INT'L L. REV. 647, 670 (1998).

⁶¹ Basic Agrarian Law, *supra* note 57, art. 19; Regulation on Registration, *supra* note 47, art. 32.

⁶² Regulation on Registration, *supra* note 47, art. 31.

⁶³ *Id.* art. 5.

⁶⁴ Basic Agrarian Law, *supra* note 57, art. 19.

⁶⁵ Out of the estimated 70 million parcels of land in Indonesia that qualify for registration, approximately 17 million have been registered. Burns, *supra* note 20.

⁶⁶ *Id.* at 24.

⁶⁷ Regulation on Registration, *supra* note 47, art. 13.

⁶⁸ The process for sporadic registration is similar to systematic registration, but is initiated by the individual owner. Another difference is that the local BPN office reviews the sufficiency of the evidence itself, rather than the Adjudication Committee. The period of public announcement is also longer in the case of sporadic registration: sixty days rather than thirty days. The application form for sporadic registration is very similar to the form used for systematic registration, and includes no indication that two or more names can be placed on the land documents. Regulation on Registration, *supra* note 47, arts. 26, 27; Interviews with BPN officials, *supra* note 59. BPN officials report that when someone seeking to

The systematic registration process is instigated by BPN and is overseen at the village level by an Adjudication Committee, which consists of several BPN officials and the mayor of the village.⁶⁹ The Adjudication Committee is responsible for certifying the validity of ownership claims, which citizens seek to register.⁷⁰

Once an area for systematic registration has been selected and approved, BPN holds "socialization" meetings in the village to inform residents of the process of registration, the fees, and the benefits.⁷¹ These meetings are held either during the day or at night, though more tend to be held at night because more people can attend in the evening after working hours.⁷² Attendance at day meetings is largely female, while attendance at evening meetings is largely male.⁷³ Village leaders and villagers told us that even those who did not attend these meetings received the necessary information via word of mouth. Because BPN is more likely to hold meetings only in the evening, when women rarely attend, few women receive first-hand information about the registration process and do not have the opportunity to ask questions at the meeting.⁷⁴ However, no one specifically cited the meeting schedule as a problem when questioned.⁷⁵

After the socialization meeting, BPN invites residents to fill out registration applications and to submit evidence of their land rights to a temporary BPN office set up in the village.⁷⁶ Supporting evidence of ownership might include the *girik* document (tax receipt), purchase and sale agreement, a letter of inheritance, or oral testimony from witnesses.⁷⁷ The application form requests the singular name of the applicant followed by a

register his or her land approaches them, they do not explain that marital property can be registered either in the name of one spouse or the names of both spouses; they simply register the land exactly as the person requested on the application form. *Id.* This is the same approach BPN takes during systematic registration. *Id.*

⁶⁹ Regulation on Registration, *supra* note 47, art. 8.

⁷⁰ *Id.* art. 24.

⁷¹ Interviews with Ir. Ibnu Wardono, SH, MM, Director of the Land Information Systems Directorate of the National Land Agency (BPN) and other BPN officials, Jakarta, Indonesia (July 2002) (on file with author).

⁷² Interviews with BPN officials, *supra* note 59.

⁷³ *Id.*

⁷⁴ *Id.*; see also Interviews with rural farmers, *supra* note 23.

⁷⁵ *Id.*

⁷⁶ Interviews with BPN officials, *supra* note 59.

⁷⁷ See, e.g., Regulation on Registration, *supra* note 47, art. 24. We learned of the specific types of evidence commonly accepted by Adjudication Committees through interviews with BPN officials. See *supra* note 71.

long line, but the form does not indicate that it is possible for the applicant to request registration in more than one name.⁷⁸

After the applicant submits the application and supporting evidence, the Adjudication Committee reviews the evidence to determine if it is sufficient.⁷⁹ If there is no documentary evidence available, an applicant can submit witness testimony that the applicant has lived on the land in good faith for at least twenty concurrent years.⁸⁰ After the Adjudication Committee has reviewed the evidence and approved the application, BPN issues a *daftar isian* (completion form).⁸¹ BPN then publicly announces the *daftar isian* and a map of the land by posting them for thirty days.⁸² If someone objects to the applicant's claim during the announcement period, the head of the Adjudication Committee must try to settle the conflict amicably.⁸³ If it cannot be solved, the Adjudication Committee suggests that the objecting party file a suit in court.⁸⁴ After the announcement period expires, BPN issues a report either approving the application or stating that it is subject to an objection.⁸⁵ Once BPN approves the application, it registers the applicant's rights in the land book and issues a title certificate.⁸⁶

B. *Registration of Women's Marital Property Rights in Land Under the Registration System*

Very few titles have been issued in the names of both husband and wife under the systematic registration process.⁸⁷ BPN began the systematic registration program in 1994, and as of 2000 it had registered 1.9 million parcels, or an estimated 3% of all parcels.⁸⁸ As of 1998, 30% of title certificates had been issued in the names of women, 65% in the names of men, and 5% in multiple names. This last category includes both married couples registering land jointly and siblings registering inherited land

⁷⁸ Copy of Registration Application Form ("Lampiran 13") obtained at BPN field office [hereinafter COPY OF REGISTRATION FORM]; Interviews with BPN officials, *supra* note 59.

⁷⁹ Regulation on Registration, *supra* note 47, arts. 23-28.

⁸⁰ *Id.* art. 24.

⁸¹ *Id.* art. 26.

⁸² *Id.*

⁸³ *Id.* art. 27.

⁸⁴ *Id.* art. 27(3).

⁸⁵ *Id.* art. 28.

⁸⁶ *Id.* arts. 30(1), 31.

⁸⁷ SMERU RESEARCH INSTITUTE, *supra* note 16, at 32.

⁸⁸ Between 1994, the year systematic registration started, and 2000, BPN registered 1,957,912 parcels through the project. Lutfi Nasoetion, Land Registration to Improve Security, Transparency, Governance and Sustainable Resource Management 21 (2002) (paper presented at World Bank Asia Regional Workshop on Land Policy and Administration).

jointly.⁸⁹ Most BPN officers interviewed during this field research estimated that 70% of land in their jurisdiction is currently being registered in the names of men, 30% in the names of women, and less than 1% is being registered in multiple names, either to husband and wife or inheriting siblings.⁹⁰ These figures are general estimates because BPN offices are not required to compile registration statistics according to gender. However, some offices have taken it upon themselves to keep such data.⁹¹ The 30% of land that is registered in a woman's name is usually land that she inherited from her family, and in some rare cases, land that she purchased with her husband.⁹²

The lack of registration in couples' names is due to several different factors, but a primary cause is the fact that most landowners are not aware that it is possible to register land in more than one person's name.⁹³ One reason for this lack of knowledge is the fact that the option is not explained to registrants at the socialization meetings meant to educate the public about the registration process.⁹⁴ BPN officials do not explain at these meetings that couples can register marital property in the names of both spouses and that BPN can issue title certificates for marital property in the names of both spouses.⁹⁵ When asked why these topics are not covered at socialization meetings, BPN officials gave several reasons. Some officials are afraid that providing information about the fact that both the husband's and the wife's names can be placed on the land title certificate is not neutral and might influence a couple's decision on how to register their land.⁹⁶ Upon further discussion, several officials who initially held this opinion agreed that merely providing information about options is probably still neutral. Also, some BPN officials believe these topics are outside the scope of the meetings. As one BPN official put it, the meetings are a forum for teaching about the process of registration and not "a venue to campaign about women's rights."⁹⁷ Furthermore, as mentioned above, the application form used for both systematic and sporadic registration does not indicate that land can be registered in more than one name.⁹⁸

⁸⁹ Government of the Republic of Indonesia, Indonesian Land Law and Tenures: Issues in Land Rights, chs. 4-22 (1997) (document prepared as part of the Land Administration Project).

⁹⁰ Interviews with BPN officials, *supra* note 59.

⁹¹ *Id.*

⁹² *Id.*; Interviews with rural farmers, *supra* note 23.

⁹³ Interviews with rural farmers, *supra* note 23.

⁹⁴ Interviews with BPN officials, *supra* note 59.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Copy of Registration Form, *supra* note 77; Interviews with BPN officials, *supra* note 59.

In addition to landowners, some BPN officials themselves are not certain that land could be registered in the names of both husband and wife.⁹⁹ Most BPN officials stated that multiple people can be listed as owners of both jointly owned marital property and also of inherited property jointly owned by siblings.¹⁰⁰ This view was confirmed through discussions with the central BPN office in Jakarta.¹⁰¹ One BPN office, however, thought that placing more than one name on a plot smaller than two hectares might violate the Government Regulation on Fixation of the Size of Agricultural Land. This Regulation provides that only one person can own a plot smaller than two hectares, except in the case of joint ownership by heirs who inherit land as a group.¹⁰² Other offices did not view this regulation as an obstacle to placing both spouses' names on title certificates to marital property.¹⁰³

This lack of education about the possibility of co-registration for married couples has resulted not only in the public not understanding it as an option, but also has led to confusion within the BPN itself.¹⁰⁴ In drafting the Registration Regulation and establishing registration operation procedures, it seems that little thought was given to how to handle co-owed marital property at the time of registration. The Registration Regulation itself is silent on the topic of how such property should be registered, though registration officials assured us that it is legal and possible to register land in the joint names of husband and wife.

This oversight highlights an important issue for policy-makers seeking to create and protect property, including land rights for women—granting women rights within family law or marriage law alone is not enough; these rights must also be taken into account when designing registration systems.

However, lack of education on registration options is only part of the equation. Regardless of the availability of co-registration for married couples, many landowners on Java stated that while both husband and wife co-own property purchased during marriage, because the husband is ultimately the head of the household, it makes sense to register land only in his name.

⁹⁹ Interviews with BPN officials, *supra* note 59.

¹⁰⁰ *Id.*

¹⁰¹ Interview with Ir. Ibnu Wardono, *supra* note 71.

¹⁰² Government Regulation in Lieu of Act No. 56 Concerning Fixation of the Size of Agricultural Land, art. 9 (1960) (Indon.).

¹⁰³ Interviews with BPN officials, *supra* note 59.

¹⁰⁴ *Id.*

V. THE IMPACT OF WOMEN'S LACK OF REGISTERED OWNERSHIP ON THEIR FUNCTIONAL LAND RIGHTS

Fortunately, at least on Java, the lack of protections within the registration process does not appear to seriously harm women's land rights.¹⁰⁵ This is the result of several factors. First, Javanese custom recognizes the concept of co-ownership of marital property and protects both spouses' rights to marital property regardless of how it is registered.¹⁰⁶ Despite the fact that marital property is most commonly registered in the husband's name alone, the general opinion is that the name on the title certificate for marital property is not an indication that one spouse is the sole owner of the property.¹⁰⁷ Women and men alike feel confident that even if only one name is on the title certificate, both spouses are owners of property purchased during the marriage.¹⁰⁸ Families made decisions regarding the use and disposal of marital property by consensus, without regard to the name in which property was held.¹⁰⁹

Furthermore, the formal legal system contains safeguards, such as requiring the consent of both spouses at the time of transfer or mortgage, that protect women's interests in marital property, even if the names of both spouses do not appear in the land register or on the land title certificate.¹¹⁰

When land is transferred or mortgaged, the PPAT must prepare a transfer deed or mortgage deed.¹¹¹ The role of the PPAT is important because the PPAT is responsible for confirming that the party wishing to sell or mortgage the land is the actual owner and checking other facts related to the transaction.¹¹² PPATs must complete special training and pass an examination to ensure that they understand their responsibilities.¹¹³

¹⁰⁵ These research findings are limited to Java, where strong customary notions of marital property rights prevail and both women and men are likely to inherit separate property from their parents. Other areas of Indonesia have other customary practices that may not protect women's land rights at the same level that they are protected on Java. Interviews with academics, in Jakarta and Malang, Indonesia (July 24, 2002) (on file with author). While our research applies to the roughly half of Indonesia's population who reside on Java, it would be useful to conduct further research on women's land rights in other areas of Indonesia to determine if further protections might be needed in national regulations to protect and enhance women's rights to land. As the systematic registration project expands to other areas of Indonesia, this additional research could be very useful in adjusting registration policies to ensure women's land rights are protected.

¹⁰⁶ Interviews with rural farmers, *supra* note 23.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Interviews with PPATs, in Solo and Malang, Indonesia (July 15-19, 2002) (on file with author).

¹¹¹ Government Regulation No. 37 on Regulation on Land Deed Making Official (1998) (Indon.).

¹¹² *See generally id.*

¹¹³ *Id.* art. 6.

To ensure that a person attempting to transfer or mortgage registered land is the actual owner, PPATs must obtain a copy of the owner's original land title certificate, and must then compare the name on the certificate against the name and photograph on the person's government-issued identification.¹¹⁴ If the land is not yet registered, the PPAT can create the transfer deed without registering the transferee's ownership; however, the PPAT cannot create a mortgage deed until the underlying ownership is registered.¹¹⁵

PPATs must also investigate whether the object of the transfer or mortgage is separate property or marital property.¹¹⁶ The PPAT does this by requiring the transacting party to state whether he or she is married, present a personal government-issued identification card containing marital status information, and present documentation of land ownership, which describes the date and manner by which the land was acquired.¹¹⁷ The PPAT must compare the date of marriage against the title certificate to determine if the land was purchased during marriage.¹¹⁸ If the land was purchased during marriage, it is marital property.¹¹⁹

The PPATs interviewed stated that they determine whether the land is marital property to avoid liability, even though there is no specific legal requirement that they make such determination.¹²⁰ However, the PPATs must use standard form deeds, which contain a safeguard that protects the interests of the non-transacting spouse.¹²¹ Specifically, the standard form deeds contain spaces requesting the signed approval of the non-transacting spouse.¹²² The space must either contain the approving signature of the non-

¹¹⁴ Interviews with PPATs, *supra* note 110.

¹¹⁵ Regulation on Registration, *supra* note 47, art. 39(1); Law No. 4 on Mortgage, art. 10 (1996) (Indon.).

¹¹⁶ Interviews with PPATs, *supra* note 110.

¹¹⁷ PPATs do not investigate the validity of identification cards presented by parties. Interviews with PPATs, *supra* note 110. When asked about cases of married persons using out-of-date or forged identification cards to transfer land without the knowledge of their spouse, no PPATs had heard that this was occurring. However, it is easy to obtain more than one identification card, and citizens must obtain a new government-issued identification card only once every ten years. *Id.* Thus, it is entirely conceivable that a married person could have an identification card stating that he or she is single. Although the Government also issues "family identification" cards to families in Indonesia, because everyone was once single, most married people remain listed on their parents' family identification card, and could use their parents' family card to demonstrate that they are single. *Id.*

¹¹⁸ *Id.*

¹¹⁹ Law on Marriage, *supra* note 15, art. 27.

¹²⁰ Interviews with PPATs, *supra* note 110; Interview with Uvic Musfirotn, SH, Family Law Attorney, in Jakarta (July 25, 2002) (on file with author).

¹²¹ Copies of standard form deed obtained from a PPAT in Solo (on file with author) [hereinafter standard form deed].

¹²² However, the PPATs do not require the non-transacting spouse to sign in the presence of the PPAT and the transacting spouse may obtain this signature at home. Interviews with PPATs, *supra* note

transacting spouse or must state that the transferee is unmarried or that the land was inherited, and therefore, separate property.¹²³ When land is sold, after the PPAT has created a transfer deed, the PPAT must file the deed with BPN within seven days.¹²⁴ At this time, BPN requires the deed to contain the signature of the non-transacting spouse, or an explanation by the PPAT regarding why such a signature is not necessary.¹²⁵

Thus, while the initial registration does not record a wife's ownership interest in marital property along with her husband's, later checks at the time that land is transferred ensure that a woman is not divested of her land rights without her knowledge and permission.¹²⁶ This is true at the time land is sold and also true at the time marital property is divided due to death or divorce. In the case of division as the result of divorce, BPN can only divide marital property in accordance with a court order, which either equitably divides the marital property between the couple or divides the property according to the couple's own agreement.¹²⁷ At the time of death, BPN must either update the registration records according to a will or a property division plan agreed upon by all parties with a legal interest in the land.¹²⁸

The requirement of spousal consent at the time of transfer acts as a de facto presumption that property is co-owned marital property.¹²⁹ The standard deed requires either the spouse's signed consent or proof that the property is not marital property.¹³⁰ This, combined with Javanese custom, protects women's land rights, even though these land rights may not be registered. Furthermore, at the time of death or divorce, women's interest in co-owned marital property is also protected by a requirement that they must consent to any property distribution that differs from the legally stipulated distribution.¹³¹

110. If the party is single or if the party acquired the land by inheritance, the PPAT simply marks the line with an "x" (although some PPATs said they usually obtain the signature of the non-transacting spouse even for transactions involving separate property).

¹²³ *Id.*

¹²⁴ Regulation on Registration, *supra* note 47, art. 40.

¹²⁵ Interviews with PPATs, *supra* note 110; Interviews with BPN Officials, *supra* note 59.

¹²⁶ See discussion *supra* Part V.

¹²⁷ Regulation on Registration, *supra* note 47, art. 55; Interviews with Purbadi Harjoprajinto & Uvie Musfirotn, SH, family law attorneys, in Jakarta (July 25, 2002) (on file with author).

¹²⁸ Compilation of Islamic Law, *supra* note 27, art. 183; Regulation on Registration, *supra* note 47, art. 42; Interviews with BPN officials, *supra* note 59.

¹²⁹ *Id.*; Standard Form Deed, *supra* note 121.

¹³⁰ *Id.*

¹³¹ COMPILATION OF ISLAMIC LAW, *supra* note 27, art. 183; Regulation on Registration, *supra* note 47, art. 55, 42; Interviews with Purbadi Harjoprajinto & Uvie Musfirotn, *supra* note 127; Interviews with BPN officials, *supra* note 59.

VI. CONCLUSION

Javanese women's land rights are not compromised, despite the fact that land registration in Indonesia does not reinforce and complement marital land rights granted to Indonesian women under the Marriage Law. Two factors account for this difference. First, the formal land transfer procedures, which require wives' signed consent or evidence of the land's separate property status, act as a *de facto* presumption that property belonging to a married person is community property. This is regardless of whether or not the land is registered in both the husband's and the wife's names. Second, Javanese customary practices recognize and protect the concept of marital community property.

Other countries, such as Vietnam, do not have these two checks. Thus, even if a woman is legally recognized as a co-owner, she may not be a functional landowner. Because she is not a registered owner and because there are no checks at the time land is transferred to ensure that unregistered co-owners are informed of transactions, she does not enjoy secure ownership rights.

This study did not find that Java women were harmed by the incongruence between rights granted under family law and under the country's registration system. However, similar inconsistencies may undercut the land ownership rights of non-Javanese women in other developing countries, where the formal rule of law is weaker and where customary traditions do not recognize women's marital property rights. In these settings, it is imperative to ensure that women's land rights are reinforced and supported at the village level, through land rights documents and registration records that clearly recognize a woman's co-ownership interest. A system ensuring that a woman's name appears on ownership documents for community property would be the ideal system, because it would not only protect women's land rights at the time of transfer or divorce, but would also ensure that a woman understands that she has a present ownership interest in the land.

In some countries, it is cost-prohibitive to require the names of both spouses on registration documents. One option is for countries to adopt a system that is similar to Indonesia's, whereby land is presumed to be co-owned marital property if the owner is married.

A land registration system that accurately reflects land rights granted to women in family law legislation will ensure that women's legal ownership interests in their households' land are recognized and protected. Simply declaring women to be landowners of household land in national

legislation is not enough. These high-level policy decisions must be reinforced at the ground level through the implementation of appropriate registration systems that effectively communicate to both women and men that women are indeed genuine owners of land.

