PEASANT WOMEN AND ACCESS TO LAND
CUSTOMARY LAW, STATE LAW AND GENDER-BASED IDEOLOGY
The Case of the Toba-Batak (North Sumatra)

Indira Juditka Simbolon
STELLINGEN

1. The promotion of the principle of gender equality into the Toba-Batak rigid, patrilineally-based society is to be seen in the wider process of the "de-sacralization of adat". (this thesis, chapter 2)

2. With the inception of western influence in the Batakland through German missionary work and Dutch colonialism, the western idea of asserting stronger (customary) rights to land through tilling and actively exploiting it has come to dominate. This idea ignores the fact that customary land tenure involves a rather different temporal conception of land use in that maximizing land use also means preserving it for future generations. (this thesis, chapter 2)

3. People are subjected to law through their own construction of belief in a myth of law's authority. (Peter Fitzpatrick 1992; this thesis)

4. **Ijuk di para-para**
   **Hotang di parlabian**
   **Na bisuk nampuna hata**
   **Na oto tu pargadisan** (Toba-Batak maxim)

5. It seems that the state agencies' strategy of transforming disputes about land rights into criminal cases where local people become associated with a criminal act as (flexibly) defined by the state, has been rather successful in subduing the peasant's struggle. (this thesis, chapter 5).

6. The multifold function attributed to land is, perhaps, the most important factor in explaining the attitude of Toba-Batak peasant women when it comes to deciding whether or not they should strive for land in inter-familial relations. (this thesis, chapter 6).

7. In the Netherlands, too much paper is wasted everyday to produce booklets and folders to advertise what cheaper things are available in the shops.

8. In many cases of the taking of people's communal land by the state and private investors, there is a tendency to criminalizing the victims rather than victimizing the criminals. (this thesis, chapter 5)

9. Fieldwork is time-specific but its moment is one episodic period in a longer stream of time. (Moore 1993; this thesis)

10. The most annoying experience I have ever had during my study in the Netherlands is that I lost two bicycles.

Indira J. Simbolon
Wageningen, 3 June 1998
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Indira Juditka Simbolon

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The Case of the Toba-Batak (North Sumatra)

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To
Ardina boru Rajagukguk
My grandmother

For
Gracia and Gloria Samosir
My beloved daughters
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During a Toba-Batak traditional feast, a feast giver is always required to acknowledge all those who have partaken, whether or not they are present. This is performed through parjambaran, which includes publicly distributing the right parts of the slaughtered beast, the right amounts of cash, the right types of traditional cloth or ulos and the right words, all to the right persons. Failure to carry out this requirement may result in great disappointment for the feast giver and partakers alike and the feast eventually loses its ultimate significance. Therefore, the distribution of parjambaran makes up the most important yet difficult part of a Batak traditional feast. A feast giver should carefully make due acknowledgement, publicly, of all the partakers and apologize, also publicly, for being unable to individually mention all the feast partakers. Because of the importance of acknowledgement, the feast giver pleads with all the partakers to treat the distributed parjambaran as being symbolically complete, 'rambu pinudun', that all names have been called, "Ai ingkon sude do digorai". This results in all the partakers happily saying that everything has been properly distributed, "Ai naung sahat ma i!".

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***
CHAPTER 1
GENERAL INTRODUCTION

1.0. INTRODUCTION

This study is about opportunities, constraints and strategies regarding access to land of peasant women who live in the changing Toba-Batak patrilineal community of North Sumatra. Their access to land is seen in the wider context of the pressure of land scarcity due to the individualization, statization and privatization of communal land. Studies on Toba-Batak (peasant) access rights to land usually emphasize the normative content of society's institutional and cultural frameworks but neglect the cognitive aspects and actual life situations in which these may become relevant (Ypes 1932; Nasoetion 1946; Vergouwen 1964; Eijkemans 1995). As a result, a Toba-Batak woman's access to land is often seen only from a normative point of view in that according to Toba-Batak customary law, a woman cannot inherit land (Bemmelen 1989; Rodenburg 1993 and 1997). This neglects the fact that inheritance is not the only way for peasant women to have access rights to land; that Toba-Batak customary law is not the only "guide" that determines how one gains access rights to land; and that the constraints on peasant women in getting access to land are not attributed (only) to peasant men, or to the rule of patrilineality, but also to the practices whereby the nation state implements its legal and developmental policy.

The importance of land in general is closely connected to the Toba-Batak conceptualisation of the ultimate goal in life which is defined by the terms: hamoraon, hagabeon, hasangapon, meaning "prosperous, blessed with descendants and honoured". Such a conceptualisation reflects the cosmological ideal of a proper and satisfying life. This denotes the importance of the ideology underlying people's behaviours, conduct and practices. Hamoraon reflects the idea of abundant material conditions in one's actual life. According to Toba-Batak thinking, hamoraon should be reflected by one's actual material conditions: wealth and prosperity that ultimately manifest in the abundance of land. Batak old songs and maxims always equate hamoraon with land and landed property. Since my childhood, I have heard the musical Toba-Batak people singing verses about the state of wealth and prosperity related to land: "...gok disi hansang, nang eme nang bawang rarak do pinahan di dolok i" (where plentiful groundnuts, rice and shallots grow and where numerous cattle breed on the hill). Even the lyrics of contemporary Toba-Batak pop songs often make a parallel between poverty and the lack of availability of rice fields. During my frequent travels by public transport back and forth to Medan-Tarutung for this study, I often heard the lament about poverty sung by famous Toba-Batak pop singers.
coming over the too-loud tape-recorder: "Ndang na mora hita hasian, manang parhauma na bidang... Mate amangmi so martining hasian, da hauma si satopak i amang!" (We are not rich, my son, nor do we have a huge rice field... Your father died without leaving any inheritance behind, but a small plot of rice field!).

In the Toba-Batak conception, the maintenance and perpetuation of wealth and prosperity should be passed on to following generations. Thus, the notion of hagabeon is an equally crucial determinant of the completeness of one's ultimate goal in life. Hagabeon is a condition where one is blessed with off-spring and, subsequently, a network of kin. I attended many Toba-Batak wedding feasts where the newly married couple was blessed with the words: "Bintang na rumiris, ombun na sumorop; Anak pe riris, boru pe antong torop!" meaning: "The stars twinkle above, and the mist covers the meadow; Blessed with numerous sons, and a myriad of daughters". Or, take another commonly expressed maxim: "Laklek ni singkoru na gantung diginjang pintu; Maranak sampulu tolu, marboru sampulu pintu!" meaning: "The husk of singkoru is hung over the door; May the couple be blessed with thirteen sons and seventeen daughters!" A wealthy and prosperous individual who has many off-spring and an extensive network of kin is considered an honourable person. Thus, hasangapon as the ultimate goal in life carries the idea of honour which derives from the accumulation of wealth in the abundance of land and the perpetuation of the landed property through the wide network of kin.

The hamoraon, hagabeon, hasangapon notion, which is most often pronounced by men on various adat occasions and at public meetings, may have a gender-specific message to Toba-Batak men and women. Under the patrilineal propensity of the Toba-Batak kinship system, the emphasis rendered to men and women may differ since women's membership in the kinship system is ambiguous. As Niessen (1985-:75) aptly puts it, "...she is situated between hula-hula (wife-giving group/ marga) and boru (wife-taking group/marga), she is associated with both, and an absolute member of neither". Since Toba-Batak history and genealogical charts are traced only through the male line, it is likely that such a life conceptualisation is more meaningful for Toba-Batak men than women. Wives and female descendants may not be registered in the genealogical charts. This has two consequences: first, that while a Toba-Batak woman may know her natal clan relations, detailed knowledge of descent tradition is specifically a male preoccupation and responsibility. Secondly, from his childhood, a Toba-Batak man is made aware that he belongs to his father's clan, marga, and that the above notion is to be applied to that clan. A woman, on the other hand, unlike a Toba-Batak man, is to associate herself to two clans in different stages of her life: that of her father during her girlhood, and of her husband during her wifehood. In short, symbolically the conceptualisation of life as a whole is pertinent to men, while only the hamoraon and hagabeon aspects of it are applicable to women.

Lastly, socio-economic and political changes have given new meaning to the Toba-Batak conceptualisation of life. Both the sources and symbols of hamoraon, hagabeon, hasangapon have changed over time. Ideas about what was considered hasangapon, hamoraon, hagabeon in the past may not be appropriate now. On the other hand,
they may be reconfirmed and reinvented over time\(^1\). In the early days, the most prominent symbols associated with these concepts were land, off-spring and extended relationships. When land was abundant, clearing a forest and setting up a new village or *huta* was most honoured since the one who did it was considered a *raja huta* and his patriline descendants would assume the status of proprietorship. A father would clear a plot of land, *mamburburi*, starting a new rice field exactly eight days after a boy had been born. Clearing land for a newly born boy was considered an act of responsibility of a father to his male descendants. Thus, the increased number of off-spring would automatically be followed by the expansion of *marga*’s territory. Newly-wed couples would be given the same plot of rice field, *panjaaen*, by the man’s father to start an independent household, *manjae*. The *panjaaen* was a proclamation that the newly-weds had become a fully responsible couple before the *adat*. A married woman may be given a plot of rice field by her father if she asks for it, *pauseang*. This gift symbolizes "honour" on her father’s part because he is able to share his wealth with another clan group or *marga* to which his daughter now belongs. Simultaneously, the relationship between the two clans is strengthened by the *pauseang* land, and at times it reminds both clans of maintaining the marriage pattern for future generations\(^2\). In recent times, however, circumstances have not allowed the traditional practices of endowing *panjaaen* and *pauseang* land to take place without complication. Land shortage, population growth and the increasing need of land for various development projects have become a constraint on the continuity of customary land relationships.

Thus, I investigate how the contemporary Toba-Batak give new meaning to the long-standing notion of *hamoraon*, *hagabeon* and *hasangapon* in relation to their access rights to land. In the context of Indonesian pluralistic society, the rapid process of economic development resulting in various forms of imbalances, and attempts to create a politically stable state, it is of interest to know how the contemporary Toba-Batak negotiate, conform to, challenge, contest, resist, reject and redefine any imposed values and meanings on men’s and women’s access rights to land.

As a subject of inquiry, the Toba-Batak has been of interest to many. However, manuscripts written by ordinary women on Toba-Batak life and culture are not known. Confirming the idea that knowledge of descent tradition is specifically a male pre-occupation, a great deal of written material on Toba-Batak life and culture is provided by ordinary Toba-Batak men in their appreciation to Toba-Batak *adat* (Lumbantobing 1899; Hoetagaloeng 1926; Mangaraja Salomo 1938; Hutagalung 1961; Tampubolon 1960 and 1964). This explains why Niessen calls the abundance of materials on Toba-Batak social and political organization pertaining to the kinship system and the written and magical arts a "male domain of culture" (1985:8). Some scholarly

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\(^1\)Harahap and Siahaan (1987) have done valuable research on the changing values of contemporary Toba-Batak society in which they confront the validity of the long standing notion of *hamoraon*, *hagabeon* and *hasangapon*.

\(^2\)For details on the Toba-Batak’s rules and pattern of marriage see Niessen (1985:89-91).
materials have been produced by Batak anthropologists and sociologists (Nasoetion 1943; Tobing 1956; Ihromi 1963, 1994; Harahap and Siahaan 1987; Simanjuntak 1983, 1995), or Batak Christian theologians (Lumbantobing 1992; Hutauruk 1980; Aritonang 1989/1994), or Batak Christian theologians who are doing anthropological studies on Batak societies (e.g., Sinaga 1981).

Westerners writing about Toba-Bataks come from three different arenas: Protestant mission, Dutch administration and western scholars. Earlier studies on Toba-Batak adat were conducted by German missionaries (Warneck 1909) and Dutch colonial administrators and scholars (Joustra 1910; Voorhoeve 1927; Ypes 1933; Vergouwen 1933/1964; Loeb 1933, 1935; Korn 1953; Keuning 1958). In post-colonial time western scholars have continued to contribute to the study. They include theologians (Pedersen 1970; Schreiner 1972; Parkin 1975 and 1978 and Nyhus 1987) and other scholars (Bemmelen 1986, 1989, 1992; Bovill 1987; Brunner 1961; Castles 1972; Cunningham 1958; Eijkemans 1995; Lando 1979; Sherman 1982, 1990; Niessen 1985; Rodenburg 1993/1997; Viner 1979).

However, very few studies on Toba-Batak women are available, and even fewer take into account the dynamics of macro and contemporary socio-political and economic changes. Bemmelen (1982, 1986a and 1992) has done a historical study of educated Toba-Batak women and the changing pattern of partner choice among the elites during the colonial period. She demonstrates how women's access to education shaped and was influenced by the formation of the new Batak elites. Although her archival study is of great importance, the current situation of Toba-Batak women has drastically changed so that it now requires interdisciplinary explanations. Rodenburg (1993/1997) has provided a highly valuable look at Toba-Batak peasant women who stay behind in the contemporary migration process. She describes the roles played by Toba-Batak women in the home village in activating the process of male-migration. Yet little attention is paid to developing a macro analysis that goes beyond the description of the micro-level phenomena. Another attempt to study the issue of inheritance and equal rights for Toba-Batak women is the legal anthropological approach taken by Ihromi (1994), but it is restricted to the situation of Batak migrants in urban areas, especially in Java, beyond the Toba-Batak ancestral villages.

While over the past thirty years land problems and disputes involving the state and private investors among the Toba-Batak have notably increased in number, socio-legal studies concerning contemporary land rights, especially of women in the changing Toba-Batak rural society, are clearly absent. Thus, this research contributes to both socio-legal studies of contemporary Toba-Batak rural society and gender studies concerning access rights to land. The objectives are the following:

1. To show how different normative and institutional frameworks order the allocation of land resources;
2. To understand how colonial, religious, state, economic and political frame works affect women, by underpinning local patterns of inequality;
3. To assess the possibilities for differential access rights to land by peasant women/men.
1.1. STATEMENT OF PROBLEM

Land in general is crucial for the Toba-Batak people of North Sumatra, of whom 70% are peasants, because their livelihood has been centred mainly around rice farming activity and the agricultural cycle (cf., Eijkemans 1995; Sherman 1982; Situmorang 1993). Rice farming has been the most important economic activity since before the colonial period, and their relation to land has long been closely linked to the patrilineal kinship system. It is the patrilineal group, the marga, whose ancestors initially cleared the areas, which now exercises different degrees of control in the allocation and usage of different types of land. Originally, and when land was still abundant, the ways for a Toba-Batak man to acquire land were through clearing of an empty area, exchange or, most commonly, through inheritance. For a woman, as will be elaborated, it was through her association with men.

With political, ideological and economic changes, the significance of the traditional patrilineage authority is gradually declining, affecting its function in both land allocation and dispute settlements. The new sources of power among the elites have changed – from merely kinship-and-land centred to that of more knowledge-and-capital centred. Besides the traditional authority (adat), there is religious authority (church leadership) and state-related authority (initially the educated Bataks representing the Dutch administration in Tapanuli in the colonial period, and later, the Bataks representing the post-colonial state at various levels). The same person may hold more than one form of authority to legitimize and strengthen their position; sometimes those in authority maintain a distance from each other, quite often they are in conflict with each other.

Since Toba-Batak is a double category based on patriliny as well as regional boundaries, the Toba-Batak elite includes those living in cities outside the ancestral villages who are economically and politically influential in making local decision making concerning the adat, church and state authority. Their social identity is constructed not only through their position in the kinship hierarchy, but also through "social/economic achievement" which may be used in gaining access rights to land. Because of their shared economic and political interests with those of the government, they often serve as mediators in releasing local people's land for government or private companies\(^3\). The presence of these successful urban elites in the village is accepted with pride and envy. From the Toba-Batak point of view, being a peasant is not at all desirable because it equates with being backward, poor, uneducated, defeated and unlucky. With the introduction of formal education in colonial time followed by modernisation and economic changes under the national development banner, access rights to land is no longer seen as the only important power resource. In addition to access to capital and labour, access to non-material goods such as

\(^3\) Similar situations exist in many developing countries. For Cameroon, see Fisly (1992).
information, knowledge, education and association with the elites is becoming more important. Thus staying in a rural area and tilling the land is no longer appealing.

This explains why Toba-Batak male migration to find a job, engage in trade or further education has taken place since colonial time (Cunningham 1958; Rodenburg 1993/1997). In the last decades, uneven national economic development between rural and urban areas and between regions has become one of the most determining factors of migration. Migration has been a means for upward mobility, an opportunity which is mostly given to and taken by Toba-Batak men. Due to economic limitations, male education is preferred because education is financed primarily by patrilineage rice fields. Male migration is further encouraged by the fact that a Toba-Batak man is guaranteed the rights to land even if he is temporarily or permanently absent from the village. In this case, a woman is usually given access to the neglected farmland by her departing kinsman because she is expected to support them, especially in the initial period of migration. Migrating kinsmen are thus assured that under no circumstances will the woman claim ownership rights over the land.

For most Toba-Batak peasants who do not join the migration process, land will continue to be the most valuable form of wealth in more than one sense (cf., Rodenburg 1997). Those peasants who cannot be fully absorbed by other sectors of the economy continue to consider land or land-based resources as the only and the most reliable means of obtaining or sustaining a basic livelihood. As individualised farmland becomes scarce and clearing new plots is no longer unrestrained, the process of communal land expropriation by private companies is rapidly taking place. Government permits and licenses granted to private companies to exploit massive plots of communal land have caused dissension among Toba-Batak peasant communities. Local peoples' rights are overlooked; peoples' consent is ignored; the customary procedure for acquiring land is manipulated; and intimidation by different state functionaries takes place while ecological destruction occurs. The immediate impact on women is that their access rights to communal land as recognized by the adat, such as rights to cattle grazing; collecting of firewood, wild fruits and herbs; and rights to water are declining.

Conflicts between local state authorities and adat leaders have increased over the question who is the appropriate authority to decide whether or not communal land can be expropriated for private companies. Not surprisingly, people overtly or covertly resist the loss of their land-based resources (cf. Scott 1985). The most overt resistance usually comes from peasant women. During conflicts, different actors - local authorities, the company, peasant men and women - use law as "a weapon in

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4Cunningham (1958:42) remarks: "As a result of ... geographical mobility among the males, there is a striking contrast in degree of cosmopolitanism between the Batak man and woman. The men have a geographical knowledge far greater than that of their wives.... They know that there are different and even better ways of doing things than are found in Batakland".

5This is a worldwide phenomenon. Agarwal (1994a, 1994b) draws a similar conclusion regarding the impact of the process of 'privatization and statization' of communal land on women in many South Asian countries.
social conflict" (Turk 1978) by going "norm shopping and forum shopping" (Benda-Beckmann 1981), as well as making use of all possible non-legal and illegal means. The state with its administrative and institutional networks, together with legitimized coercive authority and the "state monopoly of violence" (Benda-Beckmann 1990) assumes normative and institutional control over land allocation in the area. Indeed, for governments and political rulers, control over land and its diminishing resources will continue to provide the most effective leverage in the governance of people (cf., Benda-Beckmann, forthcoming; Goheen and Shipton 1992).

1.2. THEORETICAL CONSIDERATIONS

In general, research on peasant women's access rights to land in developing countries has had to contend with at least three theoretical problems. First, there is doubt about the adequacy of feminist theories in handling cross-cultural aspects of power and gender relation problems in less differentiated societies. The relevance of kinship to access to land in less differentiated societies as opposed to that of western societies has instigated a critical look at kinship relations. It is widely regarded as a broader system of inequality in which gender is a key dimension (Collier and Rosaldo 1981:276; Ortner and Whitehead 1981) rather than simply as an aspect of political economy (Meillassoux 1981; Terray 1972). Thus, many anthropologists blame the command of culture for being a hindrance to women's equality. In this regard, Schrijvers (1986: 79-92) criticizes the use of "culture as camouflage" to legitimate the subordination and exploitation of women. On the other hand, and responding to the influence that cultural difference may have on anthropological research, Moore (1988:2) challenges the extent to which feminist anthropologists face the problem of the bias inherent in western culture. According to her, feminist anthropologists assume asymmetrical relations between men and women in other cultures to be analogous to their own cultural experience of the unequal and hierarchical nature of gender relations. Others (Rogers 1975; Leacock 1978: 247-248; Dwyer 1978:229) have also been critical of those who interpret difference and asymmetry as inequality and hierarchy.

Secondly, there is doubt about the adequacy of peasantry theories to deal with peasant women. As some have argued (Bernstein 1990; Li 1992; Zarkov 1991), most theories on peasantry are generally limited in their understanding and interpretation of peasant society while their theoretical interests hardly take peasant women into consideration. Raymond Firth (1951) provides an analytical definition of the peasantry as an economic category. He defines peasants as "small scale producers using simple (non-industrial) technology equipment. Their economy is subsistence, relying for consumption mainly on what they themselves produce" (Firth 1951:503). Peasant societies are determined by a complex system of economic, social and cultural relations in which the subsystems of "productive sphere" and "social relations" are very closely interlinked. In this sense, Polanyi (1977) described a peasant society as
embedded economy. Shanin (1971) has formulated the conception of peasantry as a specific social entity, constituting four essential aspects, namely: a) the family farm as a basic unit of multidimensional social organization; b) land husbandry as the main means of livelihood directly providing the major consumption needs; c) a specific traditional culture related to the way of life of small communities; d) an underdog position because of external domination.

The work of Scott (1976, 1977, 1985, 1988) on the economy and society of peasants living under external domination have not gone unchallenged. Hart (1991) and Agarwal (1994b) draw attention to his ungendered mode of analysis. Hart (1991:117) argues that a gendered analysis raises doubts about some of the central assumptions which inform Scott's work, particularly "the process through which class identity is produced or undermined". Indeed, Scott's (1985) field study in Southeast Asia particularly looks into how the poor peasants resist, even under the most oppressive conditions. Their various forms of resistance—passive non-compliance, subtle sabotage, evasion and deception—create a symbolic meaning of peasant resistance, challenging the assumption that the poor are victims of false consciousness. The "everyday forms of peasant resistance", according to Scott, have both material and symbolic manifestations: they are part of a struggle over both resources and meanings. As a criticism of Scott's elaboration of the "everyday forms of peasant resistance", Agarwal (1994b:83) notes that Scott "fails to ask how gender might interact with class (or other forms of social hierarchy) in specific ways, and to determine the forms that resistance to it might take."

Thirdly, there is doubt about the adequacy of legal theories in understanding the complexity of plural normative orderings in developing countries. This has been a major critique levied against the positivist and utilitarian conception of law which claims that "state law" is the (only) law and other normative orderings are subservient to it. The positivist thinking expresses itself ultimately in the notion of the "state based on the rule of law". Indeed, there are two practical problems concerning the notion of the rule of law. On the one hand, it neglects the fact that 'power' plays a significant role in such a state, therefore power often 'legally' produces 'the law' which engenders unequal power relations. On the other hand, it has been shown that in the social working of law, state law is not released into a "normative vacuum" (Moore 1978; Griffiths 1986:34).

Most western feminist legal scholars follow the tendency to resort to a positivistic and utilitarian conception of law. This is due to the history of feminism itself which corresponds with the history of the concept of equality. Modern feminism, as Smart (1989:5) critically observes, corresponds both to notions of equality and the idea that equality of opportunity can be achieved through law in the form of legal rights. This view is based on the conceptualisation of law as a potentially neutral arbiter and protector of the weak, rather than as implicated in the very oppression that it is hoped to eliminate (Smart 1984). Feminists' engagement with law is, therefore, twofold: resisting legal changes which appear detrimental to women, and using law to promote women's interests. Along those lines, criticism of law was initially centred around the
issues of the exclusion of women (Sachs and Wilson 1978), the substantive law (Atkins and Hoggett 1984), and specific practices of law (Adler 1987). As a response to this liberal approach, a substantial feminist literature on the idea of a "feminist jurisprudence" has flourished (Rifkin 1980; Scales 1980, 1986; Mackinnon 1983; Lahey 1985; Heidensohn 1986; Thornton 1986; Wishik 1986; Littleton 1987). It is only quite recently that feminists have begun to criticise the very tools of the legal method which had been presumed to be neutral (Smart 1989:21).

The search for a feminist jurisprudence arose in the context of the gender-equality versus gender-difference problem. This development in feminist thinking is paradoxical because, "...during the same decade that liberal feminists, political activists and lawyers pressed for equal (meaning same) treatment by the law, the feminist theorists in non-legal disciplines rediscovered women's differences from men". In this regard Menkel-Meadow and Diamond (1991: 225-226) talk about the first two stages of gender theorizing. Firstly, gender theory sought to explore the sameness of the genders in reaction to contradictory claims made about the differences between the sexes as a ground for exclusion. Secondly, gender theory was forced to confront some differences that could not be erased by a foreground of sameness. These competing principles in feminist discourse have raised the basic question whether women should be given special treatment by the state and the law on the basis of their uniquely female capacities and supposed characteristics, or whether justice would be better served by treating women as equal to men. MacKinnon (1987, 1989:246-247) has been very active in using the law to challenge gender oppression. While being critical of the dilemma between gender equality/difference principles, she argues that women must use the law and the state to end sexual domination and subordination. Eisenstein (1988:221), praising 'the rule of law', also sees the law as influencing behaviour and therefore also assumes that legislative and judicial change will improve women's status by "freeing them from their engendered difference". Smart (1989:160), on the contrary, rejects law reform as a means to improve the status of women. She concedes that law defines reality through which process women's experiences and voices are disqualified though not because women are different from or equal to men. Rather, her concern is with fundamental issues of "phallocentric" (p.27), "power of law" (pp.32-33) that include legal logic, legal values, justice and the presumption of the neutrality and objectivity of the state law.

This overemphasis on state law is not only found among (western) feminist legal scholars. Agarwal (1994b), an Indian feminist economist responsible for one of the

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6 According to Smart (1989:67) there is a dispute on what is meant by feminist jurisprudence: "...for some it appears to be little more than whether to apply the principle of equality or difference when legislating on gender issues, while for others it is a question of reconceptualizing justice."

7 See also Goldschmidt and R.Holtmaat (1993) for the situation in the Netherlands.

8 See Gilligan (1982: 6-8).

9 According to Smart (1989) this quest for law reform may fall into a trap of 'androcentric standard' in a game whose rules are determined by masculine requirements and a positivistic tradition. In addition, such a quest seems to imply that law remain a discrete area of activity, detached and somehow superior to society.
first major studies on gender and property in South Asia, has followed the same tendency. She promotes individual private property and control over land under the state legal framework as the ultimate way to secure the well-being and empowerment of women (Agarwal 1994b:XV). Though the potential of various customary laws and practices to secure women with adequate access rights to land are sometimes admitted, she resorts to state law and power to solve the problem of gender inequality of access to land. According to her, gender inequalities and anomalies in laws which are discriminatory should be addressed, while those laws which are not discriminatory in norm but become so in practice should be amended (Agarwal 1994b:248).

I have no doubt that the work of feminist legal scholars is relevant particularly in the context of western societies where, arguably, state law has a very specific place in the politics and history of feminism. However, such an approach to the study of law is not unproblematic in the context of women in developing countries. First, equality as envisaged by John Stuart Mill was an equality of individuals under the law, in the context of structural inequalities based on class, race and gender (Smart 1984). Secondly, the legal approach and the various critiques levied against it are exclusively located in the framework of state law. When feminist legal scholars talk about 'law' they certainly mean "state law" and the state legal framework. Thirdly, the complex issue of women's access rights to land in developing countries cannot be simply reduced to the issue of law.

Thus, I will look at the issue of peasant women and access to land not merely as an individual endeavour, but also socio-politically where gender and kinship or other aspects of social hierarchy interact. In this regard I support Menkel-Meadow and Diamond's (1991:226) third stage of gender theorizing which seeks "to decenter and destabilize any unrealistic attempt to homogenize the genders in opposition to each other, as well as to recognize the multiple and context dependent experience of gender identity..." Although there is a normative hierarchy that positions state law superior to customary law, empirically and factually they are not inherently hierarchical and their relative significance has been varied and changing. I treat neither customary law nor state law as presumably neutral in the normative or institutional sense. They can both be used to accumulate power and wealth, and to carry and create power difference into the society.

1.3. CONCEPTUAL FRAMEWORK

1.3.1. Law in Society

The study requires us to examine what law is about and how it operates in society. As already suggested, there is a widespread assumption when considering law that state legal structures and norms directly cause and determine action. This has led to a contrast of "traditional values" with the "modern", that is with western derived law. As a result, traditional legal values are easily interpreted as "obstacles
to development" (Wright 1992) and modernisation of the legal system is strongly demanded. This was the basis for the "law and development" movement of the 1960s and 1970s (Trubek 1972:40-48; Gardner 1980:6-26). Vatikiotis (1989) for instance, observes that in Asia the World Bank, the IMF and Western governments tend to press for a "modernisation" of law as a necessary framework for economic development and a precondition for granting credits. Both legal-sociologists and -anthropologists criticise the functionalist dimension of legislative change epitomised in the law and development movement. Benda-Beckmann (1993:116) criticises this instrumentalist model which perceives state law as a tool for development:

Law, as 'desired situation projected into the future'..., is used as a magic charm. The law-maker seeks to capture desired economic or social conditions, and the practice supposed to lead towards them, in normative terms, and leaves the rest to law enforcement, or expressed more generally, to the implementation of policy.

Critics of the instrumentalist model have developed the concept of legal pluralism. Most socio-legal studies' critiques are attributed to the fact that legal instrumentalism creates a "gap problem" (Nelken 1981). Identifying and studying the gap between law and its practice proves to be an inadequate analytical framework for understanding how law operates in society. Antons (1995:107) observes that legal-anthropologists in particular have "directed the attention to the lasting importance of the so called 'traditional values'... to the vast sector of informal dispute resolution and to the phenomenon of 'legal pluralism'". Legal pluralism explains the situation particularly evident in most countries in Asia and Africa which are marked by considerable cultural differences among ethnic/religious groups. Thus, Moore (1978:54ff) offers a bottom-up approach to understand the social working of law. According to her: "the social medium through which rules are transmitted and the social context within which they operate is full of norms and institutions of varied provenances. The (in)effectiveness of legal rules must therefore be explained primarily in terms of social structure".

However, in the same period of the law and development movement of the 60s and 70s, western socio-legal scholars studying legal pluralism tended to emphasize the differences between, and the coexistence of, plural legal systems within nation-states rather than studying the complex interrelations among conflicting and overlapping normative orders in local, regional and global space (Collier et.al. 1994:421). As an exception, Moore (1973; 1978:55-58) through her notion of a "semi-
autonomous social field" moved beyond a pluralism model to write about continuities and connections between normative orders. After Nader's (1965: 6) discussion on the interpenetration of legal levels, the theme on the intermingled normative orders is repeated in Collier's (1973: 52-53, 254-55) discussion of the interdependence of legal levels. The concept of a "semi-autonomous social field" was further applied to different types of formal and informal institutions to include also western industrial countries. The function of this concept is to show the normative complexity that dominates social interactions. As Griffiths (1983:34) phrases it: "the descriptive theory of legal pluralism is the theory of the normative heterogeneity entailed by the fact that social space is normatively full rather than empty".

Despite some criticisms posed by conventional legal scholar against the approach to legal pluralism (e.g. Tamanaha 1993), the legal pluralism approach has continued to develop. As Collier et.al. (1994) asserts, the socio-legal scholars in the 1980s began to move from a focus on the differences between indigenous and European law, and on the coexistence of what were understood as distinct legal systems in colonial and post colonial contexts, to a concern for the interpenetrations of "private government" (Maculay 1986) and public ordering in the industrial world. Merry (1988:872-79) discusses differences between what she terms "classic legal pluralism" and the "new legal pluralism". However, the socio-legal scholars' approach has not gone unchallenged. Among the proponents of legal pluralism for instance, Fisiy (1992:8) criticizes the tendency of many socio-legal scholars to contrast state law with other normative systems as if they were distinct and homogeneous blocks of norms: "to conceptualise legal pluralism as comprising coherent blocks of normative systems interacting with each other is to miss the fact than only fragments of various normative systems interact in the social setting". Kidder (1979:296ff) also contributed to this more complex understanding of legal pluralism through his analysis of "levels of externality" and of the differential extent to which indigenous law may be experienced as imposed. Thus, there are many different ways of dealing with plural situations with some describing and emphasizing the intermingling of different legal elements in social processes (see e.g., K. von Benda-Beckmann 1984; F. von Benda-Beckmann 1979; Sousa Santos 1987; Fitzpatrick 1983).

In addition, and in line with the perspective of this research, even within a single normative system there is always inconsistency and overlap concerning the normative contents, the interpretations of the norms at different levels of institutions, and spatial and temporal implementation and enforcement. As F. von Benda-Beckmann (1979, 1989) and K. von Benda-Beckmann (1984) mention, customary law is actually much more complex than the ideology it represents. Likewise, the inconsistency of state law is underscored by Smart (1989:4):

...(U)sing this concept in the singular tends to imply that law is a body of knowledge/rules which is unified in intent, theory, and practice. In fact, ...law operates with conflicting principles and contradictory effects at every level from High Court judgements to administrative law....
It is therefore important to observe how the inconsistency within and between various normative systems is perpetuated and how it influences people's behaviour. This draws us to try to better understand how law actually operates in society in developing countries. Rather than mainly dealing with the "gap problems" (Nelken 1981) and figuring out why the state law succeeds or fails, I look at the extent to which the co-existence of various normative orders have shaped and been shaped by social practices. In the context of this research there is a need to understand the complex tenure systems, either dominantly derived from the western legal system or the customary legal system, and the extent to which those tenure systems have shaped and been shaped by gender-based ideology.

1.3.2. Complex Tenure Systems

For practical reasons, it is quite common to make a distinction between "western" and "non-western" tenure systems. The former is identified more with the state law(s) and the latter with the customary law(s). Some treat the two systems as opposing each other (Bohannan 1967; Coldham 1978; Shiva 1990). Others use the division in a more cautious way. In the context of Africa, for instance, Adeyoju (1976) sees the difficulties of speaking precisely of a customary land tenure typical to the situation in a whole country; while Bruce (1988) indicates the existing spatial boundary of a western-tenure form in a non-western country. Others (Peters 1987; Lawry 1988), avoiding the dichotomy while trying to demystify the false assumptions often made about non-western tenure systems, explain similar characteristics each system may have in its divergence. Thus, a basic categorisation of land in most systems could reveal a complex coexistence of group and individual rights. However, for analytical purposes, most scholars describe the customary tenure systems, especially in Asian and African countries, as having some specific characteristics in comparison or in contradiction to the western tenure system.

The western tenure system pays high tribute to the notion of ownership, that a "land system is in fact a property system", a "commodity" (Simpson 1976:5), even if land does not enter the market (Bohannan 1967:57). This assumption is paramount in the notion of "private property" in the context of the capitalist mode of production. The classical western conception of ownership assumes a bundle of consolidated rights and a single, identifiable "owner" of that bundle of rights who is identifiable by formal title rather than informal relations or moral claims (Singer 1996:71). In this classical western conception, ownership gives permanent rights of absolute control, conceptualized in terms of boundaries which protect the owner from non-owners by granting the owner the absolute power to exclude and to transfer those rights completely or partially.

Thus, in the western conception, land is attached to imaginary grids and identifiable as parcels or plots which can be held, owned, rented or sold (Adeyoju 1976:28), and in itself subject to manipulations and redefinitions (Bohannan 1967:52).
Land rights and deeds have to be registered in order to guarantee the security of tenures (Simpson 1976), since land is physically immovable and everlasting. Tenure has to do with rights to land against or with other persons with the consequence that rights to land can become attributes of the land; "rules of tenure encompassing with those of the group in the same parcel of land" (Adeyoju 1976: 28). This complex notion of land is an absolute essential to the western system of land tenure, as well as to the market oriented economy (Bohannan 1967:53).

On the other hand, customary land tenures are often represented either by their perceived negative aspects (see e.g., the critical discussion on "Hardin's tragedy-of-the-commons" in McCay and Acheson 1987), or by their highly idealised version (see Shiva 1990 who romanticises the customary way of dealing with the forest; Ellen 1986 for critics on idealization of customary tenure). The former makes much of insecurity of tenure, while the latter perceives an indigenous talent for cooperation, epitomised in communal tenure (Bruce 1988:24). In this way customary land tenures may be easily misunderstood by scholars and policy-makers alike.

Customary tenure usually refers to "systems where some social authority or local political entity exercises administrative rights over land" (Lawry 1988:5). An important aspect of customary tenure is the principle of "first occupancy" and its overriding special rights to the first settlers in a particular area (Adeyoju 1976:29). Individuals have rights to land usually in the form of long-term usufruct rights by virtue of their membership in the social group (Lawry 1988; Adeyoju 1976). As a consequence, most customary tenures tend to prohibit land holders to sell their land to outsiders. In a more refined way, Bruce (1988) elaborates customary tenures in terms of different types of "communal tenure", social hierarchy, multi-tenure systems, and pervasiveness of change. He argues that most customary tenures apply significant group control, reflecting some group interest, over land that is apportioned for the relatively exclusive use of individuals or families of the group. The group may be an extended family, a lineage, a clan, a village or a tribe (Wiber 1991:470). Many scholars reject the generalization that communal tenure refers to common ownership that implies common exploitation and management, or that each member of the group has the right to use independently the full extent of certain land of the group. The appropriateness of the term "communal" in a given case will depend on the extent of the controls and limitations imposed by the group, because all societies impose some controls on their member’s use of land (Bruce 1988; Adeyoju 1976). In this sense, thus, no community anywhere could guarantee all its members equal access to land.

Bruce observes that groups’ hierarchies in many societies may be defined by common descent or common residence, or a combination of both principles. In many African societies with minimal social and political organization, the relationship of upper levels of the hierarchy to land can be expressed in terms of "territory" and "sovereignty" (Bruce 1988). In the case of the "Ngwato" and "Tswana" of Africa, for instance, people have access to land on the basis of their position within the structure of the tribes (Hitchcock 1980). This vertical dimension varies for different land types in a single community, because different land uses call for different tenures. Multi-te-
nure systems exist on different types of land – arable land, forest, grazing land, wet land – which can be under dominantly communal or individual control, attached to primary or secondary rights to it.

Secondary rights under customary tenure systems are very important because these are the very rights that reflect the complexity of social relations in societies and their relations to land. Indeed, "an important social goal of the customary tenure system is to provide members of the community with the means for making a basic living..." (Lawry 1988:6). These secondary rights are layered and varied according to place, time, types of land, social status, gender, birth order, life cycle, etc. The primary rights over lineage land may be retained by the lineage as a group, but individual members may be endowed the rights to use and manage different plots within the lineage land. In this regard Bruce, following Gluckman (1969) distinguishes between the estates of administration and estates of production, while F. and K von Benda-Beckmann (1995 and forthcoming) distinguish between socio-political control over land as primary rights and use/exploitation rights of land as secondary. Individual rights over different plots may be considered as secondary relative to the primary rights of the lineage. But the endowment of these individual access rights to land may be arranged along age, gender or life course lines. In the case of a patrilineal society, for instance, the individual access rights to land of a married man may be seen as primary from which his wife, daughters and unmarried sons may draw secondary rights. The status of primary- and secondary-rights may also be drawn from the objects involved. In the Moluccas, there is a distinction between rights to land and to trees, and the persons or groups entitled to land and trees may be different (F. and K. von Benda-Beckmann 1990). In the case of pre-colonial India, women used to have free access, which is considered secondary, to collect forest products from the forest to which the community retained the primary rights (Shiva 1990).

As the perspective of this study demonstrates, the issue of peasant women’s access rights to land should be analyzed in the context of growing legal complexity. This requires the need to consider the interplay between primary rights and secondary rights to land on the one hand, and on the other hand, the coexistence of both individual and group rights in the context of contention between customary- and state-derived tenure systems.

1.3.3. Gender-based Ideology

An ideology can loosely be defined as the conceptual system by which a group makes sense of and thinks about the world. It is a collective rather than individual product. Gender-based ideology is, as used throughout this book, the way a group perceives the proper social roles of men and women in certain socio-cultural contexts based on the sexual-biological differences of being male and female. I support Glenn (1994:9) who aptly asserts: "(I)deologies do not have equal sway. A dominant ideology represents the view of a dominant group; it attempts to justify this
domination over other groups, often by making the existing order seem inevitable". Thus it can be argued that when talking about gender-based ideology, one is always confronted by the fact that the biological factor of being male and female is socially constructed to define hierarchical relations between genders, often at the expense of women. As the socio-cultural and politico-economic circumstances change over time, the arena, forms and means through which gender-based ideology work and are transmitted may also change.

Many feminist writers have been concerned primarily with patriarchal control over women in different contexts of societies. By patriarchal control they refer not just to individual husbands and fathers controlling their wives and daughters, but also male-dominated institutions controlling women as a group. Patrilineal kinship is the core of what is meant by patriarchal control: the idea that paternity is the central social relationship. This book argues that under this patrilineal system, because what is valued is the relationship of a man to his wife's sons, women's vulnerability in accessing rights to land lies exactly in her ability to bear sons for the patrilineal kinship. Women certainly have rights in patrilineal kinship system, but marriage arrangements, residence, descent and inheritance are rarely organized in such a way as to guarantee their access to resources, particularly land.

In the context of our discussion where contention and competition between customary and western (modern) land tenures apply, the question of peasant women's access rights to land becomes highly problematic. On the one hand, peasant women's access rights to land under customary tenure are often limited by gender-based ideology underlying various customary laws. South Asian's peasant communities, for example, unscrupulously restrict women's access to land just because they are women (Agarwal 1988, 1994; Kapadia 1996; Sharma 1980). Many other studies assert that peasant women's access rights to land under customary law are often invisible because they are mediated through men (Berg 1996; Mackenzie 1991). On the other hand, despite the well-known legal principle of equality underlying the property system of the state, the introduction of state arrangements concerning land matters often overlooks the existing peasant woman's mediated access rights to land under customary laws. The invisible rights under customary tenure are easily ignored by the state law because of many other complex and competing interests underlying the formulation of the state law. In Africa, for instance, land reform and registration of land title as a paramount symbol of a modern property system are detrimental to the continuity of women's secondary rights to land (Coldham 1978; Davison 1988a and 1988b; Jacobs 1996; Mackenzie 1989 and 1990; Meer 1997; Pala Okeyo 1980). In India, Shiva (1990) indicates that a forest concessionaire granted to the timber industry since colonial times has ignored woman's access rights to harvesting the forest's yield which they have enjoyed for generations. Thus, as will be argued in this study, the contention and competition between customary and western tenures often articulate, rather than circumscribe, pre-existing gender-based ideology in one society.
1.4. CENTRAL QUESTIONS

The above explanation raises some interesting questions. The first set of questions relates to changing familial and inter-lineage relations to land and its impact on women. How do the Toba-Batak conceptualise access rights to land over time? What changes have been brought about by the German missionaries, Dutch colonial administration and post-colonial state? How do the shifts of power among Toba-Batak elites in the context of national development affect the discourse and practice of women's access rights to land? Does male out-migration enhance or distort women's access rights to land? Can peasant women's social and economic capital be translated into access rights to land? Do women benefit from the plural normative orderings in acquiring access to land? With state-derived land rights, do women buy land, and why? How central is law to Toba-Batak peasant women?

The second set of questions relates to the pressure on communal land and its impact on women. What is the importance and function of communal land in Toba-Batak society? How does control over communal land shift to the state and private investors? What are the implications of the diminishing of communal land to local villagers? Why do peasant women resist the idea of expropriating communal land more rigorously than do peasant men? What kind of overt and covert resistance do they reveal? How do they strategize their access to land in relations to the state's increasing control over land? What are new perceptions regarding people's and women's access to land being developed during the conflicts?

1.5. RESEARCH SETTING

I primarily focus my research in the area where most Toba-Batak live, in their sustained huta and villages scattered throughout what is now called "North Tapanuli District" (Kabupaten Tapanuli Utara) according to the political map of the present Indonesian state. The district under study had been part of the wider Tapanuli Residency defined by the Dutch in the colonial period, which became an autonomous district in 1956. It does not entirely cover the socio-spatial area of all Toba-Batak lineages since there are a number of ancestral villages which fall under other administrative districts. North Tapanuli is one of eleven districts in North Sumatra Province13.

13 The eleven districts are North Tapanuli, Central Tapanuli, South Tapanuli, Nias, Langkat, Karo, Deli Serdang, Simalungun, Asahan, Labuhan Batu and Dairi. In addition, there are six municipalities: Medan, Pematang Siantar, Sibolga, Tanjung Balai, Binjai and Tebing Tinggi. See Emergency Law No.7/1956 on autonomous district formation; The Emergency Law No.9/1956 on autonomous administrative townships plus the substitution of Government Regulation Law No.4/1964 regarding the formation of the Dairi district.
Located at 1°20'00"-2°04'00" north latitude and 98°10'-99°35' east longitude, and between 300-1500 meters above sea level, North Tapanuli consists of 811 villages (desa) and 31 urban villages (kelurahan), scattered in 27 sub-districts (kecamatan), sharing a border with the districts of Simalungun, Asahan, Labuhan Batu, Tapanuli Selatan, Tapanuli Tengah and Dairi. It is the second largest and the sixth most populous district in North Sumatra province (Mijl 1988). The area of the district is 10,605 square kilometres or 14.79% of the total provincial area. The total population was 695,777 in 1989, while the population density is 66 people per square kilometre with an average population per village of 826. More than 70% of the population are peasants, mostly rice farmers. According to 1990 data, the wet rice field area in the district is 60,891 hectares, producing 241,079 tons of rice, while the dry rice field area is 7,987 hectares, producing 18,207 tons of rice.14

Since colonial times, the Toba-Batak region has been one of the poorest areas in the province which made it unattractive to the Dutch. The first western influence on North Tapanuli was Protestant Christianity brought by German missionaries in the early 1860s. This was followed by Dutch colonisation twenty years later. While the area was widely christianised by Missionaries, the eastern coast where the neighbouring Malays lived was rapidly capitalised by the introduction of plantation estates owned by a number of European planters. Only a little later was the Dutch colonial administration expanded to the Toba-Batak area. The Dutch imposition of peace and order, followed by the opening up of the hinterland through the building of roads and other means of transport, and the promotion of popular education by the missionaries have made it easier for the Bataks to manoeuvre throughout the area. In turn, it engendered the rapid flow of (male) migration, initially to the estate plantations on the east coast and later to other areas throughout Indonesia (Cunningham 1958; Pedersen 1970; Thee 1977; Szekely 1979; and Rodenburg 1993/1997).

The incorporation of the Toba-Batak area into the wider economy of the post-colonial state has been intensified especially since the New Order Government period. The first step of the Government was to repair the political and economic isolation created during Soekarno’s time and to turn to the west for assistance. Indonesia joined the World Bank and IMF, and steadily received an increasing stream of loans from the World Bank, IMF and the Inter Governmental Group on Indonesia (IGGI), with the US and Japan underwriting major parts of these loans.15 The New Order Government embarked on a series of five-year development plans, Repelita, starting in 1969. In competition with other industrialising countries the Indonesian government has provided many incentives to foreign investors such as favourable tax

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14Kantor Statistik Propinsi Sumatra Utara (1990), North Sumatra in Figures.
15IGGI was dissolved in 1992 following the conflict between the Chair of IGGI, the Dutch Minister of International Cooperation, and the President of Indonesia over the question whether foreign aid should be associated with the situation of human rights in Indonesia. President Suharto rejected the idea that foreign development aid should be associated to the issue of human rights in Indonesia. In the same year IGGI was replaced by CGI (Consortium of Governmental Groups for Indonesia).
policies and availability of land. At the same time the state financed various development projects with increasing assistance from international agencies and developed countries. In the period 1969-1990, the government apparatus expanded rapidly in terms of state budget, manpower and its increasing presence in the outer islands. In general, the last thirty years have shown a continuous establishment of government offices and services from the provincial level down to the district level, the sub-district level, and even several services at the village level.

The Toba-Batak area in general is not exempted from the economic expansion of the state. In the sixties, the most expensive Indonesian investment was in the North Tapanuli district, the building of the Asahan project covering the Lake Toba hydro electric scheme and the Inalum (aluminium smelting enterprise) (Siahaan 1986 and 1996). The North Tapanuli district, the Toba-Batak ancestral area, was so poor that even with the Asahan project investment, the district’s regional gross domestic product per million per person in 1982 was only US$ 239 compared to US$ 309 for the province (Barlow and Thee 1988:22). In terms of the market economy, the poor condition of North Tapanuli compared to other districts in the province can be explained by its high reliance on rice and maize production rather than hard agricultural commodities such as rubber, palm oil, coconut, coffee, benzoin, cloves, cocoa and tea as is the case in most other districts. Therefore, in terms of sectoral and sub-regional development, concentration on rice farming and subsistence agriculture in North Tapanuli cannot compete with modern farming, estate plantations, manufacturing, associated service and trade, and infrastructure sectors developed in other parts of the province.

The government has attempted to address the problems of the peasants involved in the traditional sector in North Tapanuli. However, because of incorporation of the area into the national economy, there is a tendency to encourage modern sectors which are thought likely to produce more certain economic returns to those which have greater social impact but whose economic returns are less certain. As an example, in 1984 the central government, notably the Forestry Minister, granted a permit to a pulp-rayon company to exploit 150,000 hectares of forest land for a period of twenty years (WALHI 1990). The rights included the exploitation of existing forest and its replacement with eucalyptus. The endowment of forest exploitation rights to this company and many others has violated local people’s customary rights to access to forest land and resources.

1.6. METHODOLOGICAL NOTE

1.6.1. The Validity of Subjectivity

This research is a reflection of my life and my having been situated in a specific period of national development in Indonesia. Born into the highly plural Indonesian society, I depict myself as a nationalist by up-bringing, a Toba-Batak by ethnicity, a
woman by gender, the advantaged by class and education, an activist by vocation, and nurtured by a Christian family in a period when religion is an important aspect of identity under the state civil status. After the coup of 1965, the Communist was seen a number one enemy of the Indonesian State (Abdullah 1981). The New Order Government released a counter discourse that in order to combat communism, religion should be used as a necessary weapon. Ever since, the five stately recognized religions have developed fertile ground to expand their wings. I am part of a generation to whom colonisation is a past story, independence struggle is an out-dated account, political stability as defined by the government is a norm, and economic development is a goal. The tedious processes of state uniformity, politico-economic stabilisation, and depolitisation started exactly during the time I entered formal education\(^{16}\). The by-product of these processes is that most Indonesians of my generation onwards are systematically denied the opportunity and means to be critical and analytical concerning the modernisation processes taking place in Indonesia. Despite the relative success story of the present Indonesian economy especially up to the early 1990s (Dirkse, Husken and Rutten 1993), my generation onwards is not a decisive but a submissive subject of the processes.

After concluding my study at the Faculty of Law at the University of Indonesia in Jakarta, I married and moved to a village in North Sumatra in 1985, conforming to an ordinary rural life. I had been to North Tapanuli several times with my parents on holidays. Being brought up in a non Toba-Batak milieu in South Sumatra and in Jakarta, my parents wanted to give me and my two sisters and one brother a touch of Toba-Batak atmosphere: socialising with relatives from both my father's and mother's sides, and learning to know the bonapasogit better. However, coming to North Tapanuli for vacation is different than coming to live for a long period in small, rather remote villages\(^{17}\). I started to learn about and experience the daily struggle of the ordinary Toba-Batak peasants who live in the bonapasogit.

My involvement in North Tapanuli became intense. I started doing voluntary work for a local NGO mainly in the field of legal advocacy for rural people. It was (and is) provided by the NGO simultaneously with other support endeavours e.g., farming activities, credit assistance, water-supply projects, training and farmer exchange programs. Later on, I became a full-time staff member of the NGO and was in charge of similar advocacy work. It gave me an opportunity to have contact with a wide range of people: ordinary peasant men and women, clan group leaders, traders, civil servants, the successful and not so successful migrants on their visits to ancestral villages, middlemen, different levels of state authorities, church leaders of various levels, NGO activists, etc. Contact with them took place in different contexts: as neighbours, acquaintances, relatives, patron-clients from both sides, colleagues and in tutor-learner relations. Roles were performed on different occasions: during the

\(^{16}\) I entered elementary school in 1966, immediately after the 1965 abortive coup. The political atmosphere in the years following the coup was increasingly the reverse of that in pre-1965.

formal and informal occasions in big and small adat ceremonies, discussions during training/advocacy sessions, chatting, daily interactions, home visits, official meetings, church gatherings, etc. Those experiences were gained in a somewhat "natural" way of interacting with people. I took part in various activities and occasions as other social actors did. I was, most of the time, part of them and part of the social processes taking place.

In September 1990, I had a one-and-a-half year opportunity to pursue an MA degree in development studies, specialising in women and development, at the Institute of Social Studies (ISS), The Hague. This stimulated my academic interest in the issue of people's and women's struggle over land in Indonesia in general, and in North Sumatra in particular. I did a preliminary study on the issue of women and the struggle over land which became the onset of this research (see Simbolon 1991). In October 1992, I started my legal-anthropological PhD research under the auspices of the Department of Agrarian Law, Wageningen Agricultural University, and stayed in the Netherlands for another year to prepare for the fieldwork. The years I spent in the Netherlands have provided me with an opportunity to reflect on the conditions in North Sumatra. In 1993, after a year of library research in the Netherlands, I returned to North Sumatra to carry out a year long field study on the Toba-Batak people whom, presumably, I had become well acquainted with. This time I came with rather different eyes, questioning all phenomena which I, as a relative insider, used to take for granted.

Again, I was exposed to the bitter daily reality of the local people whose land was appropriated and whose environment was heavily polluted. After a controversial pulp mill, Indorayon, was set up in Porsea in 1984, the local villagers became continuously exposed to a substantial degree of environmental pollution. The case was brought to the state court by an environmental group, WALHI, against the owners of Indorayon, accusing the latter of polluting the Asahan river through poor logging practices and disposal of toxic waste into the important waterway, destroying rice farms, fisheries and adversely affecting the health of the local population. Although the 1989 decision by the central Jakarta State Court went against the litigants, however, for the first time in Indonesia, this case became a landmark in the development of environmental litigation where an environmental conservation group such as WALHI were accepted as legitimate representative of the public interest and of the environment, now recognized as a legal subject in its own right (Environesia, October 1993:10; Saman et al. 1993).

In November 1993, when I just arrived in North Sumatra for the fieldwork, the gas tank of Indorayon exploded, spreading chlorine gas into the air. Immediately after the explosion, the Indorayon staff and management were readily manoeuvred by helicopter and dozens of the company's motor vehicles. Having been denied proper information about what was really happening and the possible consequences of the explosion, thousands of villagers who lived in the area of the pulp mill sought refuge by foot to neighbouring villages they thought safe. The chlorine gas leak at the pulp mill once again threw the company's practices into a limelight, prompting the Minister
for Environment to demand a complete environmental audit of Indorayon's operations (Tempo, 20 November 1993. Later in March of 1994, Bappedal (Environmental Impact Management Agency) recommended sanctions including halving of pulp production at the Indorayon pulp mill (Kompas, 8 March 1994). I suffered from the air-pollution for some months during my stay in the surrounding areas but after the fieldwork was done I could easily leave. Unfortunately, the local people could not escape the air- and water-pollution and they are still suffering from it now. This and many other comparable cases experienced throughout my research disturb my conscience. Indeed, it is a difficult task to do research on a subject with which the researcher has sympathy because the objectivity demanded by social science standards sometimes contradicts the very conscience of, in this case, a legal advocacy activist.

The research is also, to a certain extent, affected by the highly conflicting social-political atmosphere in North Tapanuli emerging in the mid 1980s and worsening in the 1990s. Tensions occur from different directions and between, as well as among, different social actors. Claims over land are put by different local groups against private companies which have been granted land-use licenses by the central government. Ordinary villagers have become more critical of the presence of undertakings that cause pollution and express this more overtly. Clan elders defend their proprietorships recognised by customary law against the local authorities' attempt to allocate communal land. In 1990, a North Tapanuli NGO was (illegally) banned by the local military authority due to its support of various collective struggles over land. It is the first time in the New Order's history that an NGO, a local civil entity, was banned by the military (Simbolon 1992). Although the ban has now been lifted, the NGO as well as the local people are becoming conscious of the potential for the military and local authority to determine their life to an unimaginable degree. Military involvement in matters regarding civilians in North Sumatra has become widely apparent. Conflict occurred between the Toba-Batak Protestant Church, HKBP, and the government/military when the military forcefully replaced the HKBP supreme leadership in 1992 (Gultom et.al. 1993; Siahaan 1997; Simanjuntak 1996; Simbolon 1996; Sitompul and Hutabarat 1997). This act of the military is supported by a large number of influential Toba-Batak in Jakarta who are mostly big businessmen, high ranking civil servants and (former) military high officials; while the majority of local church members in North Sumatra are against it. This has affected local level interactions in that the pro and con factions are used as a means of selective identity

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18 Maddock (1989:155) has noticed the dilemma in the relation between science and sympathy. It is worth noting his remark on the issue of involved anthropologists: "The disproportionate involvement by anthropologists raises a question of the relation of science and sympathy. Is sympathy aroused or made more effective through scientific interest in its subject? Does sympathy advance understanding?"
especially by the local authority against the local people\textsuperscript{19}. However, those multiple conflicts precisely demonstrate how elite power among the Toba-Bataks has dispersed in different directions; and, at the same time, how local people actually behave in different social fields where they make use of and are bound by different normative orders.

I take a critical standpoint towards the development processes taking place in Indonesia. This ethical and political choice I made in favour of the socio-economically disadvantaged segment of the population is a value which has influenced the selection of the research questions and approach. Therefore, I attempt to articulate the often unheard voice of "the violence of development" victims (Schrijvers 1993). My point of departure is that, like any law, research and science are not neutral instruments (c.f., Schrijvers 1986). The subject of inquiry chosen, the formal research procedures required, the questions posed, the facts traced and the diagnosis made do not stand apart from social constellations. It is thus unavoidable that a choice be made in advance.

1.6.2. The Fieldwork

Then I come to the question of how to study the contemporary situation of peasant women's access rights to land among the Toba-Batak. I first take an historical approach to understand the changes taking place among the Toba-Batak. In this regard the influence of the German missionaries and Dutch colonialists are particularly important. I also make an account of the contemporary history of the post-colonial state to understand the present situation of the Toba-Batak. Having learnt that there have been many changes in the perception and practice of land relationships brought about by German missionaries, Dutch colonialists and the post-colonial state, the contemporary situation of women's access to land is investigated through conducting a village study. This allows us to understand how the contemporary and actual access rights to land within the village and lineage relations are devised under a relatively normal daily life situation. As I fully agree with Moore (1993:121-122) who insightfully notes: "Fieldwork is time-specific but its moment is one episodic period in a longer stream.", and also asks: "In what kind of fieldwork data are the implications of the larger dimensions and longer periods of time best captured?"

It is also of great importance to observe the highly conflicted situation where the state and private investors become direct competition to the local groups in accessing rights to communal land. Therefore, I also conduct a study of conflicts between the local people and private investors vis-a-vis the state. I then use the "diagnostic events

\textsuperscript{19}Previously a local police recommendation was needed to counter the label of "ex-communist" or "criminal". In the early 1990s, the pro and con position taken by local people to the government version of the HKBP was also used to scrutinise them in certain areas in North Tapanuli. Failure to get this recommendation would reduce a local person's range of possibilities for obtaining certain facilities provided by or related to the state, including further education, employment and job promotion.
analysis" (Moore 1987:730 and 1993:121) as a method of this research which allows one to understand how various notions of the Toba-Batak's and particularly women's access rights to land from different levels of normative orders and institutions are challenged, contested, conceded and reconfirmed. Moore (1993:121) who has been cautious in selecting the many occurrences which might serve as diagnostic, says: "The question which events are diagnostic depends... on what kind of questions about culture and society and history one is trying to answer. The issue is one of relevance, not of attaching invariable significance to particular acts. An event becomes diagnostic in relation to a question." In applying Moore's diagnostic analysis, I pay attention to the "events of articulation" which show the situational articulation of different political interests where those involved are competitively trying to control the outcome of a conflicting situation. The combination of village study and diagnostic events analysis enables me to observe the processes of, borrowing the analogy from Holleman's (1973) terminology, both "trouble changes" in conflicting situations and "trouble-less changes" in more normal daily situations.

Having closely been associated to the people whom I deal with in this study, the field work did not start with the formally and rigidly determined period(s) of field research. As a starting point, I take my own experience throughout life as a valuable contribution to the research. On the one hand, as I personally only have one brother, I can easily capture the nuance of how valuable a son may be to a Toba-Batak family and further to the wider lineage. As I myself have two daughters and no sons, the question when will I have a son is persistently posed by any Toba-Batak wherever we may meet, whether in a remote Toba-Batak ancestral village, Jakarta or in the Netherlands. Furthermore, the issues, the research area and the people I deal with during the fieldwork have not been totally unfamiliar to me. When several times I returned to North Sumatra for this particular fieldwork, there was a difference due to the additional formal identity put on me as a researcher. However, relations to the people in the field practically remained the same. Thus, I carried a multiple identity as a researcher who was relatively an insider, a Toba-Batak, a member of the Batak church, an associate of a local NGO that intentionally takes side of the disadvantaged, and a woman myself.

This overriding multiple identity contributed both advantages and constraints to the overall set-up of the fieldwork, especially to the research methods I intended to apply: a village study and diagnostic events analysis. The area was highly subject to various conflicts involving (para)statal apparatus, thus security considerations became paramount throughout the fieldwork. In deciding the research site for the village study, for example, I took as an important consideration the absence of a direct HKBP church conflict in the village I wanted to live in, as well as its relative physical distance to Porsea, the site of the environmentally controversial pulp mill. I therefore, along with many other relevant considerations, chose Desa Siraja Hutagalung as the site of the village study. Concerning the implementation of the diagnostic events analysis where I investigated major collective land conflicts among local people, private investors and the state, it was the same multiple identity that gave me
relatively easy access to various local groups, for instance: villagers who became the (potential) victims of industrial pollution, or who were hiding or taking refuge from state violence in relation to the church conflict, as well as those who were evicted from their land during the process of land expropriation, etc. These opportunities would not have been possible had I been a total stranger to many of them.

1.6.2.a. The village study

Initially I planned to conduct two village studies in two main Toba-Batak areal divisions, Toba/Humbang area and Silindung area. After the first two months in the field I realized that it was not necessary to have two village studies since I would also conduct an investigation of major collective land conflicts in different Toba-Batak areas. Eventually, I decided to conduct only one village study in Silindung area and to investigate major collective land conflicts in Toba/Humbang area where most critical collective land cases occurred. Thus, the two Toba-Batak major areal divisions are proportionately represented in my research.

There are practical as well as academic reasons for choosing Desa Siraja Hutagalung as the research site for the village study. With very heavy financial constraints on my part since I had to cover almost all the fieldwork costs myself, I made the choice in the most realistic way. The practical reasons are, among others, the availability of accommodation and transportation and the short (5 kilometre) distance to Tarutung, the district capital, so that I could easily get any information on what was up around North Sumatra. The proximity to the district capital was an advantage for monitoring any occurrence or development of land and related cases which was significant for the implementation of the diagnostic event analysis. Tarutung has had modern telecommunication service since the late 1980s so contacts to other areas can easily be made through telephone calls and faxes.

I visited several villages in Samosir, Humbang and Silindung. When visiting the sub-district office (Kantor Camat) of Tarutung I met several village heads and talked to them about the situation in their villages. I was particularly interested in the responsive attitude of the Hutagalung village head, a teacher of mathematics at a High School in Tarutung, who was very eager to share his experience and opinion. I thought he could be a valuable resource person, a person who knew the village and the people very well and who could be a good discussant. He showed a supportive attitude throughout the research work. I visited the area and the village head twice before I finally decided to choose Hutagalung as the research site. Hutagalung shares the border with Hutabarat village, where I lived for almost three years from 1985-1987. In highly bureaucratic state administrative procedures, an informal and spontaneous relation like this greatly helps to smooth the research work. Though the three-month research permit awarded by the district office in the area soon expired, I was not bothered by the tedious and often difficult process of renewing the permit. Without formal research permit extension, I could continue staying in the village for the duration of the research and even later visit the village several times for one month periods in 1995, 1996 and 1997.
Above all, there are some very academically relevant reasons for choosing the site. Beside its size, physical condition and location, Hutagalung represents a changing Toba-Batak community quite exemplary. It maintains a high reliance on rice-farming while increasingly displaying a differentiation in income-earning activities. Women, in particular, are highly involved in traditional cloth weaving which guarantees them constant cash earnings. Most of the population also maintains highly interdependent relationships with migrants. Land shortage in the village is prominent since there is no more uncleared communal land, nor forest nor grazing area. Hutagalung is a perfect coupling between an administrative boundary and a lineage spatial boundary. It has a considerable proportion of ruling clan and in-dwelling clan, a situation which is of high significance in understanding access rights to land of different categories of Toba-Batak women.

The village study is qualitative rather than quantitative. The data collecting technique is unstructured and semi-structured interviewing (Bernard 1988) and participant observation (Fetterman 1989). Since quite a number of women are functionally illiterate, oral history is used as a technique to gain in-depth qualitative data (Thompson 1978). However, a personal and private interview is rather difficult to conduct in the cultural context of Hutagalung village. Other family members and neighbours, thanks to their politeness, are more than eager to accompany their guest all the time. To improve the interview, visits have to be made more frequently especially to those whose stories need more in-depth study. After the third or fourth visit to the same person, the neighbours and other family members are likely to join for a while and then leave the interviewee alone.

I explored the 1993 statistical data provided by the village head, containing basic data on each household: the list of household members, place and date of birth, religious affiliation, occupation, education and membership status in the household. Based on this statistical data, I clustered the households into village lineal/spatial living compounds called huta. I categorized the 25 living compounds, huta, into three main Hutagalung lineage fissions: Datu Harean (six huta, 122 households and 643 inhabitants); Tuan Napitu (eight huta, 82 households and 368 inhabitants); and Siraja Inaina (eleven huta, 136 households and 653 inhabitants). In accordance with the Toba-Batak relation to land, I categorized the inhabitants into whether they belong to the ruling clan (marga raja) or the in-dwelling clan (marga boru). Throughout the village study, I tried to always consider the representation of both the three lineage areal divisions and the two marga categories. In addition, I take samples of women whose life stories are exemplary to understand the dynamics and vulnerability of Toba-Batak women’s access rights to land.

1.6.2.b. The diagnostic events analysis

I visited various Toba-Batak areas where the collective land conflicts were occurring to get first hand information. I attended their group discussions most of the time as a passive listener. From time to time, and if asked, I shared my opinion and contributed to the discussion. This was unavoidable because many of them had
already known, and I did not want to hide the fact either, that I was a graduate from law school. Discussions with individual members of the groups on various occasions were held, always in a very informal way. I accompanied some of them who went to the local government offices to submit petitions. In order to have a better understanding about conflicting situations in North Sumatra, I met people and local groups who faced problems with the state apparatus in other cases than just land. Thus, for instance, I met the villagers who suffered from the environmental pollution precipitated by the pulp mill. I also visited those groups of villagers who were tortured by para-statal forces because of their refusal to accept military intervention in the Batak Protestant church affair. Those protesting church members ran their meetings and church services in *parapelapean*, a simple tent set up temporarily in an open space. I attended some of their meetings throughout North Tapanuli. Different categories of people and groups (peasant women, peasant men, community leaders, church leaders/members, local NGO staff and lawyers) were examined. The progress of their struggle was also followed from the media coverage: public newspapers and magazines, and also local NGO bulletins and reports. I received a lot of first hand information from the local NGO staff who directly dealt with the conflicts and who later became the confidants of the people. Their perspectives substantially enriched the research.

In relation to the political constraints in North Sumatra, I was not able to effectively approach the state authorities and the different companies. In most collective cases they simply receded from any inquiry because of their position which was understandable. To compensate for the gap of information, I had to depend more on informal relations with the local authorities as well as on reliable secondary data. Thus, I dug through the state apparatuses' and the companies' press releases on certain issues, their written reports, public media which, unfortunately, rarely voiced critical coverage, seminars on related issues and court files. In the first year of fieldwork I attempted to trace the local state court documents on the latest civil cases related to land in North Tapanuli. But the heavy financial constraints did not allow me to continue the attempt because tracing the rather messy and not very well documented court files prove to be a very burdensome activity. Though I was welcome by the *Panitera Pengadilan Negeri* Tarutung to conduct the research there, I later gave up my attempt because of, again unfortunately, the lack of finance to pay a research assistant to perform the work.

In the first year of fieldwork I came across a number of on-going land conflicts in North Sumatra which were valid for my inquiry. Then I set up some qualifications for the cases I would particularly like to focus on. Some of the qualifications are: the exemplary nature of the issue brought by the case, the exemplary nature of the reactions to a familiar problem, the distinctive character of those involved in the case, the anticipated widespread impact of the case, and the involvement of women in the case. During my next shorter visits to North Sumatra in 1995, 1996 and 1997, I focused more on three major collective land conflicts, namely the Dolok Martalitali case, Sugapa case and Parbuluan case which are used in this book. While the three
cases fulfil the qualifications set above, the reasons they are chosen are, at least, twofold. First, they represent the different decades of the New Order period, the 1970s, 1980s and 1990s. Secondly, they represent the nature of capitalism involved and the scale of investment implied. The Dolok Martalitali case involves a large-scale state investment supported by foreign government and foreign private investors. The Sugapa case involves a large-scale investment owned by a national (read: Chinese) conglomerate and supported by foreign capital. The Parbuluan case is a medium-scale investment owned by a rather small investor who is a Toba-Batak.

1.7. STRUCTURE OF THE BOOK

The considerations above have shaped the structure of this book which is divided into six chapters. Chapter One explores the overall background of the study in which the statement of the problem, theoretical and conceptual frameworks, the central questions, research setting and the methodology used are explained.

Chapter Two introduces the background of the Toba-Batak changing society in colonial times. Elaboration of the Toba-Batak adat that covers the religious, genealogical, and territorial aspects is provided. The relevance of the three aspects of adat to Toba-Batak land relations is demonstrated. The Toba-Batak gendered access to land is examined, starting with the normative notion of gendered access to land under the adat. The chapter later deals with the major western influences brought by German missionaries and Dutch colonialists to Toba-Batak society. The focus is on the changing perceptions of Toba-Batak customary law in general and the attempt to improve the position of Toba-Batak women in the colonial period through the introduction of formal education for women and more gender neutral jurisprudence. It is an elaboration of the on-going contention and competition between the adat, church and colonial authority, hence, the emergence of legal plurality. Two examples of Toba-Batak resistance to western expansion are described: a case of resistance against European leadership in the indigenous church and one against the expansion of European plantations.

Chapter Three deals with the situation of Toba-Batak society in post-colonial time. It demonstrates how contemporary Toba-Batak society in North Sumatra is affected by the ever increasing power of the post-colonial state, especially in the New Order period. The general social-political situation at national level is discussed in order to understand the background of the steps being taken by the New Order regime in its overall development policy. The legal status of Indonesian women under the post-colonial state is examined in the framework of a unitary state legal system. Then the state's attempt to improve women's position within familial relationships is discussed. The court view which specifically concerns (Toba)Batak gendered access to land is examined through the analysis of the post-colonial jurisprudence on marital law, marital property and inheritance. An elaboration of the attempts made towards a unitary system of land law is provided, followed by an account of how the economic
policy of the post-colonial state has led to a state monopoly of law in land appropriation. After the elaboration at the national level, I give some hints regarding the local socio-economic context in which the persistence of poverty among the Toba-Batak prevails. The last part of Chapter Three deals with the local impact of land statization and privatization through analyzing five state endeavours in the Toba-Batak area: the State’s Asahan project, state forestry programs, state policy on industrial policy, a national project on tourism, and lastly, regulation concerning the Lake Toba environmental management.

Chapter Four gets its input from the village study conducted in Desa Siraja Hutagalung. It is an attempt to understand how, in the Toba-Batak relatively normal daily life situation, the actual access rights to land in internal village and lineage relations are devised. The focus is on describing the actual access rights to land of women under Toba-Batak patrilineal society. The chapter starts with the general description of the village and its historical background from time immemorial. I then depict how marga identification matters in the contemporary practice of women’s and men’s access rights to land. In my analysis and throughout the chapter, I cluster the two categories of women under the Toba-Batak land relationship: women of the ruling clan (marga raja) and of the in-dwelling clan (marga boru).

Chapter Five deals with the on going Toba-Batak collective land conflicts that presently mark the relationships between the local people, the state and private enterprise. The aim is to demonstrate how the different notions of Toba-Batak’s and women’s access rights to land from different levels of normative orders and institutions are challenged, contested, conceded and reconfirmed. The discussion is located in the wider context of the changing political-economy of the Toba-Batak area because of its incorporation into the national economy. Three cases presented, namely Dolok Martalitali, Sugapa and Parbuluan, indicate how peasant men and women are affected by, and at the same time react to, the on-going statization and privatization process of land under the state legal framework. The chapter demonstrates the inconsistency of state law regarding land management and allocation at different normative and institutional levels.

Finally, in Chapter Six I draw the conclusion to the whole discussion.
CHAPTER 2

THE TOBA-BATAK SOCIETY
IN THE COLONIAL PERIOD

2.0. INTRODUCTION

This chapter describes the changes taking place within Toba-Batak society in the colonial period. The four areas of change to be examined are the adat, religion, land relations and the position of Toba-Batak women. The changes are considered in the context of the two major western influences that arrived in the later part of the 19th century, namely the German missionaries who brought Protestant Christianity and the Dutch who established a colonial socio-political system.

The Toba-Batak is a patrilineal society encompassing a wide range of features and inhabit a region clustered by the state within the administrative boundary called the North Tapanuli District of North Sumatra Province. They occupy the mountainous Lake Toba areas and are surrounded by other Batak groups: Karo to the north, Pakpak to the west, Simalungun to the east, and Angkola and Mandailing to the south. The groups are distinguished by the language they speak (Voorhoeve 1955; Ypes 1932). Toba-Batak is the most populous of the sub-groups. Though basically sharing a similar social organization and a common religious tradition, each group maintains a separate identity, especially from that of the major Toba-Batak. However, they agree on their common ancestry which is based on the legend of Siraja Batak originating in Sianjur Mulamula of the Toba area which, in turn, gives the Toba-Batak a culturally central position. The discourse that all Batak groups have sprung from the one common ancestor is shared by the different groups. It is common that when people from different Batak groups meet, they spontaneously try to trace their possible (fictive) kinship relation to each other.

An important Batak feature is the marga or patrician through which they relate to each other. It is a category which cannot be defined precisely because "each individual belongs to a system of ever widening lineages, to a number of ever..."
extending groups of which the unifying connection is always to be found further back in time" (Vergouwen 1964:33). Marga is a bonding of groups of people who consider themselves originating from one blood and womb, sabutuha, based on a certain genealogical structure. The marga system implies that each group of people who shares a common genealogical origin also shares a common residence at least at one point in time. Ordinary Batak express the spatial manifestation of the marga with the term bonapasogit. Therefore, marga is closely related to a spatial area as also revealed in the myth of creation and origin of the Batak people.

Ypes (1932:9-14) insists that marga identification is not consistently reckoned from the (male) blood line. Based on his account of the raids in the 1820s by the Islamic Padri troops, he estimates that there are several ways of establishing marga identification. An adopted child may get the marga of the adopted father. A child born out of wed-lock may be endowed with a marga identity. A marga may be formed, or be incorporated into another marga, through specific events or ceremonies. The expansion of marga branches may not follow the descent hierarchy consistently; rather, in most cases it follows the pattern of early migration waves. Lastly, incestuous relations, sumbang, which in the Batak case include all sexual relations between people of the categorically same marga, may end in the forming of a new marga.

While the Bataks have their own ideas of being in the world, western scholars speculate about their origin and pre-historic features. Heine-Geldern (1945:147f) says that the Batak came, through a series of migrations, from South China, Yunnan and North Vietnam some time during the 8th and 7th centuries B.C. Pedersen (1970:18) speculates that the early Batak in the Lake Toba region "...were probably shifting cultivators of root crops or perhaps rice with non-metallic technology". Hinduism is generally considered an important early influence in many aspects of Toba-Batak life, especially elements of a magico-religious nature. It penetrated deeply into the Batakland between the 2nd and 15th centuries and caused much social change (Cunningham 1958). The abandoned temples and ruins found in the Asahan valley and southern Batakland indicate the Hindu influence among the Bataks.

2Sinaga (1981) mentions that there are at least three versions of the Toba-Batak creation myth: the first by Warneck (1909:27-32); the second by Tobing (1858:31-50); and the third by Tampubolon (1964:12-34). The myth is about Boru Deak Parujar, daughter of Batara Guru from the upperworld and granddaughter of Mulajadi na Bolon, the highest and most powerful Batak deities. She escapes to the underworld with a lizard-like husband who is her paternal uncle's son, an unlawful marriage partner. In the underworld she battles a giant fish and a devious monster who try to prevent her from creating the earth. Finally, she succeeds at her task and creates the earthly habitation of all her descendants, the Batak people. For a complete knowledge of this myth, see Niessen (1985) who relates the whole story.

3The Padri conquered Angkola- and Mandailing-Batak in the south, killed Sisingamangaraja XI in the 1820s, but failed to islamize the Toba-Batak area. For details, see Dobbin (1983:117-192).

4Niessen (1985) finds it difficult to discern the features of pre-Hindu Batak culture; Parkin (1978) and Cunningham (1958) conclude that the distinctive Batak features did not profoundly change.
The Toba-Batak who lived in the interior area had minimal contact with outsiders. Prior to the arrival of German missionaries in the 1860s and the Dutch colonialists twenty years later, there was little account of the society. Accordingly, analysis of change and continuity among the Toba-Batak is carried out mainly in the period commanded by those two major western agents of domination. During this period Batak adat was under attack and continuously reshaped in its normative as well as practical meaning (cf., Sianipar 1973). The Toba-Batak ethnic identity, blurred with religious (Christian) identity, was transformed as the Dutch colonialists tried to depoliticize the Toba-Batak leadership by incorporating them into the wider Dutch East Indies administration. The major aspects of life affected were, therefore, in the area of belief systems including ideology and religion which, in turn, affected political, social and economic organization at the level of the individual, core family, clan groups and society as a whole. Because of the change of religion, together with the changes in the material world, the Batak world view shifted from isolated and inward-looking to adaptive and outward-looking (cf. Pedersen 1970; Schreiner 1994). This, in turn, eased the incorporation of the area into the wider Dutch East Indies administration. They were being exposed to the rapid development taking place outside the area, resulting in migration flows of the Toba-Batak particularly to East Sumatra and later to other parts of the colony (Cunningham 1958).

2.1. THE TOBA-BATAK ADAT

2.1.1. Religious Aspect of Toba-Batak Adat

Toba-Batak cosmology and religious concepts are the basis to understanding the Toba-Batak adat. The cosmology divides existence into three interrelated parts: the upper world, the middle world and the under world or, respectively: banua ginjang, banua tonga, banua toru (Pedersen 1970:20; Sinaga 1981; Tobing 1956). The High God Mulajadi na Bolon (the great beginning of existence) and the spirits of departed ancestors occupy the upper world. The middle world is the realm of human activity; while the underworld is the home of ghosts and demons. The High God is involved in the human world through the three Gods: Batara Guru, Soripada and Mangala Bulan. These three are generally assumed to be male and each of them performs a particular function in the realm of human activity (Sinaga 1981). Batara Guru performs creative function because he establishes, founds, and constitutes something, particularly adat. The second God, Soripada, is the reflection and personification of the governing activities of the High God. He is the protector of the fields and guardian of all human beings. The third God, Mangala Bulan, brings good and bad luck through his control over rainfall and fertility in general, and is the personification of the judicial activity of the High God.

There are innumerable deities and spirits who dwell in mountains, rivers, fields and forests. Some of them are nature deities or the personifications of divine-
natural powers and some are the spirits of the forefathers. Sinaga (1981:77-78) mentions some of the most important deities apart from the four primal Gods. *Debata Idup* is the deity of human fertility to whom barren women pay their tribute. *Boraspati ni Tano* is a nature deity living in the earth and is the personification of fertility of the land. *Sibaso na Bolon* is revered as the spirit of the common forefather of humanity. He is invoked in the ceremony honouring the spirit of the common forefather of a *marga*. Lastly, *Boru Saniang Naga*, one of the few Batak goddesses, is believed to be the deity of water and spring, bringing fertility to the soil. The Toba-Batak worship the spirits of the deceased, *begu*, as much as nature spirits. Among the *begu*, the spirits of the ancestors occupy a particular place, especially the spirits of those who, in their lifetime, became rich, had power and material goods and whose descendants are many. These revered spirits of the ancestors, the *sumangot ni ompu*, desire to be worshipped and honoured with offerings in order to keep on promoting the welfare of their living descendants. It is also believed that venerated spirits enjoy well-being and honour in the spirit world. A great sacrificial ceremony would elevate the rank of the spirits so that they approach the status of God which is called *sombaon*. If the spirits are neglected, it is believed that they can cause various catastrophes. Thus, Toba-Batak existence is centred around the highly interdependent relations of the living and the deceased as Pedersen (1970:21) remarks: "The Toba-Batak experienced all cosmic space as a totality of under world, upper world, and middle world in which each layer had a special function in the harmony of existence. Disruption of this harmony would mean the annihilation of the whole cosmos."

The Toba-Batak comprehend all areas of life as *adat*. Brunner (1959:55) illustrates the fluidity of the Batak *adat* concept:

...*(l)*t includes not only inheritance, property, and marriage law, but also a value system, the procedure of each life-crisis ceremony, the entire kinship system, and the proper behaviour between members of various patrilineal kin groups. Adat defines the reciprocal rights and obligations between relatives, both living and deceased. Its major social function is that it tells one Batak how to behave toward another. It is not precisely equivalent to either law, custom or culture....

The totality of *adat* covers all things: the physical and the spiritual, the present and the future, interpersonal relationships and relationships with the creator, the maintenance of harmony between the self as a micro-cosmos and with the whole universe, the macro-cosmos. *Adat* in its deeper sense is associated with order, which is contrasted with disorder (Sinaga 1981: 72 and 89). In the myth of creation, according to Tampubolon (1964), it was the first step of God to establish *adat*

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*An Indonesian *adat* scholar also applies the concept of *adat* to the general situation of Indonesia, saying: "Adat is the whole body of teaching and their observance which governs the way of life of the Indonesian people and which has emerged from the people’s conception of man’s world" (Koesno 1971:3).
which was the source of wisdom and religious knowledge. The primacy of adat in
the relationship with God is shown not only by the initial derivation of adat from
God, but also by the belief that (in)obedience to adat determines existence and life
on the one hand, and nothingness and death on the other (Tampubolon 1964: 24).
To understand the Toba-Batak adat as a totality, we shall quote from Lothar
Schreiner (1972 as quoted by Artonang 1994:40) who says:

Adat is the concrete form of the total character of tribal religions. It involves,
infuses and determines the life of the tribe or ancient peoples in a host of
ways. The adat connects the visible living with the invisible dead. Adat is a
social order of the village as a community under law, as a community of pro­
ducers, and as a religious fellowship. As a social order of divine origin with a
threefold manifestation, i.e. myth, ritual and genealogical groups, the adat
cares for and maintains both the life of law and economics, as well as the
vitality of the individual and corporate life. Adat originates in myth, but its
power is rooted in natural law with a goal of eternal harmony between the
macro and micro cosmos. ... Adat has a normative character because it has a
foundation in myth which forms the way the ancient people understood their
world. Thus it is the external side and the casuistic elaboration of myth in the
communal life and its implementation in all areas of life. And myth is the way
people express their experiences in the world, their way of knowing the world
and their power over that world. Therefore, in the final analysis, adat may be
deefined as the epitome of the closed world of ancient peoples with its local
character.

In practice, the Toba-Batak world revolves around kinship and territorial groups,
pointing to the importance of the human and land fertility as regulated by adat and
manifested in a series of rules and rituals relating to deities and spirits. Genealogi­
cal groups of agnate usually performed sombaon offering-ceremonies to venerate
the ancestral spirits. A bius feast was performed in a certain geographical area,
involving all its inhabitants regardless of their marga. The objects of veneration in
these bius were the male ancestor common to all, the sombaon, as well as the
gods and nature spirits. The periodical bius feasts were closely connected to the
agricultural cycle in the area (cf. Situmorang 1993), so that fields would be fruitful
and the cattle multiply, "Asa gabe na niula, asa sinur na pinahan", which summar­
izes all the material desires of the Toba-Batak. Sherman (1982:448) argues: "There
is... a clear link in the Batak beliefs and practices of sacrificial feasting and field
offerings, between the bounty of their crops, the fruitfulness of people and
livestock, and the beneficence of spirit-power of patrilineal and affinal descent-ties"

The religious element was basic to all practices and activities of the Toba-
Batak was permeated by religious meaning, guided by religious motives, and
dominated by supernatural concepts through the gods, ancestors, and dynamic

\footnote{Vergouwen (1964:67) also says: "The whole of the personal and social life of the pagan Batak
is permeated with their religious conceptions and there is scarcely a sphere of life in which their
behavior is not guided by religious motives and their thoughts dominated by concepts of the super­
natural."}
cosmos in which he lived”. Rules regarding kinship are patrilineal in which men form the patriline group(s), marga, while women create the affinal relationships by being married into other patrilineal groups. The Batak believe that their genealogy sprang from Siraja Batak and that in principle they belong either to the Lontung or the Sumba moiety which hundreds of Batak margas originate from.

The myth of Siraja Batak involves both religious practice and liturgical dimensions, so that each marga performs various rituals to strengthen the union among themselves and with their ancestors (cf. Schreiner 1979:119-122). In addition, the genealogy of the Batak bears a territorial significance because each marga is always bound to an ancestral area. At least in former times, each marga possessed and was bound to a specific territory; on the other hand, each territory formed an assumed ancestral area of each marga (cf. Aritonang 1994:37). Therefore, knowledge regarding the genealogical relationships is of the utmost importance for the Toba-Batak since it determines one’s dynamic position in both the smaller marga circle and the wider Toba-Batak society (cf. Niessen 1985:73). This, in turn, may (in)validate the rights of a lineage group or an individual to put a claim on certain ancestral areas.

2.1.2. Genealogical Aspect of Toba-Batak Adat

The exogamous kinship rules of the Toba-Batak adat concern the three interdependent functional groups seen from the male ego’s perspective: hulahula, dongan sabutuha and boru. The three groups together form the minimal social unit and no ritual can work without representatives of each of the three groups being present (Niessen 1981:5). The male ego’s marga (dongan sabutuha or womb companions) obtains wives from the wife-giving marga (hulahula) and bestows them on the wife-taking marga (boru). Relations between wife-givers and wife-takers are asymmetric and characterized by mutual dependence: wife-givers bestow the spiritual gift of prosperity, fertility, and well-being on the wife-takers who reciprocate with wordy support. Niessen (1981:5) says that the discreteness of the groups is essential to the workings of Toba-Batak society and that no one can play both roles at the same time. Philips Tobing (1956:73) describes the three functional groups from the male ego’s perspective as follows:

...(D)ongan sabutuha (lit. womb companions), i.e. “those who originate from one womb” points to agnatic relationships. The dongan sabutuha are also called "dongan samarga", i.e., marga companions and thus one’s dongan sabutuha are in principle all male members of one’s marga. Normally, however, the word refers more specially to the nearer agnate, the "na marsaompu", i.e., those agnate who have a great-grandfather in common.

...(H)ulahula principally points to one’s father-in-law and his nearer dongan sabutuha. Boru principally indicates one’s son-in-law and his nearer dongan sabutuha.

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7 Seen from a male ego’s perspective, an agnate is a relative through paternal links. An affine is a relative through marriage.

8 See Toba-Batak genealogy in Hoetagaloeng (1926); Ypes (1932); Vergouwen (1933/1964). A selected Toba-Batak genealogy is also presented in chapter 4 of this book.
The relations of the functional groups are created at various levels: an immediate level between individuals, lineages and margas, and may be extended to incorporate the entire society. They are capable of being both all-embracing, able to incorporate the whole society, and so specific as to denote the most immediate kin. Niessen (1985:85-86) enlists Toba-Batak kinship terminology and argues that each term specifies a coincident code of behaviour so that "it is necessary to determine kin positions (martarombo or martutur) in order to be able to interact properly and successfully" (1985:84).

The three functional groups are seen as the representatives of the three Batak male gods – Batara Guru, Soripada, Mangalabulan (Tobing 1956:74). Batara Guru is the symbol of the hulahula who, through the fertility of their daughters, procreate new human beings. Hulahula enjoy great honour and power, as does the Batara Guru among the 'Three Gods'. Hulahula is often called "the Representative of God" because of the similarity of function and also called "the Beginning of the Days" (bona ni ari), because light and day are intimately related with the idea of creation (Vergouwen 1984:49). The second God, Soripada, is the symbol for the dongan sabutuha which, at times, bears responsibility for nurturing the children of its members. The symbol of boru in Mangala Bulan is more complex. In the context of the creative function of Batara Guru symbolized by the fertility of the daughters of hulahula, there is an intimate similarity between the function of Mangala Bulan and boru (son-in-law and his dongan sabutuha). Mangala Bulan blesses fertilization prepared by the Batara Guru and withholds rain in order to hinder the actualization of the fertility. Similarly, a boru (son-in-law) can fertilize a woman but he can also, according to Batak perception, withhold fertilization⁹.

With the principle of margas exogamy, people may not marry others of their own clan. The direction of a marriage between two lineages of different clans may not be reversed for five generations: a man cannot marry a woman from a lineage to which his immediate patriliny has given a sister or daughter as a wife. However, two margas may exchange wives in both directions "... provided the alliances occur at a sufficient kinship distance from each other, where the hulahula-boru opposition is so weak that the roles are not confused. A marga may play the role of hulahula to another marga on a certain ritual occasion and boru to the same marga on a different occasion. This presents no problem as long as both roles do not have to be played by both sides simultaneously" (Niessen 1981: 7). As a result of marriage with women from lineages of other clans, some men within a given lineage establish alliances with some men of other clans. Eventually, such alliances tend to overshadow the unity of members of a given line of descent. A marriage carries spiritual substance and in practice always creates a new functional position for the different margas involved as Niessen (1985:121) accurately depicts: "The union of

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⁹See symbolism of the three gods in Toba-Batak triadic social relations in Sinaga (1981:76).
the souls of the bride and groom is the point of convergence of vertical lines of spirit power flowing within the descent group, and horizontal lines between affines".

A unique feature of the Toba-Batak is the ever growing number of marga, a feature attributable to the process of fissioning whereby a lineage group breaks away from the larger mother group (Niessen 1981). In the 19th century there were more than 325 margas (Situmorang 1993). Hoetagaloeng (1926), made a record of the marga and their spatial divisions springing from the mythical character of Siraja Batak. Vergouwen (1964) in the early 1930s was informed that the age of the marga was about 15 to 20 generations. Considering that the average age of one generation is 30 years, the marga formation can be calculated to have taken place between 450 to 600 years earlier, that was in about the 14th to 16th century. In former times, when small groups departed from a marga and moved far away in order to settle in a new area and found a new lineage, knowledge of the relationship that existed to those who remained behind in the ancestral area could be lost in the ensuing centuries of isolation and precarious existence (Vergouwen 1964:18). In some cases, a certain lineage fission at a certain level could result in a total split from the main marga.

2.1.3. Territorial Aspect of Toba-Batak Adat

The marga formation/lineage fission was closely related to spatial expansion and land colonisation because it usually went hand in hand with the founding of a village, mamungka huta. Founding a village was most valued because it gave a man and his male descendants the right to rule the village and to decide about the admittance of others. While the descendants have a right to remain, they could expel those of other lines. Vergouwen writes that "the right to rule in the village, 'harajaon', is the 'common right', 'hatopan', of every one of the founder's direct patrilineal descendants" (1964:112). In relation to this, Sherman (1990:72) has questioned the tendency of the Dutch to interpret this shared right of harajaon as signifying "the right to rule" or "chieftainship". Instead, all the descendants of a hamlet founder performed the exercise of ritual privileges which include the exercise of those privileges with respect to land.

Being organized along marga lines, the Toba-Batak were a relatively highly egalitarian society with a minimal leadership hierarchy. Each marga/lineage would have its own leader, raja, and they were quite independent from each other. Each raja had the authority over a certain lineage not wider than a minimal marga, and over a defined spatial area not wider than a group of huta. In principle, a

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10 See also chapter 4 on how "migration" and founding a huta have become a common way of marga splitting.

11 See later the description of how the male descendants of the founder of Hutagalung village have certain privileges which may effect the admittance of the in-dwelling marga in chapter four.

12 The term raja refers to those who lead a certain area, affiliated to certain patriline descent groups. Thus, raja is mainly seen as a lineage leader in a certain spatial context (Castles 1972:21).
marga is one ceremonial and sacrificial community. A larger ceremonial and sacrificial community which includes more lineages or a larger marga is called sahorja (Vergouwen 1964: 35-36). Since people of the same marga might live in different localities, and in turn, one locality might be inhabited by people of different margas, the Toba-Batak also recognized the principle of territory under the name bius (Situmorang 1993; Ypes 1932). In the Toba area there was a supra-bius level of authority which was headed by the King-priest Sisingamangaraja who later severely opposed the arrival of the Dutch. In the colonial period this supra-bius authority was rejected, but the Dutch did confirm the territorial power of the different bius though were not necessarily welcoming of their spiritual power. In the early 20th century, the time when the Dutch were already in control, the Toba-Batak were divided into 95 bius scattered in the six Dutch administrative areas or districts (onderafdelingen). In Dairilandten that belonged to the Pakpak-Batak, there were two Toba-Batak bius. On the other hand, there were two Mandailing-Batak bius that belonged to the Toba-Batak in Barus. Table 2.1. indicates the inconsistent way the Dutch clustered the Batak groups into different districts.

Table 2.1. Number of Bius in six Colonial Districts

<table>
<thead>
<tr>
<th>District</th>
<th>Total Bius</th>
<th>Toba-Batak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dairilandten</td>
<td>11</td>
<td>2</td>
</tr>
<tr>
<td>Samosir</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Toba upland</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>Silindung</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Barus</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>106</td>
<td>95</td>
</tr>
</tbody>
</table>

Source: extracted from Ypes (1932: 555-553).

Every territorial unit performed the function of maintaining both the spiritual and secular life of the inhabitants. At the huta level both secular and spiritual leadership might be held by the raja huta, although further tasks might be delegated to different individuals. At the bius level the division of tasks between the spiritual and secular leadership was more apparent. The spiritual leadership at the bius level was in the hands of raja-raja parbaringen whose main task was to perform the annual bius offering ceremony especially relating to the agricultural cycle. They were the mediators between the secular and supernatural powers, thus, the main bearers of the adat. The secular leadership of the bius was in the hands of a council representing all the margas in the bius. The council was responsible for maintaining law and order, peace-keeping, defending the border lines, handling judicial affairs, managing irrigation and guarding the performance of the traditional

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market place or onan. Based on these characteristics, Ypes (1932) concludes that the bius was not only a sacrificial community, but also had a political character precisely because of its strong territorial element. This territorial element was appraised by the Dutch in the creation of the new colonial administrative hierarchy.

2.2. SOME ASPECTS OF ADAT LAND RELATIONS

Under the isolated conditions found up to colonial era, when adat was closely tied to religious concepts, Toba-Batak genealogy was very important in determining the relations among people, and between people and the land. The myth of creation was used as the basis to determine one's position in the smaller margal circle and in the wider Toba-Batak society. Genealogical relations became even more relevant when considered in the context of space because the process of margal fissioning went hand in hand with the process of land colonisation. In this sense, one would talk about the importance of an ancestral area and the first-settlers' rights. In a spatial context, different margas ascribe different positions to their relation to land and with each other. Ypes (1932), a colonial administrator, described the Toba-Batak traditional relation to land and managed to convey the complexity of those relations, where "the who, the how, the when and the what" matter in qualifying the concrete situation. His description was based on observations made of the time when the German missionaries and Dutch colonialists were beginning to gain influence and the older customs were still strongly practised. Therefore, I draw on the description of the Toba-Batak religious, genealogical and territorial aspects of land relations mainly from the work of Ypes.

The early features of Toba-Batak land relations were comprised of three basic components: (1) the social entities that bear the land relations; (2) the object of land relations; (3) the substance of land rights.

2.2.1. The social entities

Adat principles clearly define the social entities which can be holders of land relationships. Concerning these, Ypes (1932) talks about the bius as a superior territorial unit, comprising the great bius, bius na bolon, and the small one, bius na metmet, in which different margas live side by side. The main function of the bius is ritualistic, that is to organize annual offering ceremonies related to the agricultural cycle in order to assure the success of planting and harvesting. Each bius comprised different genealogical groups, marga, and each marga fell under

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14 See Ypes (1932: 159-163); Sherman (1982: 196-199).
15 In the book Ypes (1932) also describes the customary land law of the Pakpak-Batak, one of the Batak sub-groups.
16 The idea is taken from the three basic components of property relationships in Benda-Beckmann (1995:7).
one territorial unit, *portalian*. The ritual function of the *portalian* fell under the command of *horja*. The *portalian* was further divided into lineage territories called *golat*. In this regard *golat*, which was further divided into hamlets or *huta*, gave execution rights to the concerned lineage members to concretely regulate the individual use of, and control over, land. Those lineage members living in the *golat* and *huta* were therefore called the rightful, *partano* or *marga raja*. The very word *partano* was distinguished from the word *parripe* or *marga boru*, the latter referring to those other than the proper lineage members with restricted rights to land in the *golat*. In short, a *marga* member’s domicile determined the concrete and operational status and relation to land under the Toba-Batak *adat*.

*Adat* principles treasure the unity of land and people and relate it to unity with the supreme being. Land and people unity is closely associated to the group of patrilineally related people who partake in the same common ancestor worship and worship of the Batak supreme being, as the maxim says: "Sirunggu, sitata. Disi hita juguk, disi do Debata". It means that the land on which people reside is considered the vicinity of god and the ancestors’ soul. The triangle of land, people, and ancestor worship is manifested in the *marga*. When two Bataks meet, they ask about each other’s *marga* and their *huta* of origin. If, for instance, one says that he belongs to *marga* Limbong from Pahae, the other is likely to wonder why a *marga* Limbong resides in Pahae and not in Samosir of the Toba area. Such a simple inquiry is, indeed, commonly made by any Batak to whom relation to land is based on the principle of first occupancy while the unity of one’s *marga* and land reflects one’s social status. Since the right to access land is vested in *marga* membership, being a *marga* member in the domain of the *marga* is likely to guarantee enough rice field, the main source of wealth.

The implication of the rule of *marga* membership in terms of *marga* domain for a woman is quite complicated. Marriage and post-marital residence are the two determinants of whether she has strong or weak access rights to land. The general principle is that before being married, a woman belongs totally to her father’s *marga* which implies that she has the right to access her father’s *marga* land. The moment after marriage, a woman affiliates herself with the *marga* of her husband though she is still known as the daughter (*boru*) of her father’s *marga*. If after being married she resides in the *huta* of her husband’s *marga*, she loses the right to access to her father’s land while she gradually acquires and develops new access rights to her husband’s land. Access rights to her husband’s land become stronger the longer she resides in her husband’s *huta*, if she bears children, especially sons, and when she becomes older and has daughters- and sons-in-law. The absence of these factors may limit the possibility of acquiring stronger rights of access to the land of her husband. Thus, unlike men, there are unpredictable factors which may inhibit a woman developing her right to access land, especially those related

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*17* Parallel to this, Situmorang (1993, Toba na Sae:58) depicts a similar idea although it is restricted to the domicile of one *marga* in a *bius* only.
to her ability to bear children and the age of her husband so that she is not too
early widowed. If a married woman and her husband opt to reside in her natal huta,
it is likely that the woman would not get the right to access to her husband’s marga
land while they are cultivating the land of her father, and the right to access to her
father’s land would not necessarily be with full entitlement. A married woman’s
entitlement to her father’s marga land is not based on rights as is the case for her
brothers, but depends on the mercy of her father and male relatives.

The marga, which is further divided into lineages, gives execution rights to the
lineages and their members to concretely regulate the individual use of, and control
over, the land. It also authorizes the transfer of land rights within their respective
domains. Because of different levels of adat authority and different marga positions
involved in land relationships, one always finds flexible external alignments and
internal differentiation within a village. A marga as a whole is a unit, but it is
internally differentiated among lineages, sub-lineages, and further down to families.
As a consequence, the adat authority which governs land relations is varied and
layered and the privileges endowed to women and marga bom at a low level of
authority may or may not be admitted by a higher level authority or vice versa.

Land partition through inheritance should first be handled by close family
members. The married sons of a deceased man should discuss the inheritance first
among themselves, and the formal partition takes place in the presence of the
immediate siblings of the deceased (dongan sabutuha), his immediate affine or
wife-giver (hulahula) and the wife-taker or the family of his married daughters
(boru). The three groups form the basis of adat authority, the Dalihan na Tolu.
Decisions on lineage land have to take place before a higher adat authority, the
Dalihan na Tolu of the lineage. Thus, similar to Vergouwen’s (1964:33) statement
about the flexibility of marga, I make the analogy that Dalihan na Tolu too, "...belongs to a system of ever widening lineages, to a number of ever extending
groups of which the unifying connection is always to be found further back in time."
The flexibility of adat authority can be understood by looking at the Batak’s flexible
way of classifying their relatives. As Niessen (1985:89) aptly puts it:

...the system used by the Batak to classify their relatives is so all-embracing
as to incorporate the whole society and so specific as to denote the most
immediate kin. It operates at several levels. On the one hand, if ties are not
renewed every three generations they become inoperative at a certain ritual
level. On the other hand, they are never forgotten and, this fact is recognized
at another ritual level. Finally, the system is so basic to interpersonal
interaction that even where no actual ties exist, valid fictive ties are created.

2.2.2. The object of land relations

The object of land relations under the Toba-Batak adat relies on both physical
and socio-cultural properties and falls under different categories. Besides
considering whether the land falls under the control of huta (one lineage), or of
golat (several lineages), or bius (several margas) the physical attributes of the land determine the general rules. Housing area, farming area, grazing area, forest area, reserved area and sacred area carry different layers of socio-cultural meaning. It is the housing area, or parhutaan, that is the starting point from which the different access rights of various members and non-members of the huta to all adjacent physical properties are formulated. It is precisely in the spatial context of huta that different margas ascribe different positions in their relation to all physical properties and with each other. In short, it is through the notion of huta that the "folk geographies" (Bohannan 1967) of the Toba-Batak are conceptualised.

The object of land relations can take various forms:

1. **Forest area**: An aged forest is called tano rimba and harangan, a young forest is called tombak or rabi. If the land has never been cleared it is called tano na so hea niula or tano tarulang. If a plot of land was once cleared and is now abandoned, it is called gasgas or tano na niulang.

2. **Housing area**: A housing area or parhutaan is located on a tract of land bordered by two walls, parik bulu suraton and parik bulu duri. Its four corners are marked by the pagopago, usually big stones or a large tree.

3. **Farming area**: Wet rice field is called saoa or hauma. Dry rice field is called hauma tur. A plot of land that has been left fallow for a short period of time, e.g., two years, intended for crop rotation, is called tano dipombal. If the land for the same purpose is left fallow for a longer period, then it is called talun. A porlak is a garden meant for growing other than rice.

4. **Grazing area**: Jalangan is a grassland for grazing unattended cattle, while jampalan is for grazing tethered cows, goats or horses.

5. **Reserved area**: Tracts of land reserved for different purposes. Hauma harajaon is a reserve for setting up rice fields the yields of which are used to cover the costs of the offering ceremonies at the bius or horja level. Reserved forest for firewood is called tombak riperi. Reserved land for grazing is called jalangan. A tract of land reserved for the expansion of a huta is called pangeahan or tambatamba ni huta. If it is reserved for the new-comers or newly-weds it is called punsu tali. Water reserves are called mata mual.

6. **Sacred area**: These tracts are believed to be the vicinity of the spirits and the souls of the dead ancestors which are called parsombaonan, solobean, parbeguan and saba parhombanan. A graveyard is called partangisan, parban-daan, or udean. If the grave is owned by the commons it is called partangisan hatopan, while an individual graveyard is called partangisan pangumpolan. A tract of land where people perform a special prayer to heal the sick by meditation is called tano langlang or parlanglangan.

Implied in the physically defined objects are the specific uses purported for specific objects, though these uses may be subject to change. Parts of the grazing and forest areas may be converted into farming area while the reserved area is meant to be converted into housing and farming areas. Farming is considered the most important object of land relations under the adat. Rice field in particular,
corresponds to the ultimate feature of the social order, conceptually distinguished as "the material and the ideological" (c.f., M. Bloch 1975: 205, 211). Rice field is traditionally regarded as the most important valuable for attaining immediate and future economic security, and as the most important means to strengthening adat relations between generations and between affine.

2.2.3. The substance of land rights

The various objects of land relations fall under the authority of different and sometimes overlapping social entities which, in turn, constitute the total bundle of rights such as the right to regulate, supervise, represent in outside relations, alienate and allocate, and use and exploit. Implied in this bundle of land rights are substantial and procedural aspects which have a mix of public and private dimensions (c.f., Benda-Beckmann 1997). At the highest but often abstract level, the marga or lineage as a whole plays the role of a regulator, a supervisor, a group representative and an authority to alienate and allocate land. In principle it is the marga of the first occupant, and not the individuals, which holds residual rights. Individual member may die, but a marga or lineage surpasses the life of individuals. Physical objects like forest, grazing, reserved and sacred areas are usually subject to the direct authority of the marga. On the other hand, rice fields and housing plots are usually under the direct authority of the individual members.

The rights, duties, privileges and possibilities given to the bius, horja, huta, family or ripe and the different individuals vary in relation to the objects of land concerned. In the early marga formation, the different groups started to clear the forests, occupied different areas and started a huta. The huta may also have been founded on tano tinaban, a tract of land appropriated by the conqueror. In either case, the (male)persons who founded the huta are called sipungka huta. The process of founding a huta, as already mentioned, legitimized the two positions in relation to land, first as partano or marga raja, and secondly, as parripe or marga boru which position is an important dimension in understanding Toba-Batak access to land. As Vergouwen (1964:110-111) states:

> In Toba the internal differences between the villagers result from and are dependent upon the foundation of the village. Once a man has founded a village, mamungka huta,... he creates for himself and for his sons a community of its own and in doing so he and his male descendants acquire the right to be masters there and freely to dispose over the admittance of others.

With such different positions, different rules exist concerning what the marga raja or marga boru may (not) do in terms of making physical land improvements and the kinds of land transfer undertaken. The marga raja may clear a forest, mangarimba, to start a garden or a rice field\(^\text{18}\). The marga boru, however, before

\(^{18}\)It is also called mambaen portak, manoriahi, manombahi, mangarabri (Ypes 1932:201, 246).
doing so should ask permission from the *huta* chief and offer him in return a ceremonial meal. The land cleared by a *marga boru* for a rice field is called *lupak* and to this a *marga boru* has an inalienable usufruct right or *tasir*. Most of the *huta* reserve tracts of land heading to the border side of the *huta* which are called *punsu tali* and are for both the *marga boru* and the newly wed. The *marga raja* has the right to enlarge the plot, *pangeahan* rights, either by natural occurrence or by his own efforts, the latter called *mangonjar*\(^*\). The plot of a *marga boru* is, in principle, fixed and definite although he may be given permission to enlarge it.

Based on the principle that *marga* holds the residual rights which in turn extends various rights to individual members, land relationship is further characterized by the conditions and procedures under which rights to land may be appropriated, acquired or maintained through specific transactions. Land transaction under the Toba-Batak *adat* is strongly emphasized when it comes to strengthening *adat* relations between related generations and affines. However, this normative claim of the magico-religious and cultural value of land transaction is often combined with economic and reciprocity motives. Over the course of time, economic motives may supersede other motives in the transaction. An elaboration of the two main categories of land transaction under the Toba-Batak *adat* follows. The first is categorized as "generational and affinal land transaction", the second "reciprocal and economic land transaction".

2.2.3.a. Generational and affinal land transaction

Generational and affinal land transaction takes at least three different forms: through *waris*, *teanteanan* and *pauseang*. Thus, gender classification and marital status are other dimensions which count when it comes to further stipulation of access to land. Vergouwen (1964:270-289) discusses this generational and affinal land transaction under the broad term inheritance law. According to him there are three main parts of inheritance law that must be distinguished under the patrilineal Toba-Batak *adat*: success in direct descent in the male line; the accrual to the collateral male line; the allocation to daughters. Analytically, generational and affinal land transaction among the Batak provides a framework within which resources are distributed along kinship and gender lines. *Waris* is the succession in the direct male line which is effected through the birth of sons. When the land accrues to the collateral because the deceased has no male issue, the land is called *teanteanan*. A daughter has no definite rights to inherit land from her father. However, when married, she may request a portion of land for her and her children through performing a certain ceremony. The land she receives is called *pauseang*. These three types of land transaction are proof that land fulfills its ultimate function in providing "the material basis for the social continuity of the groups beyond the lifetime of individual land holders" (cf. Benda-Beckmann 1997:16).

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\(^*\)Plot enlargement occurs in two ways: through a natural process that adds to the existing land bordering a sloping terrain; through physical effort if the plot bordering on water is expanded by adding gravel and soil (Ypes 1932: 205-206).
Waris (inheritance)

The principle of adat inheritance is that it is men, not women, who are entitled to inheritance. According to Toba-Batak belief, the life of deceased forefathers is continued by their sons. Therefore, the material goods acquired by the forefathers will be preserved and augmented by the sons. The material goods inherited by the sons would partly go to food offerings which would honour and show respect for the forefathers' souls, and in turn would be reflected in the prosperity and poverty of the descendants. If there are sons, the adat guarantees that they are the sole heirs and that all sons are entitled to inherit the land of the deceased father. In general, each of the sons is equivalent in status and they are treated in a similar way. However, there are a variety of different factors affecting the distribution of the inheritance. The land inheritance is not regarded as an entity that can be split up precisely into a number of parts. In fact, this would hardly be possible since the parts are never valued in terms of money or converted into money.

A man of marga raja inherits the land automatically. On the other hand, if he is a marga boru, he has to ask permission from the huta chief to continue his deceased father's usufruct rights to land, the lasir. The marga raja's access rights to land in the huta are eternal, even though he may reside elsewhere temporarily or permanently. Unlike the marga raja, the marga boru may maintain his access rights to land as long as he lives there. Unmarried persons, both men and women, have access rights to land through their father. Marriage is one important passage of life through which one is considered socially mature and may take the full rights and responsibilities under the adat.

The process of inheritance partition may take place even before the death of the father. This may take at least two forms, basically depending on the reason why early inheritance partition takes place. Pre-mortem inheritance can take the form of panjaean and indahan arian. Panjaean land is received by a married son from his father as a token for the son's setting up an independent household. It is the responsibility of the man's father to allocate a plot of land for the panjaean of his son. Again, the position as marga raja or marga boru determines how easily one may get access to land as panjaean. Under the Toba-Batak adat, a newly-wed couple would initially reside in the husband's parental house. After some time, usually after the wife is pregnant for the first time and before delivery, the son may ask his parents to let them set up their own independent household.

The modest sign of an independent household is the establishment of a separate cooking hearth though the couple may still share the same house with the parents. When the newly-wed start burning their own firewood, nung masitutung sobanna, and cooking their own rice in a separate pot, they start to be seen as an independent household. A mature, independent household takes formal form the moment the couple moves to a separate house, either newly built or borrowed. The couple would serve a ceremonial meal during which the man would deliver the appropriate speech, hata nauli, asking permission to set up an independent household. The parents would respond suitably with words of blessing, pasupasu. After the ceremonial meal the man's parents would provide them with a bag of
hulled rice and the necessary kitchen utensils for two, such as a cooking pot or hudon, a big spoon or hariar to stir the rice, two plates and two glasses. Also a sleeping mat, two pillows, two blankets and an oil lamp. At this occasion it is common for the man’s parents to endow the newly-wed couple with a plot of rice field, hauma panjaean, so that they can be self-sufficient. In addition, the couple may get a small plot of garden to grow vegetables, fruit trees, cassava and sweet potato. The panjaean land then comes under the control of the son and his family, and he is entitled to use it or alienate it. The son who has already received a panjaean in the form of land or house may not get his portion of the rest of his father’s land should the father die. The panjaean land is considered his share of the (pre-mortem) inheritance. Thus, in practice only those who have not received any panjaean, or those who are not yet married, will receive land inheritance. Yet the deceased’s debt is usually equally divided among the sons. A son who inherits a pledged rice field has the obligation to redeem it.

The second form of pre-mortem inheritance is called indahan arian, that is a plot of rice field given by the parents of a man on the birth of his child, through an upa-upa ceremony. Different regions may apply different rules to indahan arian. Usually, only the first born grandson from the eldest son will receive indahan arian, although other first born grandsons from younger sons may receive it. Other grandsons, whether first born or not, may also be given an indahan arian but this is very rare. The first born grandson from the eldest son has a special place in the life of the grandfather. This grandson is called dongan sagoar, and his name is shared by the grandfather. A man who has a first grandson, say Poltak, from his first son will be called Ompu Poltak. When the grandson becomes an adult and gets married, it is likely that the grandfather, if alive, will endow him with a plot of rice field which is called upa ompu.

Teanteanan (collateral inheritance)

Should a man die without male descendants, the land inheritance accrues to the collateral, the panean. It should first go to the brothers of the same father as the deceased and should there be no brothers, then the uncles and cousins of the same grandfather. The appropriate claimants go a step further back in the genealogy each time, based on the same principle. If the deceased left neither a widow nor daughters, then the panean can immediately take over the whole land. The house of the deceased would be destroyed and burned, hoping that the curse of infertility would not spread to other fellows. If there are widow and daughters, then the panean must allow at least part of the land to go to the dispossessed

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20 Indahan arian literally means “rice for the day”. It is a rice field which provides basic food. In principle indahan arian land is meant for one’s grandchildren. Both a woman’s and a man’s parents may give indahan arian land to their grandchildren. Under this section (waris) only Indahan arian from the man’s parents is discussed while that from the woman’s parents is discussed under the section pauseang.
family. The closest kinsmen who become a panean have an obligation to take care of the widow and her daughters.

In the past it was obligatory for the widow and her daughters to stay in her husband’s residence and not to return to her natal family. A widow of child-bearing age is expected to be married to one of the closest kinsmen, either to her unmarried younger brother-in-law or to another unmarried close kinsmen. Through levirate, the widow and her daughters will automatically be under adat responsibility and be the property of her new husband, hence the deceased husband’s marga. With the interplay between marriage and maintaining access to land, the overall function of land for the social continuity of the group is preserved in a gendered way. Prior to Dutch colonial time and the introduction of Christianity, levirate used to be a pre-condition should the widow want to maintain rights over land and her daughters. Refusal of these obligations would result in the woman’s natal family having to return the marriage payments and the land, and often having to give up custody of her daughters. However, it is obligatory for the panean kinsmen to allocate portions of the land for the benefit of the deceased’s daughters. The allocation of the daughters’ portion may later be transferred in the form of a pauseang. If a marga boru man dies without male issues and without brothers, then the land automatically accrues to the raja huta.

Pauseang (affinal land gift)

Concerning gender status, in general a married woman will follow her husband and dwell in her husband’s compound. It is through wifehood that she gets access rights to the husband’s land. However, in many cases a man may also follow and dwell in his wife’s compound. In either case, it is only after marriage that a woman may ask her father to give her a plot of rice field, a gift of land which is commonly called a pauseang. The transfer of rice field by means of an affinity relationship is one of the principal ways in which strong access rights to land are transferred, unredeemably, from one marga to another through a daughter. The pauseang gift is one of the most important forms by which this is achieved. It is through pauseang that a woman may get the strongest individual control over the adat land. Vergouwen (1964:202-211) uses the broad term bride’s dowry for pauseang because in principle the rice field is given to a daughter by her father at the time of her marriage or shortly afterwards.

There are different forms of pauseang depending on when and for what purpose it is given. The strongest in nature is called bangunan, that is a gift of affection from a father to his still unmarried daughter with the hope that the rice field may enhance the opportunity for the daughter to find a marriage partner. Therefore, a bangunan field is transferred personally to the daughter. This transaction should be made known to the closest kin to avoid possible conflict in the future. The daughter maintains individual control over the field and its produce, both before and after marriage. Should she divorce or become a widow and not remarry in levirate, she retains the individual control over the field. When land is given to a man’s family to secure a child’s betrothal, a common practice in the past, it is
called *hundulan ni boru* which should be returned when the marriage does not take place. When land is given to a married woman as a token of her deceased father, it is called *daon sihol*.

Another form of *pauseang* is *ulos na so ra buruk*, literally meaning: a cloth that will not rot. When a married daughter has not had a sign of pregnancy after a considerable period of time, or if the married daughter becomes very ill, her natal family will pay a visit to perform a *mangupaupa* ceremony for her spiritual and physical well-being. Therefore the land is also called *tano naniupahon*. The father will wrap her with a piece of cloth, *ulos tondi*, and pour upon the daughter a magical blessing, *mangupahon*, in the form of a rice field as a gift. In this way the daughter symbolically receives an eternal cloth, *ulos na so ra buruk*, which will always maintain both her spiritual and physical being. If the daughter dies before she has a child, the land is to be returned to her father.

The third form of *pauseang* is *indahan arian*, a land gift from a father which is intended for his daughter's children. After the birth of her first son, a woman will visit her natal family to introduce the baby, *paebathon*, in an *adat* ceremony. During the ceremony she expresses her wish to receive a rice field from her father. Through the land gift it is expected that in the future the son who receives the rice field will always remember and pay a visit to his mother's natal family and, ultimately, will marry a woman from his mother's *huta*. In a rare case, a rice field may also be given at the birth of the daughter's daughter as an *indahan arian*.

In whatever form the rice field is given by the woman's natal family, people simply regard it as a *pauseang*. Over the course of time, *pauseang* gains importance in the recognition of the affinity relationship between different *marga*. While a *pauseang* serves a ritual-ceremonial function as a counter-gift to the marriage payment, *sinamot*, it also serves as economic security for the woman and her children and as the fulfilment of the expectation that the husband's family would respect her, "asa sangap ibana" (Vergouwen 1964:61).

2.2.3.b. Reciprocal and or economic land transactions

*Dondon* (pledge)

The term *dondon* refers to a plot of land used as a collateral in which it is pledged against money with a right of redemption. Such a transaction takes place often in an emergency situation when a landowner desperately needs money. Initially, land is pledged only for an *adat* reason like an *adat* wedding or funeral. When a senior member in the family, either the father or the mother, dies in between two harvests, it is likely that the family cannot afford an *adat* funeral. They have the option to bury the deceased without an *adat* ceremony, but after some years they are still obliged to perform the *adat* ceremony which would then be

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21 As mentioned earlier, an *indahan arian* may also be given by the man's father to his grandchildren. In that case it is considered as part of a pre-mortem inheritance.
much more expensive. As long as such an obligation is not fulfilled, the children
of the deceased are not entitled to receive an adat funeral should they themselves
die. Similar rules apply to an adat wedding. If a couple has not performed an adat
wedding, they are not entitled to partake in any adat ceremony.

Therefore, pledging for an adat ceremony is seen as a necessary part of the
game to keep the honour of the family. In this regard, pledging is always kept
within the lineage so that when the owner cannot redeem the land, the control over
the land is still retained by the lineage. While it is considered prestigious to keep
control over the land within the family circle, the landowner still hopes to be able
to redeem the land from the close relative.

The redemption of land, martobus, must be paid off all at once. On the other
hand, if the pledger needs more money, then the amount of the loan already
outstanding can be increased. Thus, pledging opens the possibility of having a
constant source of loan money. The pledger, who wants to hold on to the land, will
lend the pledger the additional money in order to prevent redeeming and
repledging to another person. As a common rule, redemption cannot be effected
before the rice field has been cultivated twice, balik bungki, thus after two years,
and must always be done after the harvest (Adatrechtbundel XXVI, 1928:80). It is
then obligatory for the pledgee to surrender the land immediately. However, the
pledgee may request a year's prolongation without additional increase of the
original amount loan.

**Dondon pate (permanent sale of land)**

The transferral of land without the right of redemption is indicated by the term
dondon pate which is a very uncommon practice although it does exist. Traditionally,
the permanent sale of land could only be performed among male siblings or in a
very restricted localized lineage. This has to do with preferential rights to land of
each male member of the lineage under the adat. In this way, control over land is
kept among the descendants of the first land proprietor, thereby maintaining the
honour of the lineage. Usually a permanent land transaction, dondon pate, results
from the inability of a pledger to redeem the dondon land. It is common that after
four periods of balik bungki, that is after eight years' time, the dondon land will be
sold in a permanent transaction to the pledgee. The rice field which has been
transferred permanently, pate, cannot be redeemed even if the original owner later
becomes rich. A direct dondon pate transaction without a prior dondon transaction
usually takes place when the landowner urgently needs quite a substantial amount
of money, for instance to pay a marriage payment, sinamot, or if the owner would
like to migrate to another place without planning to return. The agreement should
be performed in an adat ceremony where closest kin from both parties are invited
to a small feast meal. Those who attend the ceremony become the living witnesses
of the transaction. A rice field may also be transferred as a marriage payment
itself, sinamot, by the man's family to the woman's. It is performed during marhata
sinamot, a meeting about marriage payment, during which the status of the land
transaction is made clear, whether dondon or dondon pate.
Bola pinang (share-cropping)

*Bola pinang* literally means splitting an areca nut. It is a form of contract in which a rice field is transferred temporarily, and the recipient is obliged to cultivate it and hand over a previously agreed part of the crop to the owner. Although in principle both parties receive an equal share of the yield, the proportion of the share should always be decided beforehand. There are two situations in which an owner lets a field be share-cropped. First, the owner is rich and has a large number of rice fields to work; and secondly, the owner is unable to provide labour because of illness or aging. The landowner, being dependent on the labour of others, would be quite selective in choosing a share-cropper. Because the landowner usually lives in the same village, he/she can always see if the rice field is well kept by the share-cropper. With the *bola pinang* arrangement, the risk is shared by both parties. The landowner should at least provide the seed and sometimes the cost for ploughing, after which he/she is entitled to 1/3rd to 2/5th of the yield, while the share-cropper provides labour and maintenance. The right of the share-cropper is restricted to work the land which cannot be handed over to other persons on any terms whatsoever. Close family members rarely object to land being given out to share-cropping, nor lay a preferential claim to being share-croppers themselves.

Mangongkos (tenancy)

The surrendering of the use of land and landed property for a certain period of time for a monetary remuneration is quite a new phenomena. The transaction was introduced during Dutch colonial time when traders had to pay rent for having used a certain market space for a certain period of time and when the government had to pay rent for using a building plot. The term *mangongkos* is derived from the Dutch word *onkosten*, or expenses. The *mangongkos* transaction also applies to a rice field where the landowner receives a constant amount of money regardless of the yield. Under these circumstances, the landowner is not bothered to check if the rice field produces a good harvest, while the tenant bears both the profit and the risk. Both parties in a tenancy arrangement situate themselves on a relatively equal footing because there is no debt involved in such a transaction.

Mangaramoti (custody) and Maminjam (borrowing)

Putting into custody and borrowing a rice field or a house have to do with the socio-economic function of property. Rather than leaving a rice field or a house totally abandoned, villagers will likely let it to others who are in need. A custodial arrangement is usually proposed by the owner who permanently or temporarily migrates to another place. The land or house under custody remains the property of the owner. A prerequisite of custody and borrowing is the use of the rice field or house and of any profit that arises from it. A custodian may cultivate the land or live in the house. A custodian may also have the right of disposal over the land or house to a certain extent, such as giving out a rice field for share-cropping or surrendering it to a member of the in-dwelling *marga*. The custodian must return
the rice field or house whenever asked by the owner. When a rice field or a house is returned after a long period of being in custody, then the owner may give the custodian an *upa mangaramoti* or a fee for custodianship.

In borrowing it is usually the would-be borrower who takes the initiative in contracting this kind of transaction. It is quite common that a married man borrows a house or a rice field from his parents, his uncle or brother. Married women usually borrow a rice field or a house from their natal family, either parents or brother. Some of the *raja huta* may have a desire to increase the number of co-dwellers, later considered as *marga boru*. These *raja huta* would allow newcomers, who are usually economically vulnerable, to borrow the vacant houses free of financial obligations. The transaction of borrowing such houses is called *maisolat*. The person who borrows, *paisolat*, does not necessarily stand in a subordinate position to the owner or the *raja huta*. However, the *paisolat*, both man and woman, are the first to be expected to give a hand to the land/house owner or the *raja huta* especially when there is an *adat* feast or ceremony in the *huta*.

*Silehonlehon (land grant)*

Land may be granted to an individual family or to a corporate body. A family from another place who comes to a village may first borrow a rice field or a house from the villagers. After a period of time, when the family has expressed its intention to stay more permanently in the village through words and deeds, they may be granted a piece of land to set up a rice field, a garden or a house as long as the family lives in the village. Unlike the land status under the custodian or borrowing arrangement, a land grant may not be revoked as long as the grantee is using it. The transfer of land may also take place in the form of a collective grant of land for certain communal purposes. For example, when the community perceives that certain regular communal activities necessitate a plot of land, it may grant a certain plot allocated only for that particular function. Land grant transactions for communal purposes started in the early nineteenth century with the introduction of Christianity when missionaries set up their posts and church buildings. Through an *adat* ceremony, the land grant is usually given by a wider lineage who owns the land and who will share the benefit of the grant.

2.2.4. Conclusion on access to land under *adat* principles

There are two categories of land transaction in which gender may or may not play a crucial role as the direct consequences of the principle of *marga* membership through the *marga* domain. One category is the generational and affinal land transaction which is strongly determined by gender and inter-familial relations. The other category which, in contrast, is not highly determined by gender or by strict inter-familial relations, is the reciprocal and economic land transaction. Under the first category, in which gender and inter-familial relations play a crucial role, there are three kinds of transaction: inheritance, collateral inheritance and affinal land gift). *Adat* principles give rights to a Toba-Batak man to inherit from his father,
while a woman is only entitled to ask her father/male relatives to show her mercy and give her a portion of land. Marriage and post-marital residence are the two determinants of a woman's strong or weak right to access land. Unlike for a man, there are unpredictable factors which may inhibit a woman's acquiring a stronger right of access to land, especially those related to her ability to bear children and to the likelihood of her becoming a widow. A woman who becomes a widow without any children is in the worst situation because she is not entitled to her deceased husband's land and only has the right to use a portion of it.

Under the category of the reciprocal and economic land transaction, a woman, like her male counterpart, in principle has enough room to manoeuvre to gain access rights to land. If she has money, she may use it to arrange pledging, permanent purchase and tenancy. If she has the labour, she may contract for a share-cropping arrangement. If she has good relationships with her huta fellows, she may be given the right to custody, borrowing or land grant. Thus, in principle, a woman's access to cash and labour may enhance her chances to strengthen her right to access land, while her social relations developed within the huta may be used to gain access to borrowing and to using land and house.

The whole process of acquiring, restricting and losing access rights to land under the adat is given religious significance in that it perpetuates the recognition of the eternal power of marga raja. All land relations and transfers should be performed through a certain ceremonial procedure. A marriage can become a doorway for the transfer of land between affines, a fact which points out precisely the importance of ritualized land transfer between different margas. A marga boru should always ask permission from the marga raja to get access rights to land and pay reciprocal tribute to the marga raja. The rights are given only as long as the couple resides in the huta, thereby submitting themselves to the custody of the huta chief and marga raja. Being in different positions relative to the land does not necessarily mean that the marga boru can easily be evicted precisely because, as Sherman (1982:451) states, "to dispossess (the marga boru)...would involve an unravelling of the social fabric, of the many-sided relationships which have been built up over time".

2.3. THE IMPACT OF CHRISTIANITY

2.3.1. The End of Isolationism

Prior to missionary and colonial times the Toba-Batak's attitude was regarded as destructive to their own existence: brutal and cannibalistic, and unable to live in peace with the neighbouring villages. Internal wars between margas commonly occurred (Marsden 1811:288; Francis 1839:202-220; Loeb 1935:93). Rumours about their fierceness spread widely and kept foreigners from having contact with them. Contact with neighbouring villages was minimal, and people never left their own villages for fear of being kidnapped for slavery (Tobing 1956:77; Sitompul
1986). Situmorang poses a counter argument that this negative description provided by western writers is the result of the biases inherent in their superior position as researcher, government administrator, or missionary. The pressure of Islam from West Sumatra created social turbulence where, as a result of the 19th century Minangkabau Islamic revivalism under the leadership of Imam Bonjol, the southern Batak region inhabited by the Angkola and Mandailing Bataks was conquered and Islamized (Dobbin 1983:117-192). In the 1820s, the Bonjol raided the Toba-Batak, and burnt houses and villages along the way to Lake Toba. The King-priest Sisingamangaraja XI was killed and later replaced by Sisingamangaraja XII, while many were captured for slavery, resulting in the Bonjol being bitterly remembered as "monjo" or the destroyer of the Toba-Batak. The Toba-Batak would speak about the Padri time, *jaman Pidari*, referring to a situation of "chaos and lawlessness" in the words of Situmorang. They blamed their *adat* and belief system for being unable to face the challenge from Islam (Aritonang 1994).

The arrival of the missionaries and colonial government marked an end to the isolation and internal wars between various patrilineal descent groups. Having been traumatized by the Bonjol's violent attempt to Islamize the region, Christianity, to a certain extent, was taken as an alternative to challenge the expansion of Islam and end the chaos. Indeed, the conversion of the great majority to Christianity, according to Sinaga (1981), can be explained in two ways. First, Christianity and colonialism went hand in hand in attacking the traditional Batak religious organization, the *Parbaringin*, which was the bulwark and bearer of the religion. Secondly, "the Batak people saw and see in Christianity a real answer to their religious, cultural and human aspirations. Christianity liberated them from their old fashioned isolationism and from the plague of demonic disasters that formed a part of their traditional religion" (Sinaga 1981:30). The formation of the Toba-Batak Christian community was such that it propagated a new sense of belonging to an ethnic group rather than the narrow patrilineal descent group(s). Ethnic and religious identities grew in importance in the midst of expanding contact with non-Batak and non-Christian and, at a later stage, as the result of the rapid flow of out-migration.

The Dutch adopted a number of different attitudes towards the German missionaries. Fearing that Christianity might create more resistance among the neighbouring Islamic groups with whom they had long fought, at first the Dutch did not favour the presence of the missionaries. However, in view of creating a buffer against the surrounding Islamic ethnic groups, the Dutch, at a later stage, sup-

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22 Personal communication with Sitor Situmorang, Delft, 8 June 1996.
23 The Batak pronounce "Bonjol" as "monjo". In the course of the 1990s, the term "monjo" has come to regain its symbolic significance when it is widely used to refer to the various state authorities and prominent Bataks who support the illegal replacement of the Batak ethnic church supreme leader by the military. The ethnic church has so far been considered one of the symbols of Batak ethnic identity and the forceful leadership replacement is considered an attack against that.
24 Personal communication, Delft, 8 June 1996.
ported the work of the missionaries among the Toba-Batak. The changing Dutch attitude was an outcome of a wider interest in annexing the Toba-Batak region, therefore protecting the growing plantation ventures in the nearby area of East Sumatra, as well as overcoming the local resistance movements, especially the one led by Sisingamangaraja XII.

Christianity was introduced in the 1860s when the Toba-Batak region was still relatively free of Dutch control. Although in 1842 the region was unilaterally declared by the Dutch to be part of the Tapanuli Residency, it was only in 1878, when the 306 villages in the Silindung valley submitted themselves to the Dutch (Hutauruk 1993:18), that part of the region came under their effective rule. The attempt to annex the whole region did not succeed until 1907 when Sisingamangaraja XII was shot dead. To start their operation, the German missionaries had to ask for a permit from the Dutch, which was obtained only after some difficulty.

Before the annexation, Dutch control over the German missionaries in the Batakland did not go much beyond the issuance of such a permit. Thus, in the beginning the German missionaries were the sole agent of western civilisation in the free Batak region, challenging the establishment of the Toba-Batak society and its belief system as a whole. The full annexation of the region was later followed by the effective presence of the Dutch colonial government. These two western agents operated simultaneously in the region, with both parallel as well as contrasting objectives and means.

2.3.2. The Growth of Christianity

In the midst of internal wars between the different Batak margas, a German missionary, Nommensen, was able to purchase a plot of land to start Huta Dame in the Silindung valley. Under the adat, the inauguration of the Huta Dame gave him the very prestigious status of raja. In the beginning only some ordinary marga members wanted to be baptized (Hutauruk 1993:36-46). They were easily expelled.

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25 Pedersen (1970:49) expresses the Dutch concern about peace in the colony which was thought to be threatened with a general Islamic uprising. Van der Tuuk, a linguist, warned that since the Southern Bataks had been Islamized, it was necessary to Christianize the neighbouring Toba-Batak land. "If we do not follow this plan, it is my opinion that the whole society will become islamized before we realize it" (see Pedersen 1970:54).

26 The Dutch interest in repressing the Sisingamangaraja XII resistance movement and protecting the growing plantation ventures in nearby East Sumatra is discussed in Sidjabat (1982); also Pelzer (1961) on the colonial policy on the East Sumatra plantations. Smith-Kipp (1994) reveals that the Dutch also encouraged Dutch missionary work among the Karo-Batak to protect the plantation area of East Sumatra and deter the Achenes who were muslims.

27 Control over missionary personnel was codified in the RR (Regerings-Reglement) of 1854. Article 123 of the RR (or article 177 of the Indische Staatsregeling) read: "Christian religious teachers, priests and ministers must have special permission given by or in the name of the Governor General to work in the Netherlands East Indies. This permission can be withdrawn if it is clearly detrimental or its conditions not fulfilled" (See Nyhus 1987:20). For a more detailed explanation on the required permit for missionary personnel see Randwijck (1989:201-222).
from their *adat* community and had to move to the *Huta Dame* and submit themselves to the protection of "*raja*" Nommensen. Nommensen was aware that the expulsion from the *adat* community would harm the new converts and in the end would not encourage other Toba-Bataks to become Christians. Thus, right from the beginning, Nommensen understood the importance of retaining one’s fellowship in the *adat* community, and realized that in one way or another the forming of a Batak church should take the *adat* seriously into consideration (Schreiner 1994).

### Table 2.2.
Batak Christian Congregations 1867-1881

<table>
<thead>
<tr>
<th>Year</th>
<th>Main Congregation</th>
<th>Branch Congregation</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1867</td>
<td>7</td>
<td>1</td>
<td>115</td>
</tr>
<tr>
<td>1868</td>
<td>7</td>
<td></td>
<td>728</td>
</tr>
<tr>
<td>1870</td>
<td>10</td>
<td></td>
<td>1,071</td>
</tr>
<tr>
<td>1871</td>
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</tr>
<tr>
<td>1879*</td>
<td>11</td>
<td></td>
<td>3,402</td>
</tr>
<tr>
<td>1880</td>
<td>11</td>
<td>26</td>
<td>(7)</td>
</tr>
<tr>
<td>1881**</td>
<td>13</td>
<td>34</td>
<td>5,988</td>
</tr>
</tbody>
</table>

* Source: Aritonang (1994:152)
** In the year 1881 Nommensen moved up-north to Toba-Lake area; The church order of 1881 was established.

At this crucial time Nommensen met Pontas Lumbantobing, an influential *raja* who was baptized in 1867 and was able to persuade other *rajas* to become Christians. In 1873, Nommensen moved his post from the swampy *Huta Dame* to a better area in *Pearaja* donated by Raja Pontas (Schreiner 1994:46). With the help of a colonial representative in Sibolga, the newly converted *rajas* could retain their residency rights. Thus, conversion no longer invalidated one’s membership in the *adat* community. The conversion of the *rajas* was subsequently followed by the whole *marga* and all the *huta* members, making Christianity a relatively widely accepted new religion. Indeed, this collective conversion by all the *marga* members maintained the cohesiveness of the Batak kinship system (Pedersen 1970:85). Fortunately for Nommensen, the Dutch Governor of Padang, who visited the "free" Toba-Batak area of Silindung in 1868/1869, inaugurated a Christian *raja* in place of a "pagan" one who died, an act that certainly confirmed the idea that a Christian was favoured by the Dutch (Hemmers 1935:105). This, in turn, encouraged many other Silindung *rajas* to invite Nommensen to set up a missionary post in their territory, granting him plots of land for that purpose (Hutauruk 1993:42). The former battling among different *rajas*, therefore, turned into a new competition for setting up a missionary post (Lumbantobing 1992:80).
Table 2.3. Batak Christian Congregations  
In the first phase of the high period, 1882-1907

<table>
<thead>
<tr>
<th>Year</th>
<th>Main Congr.</th>
<th>Branch Congr.</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1882</td>
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<td>43</td>
<td>7,586</td>
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</tr>
<tr>
<td>1888</td>
<td>13</td>
<td>56</td>
<td>13,135</td>
</tr>
<tr>
<td>1889</td>
<td>13</td>
<td>71</td>
<td>15,124</td>
</tr>
<tr>
<td>1890</td>
<td>18</td>
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<tr>
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<td>22</td>
<td>107</td>
<td>31,076</td>
</tr>
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<td>1895</td>
<td>22</td>
<td>109</td>
<td>33,170</td>
</tr>
<tr>
<td>1896</td>
<td>22</td>
<td>127</td>
<td>33,170</td>
</tr>
<tr>
<td>1897</td>
<td>23</td>
<td>133</td>
<td>36,156</td>
</tr>
<tr>
<td>1898</td>
<td>24</td>
<td>148</td>
<td>37,156</td>
</tr>
<tr>
<td>1899</td>
<td>26</td>
<td>159</td>
<td>37,546</td>
</tr>
<tr>
<td>1900</td>
<td>28</td>
<td>175</td>
<td>40,723</td>
</tr>
<tr>
<td>1901</td>
<td>30</td>
<td>179</td>
<td>43,883</td>
</tr>
<tr>
<td>1902</td>
<td>32</td>
<td>205</td>
<td>46,154</td>
</tr>
<tr>
<td>1903</td>
<td>34</td>
<td>226</td>
<td>47,784</td>
</tr>
<tr>
<td>1904</td>
<td>36</td>
<td>265</td>
<td>51,585</td>
</tr>
<tr>
<td>1905**</td>
<td>39</td>
<td>301</td>
<td>55,685</td>
</tr>
<tr>
<td>1906</td>
<td>42</td>
<td>338</td>
<td>61,784</td>
</tr>
<tr>
<td>1907***</td>
<td>43</td>
<td>357</td>
<td>68,918</td>
</tr>
</tbody>
</table>

Source: Aritonang (1994: 152, 226-227)  
* In the year 1883 Toba-Holbung area was annexed  
** In the year 1905 Porsea area was annexed  
*** In the year 1907 Sisingamangaraja XII was killed

To avoid conflict among Silindung rajas, Nommensen set up a German-led missionary post in each main marga's territory in Silindung. In 1881, when management of the Silindung area was well established, he moved its station north to the "free" Lake Toba area, spreading Christianity to wider marga groups. Table 2.2. shows the growth of the early Batak congregations from 1867-1881. Nommensen's move to the Lake Toba area eased the way for the Dutch to annex the whole of Toba-Batak land in 1908, resulting, in turn, in rather smoother access for the missionaries entering the remote Toba-Batak areas. The period when Nommensen moved to the Lake Toba area until World War I (1882-1914) can be called a high point period from the missionaries' point of view (Aritonang 1994), divided into two phases based on the political situation in relation to the local resistance movement toward the Dutch annexation process. The first phase (1882-1907) was marked by important local political events: the annexation of the Toba-
Holbung area in 1883 followed by Porsea in 1905, and, the assassination of Sisingamangaraja XII in 1907 which ended the overt local political resistance.

By the time the whole region was annexed in 1908, there were 75,795 Batak church members. In 1918, only within ten year’s time after the annexation was completed, the number increased to 185,731 members. Table 2.3. displays the growth of the Batak Christian congregations in the first phase of the high period. Table 2.4. refers to the second phase of the high period of Christianization. In 1938, in the last statistics available before independence, there were 416,206 church members within 29 main congregations and 729 branch congregations.

Table 2.4. Batak Christian Congregations
In the second phase of the high period, 1908-1914

<table>
<thead>
<tr>
<th>Year</th>
<th>Main Congr.</th>
<th>Branch Congr.</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1908</td>
<td>40</td>
<td>382</td>
<td>75,795</td>
</tr>
<tr>
<td>1909</td>
<td>41</td>
<td>400</td>
<td>82,136</td>
</tr>
<tr>
<td>1910</td>
<td>40</td>
<td>432</td>
<td>103,528</td>
</tr>
<tr>
<td>1911</td>
<td>40</td>
<td>415</td>
<td>103,528</td>
</tr>
<tr>
<td>1912</td>
<td>40</td>
<td>440</td>
<td>133,745</td>
</tr>
<tr>
<td>1913</td>
<td>40</td>
<td>462</td>
<td>149,457</td>
</tr>
<tr>
<td>1914</td>
<td>40</td>
<td>467</td>
<td>159,024</td>
</tr>
</tbody>
</table>

Source: Aritonang (1994:227)

Table 2.5. Batak Christian Congregations 1918-1938

<table>
<thead>
<tr>
<th>Year</th>
<th>Main Congr.</th>
<th>Branch Congr.</th>
<th>Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>1918</td>
<td>40</td>
<td>465</td>
<td>186,731</td>
</tr>
<tr>
<td>1919</td>
<td>40</td>
<td>465</td>
<td>180,312</td>
</tr>
<tr>
<td>1920</td>
<td>40</td>
<td>486</td>
<td>194,338</td>
</tr>
<tr>
<td>1921</td>
<td>32</td>
<td>502</td>
<td>198,706</td>
</tr>
<tr>
<td>1922</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1923</td>
<td>32</td>
<td>492</td>
<td>210,416</td>
</tr>
<tr>
<td>1924</td>
<td>32</td>
<td>498</td>
<td>216,589</td>
</tr>
<tr>
<td>1925</td>
<td>26</td>
<td>497</td>
<td>223,069</td>
</tr>
<tr>
<td>1926</td>
<td>25</td>
<td>504</td>
<td>228,677</td>
</tr>
<tr>
<td>1927</td>
<td>25</td>
<td>482</td>
<td>243,199</td>
</tr>
<tr>
<td>1928</td>
<td>25</td>
<td>490</td>
<td>254,871</td>
</tr>
<tr>
<td>1929</td>
<td>25</td>
<td>537</td>
<td>273,076</td>
</tr>
<tr>
<td>1930</td>
<td>25</td>
<td>540</td>
<td>292,754</td>
</tr>
<tr>
<td>1931</td>
<td>29</td>
<td>618</td>
<td>313,086</td>
</tr>
<tr>
<td>1932</td>
<td>27</td>
<td>636</td>
<td>329,972</td>
</tr>
<tr>
<td>1933</td>
<td>27</td>
<td>636</td>
<td>343,013</td>
</tr>
<tr>
<td>1934</td>
<td>27</td>
<td>636</td>
<td>356,615</td>
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<tr>
<td>1935</td>
<td>27</td>
<td>636</td>
<td>368,535</td>
</tr>
<tr>
<td>1936</td>
<td>27</td>
<td>636</td>
<td>381,687</td>
</tr>
<tr>
<td>1937</td>
<td>28</td>
<td>-</td>
<td>398,821</td>
</tr>
<tr>
<td>1938</td>
<td>29</td>
<td>729</td>
<td>416,206</td>
</tr>
</tbody>
</table>

Source: Aritonang (1994:301)

* The year 1918 Nommensen died, replaced by Warneck.
Table 2.5. shows the growth of the Batak Christian congregations from the year Nommensen died (1918) until the time just before the German missionaries were arrested by the Dutch because of a conflict in Europe.

Both the German missionaries and Dutch colonial government had to develop a strategy for their dealings with quite a substantial number of Batak rajas, none of whom would submit to each other. While the missionaries initially tried to incorporate and in a way empower the different rajas, the Dutch, on the other hand, wanted to abolish the institution of the raja and replace it with a newly created local administrator. Nevertheless, they both had, in different ways, taken up the idea of an encompassing Batak leadership characterized by a rigid hierarchical power. From the beginning, the German missionaries incorporated the raja institution in their effort to Christianize the Batak (Lumbantobing 1992). The rajas were invited to congregational meetings and their involvement was significant at the level of decision-making as well as the later stage of implementation. To enhance the rajas' attachment to the church, the missionaries encouraged the sons of influential rajas to enter a special school for church workers28. At the same time, the church structure was developed into a hierarchical order, from the branch congregations at the small huta level, to the main congregations at the main huta level, to the church districts, to the central church council.

Likewise, a rank of trained church workers was developed, namely: sintua (elder) with a minimum of theological training, voorganger (teacher-preacher), pendeta pembantu (priest's assistant), pendeta ressort (priest) at a higher huta level, praeses at the district level, and ephorus as the supreme leadership. This hierarchy of positions has been more or less maintained over time29. While the missionaries entirely occupied the higher positions (Ephorus, Praeses, Pendeta Ressort), the Bataks filled the lower ones, a situation which was later criticized by the Bataks (Hutauruk 1993; Lumbantobing 1992). With periodic meetings at every level of the church hierarchy, a new pattern of Bangso Batak leadership that crossed the borders of the various marga domains, was intentionally developed30. According to Schreiner (1994:11), it is in Christianity that the Batak found an ethnic solidarity among them. The Protestant church became the first well structured and modern organization among the Toba-Batak.

2.3.3. Towards Indigenous Batak Church Leadership

After the Dutch became a competing authority to the missionaries, many prominent rajas grew less enthusiastic about participating in the church, while those who had been educated by missionaries were highly attracted to becoming

28In 1901 the missionaries set up a school for the rajas' sons in Narumonda, Samosir. See Aritonang 1994; Lumbantobing 1992.
29See HKBP Church Constitutions of 1881; 1930; 1950; 1982.
civil servants. Even though the number of church members was growing rapidly, there was discontent among the missionaries towards the expanding influence of the Dutch. As a result, in 1930, J. Warneck, the then supreme leader of the church, created a new post of trustee or *kas bestuur* in each congregation. It was meant for prominent Batak *rajas* and/or civil servants without requiring them to have special theological training. This step was taken to avoid the loss of influence for the church among the Toba-Batak that would be likely should those prominent people not be actively incorporated into the church’s operations (Lemp 1976). The new post created an ambiguous situation among the church council members because some were fulfilling functions based on theological training while others, who were untrained, were assigned relatively more important tasks in the church. Since previously theological training had been the major criterion to determine one’s position in the church, the appointment of theologically untrained civil servants as influential church functionaries was a significant change.

Later, the missionaries and colonial government divided some responsibilities. The former’s task was reduced to religious matters and education, while the latter undertook wider matters concerning public life and order. During the first World War (1914-1918) missionaries suffered from lack of funding from the mother organization in Germany. In this period and also in the 1920s when a severe economic crisis hit Germany, the missionaries became financially dependent on the colonial government especially in the maintenance of their schools. The subsidy was given under certain conditions which were rather difficult for the missionaries to fulfill, forcing them to close down some of the schools. Meanwhile, many educated Toba-Batak from the mission schools, though still maintaining their Christian belief, opted to work for the Dutch government which paid a much better salary. This increased the number of Bataks who became powerful in a personal capacity without having to identify themselves to the church or the *marga*.

Inspired by the on-going national independence movements especially in Java, the Batak church workers and educated church members demanded a church leadership independent from German control. Under such pressure, a new Church Order was issued in 1930 which formally established the Batak Christian congregations as an independent church under the name *HKBP*. In practice, however, the leadership of *HKBP* remained in the hands of the missionaries. Based on the new Church Order, *HKBP* was recognized by the Dutch colonial government as a legal corporation on 11 June 1931, making it the first independent church in the Dutch East Indies. Such recognition was later confirmed by the post-colonial state (the New Order Government) in 1968 and 1988.

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31 For details on the conflict between the missionaries and the Dutch on the issue of formal education in Batakland see Aritonang (1994).
32 For details on independent Batak church movements see Hutauruk (1992); Nyhus (1987).
34 The Government of Indonesia reconfirmed the status of the *HKBP* Church, No: Dd/P/DAK/d/-68, dated 2 April 1988, and Ministry of religious Affairs decision No.33, dated 6 February 1988.
In May 1940 in Europe, Germany attacked the Netherlands. One of the consequences in the colony was that all the German missionaries were put into prison, an occurrence that was taken as a blessing in disguise by the Bataks. The Dutch Mission Society tried to take over the leadership of the Batak church whose membership at that time had risen to 429,531. In an extraordinary General Synod in July 1942, however, the majority of Batak members decided to elect a Batak church minister as ephorus, voting down the Dutch candidate. Nevertheless, the colonial government as well as the Dutch Mission Society did not consider the HKBP under indigenous leadership to be the automatic heir of the German Mission Society, and therefore denied it the right to control the latter's property including the schools, hospitals and printing establishments. This led to a furious conflict between the colonial government and the indigenous church (Aritonang 1994:303-314). After the arrival of the Japanese in April 1942, the German missionaries were released from prison and many of the Dutch, including missionaries, were arrested. During the Japanese occupation of 1942-1945 all schools were forcibly shifted to government control, and other institutions were taken over by the Japanese. In the difficult period of the occupation and early national independence, the Bataks maintained freedom from the German missionaries and from 1942 to 1962, Sihombing served as the second indigenous ephorus.

Thus, the early development of Christianity among the Batak was highly effected by the changing political atmosphere in the Dutch East Indies. Governmental power was influential in the early formation of the indigenous church. The transfer of leadership from the German missionaries to the Batak took place indirectly as a result of the colonial government's imprisonment of the missionaries. For that the Bataks praised the colonial government. On the other hand, the denial of their rights over the missionaries' property caused the Batak to consider the government a contender. Thus, right from the beginning, the first indigenous church leadership experienced direct confrontation with the (colonial) state power. Later on, the Japanese authorities' appropriation of all the schools and closing down of some of them crippled the Batak church under the indigenous leadership. Thus, the Bataks learned that the (changing of the) state power would effect the ethnic church in many different ways.

2.3.4. Changing Perception on Women's Position

In spite of the rigid notion that Toba-Batak women have no access rights to land, and that their position is generally inferior to men, perceptions of their position in the family and access rights to productive land-based resources have changed over time. The presence of Protestant Christianity since the 1860s has, to a great extent, created a more tolerant attitude towards women who do not bear

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35 See the Church statistics of 1941 as referred to by Lemp (1978).
36 Sirait won the election over de Kleine by 60 votes to 40 (Jongeling 1966:260).
children. The gradually loosening grip of ancestor worship has, in a way, eased the demand for having children since they are needed to assure the flow of food offerings to the ancestors' spirits. The church persuades husbands and clan groups not to expel barren wives or childless widows from their land.

While in a sense Christianity freed women from their duty to bear sons for religious reasons, on the other hand the patriarchal ideology implied within the Christian dogma and reflected in the church structure has often off-set the positive influences. Furthermore, as Bemmelen (1989) has noted, the missionaries were not able to do very much about the material implications of having no children. Indeed, conversion into Christianity does not necessarily change the material base of one's existence. In such an agrarian community, having no sons means the beginning of lineage extinction in that a clan's name will not be handed down. At a more personal level, having no children is seen as the immediate cause of social and economic insecurity in one's old age. Hence, it is quite logical for the Toba-Batak to assume that a barren woman has contributed to the potential extinction of her husband's clan, therefore she does not deserve the clan's land.

Shortly after Christianity was introduced, the Dutch began to gain a foothold in the Toba-Batak area. The German missionaries were the first alien, non-Batak group who were given access rights to land by various Batak marga. They were permitted to set up missionary posts and establish churches. This was possible because Christianity was widely accepted in villages by marga groups. The missionaries were considered to have brought advancement because they introduced formal education and health services. With the spread of the Dutch colonial administration into the area, formal education started by the missionaries became important in providing educated and well-trained civil servants. In the end various clan groups were highly enthusiastic and competed among themselves.

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37 In a way the missionaries reconfirmed the patriarchal ideology within Toba-Batak society by establishing a congregation according to each marga's territory, implying that a congregation leader would be the leader of the marga. Therefore, it was impossible for a woman to be a leader of a congregation. Only in the early 1980s, parallel to the worldwide inclination of giving equal opportunities to women, the Toba-Batak church adopted a stipulation allowing women to be church leaders, but it is still not a smooth process.

38 One's social and economic security in old age in agrarian society is closely related to the ability to maintain control over land, and having children is considered one of the strongest guarantees of this. Research on social security, including old age social security in a changing agrarian society, is discussed in Benda-Beckmann et.al. (1988).

39 Pedersen says that the simultaneous, overall conversion of Toba-Batak clans to Christianity did not destroy the kinship system among them (1970:85). The missionaries used a strategy of first converting the leaders of the clans, who then converted their whole kin group to Christianity.

40 The significance of formal education brought about by the German missionaries for the Toba-Bataks is well elaborated by Aritonang (1989). It was initially intended for men to be competent church workers and later on to fill the need for low-rank civil servant positions as well. However, in the latter days of colonial times Toba-Batak women were also given the opportunity to obtain formal education mainly so that they could be a proper partner for the civil servants. Therefore, as Bemmelen (1989) remarks, the kind of education given to Toba-Batak women at that time was centred around the household chores (see also the following section 2.3.5.).
in inviting missionaries to come to their villages, including granting them plots of land for their activities. The schools, clinics and churches established on the land became local people’s communal property and were managed on their behalf.

In the meantime, the Dutch strengthened their foothold in North Tapanuli by establishing an administrative system and introducing a western legal system. A significant move by the Dutch was related to the shift in local political power. They constructed the village as the lowest Dutch administrative spatial area, instead of relying on the original Toba-Batak autonomous area called huta. Motives of bureaucratic rationality were given for introducing new administrative concepts and definitions which were concerned with such things as the territorial dimensions of the area and the number of people living there. Critics opposed the Dutch for ignoring the typical characteristics of Toba-Batak communities which were marked by a closeness of kinship ties, unity of home villages and a long standing relationship between boru village and hulahula village.

The introduction of Dutch administration at the huta level had two political impacts. The huta’s autonomy diminished significantly when its political leadership shifted to a more centralized colonial power. At the same time, control over land at the highest level was assumed to be in the hands of the Dutch. The presence of the Dutch administration generated new patterns of gaining access to land. Land was alienated for the Dutch institutions, private enterprise, and for individuals who were not Toba-Batak. Land use permits were issued and land purchase took place. Gradually the Toba-Batak became aware that they could also purchase plots of land, particularly those located within the Dutch administration centres. Although land purchase rarely occurred at that time, the practice introduced by the Dutch inspired Toba-Batak men and women alike; it was possible to have access to land by purchasing it. This also created room for arguing that plots of land purchased by a man could be inherited by his daughter.

2.3.5. Enhancement of Women’s Position through Formal Education

Formal education among the Batak was first initiated and developed by the German missionaries as part of and means for an effective Christianization process. In his book about the history of formal education in Batakland, Aritonang (1988) discusses the progress made by Batak women in missionary-led education during the colonial period. Elementary schools throughout the Batak land were established parallel to the pattern of church congregation formation. In the first few

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41 See for instance, the history of Christianity in the Sipahutar area written by Samosir and Sitompul (1981); and in the Hutabarat area by Pakpahan and Samosir (1985).

42 From a male ego’s perspective, a boru village is a huta belonging to the clan of the male ego’s son-in-law (wife-takers). A hula-hula village is a huta belonging to the clan of origin of the ego’s wife (wife-givers). It is a dynamic way of categorizing a huta, depending on one’s kinship and marriage position. See Vergouwen (1964:108ff) for further explanation on huta characteristics during colonial times.
years, however, all the students were boys. Later, in 1873, two girls were allowed to join an evening school which mainly taught religious studies. It was only in 1874 that the first girls' elementary school was established, followed by the establishment of a sewing class which was also opened for adult women. The missionaries encouraged Batak families to send their daughters to school which was not welcomed in the beginning. The teachers at the girls' school were the wives of the missionaries and they taught household skills they had learnt in Germany. Thus, the emphasis for Batak girls was on sewing, health care, sanitation, neatness, and the skill to educate their own children, while basic general knowledge and religious knowledge came second.

Table 2.6.
Quantitative growth of church members, elementary schools and female/male students in Toba-Batakland 1920-1938

<table>
<thead>
<tr>
<th>Year</th>
<th>Church members</th>
<th>Nuns</th>
<th>Schools</th>
<th>Female students</th>
<th>Male students</th>
<th>Total students</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>194,338</td>
<td>15</td>
<td>509</td>
<td>3,429</td>
<td>21,200</td>
<td>24,629</td>
</tr>
<tr>
<td>1922</td>
<td>210,416</td>
<td>10</td>
<td>486</td>
<td>5,288</td>
<td>21,495</td>
<td>26,783</td>
</tr>
<tr>
<td>1924</td>
<td>216,589</td>
<td>10</td>
<td>433</td>
<td>5,161</td>
<td>19,314</td>
<td>24,475</td>
</tr>
<tr>
<td>1926</td>
<td>228,677</td>
<td>11</td>
<td>427</td>
<td>6,340</td>
<td>21,352</td>
<td>27,692</td>
</tr>
<tr>
<td>1928</td>
<td>254,871</td>
<td>12</td>
<td>443</td>
<td>7,032</td>
<td>22,895</td>
<td>29,927</td>
</tr>
<tr>
<td>1930</td>
<td>292,754</td>
<td>10</td>
<td>482</td>
<td>8,733</td>
<td>26,819</td>
<td>35,553</td>
</tr>
<tr>
<td>1932</td>
<td>329,972</td>
<td>19</td>
<td>524</td>
<td>11,493</td>
<td>31,603</td>
<td>43,096</td>
</tr>
<tr>
<td>1934</td>
<td>356,615</td>
<td>20</td>
<td>561</td>
<td>12,169</td>
<td>29,650</td>
<td>41,819</td>
</tr>
<tr>
<td>1936</td>
<td>381,887</td>
<td>17</td>
<td>585</td>
<td>13,257</td>
<td>29,927</td>
<td>43,184</td>
</tr>
<tr>
<td>1938</td>
<td>416,208</td>
<td>23</td>
<td>646</td>
<td>18,300</td>
<td>36,181</td>
<td>54,481</td>
</tr>
</tbody>
</table>

Extracted from Aritonang (1988:364)

In 1890, the first woman to come as a missionary, not as a missionary's wife, arrived. She was Hester Needham, a nun from England. Later, 34 more nuns arrived to lead the diaconal work of the mission society which at the time did not include education. The nuns were obliged to start a girls' school in each area they were based and to allocate time for conducting classes. Since that time, and especially since the 1920s, the number of (girls') schools has developed as can be seen in Table 2.6. The missionaries' success in running formal education made some Dutch administrators a bit jealous. They accused the missionaries of forming "a state within a state". In 1937, for instance, the missionaries ran 642 schools using Batak as the working language, supported by 104 church ministers and evangelists and 1,167 school teachers (Randwijck 1989: 229). Dutch schools and other private schools were later established in Batakland. However, women's increasing need to enter formal education was so enormous that a number of Toba-Batak women had to go to Medan, Padang Panjang and Batavia for higher education because of limited enrolments at home (Aritonang 1988). The proportion of literate and educated women among the Toba-Batak in the colonial period was considered one of the highest among ethnic groups in Indonesia (Limburg n.d.).
The arrival of nuns as professional and unmarried women to take up positions in community work among the Bataks was certainly a striking and novel occurrence. I estimate that this contributed to implanting new ideas about the possibilities for Toba-Batak women to find alternative meaning in life outside the traditionally and rigidly defined family domain as wives and mothers. The nuns' attempt to start a school for Bible Women (Bijbelvrouw) succeeded in creating a reserve of women who taught religion, a task which was initially meant only for men under the Toba-Batak adat. Many of these Bijbelvrouw never married, or did so only when they were considered rather old. While being unmarried was humiliating under the adat, Christianity provided a rather good image for a certain category of unmarried women.

The growing number of female students was not unrelated to the German missionaries' encouragement of Batak male religious teachers to marry women who were formally educated. The religious teachers were supposed to ask permission from the missionaries if they wanted to marry (Lumbantobing 1992:136-137). The missionaries asked the nuns to organize a special training program for women who were about to marry religious teachers. They were particularly taught how to support their husbands in their work. Thus, they learned about the Bible, its history, catechism, writing and reading. In addition, they were taught to be a good example of a Christian housewife which was, at that time, equated with being able to wash clothes, cook, sew, and do other household chores properly (Bemmelen 1990:30).

When later the Dutch expanded its colonial administration into the Toba-Batak area, many Toba-Batak men were admitted as civil servants. As in the case with the missionaries, the Dutch encouraged male civil servants to marry women who had achieved a formal education. This was part of Dutch colonial "marga politics" (Bemmelen 1986): to encourage those who had been infiltrated by western thinking to form a union in marriage, thus strengthening the support of colonial interests. As a comparison, a parallel situation occurred in nineteenth-century Nigeria as a result of the development of colonial state and the spread of Christianity and Western education (Mann 1985). Europeans, both the missionaries and colonial administrators, introduced middle-class Victorians values and ideas concerning what they thought were proper marital and kinship relations. Thus, Christian marriage according to Mann (1985: 53) served as a way of defining the emerging educated elites, concentrating economic resources within the elite group, creating a network of kinship and affinal ties which worked to defend and promote the economic and political interests of the group. Bemmelen (1982 and 1986) has noted that formal education for Toba-Batak women in the colonial period was far from a women's emancipation project. Instead of aspiring to earn a salary and become economically independent, Toba-Batak women used formal education as a means for getting an equally or more highly educated husband, especially a civil servant, and for being a good housewife.

Formal education for women was implanted between two highly patriarchal structures, between the new and the old. On the one hand, the Toba-Batak women
were partially liberated from the highly patriarchal Toba-Batak adat system, but they ended up in the equally patriarchal church and colonial structure. While the European nuns performed at least half of the tasks to Christianize and nurture the Toba-Batak, none of them held a decision-making position within the structure of the mission body. Likewise, when a number of Toba-Batak women themselves became a Bijbelvrouw, their position within the church structure was very marginal (Lumbantobing 1992). They became a reserve of obedient helpers for the male church ministers and religious teachers and they themselves could not be appointed as ministers or religious leaders. In the more secular fields as well, the hidden agenda of educators (both the German missionaries and Dutch colonialists) and of the parents who sent their daughters to school was likely not to be far off from preparing a woman to be a good wife.

Though the position of Toba-Batak women was not greatly enhanced by formal education, it is difficult to assess what really happened at an individual level. I estimate that at least at an individual level many Toba-Batak women had more space to manoeuvre. They married at a later age and many of them had a genuine opportunity to find their marriage partner during the period of their education. Within the boundaries of adat restriction, those women who entered formal education were somehow brave enough to convince their parents to send them to school. If, from Bemmelen's (1982, 1986) point of view, those women cannot be seen as sufficiently emancipated, at least their daughters were slowly taught to digest the idea of women's emancipation. A number of the Toba-Batak women who in a later period were educated in the Christian milieu were, indeed, a very vocal proponent of enhancing women's position in the family, church and society. Julia Sarumpaet-Hutabarat, for instance, forcefully criticised the Toba-Batak tendency to give preference in education to sons over daughters. On many occasions she also criticised the manifold forms of Toba-Batak adat oppression towards women.43 Formal education has at least given Batak women the opportunity to uncover different and often contradictory perceptions about women's lives and compare this to their own situation under the adat.

2.4. THE INFLUENCE OF THE DUTCH COLONIAL GOVERNMENT

2.4.1. Colonial Impact on Adat Organization

When the Dutch entered the Toba-Batak area, they found that each huta had a high degree of autonomy without any strong hierarchy from a supra-local authority. The Toba-Batak did not recognize a centralized authority (Vergouwen 1964: 82, 107; Castles 1972). Sherman (1990:75) confirms: "Political authority

43 Julia's concern over women's status was pronounced in wide public and church meetings. Later she published her opinion in small articles for international church circles. See Sarumpaet-Hutabarat (1954 and 1955).
beyond the domestic jurisdiction of hamlet headmen...does not appear to have been institutionalized". Castles even holds that the Toba-Batak was a stateless society because the institutions of Sisingamangaraja did not have a state oriented political character due to the lack of a bureaucracy, military service and a tax system. In contrast, Situmorang (1993: xvii-xviii and 73-74) argues that Bakkara, the home base of Sisingamangaraja, was a model of a village republic. Both Castles and Situmorang's views are, in my opinion, two sides of the same coin, with both assuming the state to be the norm of how a society should be governed. Many *huta*, according to the Dutch, were not appropriate in their spatial size and number of population. The Dutch had to find a starting point in the existing social political structure for its administration and such authority had to be instituted by decree. The first attempts occurred between 1883 and 1908 (Castles 1972:33). A small number of *rajas* were appointed by decree as *kepala kampung* in 1883. The legacy of the imposition of supralocal authority over the area by then had become established and this created resentment. Castles (1972:203-214) points out that the Dutch were distressed by the ceaseless complaints of the people, none of whom seemed willing to submit to any other’s authority.

In 1890, the Dutch formed the *Onderafdeling* Silindung and Toba under the Tapanuli Residency, administered by a Dutch *asisten residen* based in Silindung valley. In this way the Dutch protected the cultural boundaries of the Toba-Batak as a whole, separating them from the Angkola and Mandailing, who, unlike the Toba-Batak, had had quite a centralized traditional political hierarchy. Lacking such an organization, the Dutch created a new administrative arrangement. As a result, the internal arrangement of the Toba-Batak region rarely followed the existing patrilineal spatial divisions in which the *huta* was the lowest corporate community. While once a genealogical account had predominated, the new administrative arrangement often cut right across the patrilineal divisions, and aimed at providing surveyability from the point of view of the official administration, thus paying attention only to the number of inhabitants as the basis for the systems (Vergouwen 1964:127-128). Some *rajas* were appointed as *kepala kampung* to lead a *hundulan*, the lowest level of an administrative territory. Several *hundulan* were then put under a higher level authority, a *kepala negeri*, also appointed from among the existing *rajas*. However, after the final annexation in 1908, the Dutch started introducing an administrative system totally different from the existing traditional leadership arrangement by appointing low ranking indigenous civil servants.

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45 Tapanuli Residency was comprised of three administrative sub-divisions. First, *Bataklanden* was divided into 20 overlapping lineage spatial areas, including Upper Barus, Lower Barus and Dairi. Secondly, Sibolga was divided into two lineage spatial areas. Thirdly, Padang Sidempuan was divided into 10 lineage spatial areas. For a complete picture of the administrative and lineage spatial division, see Vergouwen 1933/1964, Tapanuli Map of Tribal Areas).


47 See also previous explanation and Table 2.1.
Finally in 1914, other positions, Demang and Asisten Demang, were created for the Toba-Batak based on a special training qualification instead of merely genealogy. The shift to Demang-ship marked a change in the local political leadership that was to the disadvantage of the leadership image and social status of the existing rajas and kepala negeri (Hutauruk 1993:24-29).

Since inter-marga and inter-village conflicts heavily prevailed among the Toba-Batak, the Dutch imposed their own settlements on unresolved disputes and established a statute of limitations so that "legal claims could no longer be made in respect of contracts concluded before the sensational battle of Tangga Batu in 1883" (Vergouwen 1964:143). Whether the statute reduced overt conflicts among the Bataks remains unclear. However, the practice of issuing a decree by a supra-local authority became known. By the early 20th century, the Toba-Batak had encountered two competing supra-local authorities, the Dutch colonialists and the German missionaries; both treated them as an object of power and at the most, put them at the bottom of the leadership hierarchy.

2.4.2. Christianization and Statization of Batak Adat

Right from the beginning the conversion of many indigenous Indonesians to Christianity has created problems in their legal status, both seen from their own perspective and the perspective of the missionaries and Dutch colonialists. Conversion of the indigenous prompted the missionaries to pay more attention to changing the domains of family law and inheritance which were assumed to have been based on paganism. In a wider context, the colonial government also started to add to the growing complex situation of legal plurality in the colony by gradually introducing changes in village social organization, state administration, agrarian matters and penal law. Initially, there was a tendency to allow the indigenous Christians to associate themselves with western (Dutch) civil law while the non-Christians remained under their own adat law. This principle was applied because the first Christinization efforts, such as in Ambon and Minahasa, were usually performed by the missionaries after the Dutch had established effective control over the areas (Muller Kruger 1966; End 1982). The unpopular idea of unifying the law by applying the Dutch law to all indigenous Indonesians later came to the fore. It was based on the assumption that adat law was backward while Dutch law, which was inspired by Christian ethics, was more civilized. Indeed, there was a widespread assumption about the universality of western law and the perception that the development of law was an evolutionary and unilineal process with western law the most sophisticated final stage (cf., Slaats and Portier 1992:4).

Starting in 1848, adat law in Indonesia was to become a heated legal-political issue (Wignjodipoero 1989; Wignjosoebroto 1994). In that year a codified Dutch law, embracing Civil, Trade, Civil Procedural, and Criminal Procedural Law, was introduced for the Dutch and other Europeans living in Indonesia. The Indonesian Christians were subject to Dutch law. The ongoing debate of how best to facilitate the legal needs of indigenous Indonesians was concluded with the introduction of
the *Regering Reglement* of 1854. In Chapter 109, section four, the legal status of indigenous Christians was changed so that they no longer submitted themselves to Dutch civil law, but instead to their own *adat* law. This new *Regering Reglement* irritated many missionaries and their supporters both in Indonesia and the Netherlands who, according to Vollenhoven (1909 and 1918), still wrongly mixed up *adat* law with Islamic law. Randwijck (1989:183) notes that in 1888 missionaries submitted their complaints to the Dutch Minister for Colonial Affairs about the unfair treatment received by Christian minorities, especially in Java where the majority were Moslems, because of this new regulation. A stronger complaint was submitted in 1893 to the same minister with a copy to all parliament members, claiming that conversion to Christianity was inhibited by the Dutch policy.

In 1906 it was stated that non-European groups may submit to European law only when their concrete social needs so demand; otherwise, *adat* law applies to them. The complaints by the missionaries continued although at the time some more secular Dutch scholars like Vollenhoven, Haar and Logemann started to "invent" *adat* law. The prominent *adat* law scholar Vollenhoven (1909, 1918, 1931 and 1933), for instance, argues that western law was not necessarily better or more suitable for the indigenous Indonesian population of the time. He made a plea for respect for, and recognition and promotion of, the Indonesian *adat* law (Sonius 1981:XXX). Some time later, there appeared to be a shift in the missionaries' perception so that they no longer held that *adat* was totally pagan or identical to Islam. Dutch missionaries such as Kruyt and Adriani became interested in *adat* and, according to Vollenhoven, contributed positively to the study of *adat*.

Yet, the Christianization process of the Toba-Batak took place under totally different circumstances than those of the Ambonese and Menadonese. In Batakland, the German missionaries arrived two to three decades before the Dutch established effective control in the area. This enabled the missionaries to exert quite an exclusive power over the Toba-Batak and their *adat*. Prior to Christianization, Toba-Batak *rajas* had functioned as the guardians of village order and the convenors of *adat* court, as well as the organizers of ancestor worship rituals among the *marga* members. Although additional tasks for performing these spiritual and secular endeavours might be delegated to different individuals, the *rajas* ultimately held both sacred and secular functions under the *adat*. It was their duty to maintain the relationships among the living as well as between the living and the dead (Lumbantobing 1992; Schreiner 1994). When the Silindung *rajas* submitted to Christianity, the missionaries began to hope that the *rajas* could be prepared to develop Christian rule among the Toba-Batak (Warneck 1934:59). In order to fulfil this aspiration, the missionaries appointed the church elders from among the village elders according to the *adat*. One of the village elders' functions was to help the *rajas* maintain order in the community. While the physical structure of the missionary operation closely followed the existing structure of Toba-Batak *adat* community, the missionaries were ambiguous in their attitude towards the substance of *adat* in its concrete sense (Schreiner 1994:51).
For the Toba-Batak there was no neutral area of life that was not permeated by *adat*. Religion, customs, beliefs and ethnicity were identical and formed undivided parts. Schreiner (1994:52) states that the missionaries had come with the assumption that the Toba-Batak *adat*, in the sense of mores and customs, could be detached from the religion in the sense of ancestor worship. The missionaries saw that the Toba-Batak *adat* was preparatory to Christianity, *praeparatio evangelica*, in that the religious content of the *adat* could be satisfied with Christianity. Right from the beginning those who were converted were strictly prohibited from participating in the old religious activities. In the initial period, the missionaries took the lead in the screening process of a categorically Christian *adat*. In this sense, *adat* was seen as customs related to marriage, familial relationships, landownership, disputes and crimes and related punishments. Thus, perceptions of *adat* were based on the inventories of more or less explicitly formulated prescriptive rules of substantive and procedural law. The missionaries had labelled ancestor worship rituals and offering ceremonies as paganism. However, the extent to which an act could be considered purely *adat* and not part of the heathen practice proved to be difficult to determine, so that divergence in opinion between the missionaries and the *rajas* often occurred. In order to shield the Batak Christians from the pressure and desire to participate in various ancestor worship rituals, the missionaries had to request that the Dutch colonial government ban the practice of a number of rituals.

Schreiner (1994: 63-79) examines the first attempts by the missionaries to set up a Christian rule in Silindung, both in congregational life through a Church Order/Discipline, and in communal daily life through a Christian *adat* law. The Church Order/Discipline was formulated and implemented by the missionaries themselves. Though the creation of the Christian *adat* law was initially conducted by the missionaries, its implementation was handed over to the Batak *rajas*. Therefore, a clear division was made between a sacred order and a secular one, and subsequently between the office of the church functionaries and that of the Batak *rajas*. However, in practice decisions on matters related to church discipline often depended on the Batak *raja*.

In short, the conversion of the *adat* communities as a whole encouraged the missionaries to create two categories of codes among Toba-Batak Christians: a religious code and a secularized *adat* (Schreiner 1994:63). All baptized Toba-Batak were subject to both the religious Church Order/Discipline and the Christian *adat* law. The religious code, which was under the total command of the missionaries,

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48 Schreiner (1994:59) refers to Staudte and van Asselt, two missionaries who concluded that in Christianity the Toba-Batak finally fulfil the long search for the lost ring in the Toba-Batak legend.

49 Vergouwen (1864:102) notes: "In the first decennia of missionary work, they prohibited the holding or the witnessing of 'gondang' ceremonies for invoking the spirits or for their veneration. To enforce this rule, they had to have the help of the Dutch Government, because the chiefs were in the main still pagans and even where they had become christians, they were not strongly opposed to these ceremonies."
appeared first in the 1866 Church Order and in the Church Discipline. The imple-
mentation of the secularized adat was handed over to the Batak rajas who were
expected to apply Christian rule (Warneck 1934:59). A civil code for the Christians
was introduced in 1867, containing rules for marriage, inheritance, dice games,
theft and Sunday labour. The division between the handling of religious matters by
the missionaries and secular concerns by the Batak rajas was alien to Toba-Batak
totalistic thinking. Nor was such a division easy to handle in practice. In matters
concerning marital relations, for instance, the missionaries often had to rely on the
decision of the Batak rajas. In the end, the missionaries set up a church discipline
that was complex in that it sometimes went contrary to both the Christian (Euro-
pean) principle and the Toba-Batak conscience.

The missionaries and some Batak rajas considered the annexation of the free
region by the Dutch a pre-requisite to the success of Christianization. The
submission of the Christians to the colonial court would, according to the mission-
aries, encourage more converts (Schreiner 1994:52-53). Although this intention had
been communicated to the Dutch as early as 1868, the annexation of the Silindung
area took place only in 1879. Meanwhile, the fabrication of the civil code for the
Christian Bataks was in progress, and by 1885 forty-six chapters had been
created. The code prescribes the relations among converts, and between the
converts and non-Christian Bataks. It covers the rules related to matters on
marriage, the break-up of marriage and betrothal, the death of a married woman

In 1892, those chapters were recognized by the Governor of Padang as a guide
to the pursuance of order. Later, in August 1909, the Adat Law Commission was
founded by Bataviaasch Genootschap van Kunsten en Wetenschappen. The
commission asked the missionaries all over Indonesia to cooperate by sending
information on adat rules, articles and notes on adat about their respective areas.
In 1912, there was a general move by missionaries to unify all civil law based upon
adat that applied to Indonesian Christians. In the case of the Christian Batak, the
colonial government asked both the missionaries and Batak rajas to revise the

50 Schreiner (1994:66-67) reproaches the missionaries. For him, the dualist thinking of the
missionaries was contradictory to the totalistic thinking of the Batak. See also Andar Lumbantobing
51 Schreiner (1994:68) mentions missionaries' controversial decision on matters concerning
marriage: (1) The marital status of the baptismal pupil is recognized, though it still has to be blessed
and formalized by the church after conversion; (2) Incestuous relations include those between
people of the same marga in its broadest sense according to the Batak code of conduct, although
the people involved do not have a close blood relation in a European sense; (3) Baptismal pupils
who are married to their step-mother, a conduct considered proper according to the Batak adat,
should divorce the step-mother; (4) A widow who becomes a baptismal pupil and is supposed to
marry her (pagan) brother-in-law according to the Batak adat, should be freed from that obligation
and be helped to pay the compensation.
52 Schreiner (1994:71) refers to the unpublished "Rules concerning the application of the adat for
the indigenous christians prepared by the Batak rajas of Silindung" in the RMG F/m I, Adat
Sumatra, 11 pp.
newly invented civil code, resulting in the issuance of the Christian Batak Civil Code of 1913\(^53\). With this new code, the division between the religious role of the church functionaries and the secular role of the Batak rajas was confirmed. The missionaries' efforts to develop a Christian society resulted in a highly legalistic \textit{adat} civil code and Church Order/Discipline. However, the missionaries' move to found a Christian \textit{adat}-based civil code was nullified because the colonial government assigned J.C. Kielstra to codify the \textit{adat} law especially as it applied in the areas of missionary operations such as Ambon, Minahasa, Nias, Batak, West Java, Depok, East Java, Central Java and the Sangihe-Talaud islands. This resulted in the introduction of Christian marriage law and marriage registration law applied to some bilineally ruled Christian communities such as Java, Madura, Ambon, Minahasa, Saparua and Banda which were already dominated by Dutch colonial forces (Randwijck 1989:197). Thus, the Christian marriage law which was based on bilineally ruled \textit{adat} communities was not readily applicable to a highly patrilineal society such as the Bataks.

With this governmental assignment, J.C. Kielstra codified the Christian Batak \textit{adat} in 1914. He suggested that the 1913 Civil Code should be revised by the Batak rajas, without any missionaries' intervention. Having found that the colonial government's involvement was inclined to gear the process in a "non-Christian" direction, Kielstra's work and suggestions were rejected by the missionaries. The missionaries were of the opinion that Kielstra's work on the Batak \textit{adat} only covered the features of the pre-Christian \textit{adat} and did not include the Christian ethics and moral values that had influenced the people (Randwijck 1989). The rejection of Kielstra's work by the missionaries delayed the setting up of a Christian Batak civil code. Since that time, however, the debate on how to deal with the Batak \textit{adat} in the context of Christianity has not ended, making the church an influential forum for the shaping of the Batak \textit{adat}\(^54\).

The failure of the German missionaries to set up an \textit{adat}-based Christian code for the Batak did not stop the colonial government re-inventing the Batak \textit{adat}. Under the guidance of the Dutch \textit{adat} scholar van Vollenhoven, in 1928 a commission was appointed to advise the government on the principles of agrarian legislation in the colony where \textit{adat} jurists were free to research various areas. One of the results was the production of Ypes' famous and extensive book on the Batak land tenure systems (Ypes 1932). An investigation was also ordered into the administration of justice in \textit{adat} law cases. J.C. Vergouwen was charged with the leadership of the Highest Customary Courts (the so-called \textit{Rapat na bolon}, literally, the great Courts) in Batakland and was assigned to embody his findings in a report and to make recommendations for reforms in the existing judicial organization.

\(^{53}\) The complete text of the Christian Batak Civil Code of 1913 is provided by Hutagalung (1983:306-314).

\(^{54}\) Later, when Christians formed the big majority among the Toba-Batak and when the church leadership shifted to the indigenous after 1940, the \textit{adat} screening process was performed by the Toba-Batak Christians themselves.
Vergouwen published the most comprehensive book on the Batak *adat* and judiciary system (Vergouwen 1933/1964). The writing on Batak *adat* by colonial officials marked a change in the nature of *adat* itself because it came, to a certain extent, to be invented by the colonial officials. This re-invented *adat* was influenced by western legal preoccupations concerned with representing *adat* in terms of rules or rule-like formulations.

2.4.3. The Enhancement of Women’s Position by the Colonial Court

The colonial government attempted to influence the patrilineal Batak *adat* through court decisions. There was a conscious attempt to reconstruct Batak *adat* law with the hope that judges would guide the development of the unwritten law through jurisprudence in the direction of legal uniformity and, particularly in the case of family law, in the direction of the parental system (Subekti and Tamara, 1965), which is considered more fitting to the universal claim of equality. Hadikusuma (1993) has catalogued some of the jurisprudence on Indonesian *adat* law in the areas of family law, marital law, marital property and inheritance law focusing on some distinct ethnic groups in Indonesia since the later period of Dutch colonialism. One of the ethnic groups is the Batak which has a strong patrilineal feature. In relation to access to land among the patrilineal Batak, colonial court decisions on family law, marital law, marital property and inheritance law are the key areas where Batak women’s access rights to resources is moulded. Indeed, in a society where access to landed resources is predominantly gained through familial relations (both through inheritance and association to the spouse), the change of *adat* in familial law plays a crucial role. Thus, based on the work of Hadikusuma (1993), the colonial jurisprudence which potentially affects Batak women in relation to access to resources in general, and to land in particular, is described.

2.4.3.a. The right of a widow to children’s custody

The attempt to change Batak *adat* law regarding children’s custody started during the colonial period. According to the Batak *adat*, a woman has no right to custody of her under-aged children after the husband dies. This rule especially applies when a widow is not going to reside in the *huta* of her deceased husband. However, the Medan Low Court (*Landraad*) in its decision of 1 June 1937 (T.148:493), gave custody rights to under-aged children to a widowed mother. The Medan Higher Court (*Raad van Justitie*) in its decision of 25 March 1938 (T.148:489) had a similar view. The courts were of the opinion that when the father of a Batak family which had lived a modern life outside the Batak *adat* territory died, the under-aged children should be in the custody of the mother and not the father’s kin. While the Batak consider both residence and descent as major aspects of *adat*, descent in the male line is the most important. Residence may change but descent is eternal. Obviously those court decisions emphasized the fact that the family had lived outside the Batak *adat* territory which exempted the woman from
having to return the children to her deceased husband's kin. Thus, even in colonial
time, the state court considered a change in residence beyond Toba-Batak adat
territory basis to give a widowed woman custody over her children.

A widow who married without following adat rules for a widow to remarry was
considered to be infringing the existing familial relationship with the deceased
husband's kin. Therefore, she should be denied the right to custody over her
under-aged children. The decision of Medan High Court (Raad van Justitie) on 25
May 1938, however, considered that the custody should go to the eldest son who
had married. This reviewed the (decision of) Putusan Rapat Sibolga on March
1905 AB VI:150 which says that upon the death of a father, children will be under
the custody of the father's elder brother. Thus, a widow who remaries would still
lose custody over her under-aged children.

2.4.3.b. Marriage and its consequences for women

Jurisprudence clearly distinguishes property relations between two main forms
of Batak adat post-marital residence, namely between patrilocality and matrilocality.
In patrilocal residence the rights of a woman and her natal family to marital
property is less défendable. The reimbursement of the marriage payment releases
the widow from the adat requirement to enter a levirate, however, it does not
necessarily entitle her to the custody of her children (See Putusan Rapat Sibolga
on 2 March 1905, AB.VI:150). On 10 February 1926, Putusan Rapat Sibolga
No.36-1924 T.154:244) confirmed the Batak adat principle that if a woman leaves
her husband without notice and gets married with another man, the marriage
payment should be reimbursed. The decision of Raad van Justitie Padang on 1
August 1940 (T.154:154:241) even asserted that the woman's father should be
responsible for reimbursing the marriage payment. Moreover, the marriage
payment should be reimbursed by a woman's natal family if she dies without
children unless her natal family would give another daughter to replace the
deceased (See the decision of Rapat Kecil Porsea (T.154:215) on 3 June 1933).

The obligation to repay the marriage payment applies whether or not a widow
leaves with or without the consent of her deceased husband's kin. The decision of
Raad van Justitie Padang on 8 October 1936 (T.146:210) declared that a widow
who returns to her natal family with the consent of her deceased husband's kin
should reimburse the marriage payment. If the widow wants to marry a man other
than the brother of her deceased husband, then the movable household goods
which she has kept with her should be rendered back. In any case, if the widow
remaries another man, she loses the rights over the money, movable goods and
jewellery endowed to her by her deceased husband and that wealth will be
managed by her husband's kin until the eldest son is mature (See the decisions
Jurisprudence, contradictory to adat principle, established that a widow should not
be forced to enter a levirate if she does not want to. Yet if she marries a man other
than her deceased husband's brother, she has to reimburse the marriage payment
(decision of Rapat Besar Siborongborong on 19 October 1940, T.154:224). On the
other hand, as was already the case in Dutch colonial time, jurisprudence did not allow a levirate to take place between a married Christian man to his brother's widow who was also a Christian (See the decision of Landraad 1936). Pematang Siantar on 27 July 1936, reconfirmed by Raad van Justitie Medan on 28 Augustus.

Indeed, the status of a man in a patrilocal post-marital residence is, by jurisprudence, considered higher than that of woman. When a husband enters a marriage by endowing a marriage payment, he is entitled to pledge the rice field which is brought by the wife into the marriage (See the decision of Landraad Padang Sidempuan on 25 July 1936 No.2-1936). A woman who follows patrilocal post-marital residence has no ownership rights over immovable goods of her deceased husband, but she has the right to enjoy and use them as long as she lives (See the decision of Landraad Padang Sidempuan on 24 May 1939, reconfirmed by Raad van Justitie Padang on 21 December 1939, T.152-250).

Jurisprudence during the Dutch colonial period treated matrilocal post-marital residence as an exception to the Batak adat's tendency of patrilocality (See the decision of Landraad Sibolga No.131-1930 dated on 20 November 1930). When a man who enters matrilocal post-marital residence becomes deceased, the widow is entitled to the custody of the children and to manage all the acquired marital property though she has to put aside half of the acquired property for her children (See the decision of Rapat Sibolga No.33/1934, dated on 2 March 1925). A woman who follows matrilocal post-marital residence is entitled to half of the marital property and when she dies her sons and daughters get an equal share of her portion (See the decision of Rapat Sibolga No.41/1926, dated on 9 January 1926). Indeed, a woman is entitled to half of the acquired property while the children can inherit from both the mother and father (See the decision of Landraad Sibolga No.22/1931, dated on 27 April 1932, reconfirmed by Raad van Justitie Padang).

Thus, since colonial times, the state court has attempted to protect widowed women from the adat obligation to enter levirate. As a first step, a widow can opt to stay single. The obligation to reimburse the marriage payment only applies when a widowed woman marries a man other than her deceased husband's (fictive) brother. The state court has confirmed the differential impact of post-marital residence on widowed women. Patrilocality entitles a widow to the right to enjoy immovable goods but not the right of ownership, while matrilocality entitles a widow to the custody of her children and to manage all the acquired marital property.

2.4.3.c. Divorce and its consequences for women

In the later period of Dutch colonial time, a jurisprudence asserted that irreconcilable conflict between a husband and wife can be taken as grounds for a divorce. The woman should reimburse the marriage payment, sinamot, after the value of counter-gift has been deducted, ragiragi ni sinamot, the latter consisting of three
pieces of Batak cloth, *ulos* (See the decision of *Rapat Besar* Sidikalang, 21 March 1933, T.154:213). Regarding marital property after a divorce, a woman receives half of the acquired property (See the decision of *Raad van Justitie* Medan on 19 April 1940, T.152:256). Thus, the state court approved a woman’s request for a divorce. This contravenes the Batak *adat* idea that once married, a woman belongs to her husband’s *marga* no matter what, unless the man divorces her.

2.4.3.d. Women and marital property

In the context of a patrilocal marriage, which is the most common type among the Batak, there are three categories of marital property. First, property inherited by the husband from his parents; secondly, property brought into the marriage by the wife; and, thirdly, acquired property through the joint effort of husband and wife during the marriage. Under the Batak *adat*, all the categories of marital property are under the command of the husband. Property inherited by the husband or brought by the wife into marriage is distinguished from acquired property through joint effort. If the husband dies, his inherited property and property brought into marriage belong to his inheritors (either sons or brothers), while the acquired property fully belongs to the widow and she has the right to use as long as she finds it necessary (See the decision of *Landraad* Padang Sidempuan No.24.E.Ps, dated on 24 August 1937).

2.4.3.e. Women and inheritance

I have discussed the status of a widow and daughter concerning inheritance during the colonial period in the previous sections. I reiterate some of the points here. A daughter is not considered as an inheritor but has the right to use her deceased father’s property as long as she lives in her father’s *huta* (See the decision of *Rapat Adat Kuria* Pintu Padang on 15 December 1931, T.139-266). This kind of use right is also extended to the widow as long as she remains unmarried and stays in the *huta*. In another case, a widow is acknowledged as the inheritor of her deceased husband’s property as long as the deceased has no sons or other collateral inheritors (See the decision of *Landraad* Padangsidempuan on 4 January 1937, confirmed by *Raad van Justitie* Padang on 12 August 1937, T.149-286). Otherwise, a widow is not at all considered an inheritor (See the decision of *Landraad* Hutanopan on 29 September 1938, confirmed by *Raad van Justitie* Padang on 11 May 1939, T.152-253). Because a widow cannot inherit her deceased husband’s property, the son who inherits is obliged to provide for the widow (See the decision of *Landraad* Sibolga on 7 August 1933 and *Raad van Justitie* Padang on 15 March 1934, T.141-216).

2.4.3.f. Discussion on colonial jurisprudence

In the colonial period, the Dutch, while trying to apply *adat* law to Batak familial relationships, made a conscious attempt to interpret the Batak *adat* law more in the direction of the newly introduced European (read: Christian) equality principle of a
proper marriage relation and its consequences on marital property. In 1905, colonial jurisprudence fully followed the Batak adat in that a widowed woman does not have custody over her children because custodial rights should go to the deceased husband’s brother. Though colonial jurisprudence in 1905 could release a widowed woman from the adat requirement to enter a levirate through reimbursing the marriage payment, such reimbursement still did not entitle her to the custody of her children. In 1925, after twenty years of totally and loyally subscribing to the Batak adat’s familial law, colonial jurisprudence started to provide Batak woman more prerogatives. But this only applied to woman living under matrilocality. Matrilocality entitles a widowed woman to the custody of her children and to manage all the acquired marital property. In 1926 and also in 1932, it was confirmed that matrilocality entitles a widowed woman not only to manage the acquired property, but also to receive half of the marital property, which should be equally shared by her sons and daughters when she dies. This meant that in matrilocality, sons and daughters are in an equal position to get the property of their deceased mother. Indeed, matrilocality was seen as an exception to the Batak adat’s tendency of patrilocality as clearly expressed by a 1930 jurisprudence. Though a woman in a matrilocality was endowed prerogatives over half the marital property, a 1931 jurisprudence gives the burden to the widowed woman to prove that the property was acquired through joint efforts.

In the case of a woman leaving her husband without notice and marrying another man, the 1926 colonial jurisprudence confirmed the adat principle that she should reimburse the marriage payment. In 1931, the amount of marriage payment to be reimbursed by a divorced woman was slightly reduced by the cost of its counter-gift. The 1936 jurisprudence confirmed the adat obligation for a married woman to return the marriage payment should she leave her husband either with or without consent. In 1940, two jurisprudences accepted the adat principle of counter-relation between reimbursing a marriage payment and levirate. One says that a widow should not be forced to enter a levirate, but if she remarries with other than her husband’s kin, she has to reimburse the marriage payment. Nevertheless, the obligation to reimburse the marriage payment should be fulfilled by a woman’s father if she dies without children, unless the father offers another woman to replace his daughter. Yet, a 1936 jurisprudence declares that levirate is forbidden for married Christians. This means that conversion to Christianity should imply the acceptance of Christian marital conduct, the latter being totally against bigamy.

Another 1936 jurisprudence confirmed the Batak adat that patrilocal marriage entitles the husband to pledge the rice field which has been brought by the wife into the marriage. Furthermore, in 1939 jurisprudence says that a woman who follows patrilocal marriage has no ownership right over immovable goods of her deceased husband, but only has the right to use/enjoy these goods during her lifetime. This implies that a widow may have ownership rights over movable goods. A year

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55 See also previous section on the attempts to Christianize the adat.
earlier, however, a 1938 jurisprudence says that if the widow remarries a man other than her husband's kin, movable household goods should be returned. In 1931 there was a confirmation of Batak adat principle that the rights of a widow and her daughters to use and enjoy the property of a deceased husband are guaranteed only as long as they live in the huta. A widow is not at all considered an inheritor (jurisprudence 1938) unless there are no sons or collateral inheritors available (jurisprudence 1937). Consequently, the son who inherits is obliged to provide for his widowed mother (jurisprudence 1934).

Acquired property, regardless of patrilocality or matrilocality, became the subject of intervention by colonial jurisprudence. In 1937 jurisprudence said that if a married man dies without children, his inherited property and property brought into marriage belong to his inheritors (sons or brothers), but all the acquired property belongs to the widow with use rights as long as she requires. A 1940 jurisprudence increased the extent of a woman's rights over the acquired property in that she receives half of the acquired property attached with full rights.

In addition to the slight improvement in a widow's share over acquired property, colonial jurisprudence also improved the custody rights of a widow over her under-aged children. In 1937 it was declared that the right to custody over under-aged children is in the widowed mother's hands. The change in lifestyle from traditional to modern and from living in traditional Batak territory to non-Batak territory is used as a basis for a widowed mother's custody rights over her under-aged children.

2.5. COLONIAL IMPACT ON LAND RELATIONS AMONG THE BATAK

2.5.1. Colonial Hegemonic Claim over Land

Western land law was first introduced in Indonesia after the arrival of the Dutch East India Company (V.O.C.) in 1596 which quickly dominated trade in Indonesia. Initially, the V.O.C. introduced a system of compulsory levies from local rulers to the foreign power that indirectly caused considerable hardship to peasants, often leaving them only the barest means of subsistence (Furnivall 1944; Day 1966). After the collapse of the V.O.C in the late 18th century, the Dutch government took power and started to rule the country. Java and Madura particularly became subject to direct changes in land tenure. Governor General Daendels who is famous for developing the agricultural sector, introduced the concept of "landlordship" by extending the agricultural area and selling land to capitalists – the landlords (Adiwilaga 1962). In order to boost revenue from the agricultural sector, Governor General Daendels extended his authority to the landlords to control labourers working on the land, resulting in great misery endured by many agricultural labourers. When the British took over power for a short period (1811-1816), Sir Stamford Raffles introduced a concept of land tenancy by requiring a tax for every subject who utilized land. The village head in this case was instrumental in collecting the taxes from people, taking over or confiscating the land if the user
failed to pay, and allocating the land to those who had the potential to pay tax. This policy resulted in tremendous suffering for many poor peasants due to the vast power given to the village head (Harsono 1973; Rajagukguk 1988).

In 1830, the General Governor van den Bosch introduced a new agricultural policy called *cultuurstelsel*, or the cultivation system. Under this system the cultivators, instead of paying a land rent or tax, paid dues to the government by devoting a percentage of their land, usually one-fifth, along with their labour time to growing an export crop. This policy provided many advantages to the Dutch government while destroying the peasants' economic situation. Apart from planting export crops, the peasants had to provide compulsory labour services, e.g., for public works, community needs and for officials. This system led to excessive demands on the peasants' time, leaving them little time to grow the food crops vital to their own subsistence (Andrews 1986; Kartodirjo 1973; Fasseur 1986). The expanding state monopoly over access to landed resources was subject to severe criticism by many private investors in Indonesia, especially in Java, because it cut them off from opportunities to develop private enterprise. In answer to this, after forty years of state monopoly over landed resources, the Dutch introduced a new agrarian policy favourable to private investors which was called the *Agrarische Wet*, or the Agrarian Law, of 1870 (Hutagalung 1985; Furnivall 1956).

A crucial regulation of the Agrarian Law was the Royal Decree, *Agrarisch Besluit*, number 118. Article 1 states that all land to which no title can be proven shall be considered the property of the state. This regulation, which was well known as *domein verklaring*, or declaration of state domain, marginalized native Indonesians because their *adat* land was not registered according to western law — therefore, it was not easy to prove the rights to it. On the other hand, the regulation legitimized the colonial government's allocation of native land to private investors. It is apparent that during the colonial period land policy which was imposed with the introduction of western law was used to serve the interests of the colonial government and to get as much profit as possible from the colony.

The provision of state domain was the subject of extensive and contesting interpretation. Nalst Trenite, for example, defended the point of view that the only land legally excluded from state domain was an area actually and regularly used by the local people (Kat Angelino 1931; s'Jacob 1945). This view was severely rejected by *adat* scholars like Vollenhoven, Logemann and Ter Haar, in favour of the communal territorial right of disposal, *hak ulayat* or *beschikkingrecht*. According to them, all unused, empty or "waste" land should not necessarily be considered

56 The Impact of the Cultivation System on the indigenous economy is described well by Svensson (1985:3): "...When peasants' labour was forcibly integrated into colonial export cultivation, the advancement of indigenous agriculture was retarded. A strong population growth eroded existing resources. Tied to ever-diminishing plots of land, the peasant fell into deeper... shared poverty with no conspicuous stratification with regard to land and material wealth. Village life continued to be moulded by strong communalistic structures, redistributive institutions and more and more intricately refined cultural models. All worked to impede economic growth and development".
outside the control of the local community since the local adat community still retained the territorial right of disposal to this land (Vollenhoven 1919; Logemann and Haar 1927).

It was not until 1874 that interpretation of the declaration of state domain was clearly formulated. The Staatsblad No.79 of 1874 gave a definite interpretation of what was the village territory for, in this case, Java and Madura (Rajagukguk 1988). Land belonging to the village was communal grass land, land which had been reclaimed by natives for their own use and which had not been left abandoned, as well as homesteads, roads, sacred grounds, burial grounds, mosque lands, and all open places and public buildings inside the inhabited part of the village. The reclamation of other lands would, consequently, require a permit from the colonial government. Thus, the legalized claim over "waste" and "empty" land by the state shifted the authority over land allocation from the adat community to the state. This policy enabled many private investors to get access to landed resources through the (colonial) state without having to deal directly with the local adat community which actually had the right of disposal.

This created a severe conflict between the declaration of state domain and the community's right of disposal not only in Java and Madura, but also later in the outer islands (Benda-Beckmann 1979; Rajagukguk 1988). For Sumatra, a separate declaration of domain was issued in 1874, which differed somewhat from the general declaration which was implemented on Java/Madura (Benda-Beckmann 1979:211). Chapter one said: "All wasteland in the Sumatran districts under direct Government rule are part of the state domain, unless members of the indigenous population exercise rights over it which are derived from the right of reclamation of unused land. Except for the cultivation rights of the population, the right of disposal is exclusively vested in the Government." In West Sumatra, none of the government officials were willing to apply the ordinance of September 14, 1875, Staatsblad No.75-119a, concerning the declaration of state domain precisely because of the conflict that could be created by the hegemonic claim of the state.

2.5.2. Legitimising Claim – Administrative Boundary and Forestry Program

As already mentioned, in 1883 the colonial government introduced the lowest level of a new administrative territory, called kampung, which undermined the existing lineage territories (Vergouwen 1964:127). At a higher level the Dutch created a Negeri, a category which also included population figures as a basis of territorial formation. In 1915 the Dutch formed a district administrative region and appointed the District head as the only and ultimate authority in the district. This reduced both the authority of the local rajas as well as the church functionaries (Lumbantobing 1992). The Dutch mapping of the Batak areas required that there should be clear physical boundaries between the newly defined territories. As a consequence, many tracts of forest and grazing land adjacent to settlement areas which were not (yet) divided had to be more or less defined.
The limits of communities’ territories were set by the colonial government with the residual affect that unclaimed land came under the colonial government’s control. Though in the colonial period the declaration of state domain was applied only to directly ruled areas, particularly Java, the principle of domein verklaring was treated as a logical consequence of the state’s territorial power\textsuperscript{57}. In addition to domein verklaring, in 1927 the colonial government issued a regulation, Bijblad 11372 followed by Bijblad 12746, which entitled the government to buy people’s land for the sake of the government’s needs whenever there was no state-owned land available.

The Dutch were greatly concerned about preserving the environment surrounding Lake Toba, especially against what they labelled the “devastating” traditional Toba-Batak farming practice of slash and burn. This had much to do with the increasing value of the Lake Toba region as a natural water reserve and a holiday destination for the growing number of westerners in North Sumatra – especially the European planters since the opening of plantation estates on the east coast in 1861, the German Protestant missionaries in the Batak land since 1862, and the Dutch colonial civil servants who followed some years later. There were some reforestation programs launched, but several of the decrees that were promulgated, forbidding the cutting of wood and traditional burning of pastures, were only to the local people’s long term detriment\textsuperscript{58}. Large grazing and fallow areas of the upper reaches of Samosir and the east side of the lake were reforested to increase the supply of lumber. Unfortunately the program did not apply to locally used hardwood trees but mainly to Pinus merkuusi. Following reforestation, the newly forested area became subject to the government’s protection. As far as local people were concerned: “the forests have become government reserves by default, and have thus reduced the available pasture area without benefitting the inhabitants” (Sherman 1982:100). Thus, reforestation was used to shift the control over huge areas from the local adat community to the government.

The colonial period brought great changes in the legal sphere in Indonesia. In relation to land, the most radical change was the gradual, but profound, shift of land allocation rights from the local adat communities to the state as a centralised authority. The colonial state automatically became the legitimate authority over “wasted” and “unused” land through the introduction of domein verklaring. With this authority, the colonial government had the power not only to allocate use rights, but also to directly facilitate the endowment of land to private investors without regard to the rights of the local adat communities.

\textsuperscript{57}The idea that the principle of domein verklaring is a logical consequence of the state’s territorial power, though not formally written, is later used by the post-colonial government. See chapter three of this book.

\textsuperscript{58}Sherman (1982:99) refers to Middendorp’s 1913 end-of-term report on Samosir sub-district.
2.5.3. Batak Resistance Against European Plantation Expansion

Parallel to the arrival of the German Mission Society among the Toba-Batak who lived in the interior came European planters who set up plantation estates in the Malay sultanates on the eastern coast of Sumatra beginning in 1864. The introduction of plantation estates in this indirectly ruled area was immediately followed by a new Dutch colonial policy to encourage investment in the directly ruled areas (e.g., Java) after years of a state monopoly on agricultural extractions. The "open door" policy which was codified in the 1870 colonial Agrarian Law, however, spread the freedom of entrepreneurship to the outer island as well. The European planters were able to arrange land concession contracts with the Malay sultans who were recognized as the owners of the land along the eastern coast of Sumatra. The land was, indeed, an ulayat, or communal land from which local people lived but which the sultans as the highest authority treated as their own property. Before 1877, the concession contracts varied in their duration, the area of land involved, the form and amount of payment, and the responsibility of the planters. Since the estates proved to be highly profitable, the European planters wanted to expand them to the bordering areas of the Karo-Batak, Simalungun Batak and the Toba-Batak, which was not always welcomed by the respective locals. In 1871, for instance, the Malay Sultan of Deli let some plots of land located in the Karo districts outside his own territory. Driven by humiliation and anger, the Karo-Batak chiefs went on a rampage and burnt down the tobacco storerooms. This conduct was severely subdued by the Dutch with the support of the military forces between May and November 1872 (Pelzer 1985).

The rapid expansion of plantation estates inspired the Dutch Indies Government to standardize the land contract procedures throughout the eastern coast of Sumatra (Pelzer 1985:95-111). In 1877 the colonial government issued the first contract-model for a plantation estate which was aimed at eliminating discrimina-

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59 The pioneer of the plantation estates in East Sumatra was a Dutchman called Jacobus Nienhuys who first came to Deli, East Sumatra, in 1863. Though his initial attempt to start a tobacco estate was a failure, his second attempt in 1867 through the "Deli Matschappij" became very successful and encouraged other European planters to start not only tobacco estates but tea, nutmeg, cocoa, coconut, palm oil, rubber and sisal as well. See Pelzer (1978) for details on the various planters and plantation estates; Stoler (1995) on the aspect of the labour control of the estates.

60 There were concessions granted for a duration of 70 years, 75 years and 99 years. Some planters had to pay concession fees, while others were exempted but had to pay export and import fees or an annual labour tax. Some were obliged to pay fees only for the actual plot of land being used instead of for the whole concession. Some contracts defined the responsibility of the planters to develop the plantation at a certain speed (Pelzer 1978:90-94).

61 In chapter five of this book concerning the Parbuluan case, it is also mentioned that the European planters once came over to Parbuluan to start a tea plantation but the plan was rejected by the local people.
tory procedures on the part of the Siak sultanate. Critics of the first contract-model were in favour of another model, designed in 1878, which acknowledged the sustainability of the local farming system while recognizing the need to adjust the pre-1877 contracts to the new model. In short, the 1878 contract-model was an attempt to guarantee the traditional rights of the local peasants, most of whom were involved in swidden cultivation on an eight to ten year rotation basis. The planters were obliged to put aside a 2.8 hectare plot of land for each local family/household in the plantation area. This was not enough, however, for such a system needed about one hectare of new land each year. Notwithstanding, in its implementation the planters only offered the peasants access to the harvested tobacco fields, jaluran, for growing rice on a rotation basis at certain periods of time in between the harvesting and planting period. In the end, the new land arrangement was found to be unsuitable for the locals because unlike before, where one could use a piece of land for three successive years before shifting to another location, the local peasants could use the land for only one harvest. The question of local peasantry rights and the responsibility of the planters to reserve certain amounts of land for swidden cultivation and local village expansion became the subject of changes in the next two contract-models constituted in 1884 and 1892.

The expansion of plantation estates by the Dutch-sponsored businessmen brought both success and agony to the different (groups of) people involved. The planters made a lot of profit from the estates due to the high demand worldwide for tropical plantation products while reducing production costs through minimal levies, low-waged contract labour and profitable long-term land contracts. They also received protection by the Dutch government and enjoyed the privilege of exercising full authority on the estates. As for the sultans, they treated the ulayat land as their private property. They received money from the contracts and collected levies from the exported plantation products. The Dutch administrators, who came to East Sumatra much later than the planters, in the beginning relied heavily on the latter’s financial support to perform the administrative duties. Indeed, in the first 30 years of plantation venture, the planters had operated in almost absolute authority on the east coast of Sumatra. Only later could the Dutch colonial administrators manage to financially support themselves and gain more control over East Sumatra. Meanwhile, the search for fertile land by the European planters had been undertaken mainly at the expense of the local peasants (Pelzer 1985). Not only were the local peasants deprived of access to fertile land, they were also excluded from joining the waged-labour force on the estates. The European planters preferred to hire imported workers: Europeans for high-ranking positions, Chinese and Javanese as contract labourers, Sikh security guards, and Batak and Minangkabau low-ranking administrators and technicians (Pelzer 1961:71).

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62Pelzer (1985: 106-107) has made a chart of comparison on the main conditions of the contract-models of 1877, 1878, 1884 and 1892.
Vollenhoven (1919:83-90), a strong critic of the colonial agrarian policies, calls the period from 1870 to 1920 "a half century of injustice" because the European planters' close relationships with Indonesian peasants were highly exploitative in nature. While the expansion of the plantation estates in East Sumatra brought misery for the local peasants, many Toba-Batak men who had been educated by the missionaries migrated to the estates seeking jobs or to open new rice fields to supply the estates with food. The whole venture of the plantation estates was, therefore, seen by the German missionaries as a threat to the existing "civilization vis-a-vis Christianization" process of the Toba-Batak. The missionaries, who had played an exclusive role in shaping the Batak culture while purifying the western culture that they spread among the Toba-Batak, saw the planters as bringing ungodly elements of that western culture. According to the missionaries, it was the spirit of materialism that urged many Toba-Batak youngsters to find jobs in the plantation areas instead of staying in their own villages and tilling the land or working for the low-salaried church-related posts. In addition, since the early flow of migration to the plantation areas was in the beginning solely a male affair (cf., Rodenburg 1997), the plantations were seen as a site for immoral conduct between the Batak male labourers and Javanese women labourers.

Meanwhile, the introduction of domein verklaring in 1870 by the Dutch, which claimed "waste land" was owned by the state, increased the power of the colonial government to allocate unused land to private investors with long-term lease contracts (erfpacht). This, in turn, gave more certainty of rights especially for planters and other entrepreneurs to invest in land and develop their ventures. The investors were no longer obliged to deal with the local people but with the colonial central government in Batavia, a situation which at the same time (potentially) limited the local people's access rights to land. Inspired by the success of the planters on the east coast of Sumatra and stimulated by the provisions of the 1870 Agrarian Law, after World War I land speculators came to the Silindung areas seeking thousands of hectares of land to start a tea plantation (Pelzer 1985). In reaction, a number of Toba-Batak people, supported by the missionaries, rejected the plan and mobilised protests to the colonial government both at the local level and in Batavia. The missionaries were actually eager to support the Toba-Batak people in rejecting the setting up of plantation estates in Batakland. The first attempt of the planters to clear a forest in Pangaribuan was met by a fierce uproar when local people robbed the house of the European planter, Von Oefele. The Dutch authority sent military forces to subdue the strife, thinking that the land for the plantation area was "only" a forest located far away from the villages.

According to Hutauruk (1994:30), the Toba-Batak sent at least four letters of protest to the central government in Batavia in which they firmly claimed the validity of their adat which, indeed, had been in existence for a long time prior to the
introduction of the *domein verklaring* contained in the 1870 colonial Agrarian Law\(^6^3\). All the letters demanded that the government withdraw the long-term lease rights (*erfpacht*) from the plantation enterprise. The Toba-Batak declared that the land, whether "used" or "unused", was theirs and therefore the highest authority to give command on matters concerning that land was theirs, not the government's. They further argued that *adat* had existed long before the Dutch introduced the Agrarian Law (Pelzer 1985:117-118). Consequently, the act of the planters and the local administrator (*controleur*) to appropriate the forest in accordance to the *domein verklaring* of the colonial Agrarian Law of 1870, was a violation of the Toba-Batak *adat* law and was an insult to the *marga* groups, according to which they should be punished (Oefele 1919). Fearing that their strong demand would not be heard, the people of Silindung, Pahae, Pangaribuan and surroundings in the letter of 11 October 1917 offered some conditions if such plantation development had to take place. First, they demanded that the government protect the interests of the villagers to secure the availability of land in the surroundings, especially for expanding housing complexes and farming areas. Accordingly, the plantation estate should be established far from inhabited areas. Secondly, they demanded that local people be employed as estate-labourers instead of the imported Javanese. The second condition was based on moral — rather than economic or ethnic — reasons since the missionaries as well as a number of Christian Toba-Bataks had long been worried about the (im)moral implications of the rapid flow of imported labourers to the east coast of Sumatra\(^6^4\).

The plantation estate plan never materialized and the Dutch stopped awarding long-term lease rights on Toba-Batak land. This, according to Castles (1972:120), was due to the Dutch estimation that regional political stability was more important than the profit an estate might bring\(^6^5\). In any case, the colony had already contributed to the national income of the Netherlands. In 1928, for instance, 12\% of the Netherlands' national income was extracted from Indonesia; while in the 1930s between one-fifth and one-tenth of the Netherlands' population was dependent on or had financial interest in the commerce of Indonesia (Allen and Donnithorne 1962:288). Whatever might have been the reasons, the local people and the German missionaries had achieved great success in countering the power of both the investors and the Dutch government by affirming the validity of the

\(^6^3\) The four letters are as follow (see Lumbantobing 1994:30; and cf. Castles 1972:182); (1) Letter from the people of Pahae, 5 October 1917; (2) Letter from the people of Silindung, Pahae, Pangaribuan and the surroundings, 11 October 1917; (3) Letter from Negri Sigotom, 15 December 1917; (4) Letter from the people of Pangaribuan sub-district, 17 January 1918.

\(^6^4\) The prejudice towards the immoral conduct of the imported non-Batak laborers, especially the Javanese, overwhelmed the missionaries. If a Batak man wanted to marry a Javanese woman, for instance, the bride-to-be had first to go through a tight scrutiny where a midwife would check her virginity (Personal comm. with church personnel, April 1994 and May 1995).

\(^6^5\) Parallel to this, Stoler (1995:9) argues that as the colonial and company archives have shown, both the government and the investors were not concerned with social relations and conditions per se. Instead, it was profitability and "law and order" that inspired and patterned the whole ventures.
long-standing Toba-Batak *adat* concerning land matters and directly confronting the latter regarding (colonial) state law (cf., Pelzer 1985:118). This made people aware that the customary law, or *adat*, was worth upholding precisely in the midst of the rapidly growing power of colonial and capitalist rule. The awareness of the importance of sustaining the customary land rights grew as a result, especially among the educated Toba-Batak Christians. The radical Toba-Batak Christian Association (*Hatopan Kristen Batak*), founded on 21 September 1917, for instance, propagated a relevant slogan saying "*Ula tanom, unang dibuat Gomponi*" (Till your land, so that the Dutch will not take it away from you). However, such a slogan to till the land and transform the "unused" land to "used", was very much in line with the hegemonic Dutch thinking on the economic function of land. According to Castles, the Dutch controleur of Silindung presumed that by awarding land to plantations in the Toba-Batak area of Pangaribuan "the people would be forced to use land more economically and learn the meaning of intensive cultivation.... (The controleur said that) plantations would bring more welfare to the Bataks than their own ...mismanagement... in the forests" (1972: 132-133). Indeed, the missionaries themselves had advocated a similar idea that the Dutch wanted to appropriate the land because people did not till it properly. Therefore, at least at the ideological level, the western idea of asserting stronger (customary) rights to land through tilling and actively exploiting it had come to dominate. This idea ignores the fact that customary land tenure involved a totally different temporal conception of "waste" land in that maximizing land use also meant preserving it for future generations.

2.6. CONCLUSION

I have elaborated on the changing processes within Toba-Batak society during the colonial period. The discussion on *adat*, religion, land relations and the position of women is central in explaining the inception of legal plurality in the Batakland. I have established the holistic meaning of the Toba-Batak *adat* and shown how it was selectively narrowed by both the German missionaries and the Dutch colonialists. The first western influence, Protestant Christianity, introduced "a process of individualization and secularization" to the Toba-Batak society (Schreiner 1994:3). The most crucial change in the Toba-Batak *adat* was, therefore, the introduction of the western conception and construct of the total separation of the sacred law/authority from the secular, and the endowment of sacred authority upon church functionaries and secular authority upon the traditional *rajas*. This imposing of new meaning was accomplished by the creation of new socio-religious and political institutions in place of, or in competition with, or sometimes alongside, the existing traditional institutions.

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66 See Merle Davis (1939:428).
The Christianization of the Toba-Batak by the German missionaries had, to a great extent, smoothed the path for the Dutch to gain a strong foothold so that by the early 20th century, the Toba-Batak were encountering two competing supra-local authorities, both of which treated them as an object of power and at most, put them at the bottom of the leadership hierarchy. Both the Germans and the Dutch had, in different ways, introduced the idea of incorporating leadership beyond the traditional spatial-lineage areas, characterized by a rigid hierarchical power structure. But it was the power of the state (in this case colonial rule) that was becoming more and more central to the further process of change, even though this power had been under continuous attack both by the (German) missionaries and the Toba-Batak themselves.

The western colonial influence affected all areas of life of the Toba-Bataks, including those related to land and the position of women. Land tenure was selectively detached from its relation to the sacred nature of adat and from the essence of the adat community as "an association of worship whose members every once in a while strengthened the union among themselves or the union with the ancestors through celebrations" (Schreiner 1979:119-122). The efforts to ideologically detach land matters from the sacred nature of the adat created room to re-negotiate new relations to land, both internally and externally. The changing internal relations may concern gender, as was the case with the education of female students and various colonial jurisprudence. The promotion of the principle of gender equality into the Toba-Batak rigid, patrilineally-based society is, therefore, to be seen in the wider process of the "de-sacralization of adat". Likewise, the changing external land relations may be concerned with the emerging of (new) outside actors in accessing, managing and allocating the local land, a process in which the (colonial) state, individual Bataks and non-Bataks and private companies come into the picture. The colonial period lasted for almost 85 years in the Toba-Batak area; that is three generations during which western influence was internalized to the point that it was sometimes treated (and misread) as part of the indigenous being.

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CHAPTER 3

POST-COLONIAL TOBA-BATAK SOCIETY

3.0. INTRODUCTION

The Toba-Batak became subject to intervention by German missionary and Dutch administration forces in the colonial period, both of which treated them as an object of power and at most, put them at the bottom of the leadership hierarchy (cf. chapter 2 of this book). This introduced a situation of legal complexity among the Batak when their adat institutions, norms, values and practices were confronted with those of the colonial administration and the missionary-led church. However, in the course of time those alien elements intermingled with the adat, a process in which many of the Toba-Batak themselves actively participated. After independence in 1945, the Toba-Batak area together with other areas become part of the Indonesian national state. Under these highly pluralistic social conditions the Indonesian government established its most fundamental aim: the unification and centralisation of the state. However, from the point of view of the Toba-Batak, the state unification and centralisation project may be seen as asserting the pattern of intervention by alien power.

This chapter is an attempt to show how contemporary Toba-Batak society in North Sumatra has been affected by the ever increasing power of the post-colonial state, especially in the New Order period. I start by examining the national context in which the Toba-Batak are situated. The general socio-political situation is discussed in order to understand the background of the steps taken by the New Order regime in its overall development policy. A description of the attempts made at establishing a unitary system of land law is provided. A unitary system of law also contributes to the improvement of gender equality in Indonesia. Thus, the legal status of Indonesian women under the post-colonial state is examined. I will demonstrate how the state law, through its court rulings, has attempted to influence the different aspects of patrilineal Batak adat on the issues of family law, marital law, marital property and inheritance. Then follows an account of how the state administration has expanded. Another section deals with the issue of how the economic policy of the post-colonial state has led to the state monopoly of law in land appropriation. After elaboration of the national context, I turn to the local socio-economic context in which the persistence of poverty among the Toba-Batak prevails.
Lastly, the chapter deals with the local processes of "statization" and "privatization" of Toba-Batak land within the state legal framework and how those processes impact on the existing rights of the local people in general and the (secondary) rights of women in particular, all of which are based on adat. In relation to Toba-Batak land, therefore, I categorise the two most influential and interrelated interventions, namely that of the state and of private agencies. In the case of the Toba-Batak, the statization process takes place on at least two levels. At the normative level, the state articulates its hegemonic claim over all land through legislation and policy. The process of statization occurs as a result of the state's hegemonic claim over land through the introduction of the Basic Agrarian Law No.5/1960 and further regulations. At the institutional level the state expands its hegemony through establishing state administrative and political institutions down to the village level. However, the statization process in the Toba-Batak area does not go unchallenged by the existing normative and institutional frameworks. Under the claimed state hegemony and depending on the constructed state authority, various private agencies try to create space to gain access to land and landed resources. The process of statization gives enormous power to the state to allocate land and user rights to private companies through its authority, for instance, to decide zoning policy and/or grant licenses and permits. This leads to state-dependent processes of both land allocation and privatization.

3.1. NATIONAL CONTEXT

3.1.1. Socio-Political Situation

After 350 years under Dutch colonisation and almost four years under Japanese occupation, Indonesia, including the Toba-Batak area, proclaimed its independence on 17 August 1945. Together with the change in the political atmosphere, national independence brought with it an obsession for economic development among the state elites and ordinary people alike. The first five years after independence were a difficult time for Indonesia because the Dutch attempted to maintain their rule over the country by sending in military troops. As a result, the Indonesian military gained a very significant role in the initial process of state formation. After the conflict with the Dutch had been overcome, internal conflicts arose between political parties divided by various ideologies, while regionalism and the demand for a federal state to guarantee more autonomy for the outer islands surfaced. Ricklefs (1981) terms the years 1950-1957 "the democratic experiment". A total of six coalition governments ruled the country during this period, the longest of which held power for two years, thus confirming that the democratic experiment was a failure (Feith 1962).

Bottema (1995) has noted that the central state expanded its grip on the rural areas and agricultural production in the fifties and sixties. President
Soekarno applied a self-supporting economic policy, and was indifferent to the economic power of the western countries while improving relations with Russia and China. At the same time there was a rise of socialism among the population which influenced economic policy because it rationalised the active role of the state in pursuing people's welfare. Unlike in other Asian countries, the state has taken part in the process of industrialisation in Indonesia and dominates certain economic sectors. This began in 1957 when president Soekarno took over Dutch companies. The fifties and sixties witnessed a concentration of rural involvement by the state and political parties particularly in Java, while the Indonesian economy as a whole disintegrated in the midst of abundant regional and ideological differences. In the early sixties Indonesia was on the edge of crisis with political, economic and monetary instability resulting in virtually total stagnation of industry and services. When Soekarno moved closer to the Communist Party, Indonesia alienated the west and was denied trade and loans which were badly needed to repair the economy. Abrogating the constitution, and dissolving parliament and the elected cabinet, President Soekarno declared a new centralised authoritarian system which he called Guided Democracy. He enlarged parliamentary representation on several occasions, seeking to mobilize his rural power base. For this reason the detrimental structural condition inherited from the colonial state appealed to the elites of the newly independent state in order to support the idea of unity.

In 1965 the armed forces took over power, aborting the communist attempt at a coup d'etat. In this further process of state formation, the armed forces were again able to confirm and assume a significant role. The Communist Party and all its associated organizations were outlawed. The post-coup killing and incarcerations effectively erased communists from the political arena. President Soekarno was (forced) to hand over power and since that time a highly centralised administration under the "New Order" regime led by President Soeharto has existed. Twenty-five years later, the New Order government still regards communism as "public enemy number one" (Abdullah 1981). The hegemony of the New Order state consolidated in the public mind an image of the Old Order as a period of chaos, disorder and violence from which the present day Indonesia should be delivered. The old model of attaining unity and integration by symbol-wielding and revolution was rejected in favour of political stability, order and economic development.

President Soeharto inherited a range of urgent problems: (a) inflation at 650 per cent; (b) external debts in excess of US$ 2 billion; (c) transport and

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1Indeed, in most Asian and African countries the 1960s were marked by the toppling of the communist power and the rise of capitalism. Many state leaders of those countries who were suspected of being too close to communism were replaced through military coup. This was in line with the peak of the global cold war led by the USA representing capitalist ideology, and the USSR and China representing communist ideology. The details of the so-called Communist coup d'etat in Indonesia in 1965 are still muddy.
communications nearly at a standstill; (d) production capacity of major industries at extremely low levels due to a shortage of imported materials and spare parts; and (e) economic and political instability. As mentioned earlier, the first step of the New Order regime was to repair the political and economic isolation, and to turn to the west for assistance by joining the World Bank, IMF and the Inter-Governmental Group for Indonesia (IGGI). At the same time the government rescheduled out-standing debts to the USSR and other creditor countries, enabling the government to concentrate on development and recovery. Foreign debts were increasingly accumulated in this process of development.

The New Order regime embarked on a series of five-year development plans, Repelita, starting in 1969\(^2\). The first major decision made was the announcement of the law of foreign investments in 1967 (UUPMA 1/1967) with minimal requirements aimed at attracting as much foreign investors as possible (Hill 1990, chp.3). The law specifies forms of collaboration between foreign and domestic ventures in an attempt to improve investments in manufacturing. In competition with other industrialising countries the Indonesian government has provided many incentives such as favourable tax policy and availability of land. At the same time, the state financed various development projects with increasing assistance from international agencies and developed countries.

In the process of economic development the state has taken the initiative and assumed the biggest role for itself while giving privileges to a number of investors who are thought capable of developing the economy of the country. Yoshihara and Thee (1989) have noted that both the state and investors are active development actors in Indonesia. With the concentration in economic development based on large investments both from foreign investors and foreign loans, political stability has become a central issue in setting national policy. Robison (1986: 98) suggests that the abortive coup of 1965 and the rationale of a communist threat gave the New Order its license for authoritarianism. The Indonesian state presents itself as operating above politics in the interests of the society, as the executor of scientifically conceived strategies for development (Robison 1986: 108). Part of these economic strategies have entailed greater scope for the free market, including a greater influx of international capital and international aid than Soekarno’s regime permitted, and an emphasis on high-tech industries such as aircraft manufacture (Nasir 1987). The process of wider penetration of state services and administration is accompanied by some decentralization in planning and

\(^2\)The first plan aimed at economic stabilization and development and rehabilitation of infrastructure. The second plan of 1974/1979 focused on balanced growth, in terms of social equity and development of the other islands. The third plan combined the elements of growth, stability and equity encompassing the whole archipelago. The fourth plan remained conceptually based on the "trilogi pembangunan" of the third plan. The fifth plan emphasized explicitly for the first time employment and income generation as a national priority.
taxation; however, the state remains a highly centralized system.

While there has been a general improvement in the standard of living throughout the country, landlessness has increased in some rural areas (Hart 1986: 70). Inequalities have increased between different rural areas and between rural and urban areas while Jakarta claims the benefit of development at the expense of the rest of the country (Drake 1989: 247, 260-61). Still, many observers conclude that the government operates from a broad base of legitimacy. With the rapid economic growth "(m)ore support has been bought with distribution than...through coercion," Liddle (1989b: 58) observes a broad acceptance of repressive institutions and, in 1985, few demands for democratic participation (Liddle 1985). Speaking of the New Order, Robison also concludes that it rules with the general acquiescence of most people and in the general interests of the middle and upper classes and has provided the conditions for economic growth and social stability (1986: 120). Thus, the power of the state in Indonesia rests on a broadly felt legitimacy among the middle and upper classes as well as on a powerful army (Liddle 1988a).

3.1.2. Towards a Unitary System of Land Law

The quest for "unity" dates back to a period before the independence struggle, as a reaction to the practice of racial/ethnic discriminatory laws that resulted in a dualistic system of law under the colonial government (cf., Fasseur 1994:32). Colonial agrarian law was dualistic in two ways (Gautama and Hornick 1972). First, it divided land into two kinds: Indonesian land and European land. The rights to each type of land were different, and separate regulations were in force for each type. Secondly, the restrictions applied on land were based not on the type of land involved, but on the basis of population group. The period immediately after independence could be seen as one of "reform" and "transition" (MacAndrews 1986). The rules governing land related matters were particularly seen as exploitative in nature and penalizing to native Indonesians. Legal reform was thought appropriate in order to evolve a new land system that would eliminate the dualistic system. However, the question how unity should be realized on such a crucial matter as land has been politically-loaded and the subject of lengthy debates for various agrarian commissions which were formed one after the other from 1948 until 1960. Conflicting

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3Thus, there were a European group, native group and foreign oriental group further divided between Chinese orientals and non-Chinese orientals. Transfer from one (implicitly considered lower) group to the other could, however, be done through equalization, assimilation, voluntary submission, and involuntary submission. For details see Gautama and Hornick (1972: 6-23).

4The names of the land commissions are as follows (Budi Harsono 1968): (1) Yogyakarta Agrarian Commission (President's Decision No.16, 21 May 1948); (2) Jakarta Agrarian Commission (President's Decision No.36, 19 March 1951); (3) Agrarian Ministry Commission (President's Decision No.55, 29 March 1955); (4) State Commission on Agrarian Affairs (President's Decision No.1, 14 January 1956; terminated by President's Decision's No.97, on 6 May 1958
opinion centred on defining the most appropriate land tenure system which could encompass the pluralism of Indonesian society (MacAndrews 1986; Budiharsono 1968). The changing formation of land commissions reflected the importance and sensitivity of the land issue. There were divergent viewpoints as to what type of law would be appropriate for the newly independent nation (MacAndrews, 1986). The first view favoured a total overhaul in the land law system with the major emphasis on land reform, land distribution and the appropriation of large landholdings. Under the first view there was a split between those favouring a continuation of the dual system applied during colonial time, and those favouring only a total adat system. The second view favoured a continuation of the previously existing system and related tenure arrangements.

Based on the principle of unity, the commission finally developed the Basic Agrarian Law (BAL) No.5/1960. Repudiating the colonial concept of the state as the owner of land, the BAL pronounces that there is no ownership relation between the state and the land, except the right to control over the land (hak menguasai atas tanah negara). The Basic Agrarian Law is based on chapter 33 of the 1945 Constitution and the fifth principle of the Pancasila state philosophy. Chapter 33 of the Constitution stipulates that land has a 'social function' (my emphasis) and that all land matters are controlled by the state as the representative authority of the people. The fifth principle of Pancasila designates that in realization of a just and prosperous society, adequate supplies of food and clothing must be provided for the populace. Land in this context is seen as the fundamental provider of food and clothing, therefore fulfilling both a social- and economic-security function. Such reference made to the 1945 Constitution and Pancasila has reconfirmed the claim that the Indonesian view of land is in direct contrast to the western concept of land as merely an economic or commercial commodity to be bought or sold in a market economy with financial return as the main consideration (MacAndrews, 1968).

The position of adat in the Basic Agrarian Law is ambiguous. Chapter three mentions that the execution of hak ulayat (adat right of disposal) and such like rights of the adat law communities, in as far as they evidently still exist, should be in such a way that they are in line with national and state interests. Again, this ambiguous position is reconfirmed by BAL chapter five which declares that the agrarian law in force for all Indonesia is based upon adat law, that is the unwritten, customary rules of the indigenous population. Yet, as Gautama and Hornick (1972) have asserted, neither chapter three nor five is a simple reassertion of traditional adat as the basic law of the land, because chapter two and five, as well as chapter 58 of the BAL, prescribe that adat law may not be
contrary to the BAL itself. Furthermore, chapter five mentions a list of additional principles with which adat law must not be contrary: the national interest, based on the unity of the Indonesian people; Indonesian socialism; legislation other than the Basic Agrarian Law; and basic principles derived from religious law. These are very broad principles, at present largely undefined, but they represent potential restraints on the enforceability of adat law (c.f., Gautama and Hornick 1972).

The position of customary law under the BAL is subject to contrasting and sometimes opposing interpretations. The promulgation of BAL chapter three and five implies that there is a different treatment of adat rights applied to, for instance, individual rice fields, gardens or housing sites on the one hand, and adat rights in terms of hak ulayat or communal rights to land of an adat community on the other hand. The demarcation of hak ulayat or communal right to land has long been discussed in Indonesia and dates back to a similar discussion about the beschikkingsrecht in colonial times (see this book chapter 2 section 2.5.1.). While a distinction is made between adat rights in terms of a group’s command over land and that in terms of individual claims, adat law varies significantly from one region to another throughout Indonesia, which comprises about 13,000 islands and 180 million inhabitants. Toba-Batak customary law, for instance, is only one of the various customary laws in Indonesia. The BAL (chapter 2:1) normatively claims that "...the land, water and airspace, including all resources contained within, are, at the highest level, controlled by the state as an organization which manifests the power of the people". Hence, the BAL cannot put aside the fact that state law is not released into a "normative vacuum" (Moore 1978). In those different regions, there have been various degrees of pre-existing adat authority which also include the authority to have control over land.

In the context of Indonesian plurality, the BAL is designed to provide a legal referential basis, aimed at providing all Indonesian citizens with juridical security in all land matters. To ensure juridical security, chapter 19 of the BAL determines that the existing rights to land (both under customary law and colonial western law) should be registered in accordance to valid and recognized laws. The BAL recognizes three classes of rights: rights to land, rights to water and rights to airspace. Rights to land are defined by chapter four as the authority to use the land concerned, as well as the body of the earth and the water and the space above it, in as far as is needed for interests directly connected with the use of the land. The BAL chapter 16 mentions eleven such rights to land (c.f., Gautama and Hornick 1972: 95-105)\(^5\).

\(^5\)Besides the eleven rights to land, the BAL also recognizes hak guna air (right to water), hak pemeliharaan dan penangkapan ikan (right to breed and catch fish), and hak guna ruang angkasa (right to use the airspace).
**Hak milik (right of ownership):**
Hak milik is the most complete land right recognized by the BAL. It can be transferred through various forms of transfer and is granted without time limit. The owner is entitled to convey a number of derived rights in it: hak guna bangunan, hak pakai, hak sewa, hak gadai, hak usaha bagi hasil and hak menumpang. In principle, hak milik can be held only by persons who are Indonesian citizens and not by legal bodies. However, chapter 21 authorizes the government to make exceptions to this general rule, that is to designate legal bodies that may acquire hak milik.

**Hak guna usaha (right to cultivate):**
This is a right to cultivate state land, or to use it for other agricultural purposes, for a fixed period of time not exceeding 35 years. The right can be extended for another 25 years. Like hak milik, it can be sold, exchanged, bequeathed or otherwise transferred, and can be encumbered with forms of Indonesian mortgage (hypotheek and credietverband). As a general rule, hak guna usaha can be held only by persons who are Indonesian citizens, or by legal bodies established under Indonesian law and domiciled in Indonesia whose capital is exclusively domestic. Foreigners, foreign legal bodies and Indonesian legal bodies with any foreign capital are thus, in principle, prohibited from acquiring hak guna usaha. However, the Foreign Investment Law (UUPMA No.1/1967) makes an exception that companies established in Indonesia are permitted to obtain hak guna usaha, even though some or all of their capital is foreign. The only limitation is that the initial grant must not exceed 25 years.

**Hak guna bangunan (right to build):**
This is a right to construct and own buildings on someone else’s land the rights to which can be sold, exchanged, bequeathed or otherwise transferred, and can be encumbered with forms of Indonesian mortgage. The grant must be for a fixed period of time, not exceeding 30 years, renewable for 20 years. The holder of a right to build is entitled to convey certain derived rights: hak pakai, hak sewa and hak gadai. Holder of hak guna bangunan must be persons of Indonesian citizenship or legal entities established under Indonesian law and domiciled in Indonesia and whose capital is exclusively domestic. However, the Foreign Investment Law (UUPMA No.1/1967) again makes an exception and permits companies established in Indonesia under the Law to acquire a right to build, even though some or all of the company’s capital is foreign.

**Hak pakai (right of use)**
This is a right to use someone else’s land for purposes prescribed in the grant, whether agricultural or building. The right is not restricted to Indonesian citizens and legal entities. Foreigners residing in Indonesia and foreign legal entities with representative in Indonesia can also be granted hak pakai. Hak pakai on
private land may not be sold, exchanged or otherwise transferred unless the grant explicitly so provides. Transfers involving state land require government permission. The grant must be specified but there is no limit on how long it may be. The right may not be encumbered with any forms of Indonesian mortgage.

**Hak sewa untuk bangunan (right of lease for building)**
This is a right to build or to own buildings on someone else's land. It can be granted by persons and legal entities. The period of the grant must be specified, but there is no limit on how long it may be. The rental price must be paid in cash. The right cannot be sold, exchanged or otherwise transferred, and the let cannot be sub-let to a third party without the permission of the owner-lessee. This right cannot be encumbered with Indonesian mortgage. **Hak sewa untuk bangunan** can be acquired by Indonesian citizens and legal entities as well as foreigners residing in Indonesia and foreign legal entities with representative in Indonesia.

**Hak sewa tanah pertanian (right of lease for farm land)**
This is a right similar in all respects to **hak sewa untuk bangunan**, except that the land must be used for farming purposes, not construction, and the rent may be paid in kind as well as in cash.

**Hak membuka tanah (right to clear land)**
This is a right granted by the government to Indonesian citizens to clear and cultivate fields for a maximum of three consecutive planting seasons. The *Tambahan Lembaran Negara* 2333 says that this right can later be promoted into **hak pakai, hak guna usaha** or **hak milik**.

**Hak memungut hasil hutan (right to harvest forest product)**
According to BAL, only Indonesian citizens can acquire the right to harvest forest products. However, the Basic Law on Forestry, enacted in 1967, creates an identical right which can be acquired by Indonesian legal entities, including those with foreign capital (*Lembaran Negara* 1967:8).

**Hak gadai (right of pawn)**
This is a right acquired by Indonesian citizens to use someone else's land upon the payment of a sum of cash. The right endures until the money is repaid, that is, until the land is redeemed by the grantor. The grantor is under no legal obligation to repay the money and, in the case of farm land, can redeem the land at the end of seven years without any repayment whatsoever (*Lembaran Negara* 1960:174 and 1961:3). If the land is non-farm land, the grantor must repay the sum of money in order to regain possession, but the right to redeem itself never perishes. A grantee of **hak gadai** is free to convey derived rights to the land: **hak sewa** or **hak usaha bagi hasil**, or to grant secondary rights of pawn to a third party without notifying the owner-grantor.
Hak usaha bagi hasil (right of sharecropping)
This is a right to cultivate someone else's land for a specified period of time in exchange for which the grantee promises to pay a fixed percentage of the harvest to the grantor. Contracts of sharecropping are extensively regulated (Lembaran Negara 1960:2; Regulation of Minister of Agrarian Affairs and Farming No. 4/1964).

Hak menumpang (right of lodging)
This is a right to construct temporary housing on someone else's land, usually land on which other houses already exist. It is granted without time limit and without any rent. However, there is an implied promise by the grantee to help out around the village. The grantor is entitled to terminate the right at any time without notice, but upon a small compensation of payment to the grantee.

Although the Basic Agrarian Law No.5/1960 commands that the existing rights to land should be registered in order to guarantee juridical security, registration of adat rights have not been widely received by the population. As Benda-Beckmann (1986, 1996) says, land registration has generally met with strong opposition from farmers. Efforts to accelerate registration through the PRONA (Proyek Operasi Nasional Agraria) program of inexpensive and client-friendly registration introduced in 1981 have not yielded the results hoped for. In the case of the Toba-Batak, for instance, table 3.3. shows that only very little adat land has been registered. Likewise, in the case of the neighbouring Karo-Batak society Slaats and Portier (1988) have mentioned that the rural Karo-Batak are hesitant to register their adat land. However, the Indonesian government, induced by the World Bank policy, has, since 1995, re-engaged in a new massive Land Administration Program to improve the existing agrarian legislation and the registration system (World Bank 1994; Loffler 1996; Slaats, forthcoming). The impact of the current Land Administration Project to the customary rights of people is still too early to judge, yet a number of Indonesian NGOs have started to voice their concerns on such a sensitive issue (Fauzi 1998; KPA 1997a, 1997b, 1997c).

3.1.3. The Enhancement of Women's Position through Law and Jurisprudence

The state has attempted to enhance the position of women through the introduction of non-discriminatory laws and regulations and their implementation through court decisions. In this section, therefore, the general situation of Indonesian women under the National Law is first described. Then, to show the relevance of the state's efforts to further gender equality within inter-familial relationships especially in patrilineal Batak society. I examine a number of the state court decisions related to Toba-Batak patrilineal society.
3.1.3.a. Enhancement of women's position in the society

The Population Census of 1990 shows that women comprised about 50.1% (or 89,873,406) of the total 185,000,000 population in Indonesia. Indonesian women have equal status with men under the post-colonial state law, the principle of which is ingrained in the State Philosophy, Pancasila and the Constitution of 1945. The 1945 Constitution does not discriminate between the status of women and men, rather, it guarantees equal rights and position for men and women in a normative way. They are all seen as citizens that bear an equal share of rights and responsibilities. All citizens, regardless of being male or female, have an equal position before the law and government; they both are entitled to a proper occupation and livelihood (1945 Constitution, chapter 27). The responsibilities and obligation to defend the country also accrue to women and men as citizens (chapter 30:1). Likewise, every citizen is entitled to education (chapter 31:1). As a consequence, many further state regulations and legislative acts also bear the idea of gender equality.

Regarding access rights to land, chapter 9:2 of the Basic Agrarian Law No.5/1960 promulgates that: "Every Indonesian citizen, regardless of being male or female, has an equal opportunity to obtain access rights to land..." At the same time, as has been discussed in the previous section, the Basic Agrarian Law allows the possibility for every citizen to convert both the former Dutch and customary land titles into a new private ownership recognized by the Law. In principle, this gives the opportunity to every citizen, both male and female, to obtain access rights to land independent from kinship-based authority. At this point, the idea of gender equality in getting access to land is treated as an individual endeavour, detached from the adat communal authority on which hak ulayat (communal rights) have been based.

The controversial 1974 Marriage Law claims to have increased the status of Indonesian women. Article 31 of the Marriage Law gives the wife the same capacity as the husband to take legal action while article 36 states that husbands and wives shall have the full right to dispose of the property brought by them, respectively, into the marriage. However, the equal status of women under the state law does not necessarily reflect the actual condition of many women in Indonesia (cf. Suryochondro 1996). The normative claim about the improving status of women actually is not valid when taking into consideration that the comparative socio-economic achievement of women in general has been the result of a trickle down effect from the ongoing national economic development. In terms of entrance to formal education, for instance, the number of female students entering elementary school is increasing over time. In 1971 only 58% of school-age girls entered elementary school. In 1980 the number increased to 83% and was up to 92% in 1990. The percentage of female students entering higher education, however, is decreasing (BPS, Sensus Penduduk 1971, 1980, 1990).

The attention given to enhancing the status of women actually has become
an international outcry. In 1975 the first UN Conference on Women was held in Mexico under the theme "Equality, Development and Peace" and later the UN Decade of Women was pronounced. The international-level attempt to enhance the status of women has had an impact on the national effort. At least at an institutional level, Indonesia has maintained the State Ministry for Women's Affairs since 1978, responsible for programs and projects to enhance women's role, P2W (Peningkatan Peranan Wanita). Women's human rights are formally recognized by the UN through the release of the 1979 UN Convention on the Elimination of Discrimination Against Women or CEDAW (Tomasevski 1993). In 1980, Indonesia signed the CEDAW with the reservation that the country does not accept the intervention of international arbitrary institutions nor the International Court of Justice in case of a dispute over the interpretation or implementation of CEDAW (Andriyani 1994). This convention was ratified in 1984 with the promulgation of Law No. 7/1984. Indonesia has also signed the Universal Declaration of Human Rights and the Convention on the Political Rights of Women as well as ratified ILO Convention No. 100 on "Equal Remuneration for Women Workers for Work of Equal Value". The second UN Conference on women, held in Nairobi in 1985, accepted the "Forward-looking Strategies for the Advancement of Women". The fourth UN Conference in Beijing in 1995 suggested a "Platform for Action" for equality, development and peace. With this international outcry, governmental and private international development institutions have begun to require a coupling of the endowment of international development aid with the prerequisite of the improvement of women's condition.

Thus, equal rights and opportunities for women have been strongly promoted by the Indonesian Constitution and its further regulations. Yet in its implementation, women's roles in society have been defined in a much more restricted way. There has been a conscious effort by the government to guide the attempts for enhancing women's role and status in the direction that suits the national criteria elaborated in the State Policy Guideline or GBHN. This includes the control of women's organizations as part of the government's wider control over all organizations in Indonesia which is legitimised by the Law on Mass Organization (UU No. 8/1985). Wagemann (1996: 437-440) has prescribed the various official formulations of women's roles and status defined by the State Policy Guideline or GBHN. The 1973 GBHN narrowly defines the role of women in development in connection with family life. Women's rights and position in society are protected in order to enable them to form a contended family to prepare the nation's future generation. The 1978 GBHN defines a wider women's role in development in addition to the previously defined role in the family. The 1983 GBHN precisely states that the enhancement of women's role in development could be done through, among others, PKK, a state-sponsored welfare-oriented women's association chaired by the wife of the Internal Affairs Minister (c.f., Bianpoen 1996). The rights, responsibilities and opportunities of women in development are equal to those
of men. The same notion on women's expanded role in development is
mentioned in GBHN 1988, but still within the context of the family domain. The
1993 GBHN propounds the need to create a viable socio-cultural atmosphere
to increase the dignity and status of women so that they can play a more
effective role in society as well as in the family. It is the 1993 GBHN which
explicitly mentions that women are the equal partner of men.

The Indonesian state's monopoly on defining what women's role in society
should be and, consequently, its control over how women's organizations
should operate is being severely criticised. To challenge this state hegemony,
some Indonesian women have started to form a number of "transformative
women NGOs" as an alternative for empowering women (Triwijati 1996). The
transformative women NGOs identify gender needs based on the analysis of
women's subordination in a patriarchal society, emphasizing "strategic needs"
rather than merely "practical needs" (c.f., Molyneux 1985; Moser 1989).
However, Andriyani (1994:108) expresses her concern that "Women's
movements outside the governmental control are also weak and cannot be
expected to challenge the state power which defends patriarchy for its own
benefit. The weaknesses of these movements lay primarily in the fact that
women's issues are raised mainly because they are trendy and preferable by
the international donor agencies."

3.1.3.b. Enhancement of (Batak)women's position in inter-familial relation

While the State in a way attempts to tolerate the different adat authorities,
it has also attempted to change them to guarantee a minimal commitment to
gender equality. Like its colonial predecessor, the State has tried to influence
different aspects of patrilineal and patriarchal Batak adat through its court
decisions. In general, there has been a conscious attempt by the state court to
reconstruct and reshape Indonesian adat law with the hope that judges would
guide the development of the unwritten law through jurisprudence toward legal
uniformity and, particularly in the case of family law, in the direction of a
parental system (Subekti and Tamara, 1965), which is considered more fitting
to the universal claim of equality. Hadikusuma (1993) has recorded some lists
of jurisprudence on Indonesian adat law in the areas of family law, marital law,
marital property and inheritance law focusing on some distinct ethnic groups in
Indonesia. One of the ethnic groups is the Batak which has a strong patrilineal
feature. In relation to access to land among the patrilineal Batak, state court
decisions on family law, marital law, marital property and inheritance law are
the key areas where Batak women's access to resources continue to be
moulded. Indeed, in a society where access to landed resources is
predominantly gained through familial relations (both through inheritance and
association to the spouse), the change of adat in familial law plays a crucial
role. Thus, based on the work of Hadikusuma (1993), the post-colonial
jurisprudence which potentially affects Batak women in relation to access to
resources in general, and to land in particular, is described.
Jurisprudence on marital law

a). Engagement: It is common that in an engagement prior to marriage, the man’s family endows an adat gift in the form of money, jewellery and other valuables on the woman’s family to prepare for the wedding. The break-up of an engagement among the Batak has impact on the money or gifts previously endowed by the man’s family upon the woman’s. If the break-up of the engagement is initiated by the woman, her natal family is obliged to return all the adat gifts twice as much as the original value. If it is initiated by the man, then the woman’s natal family may keep the adat gifts. However, in practice the woman’s family always feels the pressure to return the adat gifts regardless of the reasons for the engagement breaking up. On the other side, the man’s family more than often feels obliged to return the adat gifts even though they may be the one who broke the engagement. While the Supreme Court on the one hand tried to reconfirm the Batak adat patrilineal principle, it consciously acted to reduce the unfavourable economic burden put on a woman in breaking up an engagement. On 6 July 1955, in a case involving rural people in Balige, the Supreme Court decided that in an engagement break-up initiated by a woman, her natal family should pay the man’s, not twice as much as the value of the adat gift, but only in the form of a piece of cloth, ulos (See Putusan Mahkamah Agung Reg.No.46 K/Sip/1952). In another case the Supreme Court also favoured the woman. On 11 December 1959, in a dispute involving two families living in urban Medan and Siantar, the Supreme Court made a decision (Putusan Mahkamah Agung Reg.No.396K/Sip/1958) reconfirming the adat principle that the woman’s natal family is entitled to keep the adat gift in the case of an engagement break-up initiated by the man’s family.

Thus, the state court attempts to reduce the economic burden on a woman’s natal family in the case of an engagement breaking up. The amount of adat gift to be returned is substantially reduced when the engagement break-up is initiated by the woman. This gives many women the freedom to decide whether or not to continue the engagement into marriage without having to worry about the burdensome economic consequences. Unlike before, from the point of view of a woman’s natal family, a woman may no longer be seen as the source of financial difficulty when a man breaks off the engagement because she is no longer obliged to return the adat gift.

b). Divorce: There is a jurisprudence that approves the request of a woman for a divorce on the basis of irreconcilable conflict between husband and wife (See the Supreme Court decision Reg.No.438 K/Sip/1959, dated on 13 January 1960). In another case, a woman has submitted a request for a divorce on the basis that the husband has a bad and irresponsible character. Although the husband questions the competence of the state court to interfere in an adat marriage, the request is approved by the Supreme Court (See the Supreme
Court decision Reg.No.75 K/Sip/1963, dated on 10 November 1963). The change in the status of marital property after a divorce among the Batak was introduced by a 1976 jurisprudence. In the case of a divorce of a Batak couple living in Jakarta, the Supreme Court decided that the marital property should be equally divided between the two, and at the same time the man is obliged to pay the woman a sum of money on a monthly basis (alimony), which ends when the amount paid has reached the value of his share in marital property (Supreme Court decision NO.1448 K/Sip/1974, dated on 9 November 1976).

The condition of divorced women has improved. The 1976 court decision mentions that marital property should be equally divided between the divorced couple. Moreover, the idea that a man is obliged to regularly pay his divorced wife alimony is totally novel. While in Batak adat a divorce totally dissolves the relationship and responsibility for each other, alimony imposed by the state court has drastically changed this by introducing the idea that a divorce only dissolves the relationship but not the economic responsibility of the man.

**Jurisprudence on marital property**

In 1951, the High Court of Medan made it clear that a daughter cannot inherit her deceased father's inherited property but is only allowed to use it. However, if the deceased father's inherited property has been used by his brother's son, the daughter's right to use the inherited property is terminated (See the decision of Medan High Court No.176/1951, dated on 13 August 1952). In 1958, the Supreme Court reconfirmed the Batak adat principle that all marital property is under the command of the husband and that a wife/widow only has use right as long as she needs it (See the Supreme Court decision Reg.No.54 K/Sip/1958, dated on 25 October 1958). This Supreme Court decision is parallel to earlier (decision of) Putusan Rapat Adat Kuria Pintu Padang on 15 December 1931 (T.1391:266) which says that a widow and her daughter have the right to use/enjoy the property of the deceased husband/father as long they live in the huta. However, another Supreme Court decision of 1958 has given greater authority for a widow to have command over the whole acquired property. This right is given to the widow on behalf of her children (See the Supreme Court Decision Reg. No.320 K/Sip/1958, dated on 17 January 1959). The right of a daughter to inherit her father's inherited property is not recognized by the state court. She only has the right to use. Likewise, a widow has the right to use the property as long as she needs it. She may manage the whole property but only on behalf of her children.

**Jurisprudence on inheritance**

In 1928, still the colonial period, a Batak man who was a devout Moslem died, leaving behind a son, a daughter and some properties: houses and housing plots, plots of a rubber plantation, and another plot of land. The properties were then taken and used by the son, named Fahri. In 1956, twenty eight years after the death of the father, Fahri's sister, Salmah, filed a suit to
get one third of her father's property on the basis of both adat holong ate (love) and Islamic inheritance law. The Supreme Court decision Reg.No.130 K/Sip /1967 dated on 31 January 1968 conveys that based on adat holong ate as well as a consideration to increase woman's position and rights to Batak land, a woman has the right to the undivided inheritance of her deceased father. In that case Salmah was entitled to more than what she originally wanted in the law suit (one third of the property); instead of one housing plot and the house, she received two-and-a-half housing plots and houses. The application of adat holong ate as a means to provide justice to women is reconfirmed by the Supreme Court in another case involving a woman who has no brother (Supreme Court decision Reg.No.528 K/Sip/1972, dated on 17 January 1973).

One of the most radical changes in adat inheritance law among the Batak introduced by the Supreme Court is made through its jurisprudence in 1961. The Supreme Court decision Reg.No.179 K/Sip/1961 dated on 1 November 1961 conveys that daughters and sons of a deceased are entitled to an equal share of the inheritance. A man called Rolak Sitepu died, leaving behind daughters and no son and a plot of land. One of the deceased's daughters was awarded use rights over the plot, based on an adat decision of the formerly called Balai Raja Berempat Kabanjahe No.69, dated on 1 March 1929. Later, the plot was passed on to another daughter of the deceased called Rumbane. When Rumbane died, the land was used by Rumbane's son, or the grandson of Rolak Sitepu, the original owner. Rolak Sitepu's nephews (his brother's sons) claimed that since the uncle had no sons, they were the valid inheritors of Rolak Sitepu. Therefore, they request that the plot be returned to them. In its consideration, the Supreme Court admits that the Batak adat does not recognize woman's rights to inheritance and that the collateral principle in the male line applies if a deceased has no sons. The Supreme Court also admits the Batak adat principle to recognize only the use rights of a woman over her father's property as long as she lives. However, the Supreme Court continues, "...based on the appreciation to humanity and popular justice as well as the inherent equality between men and women...as a living law in Indonesia, sons and daughters are simultaneously entitled to inheritance and they share equal portion of the inheritance".

The Supreme Court has also made a decision on the right of a widow to the property of her deceased husband (See Supreme Court decision Reg.No.100 K/Sip/1967, dated on 14 January 1968). A widow's right to her deceased husband's property was contested by her step sons (the deceased's sons). In its consideration the Supreme Court says: "in view of changes in society towards equality between man and woman and the fact that there has been a

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6Islamic law recognizes the right of women to inherit. The usual rule is that all daughters equally inherit one-third of the total inheritance, while sons equally inherit two-thirds of the total.

Jurisprudence on the recognition of a widow's status as an inheritor, the decision (to give the widow inheritance rights by the High Court) is approved”.

Another decision of the Supreme Court reconfirms the legality of a land gift transaction from a brother to a sister through a written document, *surat pemberian dan penyerahan*, not only as a transfer of use right but also ownership right which is to modify the rigid Batak *adat* on inheritance that does not recognize the inheritance right of a woman (See Supreme Court decision Reg.No.415 K/Sip/1970 on 30 June 1971). A man called Malim Djoni gave away housing plots, houses and a garden to his sister, Djaumil, for her to start a business. When the sister died in 1949, those properties were in the hands of her two sons. Because of this, the three sons of Malim Djoni, the original property owner, claimed that the property was still owned by their father, Malim Djoni, and therefore, it should be returned to them as the valid inheritors of Malim Djoni. Malim Djoni's sons argued that the property was given by their father to his sister as *pambaenan* (in South Tapanuli, while in North Tapanuli it is called *pauseang*), which is to be returned when the woman dies. However, the Supreme Court is of the opinion that the property gift, *pambaenan/pauseang*, is considered marital property of the woman which is inheritable by her children. The property gift shall be returned to the woman's natal family only when she is divorced from her husband or when she has no children, which is not the case.

Unlike the court decision in the colonial era that still did not recognize the inheritance rights of daughters, the post-colonial state court conveys that daughters and sons of a deceased man are entitled to an equal share of the inheritance. So, daughters and sons are treated as individual children, detached from their gender status. It also protects the right of a widow to the property of her deceased husband. Moreover, the post-colonial state court recognizes the validity of a new form of transaction between a brother and a sister, that is through a written document, as a transaction of ownership rights and not merely of use rights as otherwise recognized by the *adat*. In this regard, the formalization of a transaction through a written document is considered as a valid basis to give a woman strong access rights to land, more than is possible by merely an ordinary *adat* formalization.

*The state court view – an analysis*

In post-colonial time, the urge for national uniformity of the law has had great influence on Batak *adat*. In familial affairs, the jurisprudence tends to guide the patrilineal Batak *adat* into the direction of a bilineal or parental system with the intention to increase gender equality in favour of women. Constitutionally, Indonesia has acknowledged equality between men and women before the law (Chapter 27, section 1 of 1945 Constitution). Meanwhile, the increasing tendency towards a nuclear family life-style has stimulated state court judges to make decisions in favour of bilateralism over patriliny. This may lead to jurisprudence becoming a potential weapon in Batak women's struggle
for gender equality in familial relations.

The jurisprudence of 1961 marked the changes in the legal entitlement of Batak woman to inherit her deceased father's property. The jurisprudence acknowledged inheritance rights of sons and daughters in the appreciation of humanity and popular justice and the recognition of the inherent equality between men and women. In addition, a jurisprudence of 1968 clearly stated that based on Batak adat holong ate as well as a consideration to increase women's position and rights, a woman, like her brother, has the right to the undivided inheritance from her deceased father. This principle is applied also in the case of a woman who has no brother (jurisprudence 1973), meaning that the customary right of the collateral inheritors, the panean, is totally reduced. The right of a widowed woman over her deceased husband's property was also promoted by post-colonial jurisprudence in 1968. In 1971 the Supreme Court declared that the property awarded by a brother to a sister cannot be revoked by the brother's sons.

Although the Supreme Court decisions radically favour Batak women over men in familial property relations, it is rarely the case that women take the initiative of using the court in protecting their rights to familial property. Most of the woman-favoured jurisprudence is initiated by a man who sues the (step-) mother, sister and her descendants, the auntie and her descendants, etc. There is only one case in which a woman fights for her own right to inheritance, that is the case of Salmah against her brother. In the case of Rolak Sitepu's property, his daughter who had no brother did not perceive a problem with using the property. When she died, her sons who continued using the property were sued by Rolak Sitepu's collateral. In another case, the dispute takes place when the woman's sons starts using the property which makes her brother's sons sue the former. Thus, many of the disputes are essentially between different men over the status of a woman's relations to the property, but in the process of seeking justice they simultaneously change the legal perception of women's rights to property.

3.1.4. The Expansion of State Administration

In the period of 1969-1990, the government apparatus expanded rapidly in terms of state budget, manpower and in its increasing presence in the outer islands. In general, the last thirty years have shown a continuous establishment of government offices and services from the provincial level through the district level (kabupaten), down to the sub-district level (kecamatan), and even several services at the village level. The central government disseminates a wide range of social welfare programs for rural people in different regions throughout Indonesia through which its presence can be noticed by the rural population (Cheetham and Peters 1991; Dirkse, Husken and Rutten 1993). Though many of the programs resulting from state administrative expansion have been criticised as being too ad hoc, they are broadly distributed among the various
regions which makes the state's presence even more obvious (Benda-Beckmann 1996). From the early 1970's until the late 1980's, the Opsusdu (Operasi Khusus Terpadu) poverty alleviation programmes were established in regions considered to be poor. Welfare distribution also attempts to provide free education for elementary school children through SD Inpres, the development of infrastructure, the establishment of free basic health care services (Puskesmas and Posyandu), the family welfare program (PKK), official village cooperatives (KUD), and income generating programmes of the Department of Social Affairs. The most recent national programme launched by the central government is the IDT poverty alleviation programme targeted at the most marginalized areas throughout Indonesia (BAPPENAS 1995; Ismawan and Pamudji 1994; Ismawan and Susapto 1994; Mubyarto 1994). The implementation of this latest programme among the Toba-Batak is discussed in a later section of this chapter.

The state expands its hegemony through establishing administrative and political institutions down to the village (desa) level. This political move has actually been around since colonial time. Many administrative boundaries have been inherited from the colonial era with only minor changes. The most radical change started with the introduction of the Law No.5/1979 on Village Administration which gives a village partial autonomy in which it is treated both as an administrative and political unit. Although a village is declared a Third Level Autonomous Region (Daerah Tingkat III), in reality it should follow directives from superior authorities. Village head candidates have to be screened by the administration, elected by the villagers and confirmed by the provincial governor. Under this condition, a village head is caught between two often contradicting aspirations as a political head of the village and a representative of the administration in the village. Village head's obligations are to the administrative hierarchy and not to the villagers. While annual reports on the activities as well as a budget should be presented to the village assembly (LMD), action against a village head can only be taken by the superior.

It is through state legislation and administrative/political institutionalization that the hegemonic claim of the state over land is reconfirmed. The BAL and its subsequent legislation are injected into local situations where customary laws on land relations are prevalent. At the institutional level, the Law No.5/1979 is an entry point for the state to further interfere with concrete local community life throughout Indonesia. The various private agencies which compete with the locals in accessing rights to land in local settings, are aligned with the state which has developed overwhelming power over the locals. The rapid change brought about by the post-colonial state, especially under the New Order Government, includes the emergence of large-scale private and national interests in the local economy. The authority of the centralised state to introduce laws and regulations has indeed been used to create a means for controlling and accessing rights to land. The overwhelming propensity of the post-colonial state towards a unitary system of law and economic development
has legitimized the claim that it is the state, and not the different local adat communities, that is the rightful land proprietor.

3.1.5. Land Appropriation - State Monopoly of Law

State policy on land appropriation is not new. It was first introduced in the colonial era with agrarian policy regulating the effort to appropriate people's land for the interest of private investors. As previously mentioned, the 1870 Colonial Basic Agrarian Law was introduced with the main aim of facilitating the endowment of land to private investors. With this regulation the adat authority was neutralized while the state seized the authority to allocate land. The post-colonial state is also faced with the issue of how to allocate land for economic and other purposes. In its effort to develop the national economy the New Order Government has sought to stimulate domestic and foreign investors. It is not surprising that one of the first acts of the New Order Government was the announcement of the Law of Foreign Investment (UUPMA No.1/1967), warranting minimal requirements so as to attract as much foreign investment as possible (Hill 1990). The government has provided many incentives such as a favourable tax policy and the availability of land. As already mentioned, the Law of Foreign Investment revoked the BAL's provision on hak guna usaha (right to cultivate) and hak guna bangunan (right to build). While the BAL stipulates that only persons who are Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia whose capital is exclusively domestic may acquire those rights, the Law of Foreign Investment states that foreigners, foreign legal bodies and Indonesian legal bodies with capital partly owned by foreigners may also acquire hak guna usaha and hak guna bangunan. Land is an important production factor for private investors to open up the industrial, service and mining sectors. The government also needs land for development projects and to create the infrastructure for public needs. The development process and activities have obviously increased the needs to utilize land for both the state and private investors. Limited availability of state-owned land has forced the government to look for pragmatic ways to enable them to appropriate people's land by paying compensation.

It is in the context of such economic interest that the policy of land appropriation (Peraturan Menteri Dalam Negeri or PMDN No.15/1975) was introduced into national law and later followed by PMDN No.2/1976 on "Tentang Penggunaan Acara Pembebasan Tanah Untuk Kepentingan Swasta" (The Operation of Land Appropriation Procedure for Private Interest) and PMDN No.2/1985 on "Tata Cara Pengadaan Tanah Untuk Keperluan Proyek Pembangunan di Wilayah Kecamata" (The procedure of Land Allocation for Development Project in Sub-district Region) (c.f., Suhendar and Kasim 1996). This policy of land appropriation undermines the previous and more superior legislation, that is the Law on the Abolishment of Rights in Land and Objects Attached to It (UU No.20/1961) as well as its derivatives such as President
Instruction No.9/1973. The Law No.20/1961 stipulates that the abolishment of land rights shall be done through Presidential decision, thus requiring a rather longer procedure than stipulated in the PMDN No.15/1975. This Presidential Instruction indeed gives more legal certainty in the process of land appropriation. First, the development project can be called for the sake of "public need" if it has already been included in the State Development Plan and the concerned people have been informed, or has been entailed in the Major Regional Development Plan which is approved by local Parliament. Secondly, if the concerned people do not agree with the compensation, they can make an appeal to the High Court which will make the first and final decision on it. The issue of land appropriation is based on chapter 18 of the BAL which mentions that for the sake of public need, including the needs of the nation and state as well as the common needs of the people, the right over land can be appropriated by giving proper compensation according to the procedure regulated by the law. The PMDN No.15/1975 defines the term land appropriation as "abandoning legal relation previously existing between the land-rights holder and the land through giving proper compensation".

Land appropriation is, indeed, in the centre of the widespread land conflict throughout Indonesia. Under the development banner people have been exposed to various conflicts of interest regarding land appropriation in which they are often cornered with losing position. Responding to the increasing problem of land, the 1988 Guidelines of State Policy (GBHN) mentions:

Land has a social function and its utility should be able to increase people’s welfare. Therefore, it is necessary to develop national landscape and land tenure so that utilization of land can be coordinated between various kinds of use while considering the sustainability of the nature and environment as well as avoiding land use which deprives both people’s interest and development interest.

Land may be appropriated for use by government or private agencies. If it is for the government’s needs, then the process shall be conveyed by the Land Appropriation Committee whose task it is to observe/examine and to

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8 Furthermore, chapters 27, 34 and 40 of the BAL indicate that the right of ownership (hak milik), the right of exploitation (hak guna usaha), the right of building (hak guna bangunan) shall be nullified because of the acquisition for public need.

9 The Legal Aid Institute Foundation has published annual reports on the human rights situation in Indonesia in which land conflicts are mentioned. Some land cases which have drawn national attention are, among others, Kedung Ombo, Badega, Sei Lepan, Cimerak, Karimunjawa, Kampung Sawah, Cimacan Rancamaya, Nipah, Blangguan, etc. (YLBHI 1991, 1992, 1993, 1994, 1995 and 1996).

10 See the State policy guideline, GBHN 1988, D. Arah dan Kebijaksanaan Pembangunan Umum, point 30.
determine the amount of compensation. In the process of assessing and delivering the compensation, the Committee should carry out dialogues (musyawarah) with the owner/right holder of the appropriated object which should be based on market price, considering its locality and other strategic factors which would affect the land price. Compensation can take various forms such as cash, land or other facilities. Should the land appropriation require huge areas with the consequences of re-settlement of the people, then the party in need should reserve an area for the re-settlement in addition to the obligation of giving other compensation as mentioned above.

PMDN also states that in deciding the amount of compensation there should be an agreement among the committee members which considers the wish of land rights holders. The decision regarding the amount of compensation is then passed on to the party in need, the land-rights holder and the committee members. If the amount and form of compensation have been agreed then the actual land appropriation is put into action. Problems arise when the parties refuse the decision. In this case, PMDN chapter eight states that when the Committee has received and considered the reasons for refusal, it can take an action whether to stick to the previous decisions or forward the case to the Governor. The Governor then can take action either to reconfirm the decision or to make a new decision which shall create an agreeable solution for both. When the Governor's decision is still rejected, PMDN does not give any further explanation. Therefore, there is no legal remedy under the state law for those people who cannot accept the land appropriation. The room for manoeuvre warranted by law is only in the area of negotiating the compensation.

PMDN chapter 11 deals with land appropriation for private companies. Local government has the obligation to control the realization of land appropriation and endowment of land compensation. Further, it is stated that land appropriation for private companies should basically be carried out directly between the parties on the endowment of land compensation, based on the deliberation principle (azas musyawarah). The request for land appropriation by government or private company should be addressed to the Governor/appointed officer. Such request then is forwarded to the Committee which is appointed by the government. Thus, it is clear that the procedure of land appropriation is very exclusive and that it does not give space for the people to participate in the process of decision making. The decision to grant the land appropriation permit

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11 The Land Appropriation Committee is appointed by the Governor of the respective province. Members of this committee are as follows (Home-Affairs Minister Regulation No.15/1975, chapter 2): (a) Chief of Agrarian sub-directorate of the district/city as chair; (b) An officer from the district office; (c) Head of retribution and income district office or appointed officer as member; (d) Officer from the concerned government office that needs the land as member; (e) Head of district public works office or appointed officer in the case of construction land, or head of district agricultural office or appointed officer in the case of agricultural land as member; (f) District head as member; (g) Village head as member; An officer from the district/city Agrarian sub-directorate as non-member secretary.
is totally in the hands of the Governor/appointed officer and Land Appropriation Committee whose membership is all government officials.

Land appropriation is meant to facilitate the taking over of people's land by both the state and private investors for development projects and the public interest. However, the land appropriation policy does not give enough protection to those who will be potential victims. The policy emphasizes the amount and form of land compensation while there is no legal remedy for those who cannot accept land appropriation. Moreover, the procedure of land appropriation excludes local people from the process of decision making, therefore the appropriation permit from the governor is treated as more important than the local people's consent in the initial process of land appropriation. Suhendar and Kasim (1996) mention that because of the pressures from many frontiers, the government drops the three PMDNs (No.15/1975; No.2/1976; and No. 2/1985) and replaces it with Presidential Decision (Keppres No.55/1993) on "Pengadaan Tanah Bagi Pelaksanaan Pembangunan Bagi Kepentingan Umum" or "Land Allocation for Development Endeavour for Public Interest" which applies to land appropriation executed only by the government for the public interest. Land allocation for private interest is subject to separate regulations, which are, among others (Suhendar and Kasim 1996: 59-60):

a. Keppres No.97/1993 on the procedure for investment (Pakto 23/1993) which gives authority to the BPN (National Land Board) at sub-district/administrative township to issue a location permit for investment purposes.

b. Permenag/Kepala BPN No.2/1993 on the procedure to obtain location permit and rights to land for private companies for investment purposes.

c. Kepmenag/Kepala BPN No.22/1993 on the guidance to the procedure for the endowment of location permit for investment as the implementation of the Permenag/Kepala BPN No.2/1993.

Thus, the post-colonial state basically continues to wield the power of its predecessor, although the state is no longer considered as the owner of land, but rather the administer (BAL chapter 2). In the first few decades of independence, many attempts were made to modify the existing laws inherited from the colonial period. Again, the aim of legal reform is claimed to be abolishing the discriminative and exploitative nature of colonial law. The BAL of 1960 is full of a humanistic and socialistic spirit of equality. Communal rights are protected and women's and men's rights to land are equally recognized. However, the growing need for land has prompted the government to introduce further regulations to facilitate land appropriation. The issuance of Keppres No.55/1993 does not necessarily mean that the government no longer interferes in the land appropriation process for private companies. Together with the

\[12\] Details on the content/technical aspects of the Presidential Decision on "Land Allocation for Development Endeavour for Public Interest" (Keppres No.55/1993) can be found in Abdurrahman (1994).
expansion of the state's administrative authority down to the village level, the state has developed its legitimate authorities to appropriate land and grant licenses and permits to private investors. The location permit issued by the National Land Board or BPN (Badan Pertanahan Nasional) at the sub-district/administrative township level validates the effort of private companies to appropriate people's land. Although the state law guarantees that the holder of the location permit should appropriate people's land through ordinary land purchase procedures and with people's deliberation, the new mechanism has legitimised the forced removal of local people from their land. In this tendency the state has the monopoly of power deriving from the law it creates.

3.2. LOCAL SOCIO-ECONOMIC CONTEXT

In the late 1970s, a nation-wide newspaper, Sinar Harapan, labelled the Toba-Batak area of origin, North Tapanuli district, "a map of poverty". This label spread deep concern over the adverse economic situation in the ancestral area of many successful Batak migrants throughout Indonesia. In 1976, for instance, North Tapanuli, the district where most Toba-Batak villages are confined, was considered the poorest Batak district after Dairi. Until 1980 the situation did not change much as can be seen in table 3.1.

Table 3.1. Income per capita of six Batak Districts compared to that of the Province, 1976-1980 (In Rupiah)

<table>
<thead>
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<tbody>
<tr>
<td>North Sumatra Province</td>
<td>90,790.12</td>
<td>97,908.40</td>
<td>105,807.62</td>
<td>111,416.12</td>
<td>117,972.61</td>
</tr>
<tr>
<td>1. N. Tapanuli</td>
<td>66,900.38</td>
<td>88,420.91</td>
<td>91,366.10</td>
<td>97,018.54</td>
<td>105,237.25</td>
</tr>
<tr>
<td>2. Dairi</td>
<td>54,809.81</td>
<td>63,763.22</td>
<td>66,669.43</td>
<td>62,691.13</td>
<td>75,815.38</td>
</tr>
<tr>
<td>3. Karo</td>
<td>93,855.70</td>
<td>96,477.32</td>
<td>114,387.24</td>
<td>128,996.10</td>
<td>128,996.10</td>
</tr>
<tr>
<td>4. Simalungun</td>
<td>88,423.78</td>
<td>118,202.10</td>
<td>105,388.12</td>
<td>131,974.60</td>
<td>114,209.82</td>
</tr>
<tr>
<td>5. Central Tapanuli</td>
<td>84,206.52</td>
<td>108,192.11</td>
<td>94,937.34</td>
<td>92,525.90</td>
<td>99,134.40</td>
</tr>
<tr>
<td>6. South Tapanuli</td>
<td>71,659.66</td>
<td>79,313.44</td>
<td>88,216.16</td>
<td>98,031.65</td>
<td>112,500.69</td>
</tr>
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The total number of people dependent on agriculture in the area is estimated to be more than 90% (Sensus Pertanian 1983) while the average landholding per family in North Tapanuli is 0.83 hectares (Eijkemans 1988:12). Only 23.2% of the peasants possess more than one hectare of land and 5.8% possess more than two hectares. Almost all Toba-Batak peasants grow rice. Eijkemans (1995) mentions that with an average of almost six members per family, a Toba-Batak peasant family obtains an annual gross agricultural...
income of less than Rp.2,250,000 (or approximately US$ 230 per capita). There is no indication that the total size of peasants' arable land will increase in the near future; instead, the total size of irrigated arable land is slowly declining (Bottema 1995:199).

Apart from the agricultural sector, there is hardly an economic alternative for the Toba-Batak people. Mijl (1988:27) states that the government sector has increasingly played the most important economic role in North Tapanuli after agriculture. This means that the government sector has provided the greatest employment alternative in North Tapanuli and has become the main source of cash earning for many of the Toba-Batak. Table 3.2 gives a glimpse of the percentage of sectoral contribution to the Regional Gross Domestic Product of the North Tapanuli district. Timmer (1990:88) shows that the involvement in the industrial sector in the whole district of North Tapanuli was very low in 1986, namely only 6,046 persons: 385 in large and medium-scale industries, 563 in small-scale industries and 5,098 persons in home industries. The latter mainly concerns traditional weaving by village women.

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>Year 1975</th>
<th>Year 1983</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agriculture</td>
<td>59.90%</td>
<td>50.45%</td>
</tr>
<tr>
<td>2. Mining</td>
<td>0.03%</td>
<td>0.10%</td>
</tr>
<tr>
<td>3. Industry</td>
<td>0.34%</td>
<td>0.46%</td>
</tr>
<tr>
<td>4. Electricity, gas &amp; water</td>
<td>0.09%</td>
<td>0.21%</td>
</tr>
<tr>
<td>5. Construction</td>
<td>1.22%</td>
<td>1.81%</td>
</tr>
<tr>
<td>6. Trade, hotel and restaurant</td>
<td>12.18%</td>
<td>0.60%</td>
</tr>
<tr>
<td>7. Transport &amp; communication</td>
<td>3.86%</td>
<td>6.61%</td>
</tr>
<tr>
<td>8. Bank/finance institution</td>
<td>2.46%</td>
<td>5.18%</td>
</tr>
<tr>
<td>9. House rental</td>
<td>4.95%</td>
<td>3.21%</td>
</tr>
<tr>
<td>10. Government</td>
<td>11.45%</td>
<td>17.40%</td>
</tr>
<tr>
<td>11. Services</td>
<td>3.54%</td>
<td>4.01%</td>
</tr>
</tbody>
</table>

Source: Mijl (1988:28)

In January 1982, President Suharto inaugurated the operation of a modern, and up until that time the most expensive, investment: the Asahan Project covering the Lake Toba hydraulic power schemes and an aluminium smelting enterprise (Siahaan 1986 and 1996). It marked the first shift of land use in the Toba-Batak area, from merely traditional farming to modern industry. Yet, in the construction period of the project between 1978 and 1982, the North Tapanuli district had gained little income from the giant 104,167 million Yen

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13 See point 3.4.1. for details about the Asahan Project.
investment. Its regional gross domestic product per million per person at the peak of Asahan project construction, that was in the year 1982, was only US$ 239 compared to US$ 309 for the province (Barlow and Thee 1988:22).

Not long after "map of poverty" was labelled on North Tapanuli, discussions on why the district was poor started\textsuperscript{14}. One conclusion was that that poverty in North Tapanuli can be equated to the persistence of certain usage patterns applied on adat land. This conclusion was supported by a publication of the General Directorate for Agrarian Affairs which conveyed that the most chaotic land use in North Sumatra is found mostly on land which falls under the status of adat (Silalahi 1982). North Tapanuli is said to be the district in which the biggest proportion of adat land can be found. Table 3.3. denotes a sizeable proportion of adat land in the district, amounting to 67.23% of the total land in the area, while 21.01% is categorized as forestry land, the latter often one-sidedly claimed by the Forestry Department\textsuperscript{15}. Although such categorization of land (adat, forestry, state and lease land) may overlap, this may indicate that adat is presumably the norm, governing most of the land located in North Tapanuli. However, the hastily drawn conclusion about the persistence of poverty in the district does not take into further consideration, and make comparison with, the incidence of poverty/wealth in other Batak districts\textsuperscript{16}. South Tapanuli, for instance, is almost equally as poor as North Tapanuli but adat land in the former constitutes only 18.39% compared to 67.23% in the latter. On the other hand, Karo district which constitutes 52.96% of adat land proves to be the wealthiest Batak district in North Sumatra.

Table 3.3. Land by Status in Six Batak Districts (in ha)

<table>
<thead>
<tr>
<th>No.</th>
<th>District</th>
<th>Adat Land</th>
<th>Forestry Land</th>
<th>State Land</th>
<th>Leased Land</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>North Tapanuli</td>
<td>713,020</td>
<td>222,875</td>
<td>...</td>
<td>14,375</td>
<td>1,060,630</td>
</tr>
<tr>
<td>2.</td>
<td>Dairi</td>
<td>184,375</td>
<td>130,235</td>
<td>-</td>
<td>-</td>
<td>314,610</td>
</tr>
<tr>
<td>3.</td>
<td>Karo</td>
<td>112,675</td>
<td>98,750</td>
<td>-</td>
<td>1,300</td>
<td>212,725</td>
</tr>
<tr>
<td>4.</td>
<td>Simalungun</td>
<td>88,000</td>
<td>79,375</td>
<td>-</td>
<td>278,585</td>
<td>443,960</td>
</tr>
<tr>
<td>5.</td>
<td>Central Tapanuli</td>
<td>56,379</td>
<td>83,000</td>
<td>75,000</td>
<td>4,900</td>
<td>219,779</td>
</tr>
<tr>
<td>6.</td>
<td>South Tapanuli</td>
<td>347,625</td>
<td>997,500</td>
<td>531,000</td>
<td>13,125</td>
<td>1,889,650</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>1,500,074</td>
<td>1,611,735</td>
<td>606,000</td>
<td>312,285</td>
<td>4,141,254</td>
</tr>
</tbody>
</table>


\textsuperscript{14}See for instance the proceedings of the "Seminar on the development of the areas located beyond 500 m above sea level in North Sumatra" in Universitas HKBP Nommensen (1985).

\textsuperscript{15}See point 3.4.2. on how the state claims land after releasing forestry programs and projects.

\textsuperscript{16}The North Sumatra Province comprises 11 districts: six belong to the Batak groups, one to the Nias, while the four east coastal districts namely Langkat, Deli Serdang, Asahan and Labuhan Batu predominantly belong to the Malays. See Map 1 for the array of those 11 districts.
In October 1986, the central government launched a crash program for poverty-alleviation in North Sumatra by forming a special task-force team called Opsusdu Maduma. Opsusdu stands for operasi khusus terpadu (integrated special operation), while maduma in Batak means "prosperous well-being". It was the 18th national crash program in order to improve the situation of economically backward areas throughout Indonesia. Though initially intended for North Tapanuli, the Opsusdu Maduma was aimed at generating people's income in all five poorer districts in North Sumatra, namely: North Tapanuli, Dairi, Central Tapanuli, South Tapanuli and Nias. The local government in North Tapanuli took the acronym Maduma for "Martangiang dungi Mangula" (pray and then work). Along the main road from Porsea to Tarutung one could see banners bearing the acronym Maduma, with GOLKAR added, referring to "Gogo Laho Karejo" (the strength for working) which could easily be associated with the name of the ruling party, Golkar (KOMPAS, 20 October 1986). By introducing varieties of food- and cash-crops such as cloves, coffee, orange, lime and ginger to the villagers, the target of this crash program was to increase per capita income to Rp.600,000.-. However, there was not much change in North Tapanuli after four years of Maduma operation particularly because the market price of the crops could not even cover the production costs. Though the official District report stated that income per capita had increased to Rp.464,057.10.- according to the index price, in fact it only amounted to Rp. 302,639.35.- according to the constant price (Suara Pembaruan, 13 October 1990). Therefore, many local peasants in North Tapanuli would cynically alter the acronym Maduma to "Mangula dungi Mate", meaning: to work and then die.

Even though the central government-initiated poverty alleviation crash program was far from a success, the governor of North Sumatra province introduced a village integrated development effort called Martabe in October 1990. While martabe in Batak language means to honour, it is used as an acronym for "Masipature Hutanabe", meaning that one (read: the migrant) should improve one’s own ancestral village. In his dual capacity as government representative and as a Batak, the governor called for the Bataks in diaspora, the migrants, to pay attention to the development of their village of origin. He mobilised the people outside North Sumatra to accumulate funds for village development projects. In the context of the Toba-Batak, however, the martabe efforts are geared to keep the balance of in-coming and out-going cash flow between the Batak villages and the migration areas.

The fact that the Toba Lake area has been considered the centre of origin of the Batak inspired many outstanding Batak members of the elite to found the Yayasan Perhimpunan Pencinta Danau Toba (Foundation for Toba Lake

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17 The same crash program was carried out in other poorer areas such as East Nusa Tenggara and West Nusa Tenggara provinces.
18 Governor Raja Inal Siregar is a Batak from South Tapanuli district.
Heritage) in 1996. Though this Foundation proclaims itself to be "private", many Batak and non-Batak high-ranking Generals as well as state functionaries are listed as its founding members, advisors and patrons. The list of members is extended to those Bataks, as well as foreigners with interest in Batak society, who live abroad, but none of the locals who themselves live in the Toba Lake surroundings. Ironically, the chair of the fund-raising section of this Foundation is the owner of the pulp company which clearly has caused the worst environmental damage in the area while denying local people the rights to make use of existing forest and grazing areas. Therefore, the seemingly primordial and patronage-laden effort at poverty alleviation in the Batak area is actually taken as the government's non-governmental political project. Perhaps collusion between the state high-functionaries, big private investors and Batak elites outside the Batak areas ultimately finds its perfect form in the founding of this Foundation.

<table>
<thead>
<tr>
<th>No.</th>
<th>Sub-districts</th>
<th>Backward villages</th>
<th>Backward villages affected by Perda</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Balige</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>2.</td>
<td>Muara</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>3.</td>
<td>Lumbanbulu</td>
<td>22</td>
<td>18</td>
</tr>
<tr>
<td>4.</td>
<td>Porsea</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>5.</td>
<td>Pangururan</td>
<td>25</td>
<td>21</td>
</tr>
<tr>
<td>6.</td>
<td>Sipahutar</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>7.</td>
<td>Lintongnihuta</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>8.</td>
<td>Doloksanggul</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>9.</td>
<td>Harian</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>10.</td>
<td>Laguboti</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>11.</td>
<td>Sibaa</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>12.</td>
<td>Onanrungu</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>13.</td>
<td>Palipi</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>14.</td>
<td>Simando</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>15.</td>
<td>Habinsaran</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>16.</td>
<td>Siborongborong</td>
<td>7</td>
<td>0</td>
</tr>
</tbody>
</table>

**Total** | **168** | **104**


Parallel to the Bataks' primordial effort at poverty alleviation, at the national level the state also launched a nation-wide poverty alleviation program which is called IDT (*Inpres Desa Tertinggal*), literally meaning President's Instruction.

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19 Details on the background, aim, formation, proposed activities and list of members of the Foundation for Lake Toba Heritage can be seen in Yayasan PPDT (1996).

20 See point 3.3.3. for details about the pulp company and its impact on the environment.
on Backward Villages). In 1993, President Suharto issued an instruction on the improvement of poverty-alleviation efforts throughout Indonesia (see *Instruksi Presiden* No.5/1993). In April 1994, the central government launched an *IDT* program aimed at alleviating poverty in 20,633 villages categorized as backward throughout Indonesia. In January 1995, within almost a year's time, 93% of those backward villages (or 19,231 villages) had been reached by the *IDT* program\(^2\). For the Toba-Batak area, ironically, many villages around Lake Toba which have been categorized as "backward" under the national poverty-alleviation project are simultaneously subject to a local regulation, *Perda No.1/1990*, on the Management of the Lake Toba Environment, which potentially can evict the villagers from their land\(^2\). Consequently, many of the villagers in the backward villages around Lake Toba can expect that their economy will deteriorate. Table 3.4. indicates the incidence of Toba-Batak villages which are considered backward under the *IDT* but at the same time are to be adversely affected by the local regulation.

### 3.3. LAND STATIZATION AND PRIVATIZATION – LOCAL IMPACT

I describe some indications of the rapid change brought about by the state due to the introduction of large-scale national and private interests in a concrete local economic setting, focusing on the surroundings of Lake Toba. State intervention into the Lake Toba area is basically a continuation of the colonial hegemonic claim over land-based resources. Since the end of the 19th century, Lake Toba and its surroundings have been seen as a potential natural resource by western explorers. Technical interventions sought to tame the flow of the Asahan river and the declining Lake Toba water level. This colonial initiative to exploit the Lake Toba region was resumed by the (post-colonial) state in the form of the Asahan Hydro Electric Project. In a similar way, local reforestation programs to protect the environment carried out by the Department of Forestry are basically another form of claiming hegemony over the reforested area, not much different from the colonial project. The New Order Government launches a national policy on industrial forestry. Discussion on this policy indicates how national concerns over the rapid deforestation process may not be in harmony with the greater concern for national economic growth. While deforestation and industrial pollution rapidly occur around the area, the state launches a national project for promoting tourism which depends on the natural environment of Lake Toba. Moreover, there are concerns over the lowering water level of the

\(^2\)For further information on the general features of the *IDT* program throughout Indonesia, see Mubyarto (1994, 1995a, 1995b).

\(^2\)For details about the local regulation, *Perda No.1/1990*, and the problems of Lake Toba environmental management which will affect many of the villages surrounding Lake Toba, see point 3.3.5.
lake, resulting in the local government's desire to regulate the management of the lake's environment through state legislation. However the overall state hegemonic project has dispossessed local people from their land.

3.3.1. The State's First Investment – Asahan Project

The Lake Toba area and the Asahan river were seen as potential natural resources by western explorers starting at the end of 19th century (Siahaan 1986:87-90). Already in the Dutch colonial era the realization had been reached that the water tide of the lake continuously shifted according to the changing rainfall throughout the year. In 1909 and 1913 there was a big flood that engulfed the fertile rice fields along the lake's shores. To protect the rice fields from regular flooding, the Dutch initiated a risky technical intervention that would keep the water level to a maximum of 907.75 metres (Siahaan 1986; Meulen 1977). An artificial explosion was set off just at the outlet in Batu Bongbong near Siruar, 12 kilometres from the lake. It was reported that in 1917 the water level at the explosion site, Batu Bongbong, sunk to two metres while the Lake Toba level was 0.76 metre lower than before the explosion was carried out. This artificial attempt to reduce the water level of Lake Toba was followed by many further ventures. Some private companies had seen the powerful Asahan river, the sole drain of the lake, as a perfect site for establishing hydraulic power plants. It was found that the river could accommodate two 200,000 HP hydro-electric stations in Siguragura and Tangga; two 100,000 HP stations in Siruar and Simorea; and at least six other smaller stations (Siahaan 1986:98). In September 1941, the colonial government granted a concession to the Dutch company MEWA to exploit the hydraulic power of the Asahan river23. Although a great deal of effort was made, this plan could not be completed due to the worldwide changing political situation24.

After independence the plan came up again several times. Between 1954-1963, various foreign teams were invited to carry out feasibility studies for setting up hydraulic power stations and an aluminium smelting enterprise around the Asahan river25. Between 1963-1965, an Indonesian team was appointed to complete the ongoing research. Soon after the 1965 aborted coup, however, the Asahan Project was cancelled and liquidated by the New Order Government. Two years later, the government started the plan again by inviting

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23 MEWA stands for Maatschappij tot Exploitatie van Waterkracht in de Asahan Rivier (company for the exploitation of the hydraulic power of the Asahan River). See the (Colonial) Government Decision, Gouvernements Besluit, No.24, dated 3 September 1941.

24 Japan occupied Indonesia in 1942, resulting in the internment of the Dutch and relocation of the MEWA headquarters from Batavia (Jakarta) to The Hague. Indonesian independence, however, finally destroyed the dream of the company to materialize the plan.

25 In 1954-1955 a French team was asked to make a survey, followed by a Swedish Consultancy Company (VBB) in 1956, an American company, USOM, in 1956, and a Russian team between 1961-1963.
two American companies to carry out a feasibility study for an aluminium smelting plant. Following the introduction of the Law of Foreign Investment in 1967, a number of Japanese investors came to continue the feasibility study. However, the plan could not be resumed immediately because the Japanese economy and industry were hit by the worldwide oil crisis.

After a long series of negotiations, the Master Agreement between the Indonesian Government and Japanese investors for the Asahan Project was finally signed on 7 July 1975. The final amendment to the agreement indicated that the government of Indonesia increased its share from 10% to 25% while the Japanese partner (Nippon Asahan Aluminium) held 75% of the share, half of which was owned by the Japanese government and the other half by 12 Japanese private companies. The total cost of the project was estimated to the amount of 411 billion Yen out of which 22.2% was equity and 77.8% was loan (Siahaan 1986 and 1996). By then the Asahan project was the first and most expensive investment ever made by the New Order Government, involving the Indonesian government, a foreign government and foreign private companies. This meant that the success of this project would be important and strategic from the point of view of the Indonesian government because it would open the way for other foreign countries and private companies to invest in Indonesia.

3.3.2. Legitimising Claim - State Forestry Programs

The post-colonial state reaffirms the colonial hegemonic claim that reforested areas belong to and shall be under the control of the state, namely the Department of Forestry. The reforested areas are gradually expanding, therefore increasing the state hegemonic claim over land. Already in President Soekarno’s period, some primary forests which had been partly turned into vast areas of grasslands with *ni* (*Imperata cylindrica*), were reforested in the 1950s and 1960s. According to the information gathered from local people, the Department of Forestry would plant those plots with tusam (*Pinus merkusii*) and maintain control over the forests for 30 years at which time they were to be returned. The villagers would be allowed only to cut the branches, not the whole tree, to get fuel wood. The process of reforestation has reduced the areal of open communal forests while grazing land has become scarcer. As a result, many people who have raised buffalo over generations, repeatedly burn some of the reforested tracts, hoping that grass will grow to provide them with fodder.

However, the act of the local people to burn the reforested tracts down

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26The first research permit was awarded to Kaiser Aluminium & Chemical Corporation in 1968; later one went to ALCOA (Aluminium Company of America), lasting from 1969 to 1971 but without any feasible proposal resulting.

should be understood in its cultural context rather than simply its economic logic. The planting of trees under the practice of adat has a deep symbolic meaning of appropriating the piece of land on which the trees grow (Ypes 1932). Planting a tree is claiming a right to the land. Allowing one to plant a tree on a piece of land is commonly interpreted as giving approval to establishing the right of control over that plot. Thus, the lack of clarity regarding what rights are transferred to the state, under what conditions and on what/whose (communal) land, is an inherent and unsolvable problem in the reforestation programs.

Tensions also arose between the different local groups since those selected adat leaders who concluded the deal with the Department of Forestry were not always acknowledged as representative(s) by their fellow villagers, and at the same time, the (internal) boundary of the different clan group's communal tracts that were subject to reforestation was not always clear. In addition, though the forest land may be under communal control, some trees or other resources contained within may have for a long time been under individual possession. Benzoin trees and rattan in the middle of the forest, for instance, are often claimed to have been planted and maintained by the grandfather of certain individuals. Based on this, villagers claim that they are entitled to continue the right to enjoy the harvest of, and consequently to regenerate, these trees. This has made an increase in the number of contesting claims over the boundaries between the Forestry territory and communal adat land on the one hand, and over the different individual possessions within the communal forests on the other hand. As a matter of fact, conflicts deriving from the greening programs implemented in the 1950s and early 1960s are still taking place in the area.

The New Order Government also pays due attention to the maintenance of the environment around Lake Toba. In 1978 a large reforestation program with one type of tree, *Pinus merkusii*, was carried out on the island of Samosir and down to the areas along the rivers connected to the lake, *Daerah Aliran Sungai Danau Toba*. In the planting phase, local people were obliged to participate. In the first half of the 1980s, agro-forestry which was believed to be beneficial to both people and the environment, was advocated by the local government and NGOs alike. Local people started to plant alternative trees such as *kemiri* (*Aleurites moluccana*), mango (*Mangifera indica*) and clove. But poor infrastructure, plant diseases, overproduction, price policy and lack of access to the market led to heavy financial loss on the part of the local people (Bus et al. 1994). However, in the early 1990s, the local government launched a

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28 Therefore, in a very local context, the act of a ruling clan to plant a tree on the plot of an in-dwelling clan cannot be mistakenly understood by the local people as anything other than a clear message for the in-dwelling clan to leave the plot. On the other hand, uprooting somebody's trees means denying the owner of the tree the right to the land.

29 For example, a conflict over a reforested area in Hutaginjang-Sipahutar, involving two contesting clan groups, the Simanjuntak and Pasaribu.
similar program, this time called Sejuta Pohon (Lit. millions of trees), aimed at planting crop trees in which each village would receive a budget of one million rupiah. How this latter program has fared and to what extent it benefits the environment and the local people are not clear as yet.

In short, the government has continued the colonial pattern of appropriating communal land and forest by introducing reforestation programs. This "soft" land appropriation is conducted through various rationales such as protecting the environment and water reserves and combating the spread of unproductive grassland. Whatever the reasons behind the reforestation program may be, it has substantially reduced people's communal land, both grazing and forest areas, and limited the various possibilities of traditional land uses for the local people.

3.3.3. State Policy on Industrial Forestry — Licensing Private Control

While alternative reforestation of Lake Toba is continuously propagated by the local government, the existing reforested areas are given away to the pulp industry by means of the central government's authority to issue exploitation licenses and permits under the national policy on forest management and exploitation. Indonesia has approximately 108 million hectares of tropical forests, 10% of the world's total and the third largest tropical timber estate in the world (WALHI and YLBHI, 1992). Driven by the need for capital, foreign exchange and employment opportunities, the government has endorsed large-scale exploitation of the forest for timber, while devaluing the non-timber forest products and the forests' protective ecological functions. Independent analysis, however, reveals that optimistic portrayals of the sector’s contribution to national income, employment, and the government's revenue are clearly misleading. Even in purely economic terms Indonesia has gained little from more than twenty years of large-scale commercial logging. Given a deforestation rate of 1.2% per year, much of the capital which the forests represent has already been lost (WALHI and YLBHI, 1992).

The logging concessionaire (HPH)³⁰ largely fails to perform reforestation after massive exploitation. As a way out, the government offers some incentives for industrial forestry (HTI), while temporarily banning the export of raw logs and encouraging wood-processing industries. The industrial forestry is intended to increase the economic and ecological value of the 14 million hectares of land

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³⁰Under Government regulation No.21 (1970), followed by the decree of the Director-General of Forestry No.35/1972, forest concessions or HPH may be managed under one of three systems: the Indonesian Selective Cutting System (Tebang Pilih Indonesia, TPI), and two possible clear-cutting systems. Clear-cutting with Natural Regeneration (THPA) or Clear-cutting with Artificial Regeneration (THPB). In 1989 the government replaced the unsuccessful TPI system with TPTI (Indonesian Selective Cutting and Replanting System) in which the loggers are then required to do enrichment planting of commercial species following logging.
classified as critical, barren or wasted. This includes the 5.7 million hectares of recently forested land. With a stable source of raw materials for the wood-processing industries created\(^{31}\), industrial forestry is expected to reduce and finally end the exploitation of the primary forests. There are three functional types of industrial forestry: that which supplies raw materials for construction and wood working; that which supplies fuelwood; and that which supplies wood fibre for the pulp, paper and rayon industries. The wood fibre industrial forestry is found to be the most profitable. It is then decided that Indonesia will become one of the world’s top ten paper producers. A massive campaign to develop the wood fibre forestry and construct pulp and paper factories is launched\(^{32}\) in which 56 pulp and paper mills are to be built or significantly expanded by 2010, and 10% of Indonesia’s land is to be converted to industrial forestry (Down to Earth 1991).

One of the pulp plants envisaged by the national government has been set up around Lake Toba. With the government’s assumption that industrial forestry will better serve to restore the condition of categorically critical land, the Lake Toba environment is logically taken as a perfect site. According to the Forestry Department, North Sumatra has 307,100 hectares of critical forest land and 683,600 ha of critical non-forest land. The annual deforestation rate on the island of Sumatra between 1982-1990 was 1.8%, the highest in Indonesia (WALHI and YLBHI 1992). In line with the national policy on industrial forestry, in 1984 the Minister of Forestry awarded concession sites of 150,000 hectares of state forest land in the Lake Toba reigion to a pulp company, Indorayon, for an extendable period of 20 years (WALHI 1990). It was planned that each year the company would produce 165,000 tons of pulp and 54,000 tons of rayon. Early in 1986 the company was able to acquire 225 hectares of land in Sosor Ladang, Porsea, to establish a pulp mill. For this purpose the North Sumatra Governor awarded a location permit for the main construction of the project near to the Asahan river, which functions as the sole drain of the waters of Lake Toba to the sea\(^{33}\).

Indorayon is owned by a Chinese conglomerate, Raja Garuda Mas, which is chaired by Sukanto Tanoto. In addition to the license and permit awarded by the Indonesian government, Indorayon receives strong support from foreign investors, banks, consultants and consumers from various countries. The original investment was covered by commercial loans provided by a consortium of foreign banks which made a profit of $ 53.6 million in 1989 alone. Most of

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\(^{31}\)Under the Indonesian selective logging regulations (TPTI) the remaining unlogged production can supply only 24.5 million m\(^3\) annually even though the estimated demand for wood-processing industries would be 43.9 million m\(^3\) in the 1990s (WALHI and YLBHI, 1992).

\(^{32}\)Indonesia is highly competitive in producing paper due to cheap labour costs, rich resources of raw materials, and minimal effective requirements for pollution control which means low internal costs for environmental care. Producing one metric ton of paper in Indonesia costs US$ 285, far less than the US$ 485 price in Finland.

\(^{33}\)See further the profile of the company and the outline of the pulp project in KSPPM (1993).
the pulp is for export. In June 1992 the Swiss Bank Corporation approved issuance of convertible bonds worth $43.4 million on the Swiss capital market to finance the construction of the rayon plant (WALHI and YLBHI, 1992). Therefore, Indorayon company is considered a very important private investment by the government.

While many of the concession sites claimed to be state forest are still under dispute and have been contested as local community forests, local people living next to the sites are denied all access to the forests. The previously little access right to the reforested areas still held by the local people for gathering rattan, benzoin, fuelwood and herbs is now totally denied. Supposing that the local people will still be allowed to enter the monocultural forests, in the near future there will not be anything worthwhile left for the local people to collect. Hence, it is clear that the implementation of the national policy on industrial forestry, which was initially meant to prevent more damage to the environment, has brought even more detrimental effect to both the Lake Toba environment and its people alike.

3.3.4. National Project on Tourism - New Competition over Old Resources

At the end of the 1980s the Indonesian government propagated the intention to boost Indonesian tourism. According to the national plan for tourism, the Lake Toba area was geared to be the third Tourist Destination Site, Daerah Tujuan Wisata, after Bali and Jogyakarta. Indeed, the proximity of North Sumatra to Malaysia/Singapore, taking only about an hour by boat, attracted many week-enders and holiday-makers from those countries. With the inauguration of Polonia as an international airport in Medan, only half an hour flight from Singapore, tourists from Europe could also be encouraged to visit North Sumatra before going to Bali or Jogyakarta. An Asian Development Bank study has proposed that North Sumatra be developed as a touristic area as part of the development of the economic triangle in the Malacca Strait territory, involving Southern Thailand, Penang and Northern Sumatra (Thant and Lang 1995). The current plans to build a small airport in Silangit and to make a golf course in Sibandang island near Samosir island, are only examples of how a concrete step is being taken to really develop the Toba Lake surroundings into a proper touristic site.

Lake Toba is uniquely beautiful with the island of Samosir located in the middle. Prapat, a town on the edge of the lake, has been a centre for the lake's tourism since colonial times. Organized tourism has grown mainly in Prapat where large hotels and restaurants can be found. Almost all hotels there are private initiatives and the largest proportion is owned by other than local people. In the beginning of the seventies, tourism of a non-organized type started to spread to Samosir island. Many local people benefit from small and modest cottages they constructed to accommodate this cheaper type of tourism. Indeed, two-thirds of the tourists coming over to Samosir are non-
organized, and appreciate the unspoiled nature of the environment and the cheap holiday houses provided along the island's shores (Hagens and Naerssen 1990). Non-organized tourism, therefore, has a larger economic impact on the local population than the organized type. Hagens and Naerssen's (1990) study on those who are directly engaged in the tourist industry shows that in the centre of tourism on Samosir island alone, 23% of the local entrepreneurs make a living solely from the tourist industry, 28% of the households consider the tourist industry as their main source of income though they still depend on agriculture, while around 50% of the households engaged in the tourist sector heavily depend on other sources of income, especially agriculture. This indicates that agriculture is still the most important source of income for most people living in the Lake Toba region.

Unlike Bali or Jogjakarta which offer a variety of cultural attractions besides their relatively beautiful landscape, cultural performance in the Lake Toba area is not yet geared to commercialization. In 1978, the local government initiated an annual Lake Toba festival, a cultural festival of the six Batak groups, to attract more tourists. In discussing trend toward tourism development in the area Hutajulu (1994) mentions that there has been a conscious attempt by the local government to include a Batak ceremony as a tourist attraction, something uncommon for the Batak since Batak ceremony takes place always in a contextually ritualized way. Hence, natural beauty is still seen as the singular asset for Lake Toba tourism, implying that any disturbance to the lake's environment will be a threat to the continuity of the national state project on tourism.

The increasing number of tourists coming to Lake Toba has boosted construction of tourist accommodations. Many big and smaller hotels are built close to the shoreline and much of the land adjacent to the hotels has become inaccessible to local people. Meanwhile, people are competing to get closer to the shores in order to have easy access to the most important water resource and for some also to build cheaper accommodations for the less well-off tourists. However, the local people's daily use of Lake Toba's water for cooking, bathing, washing, sanitary and animal pasture, as has been done for ages, is suddenly seen as polluting the water and disturbing the perfect scenery for the tourists. One of the biggest threats to tourism is the lowering of the water level of the lake and the pollution of the shores. Hagens and Naerssen (1990) have indicated that the lowering water level has made it difficult for boats to drop passengers at some of the areas, while dumping of oil in the lake and the disposal of plastics on the coast endanger the natural environment.

For the local people themselves, the declining water level means it is more difficult to get access to water. Owners of the big and mid-sized hotels usually

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34In July 1997, the 19th Lake Toba Festival was held. As usual, local people in the surroundings joined the festival with enthusiasm. Unfortunately, the closing night of the festival was to end with a serious accident when a locally-owned boat, which only had capacity for 60 passengers, collapsed, causing the death of over 180 local passengers.
prohibit local people the right of passage, not to mention the right to use the
beach adjacent to the hotel. Therefore, the mushrooming of tourist accommoda-
tion owned by outlanders along Lake Toba has raised the question of access
to the resources adjacent to the tourist accommodation areas, namely the water
from the lake itself, and secondly the newly created ground resulting from the
decline of the water level. Indeed, the new ground created by the lowering
water level has been disputed over time. Meulen (1977) discusses the disputes
that took place among the local people when the first artificial explosion was
detonated by the Dutch in 1915, creating a belt of potential rice fields along the
shores. While in the past the in-dwelling marga and the outlanders were not
etitled to the newly created ground adjacent to their land, in the current case
of Lake Toba tourism it is the local people who have, on the contrary, been
excluded from access to the newly created ground.

3.3.5. Regulating Lake Toba Environmental Management

The lowering water level of Lake Toba has become a concern for the local
government of North Sumatra precisely because the area has become the site
of big investments the state does not dare to loose. The Asahan Project, the
Indorayon pulp industry and the national project on tourism all depend on the
sustainability of the Lake Toba environment. The North Sumatra Governor is
ultimately responsible for the management of the Lake Toba environment. On
5 July 1990 he issued a regulation, Perda No.1/1990, which was approved by
the Indonesian Minister of Internal Affairs on 15 January 1991. It stated that the
management of the Lake Toba zone is aimed at "...avoiding the destruction of
the ecological function of the Lake Toba zone and improving the quality of the
environment as well as optimizing environmentally-sound and sustainable
development..." (Perda No.1/1990, chapter 2:1). The destruction of the Lake
Toba zone is seen more as the result of natural processes combined with the
local people’s insensible use of the resources grounded in the Toba-Batak adat
rules, rather than as a logical consequence of the various projects the different
and sometimes contradictory state policies want to augment in the area. The
content of Perda clearly reflects the policy makers’ impertinence towards the
local people when it says that the objective of the Perda is "to improve the
discipline of the inhabitants" (2:1.c). In addition, two other objectives are
defined, namely: to improve the ecological function of the zone (2:1.a); and
augment its functional utility (2:1.b). When defining the functional utility of the
zone, tourism comes first, followed by industry, food-cropping, fishing, animal
breeding, plantation, forestry, transportation, mining, and rural and urban
settlement. This, from the point of view of policy makers, is a statement of the
centrality of tourism and industry in the zone.

The Lake Toba zone is defined as "the Lake Toba water-catchment area
and the Lake Toba water" (chap. 1f), divided into zones for development and
exploitation or kawasan budidaya (chap.1h., yo. chap. 4), and for protection or
kawasan lindung (chap.1i., yo. chap. 4). At the same time the management of the zone is defined as "the management of the living environment and development in the Lake Toba zone" (chap.1g). It is obvious that the newly constructed map of the Lake Toba bio-physical and economic environment does not match the map of the already existing socio-historical and cultural environment. The Perda, just like previous colonial decrees, conclusively pronounces the state's hegemonic claim over the Lake Toba environment when stating that the allocation of various use rights in the purported zone(s) should be carried out by the Governor\textsuperscript{35}. Such state hegemonic claim by means of regulation and backed-up by a network of enforcement apparatus, overlooks the long standing existence of local inhabitants, rules, practices and customary authorities.

While on the one hand the Perda gives enormous power to the Governor to allocate the use rights of the Lake Toba zone, it extensively states prohibitions addressed to the local people and the land owners in the zone from performing certain long-lived local practices. Therefore, in the case of this Perda it is not the land which is being physically appropriated, but, indeed, the long standing use rights of the people. Some of the most relevant prohibitions mentioned by the Perda chapter 7 are\textsuperscript{36}:

- to perform shifting cultivation;
- to clear and burn the forest;
- to pasture animals to the water edge of the lake;
- to leave cattle unattended;
- to occupy the ground created out of the sinking water;
- to allow the land to be unused;
- and, to allow the swelling of enceng gondok, gulma and mud.

The Perda has an overwhelming aspiration to protect the interests of tourism by giving due attention to the preservation of old construction which may contain historical and cultural value. At the same time, the construction of new building is also regulated (Perda chapter 9). Erecting any construction on the area 50 meters adjacent to the water edge, and between the water edge and the public road, is totally prohibited. Any construction which may "disturb" the lake panorama at certain locations determined by the Governor is forbidden. The same applies to any construction on the sloping area with an altitude of 40\%, except on locations determined by the Governor; on the land 20 metres off the public road; and on the water surface of the lake. It is

\textsuperscript{35}Here the Governor is given an enormous amount of power to define and control the rights to use the Lake Toba environment. See Perda No.1/1990 chapters 4:2.; 5:2.; 6:1.; 7:1e.; 9:1b.; 9:1c.; 9:1h.; 9:2b.; 10., and chapter 13:1.

\textsuperscript{36}There are some other prohibitions in the same chapter 7 of the Perda which may also apply to other than the local people, namely: to dump liquid, solid or fumed waste into the lake; to extract mining resources of c type; to fish with explosive-, electric-, or chemical-equipment; to perform activities which may disturb the fish-breeding spots; and to wash vehicles in the water.
explicitly stated that housing construction must meet certain hygienic, neatness, safety, aesthetic and sanctuary requirements. In addition, the Governor and Bupati (head of a district) are allotted all the power to issue (or not to issue) permits for the construction of dwelling and business enterprises. Finally, all owners of existing buildings or construction within the urban settlement, industrial enterprise and tourist industry located on certain sites where construction is forbidden, are not allowed to renovate, rehabilitate or expand the structures. The whole prescription may ruin a number of cheaper tourist accommodations run by local people and in the end deny the right to live there for the poorer local people who form the majority.

The areas which are affected by this Perda cover 525 villages in four Batak districts surrounding Lake Toba: Simalungun, Dairi, Karo and North Tapanuli districts (Perda chapter three yo. the appendix). In Simalungun District there are five sub-districts affected, comprising 38 villages; in Dairi two sub-districts are affected, comprising 10 villages; and in Karo one sub-district is affected, comprising nine villages. However, North Tapanuli District, the area where the Toba-Batak mostly live, is the most affected because the Perda applies to 16 out of 29 sub-districts, covering 468 villages out of 870 total villages.

The essential problem of the Perda lies in at least three inter-related things. First, Perda treats the Lake Toba environment simply as a bio-physical and economic entity, yet at the same time it is undermining the socio-historical and cultural importance of that same environment as it concerns local people. Secondly, Perda takes for granted the false assumption that the state is the legitimate authority to manage the Lake Toba environment. Thirdly, Perda implicitly suggests that the local people are the cause of the problems of the Lake Toba environment. Because of the obligation to reforest the land, exclusion from access to the forests, the prohibition on performing local agricultural practices, and a large number of dispossessed villagers because of land appropriation by various private enterprises, many of the local people are now evicted from their land and many more are restricted from the customary rights they had enjoyed for generations and above all, very few of them will ever benefit from the new rules because even fewer will be able to follow the procedures to get the required licenses and permits.

3.4. CONCLUSION

It has been a worldwide experience that the "modern legal system" was introduced into traditional communities in Asia and Africa mostly through European expansion and colonisation. While the modern legal system was used by the colonial powers as an instrument of domination, the instrumentality of modern law was later preserved by post-colonial states. All constitutions normatively declare a determination to create a national legal system that protects and is aimed at the welfare of the populace. Nonetheless, as the
Indonesian example also demonstrates, legal reform of many post-colonial states does not necessarily eliminate the ambivalent situation the legal reform was intended to overcome. About the continuation of the instrumentality of law for political domination, Brown (1995:116) aptly remarks:

-European style legal systems were adopted not simply because they were European but also because of their attractiveness to ambitious and centralizing state elites. What attracted such elites was not the Western nature of the legal systems they constructed but the increased control, centralization, and penetration they offered.

It is in this manner that one should analyse the course of legal reform in Indonesia. The growing unification and centralisation project of the post-colonial state may be seen as asserting the pattern of intervention by alien power. This chapter has demonstrated how contemporary Toba-Batak society is affected by the ever increasing power of the state, especially during the New Order period. The Toba-Batak has become one local part of the wider Indonesian state that tries to develop its national economy as a whole in an attempt to implement the ideals of the 1945 Constitution. One major attempt to pursue the unification and centralisation project of the state is through state legislation and policy efforts in various fields of life and through the expansion of state modern bureaucracy and administration down to the village level. One way to accomplish this project is, like in colonial times too, through the efforts to neutralize the adat principles and authorities which are often considered inconsistent with (universal) national ideals of justice (cf., Wignjosoebroto 1994 and 1997).

Contrary to the patrilineal and highly patriarchal Toba-Batak adat, the Indonesian Constitution incorporates the principle of gender equality for all citizens. This materialises in the active participation of Indonesia in international (UN) forum to enhance the status of women, in the formation of the State Ministry for Women's Affairs, and last but not least, in the recognition of women's role in national development as formulated in the various State Policy Guidelines. Another way to guarantee this gender-equality principle is through protecting women's rights in the family sphere. Direct interference of the state in matters concerning Batak patrilineal family law has been carried out through its court jurisprudence. The court, as mentioned before, has applied a gender-equality principle in matters concerning the highly patrilineal Batak family.

Concerning land matters, the colonial legal construction is basically maintained by the post-colonial Indonesian government. The state is declared the ultimate authority, if not the owner, of the land under the notions of state domain over "waste land" and "state derived land rights". Only customary rights that are similar to the European notions of private land ownerships are likely to survive (Benda-Beckmann 1995). In the post-colonial state legal construction, types of land rights "other" than an individual and state property are labelled "communal land" or tanah ulayat. This label ignores the variations of land rights
combining the control and allocation rights vested in groups with different forms of individual use rights (cf., Coldham 1978; Benda-Beckman 1995). With the strengthening of state power, there are competing rights and rules pertaining to land and land rights, deriving from different sets of authority: the state and the adat. This multiplicity of rights and rules governing the land is not situated in a vacuum, but in a context of a dynamic process of land concentration vis-a-vis land scarcity. Land concentration occurs in several ways: through claims based on customary laws, through the market, and through state appropriation (Berry 1988). In other words, access to land is gained through processes of privatization and statization in addition to and in competition with adat. The process of statization and privatization of land has taken place at a rapid pace and on a massive scale, often at the expense of the adat community.

Through state legislation and administrative political institutionalization, the hegemonic claim of the state over land is reconfirmed. In the context of the Toba-Batak, both processes of statization and privatization have had direct impact on the concrete local setting. State intervention in both processes has been driven by contradictory forces between national economic ambition on the one hand and the urgency for a more sustainable local resource management on the other. As a result, the different segments and levels of state authorities launch different development projects and policy which often contradict each other in the same area. The Lake Toba area has been subject to such contradictory development projects and policy with the result that local people are often totally stripped of their land or, if they still possess it, they may lose control to exercise their traditional rights or enjoy rights to land-based resources adjacent to their land.

I have given the most striking examples of such contradictory projects and policies in the Lake Toba surroundings. The state's huge investment in the Asahan hydro-electric power project depends on and exploits water from Lake Toba. The forestry programs have one-sidedly legitimised the state's claim over the reforested areas, resulting in the decline of open communal forest and grazing areas for the local people. The policy on promoting industrial forestry is based on the assumption that this will increase the economic and ecological value of critical, barren or wasted land, while reducing and finally ending the exploitation of still existing primary forests. However, the emergence of a pulp plant has destroyed rather than maintained the existing wood in the reforested and watershed areas around Lake Toba. The monocultural forestry developed by the pulp industry destroys the ecological value of the existing forests, while it causes air and water pollution. The presence of the pulp industry disturbs the national project on tourism which demands a clean natural environment for Lake Toba water and land. On the other hand, the tourist industry has started to restrict the traditional rights of the local people to get easy access to water and land. In view of, among others things, protecting the environment and the tourist industry, the local government has released a regulation on Lake Toba environmental management. However, this local regulation treats the Lake
The Toba environment simply as a bio-physical and economic entity while ignoring and undermining the socio-historical and cultural importance of the same environment to the local people. Without taking over the ownership rights to land from the local people, the local regulation would deprive them of the rights to use the land. In short, the programs and projects brought into the Toba-Batak area often contradict each other, and when put into effect are often detrimental to the local people. Thus, under the state legal framework, local processes of statization and privatization of land compete in a very unequal way with the existing Toba-Batak adat rights to land.

Currently, the statization of land is often carried out on behalf of compassionate concerns for the preservation of the environment. Claiming itself as the guardian of the public interest, the state proclaims protective laws and regulations over certain physically defined areas, simply mapping bio-physical resources and ecologically problematic areas by conventional geographical means. In this way the protected land in those areas is not physically appropriated, but it is the traditional and local use rights which are being appropriated. The process of statization taking place around the Lake Toba area is exemplary in demonstrating that the bio-physical and ecological environment mapped by the state through, for instance, Perda No.1/1990 does not always correspond to the socio-historical and cultural importance of the same environment to the local people. People’s resource management spaces are socio-spatial areas in which ecology is connected to people through normatively structured networks of relationships and interactions (Sayer 1985). In short, there is a strong tendency towards state dependent processes of land allocation and privatization. Therefore, the issue of the struggle for land rights is to be discussed in the context of multiple actors, structures and processes.
CHAPTER 4
WOMAN AND ACCESS RIGHTS TO LAND IN RELATIVE NORMALCY
THE CASE OF DESA SIRAJA HUTAGALUNG

4.0. INTRODUCTION

In the previous chapters I have described various aspects of Toba-Batak society from colonial times up to the present period of the New Order Government. In chapter two, I discussed the changes in adat, religion, land relations and the position of Toba-Batak women in the context of the two major western influences: the German missionaries and the Dutch colonial government. These changes introduced a situation of legal pluralism wherein the Toba-Batak adat institutions, norms, values and practices were contested by thoroughly western entities. Legal pluralism does not diminish with the incorporation of the area into the post-colonial state. Rather, as chapter three demonstrates, the Toba-Batak have been confronted by the increasing legal complexity emerging from the unification and centralisation of the state, a project which is a logical political response to the great socio-economic and cultural diversity of the newly independent nation on the one hand, and the need to achieve sound national economic development on the other. In the post-colonial period, both relations to land and the position of women in the society have been subject to this emerging process of legal complexity in which the state law normatively claims its superiority over the adat.

In this chapter the normative elaborations of Toba-Batak gendered access to land and the gender equality principles normatively claimed by the state will be countered by the actual life situations of the contemporary Toba-Batak based on empirical research conducted in the desa (village) Siraja Hutagalung. Chapter four is an attempt to understand how, in the relatively normal situation of Toba-Batak daily life, the actual access rights to land in internal village and lineage relations are devised. The focus is the access rights to land for women within the Toba-Batak patrilineal society. A general description of the village gives its historical, economic and demographic features. This is followed by an account of the composition of the marga or clans in Hutagalung. As will be argued throughout the chapter, the different clan status between marga raja (ruling clan) and marga boru (in-dwelling clan) is one of the most important factors in determining one’s possibility of access rights to land in the spatial context of a huta.

The next section of the chapter deals with the issue of land ownership and historical claim which is often based on a rather mythical history of lineage fission and land colonisation. In line with the Toba-Batak way of getting acquainted with people and land, I present the process of early land acquisition of the Bataks from the mythical figure of Si Raja Batak down to Hutagalung, through which one may get the sense of the Hutagalung ancestral search for land. While one may have doubts about the oral history of Hutagalung ancestry, there is no doubt that it has been passed
down for generations and, in turn, legitimizes the present claim over land proprietorship by Hutagalung male descendants on which further access rights to land have then been established. The division of Hutagalung patrilineage and physical space is elaborated in order to provide a background to understand how descent and residence matter in the actual life of the Toba-Batak. The chapter further provides an instructive case on land acquisition by consent in colonial time. It illustrates how, unlike their female counterparts, Toba-Batak men may easily capitalize on their unequivocal and eternal clan identity to gain rather strong access rights to land. The historical claim over the land is not only made by the ruling clan, marga raja Hutagalung, but also by the first in-dwelling marga groups, boru nagojong or the great boru who have equally strong interests in maintaining their no less mythical oral history about their relation to the land.

Most members of the ruling clan and in-dwelling clans are involved in a continuous cycle of in- and out-migration which impacts on the unending negotiation process concerned with the access rights to land in Hutagalung. I take a systematic view of the different mechanisms of access rights to land and their gendered character. Thus, I elaborate on the various practices of gendered land transaction from generational and affinal transactions such as inheritance, collateral inheritance and affinal land gift, to more reciprocal and economic transactions like pledging, permanent sale of land, share-cropping, tenancy, custody, borrowing and grants. I start with each type of transaction by explaining the nature of the arrangement, the mutual rights and obligations involved, and the ceremonies and publicity required. In explaining each type of transaction arrangement, I refer back and forth to the cases presented in the different parts of the chapter. I demonstrate and finally analyse and draw conclusions about how the different villagers are aided and at the same time constrained by circumstances regarding their kinship, gender and economic status in access rights to land which affect their strategies to best acquire these rights and landed property.

I make an analytical division between access rights to land of the in-dwelling clans (marga boru) and the ruling clan (marga raja) in order to understand the gendered differential access rights to land in Hutagalung. Life history, through which one's life cycle is revealed, is instrumental in understanding how access rights to land are created and maintained, and lost, over time. I further elaborate on how marga identification is closely linked to access to land in contemporary practice. Being a marga raja or marga boru makes a difference in having the right to access land in a Hutagalung context. The chapter continues with a section on marga identification and access rights to land with an emphasis on the issue of men and male-defined lineages. I deal with access rights to land of men through cases of life-property histories. This involves a case of a marga raja man and two marga boru men.

Then there is a section on the position of women in the marga raja and marga boru system. A general introduction explains the significance of the different positions in the marga system for women. To get a glimpse at their differential access to land I make a distinction between the two categories of women: marga raja and marga boru. Again, cases of life-property histories are provided: five cases concerning marga raja women, and eight cases of marga boru women. These demonstrate the ongoing, long and tedious process of women's negotiating access rights to land in different phases of their life. I later make an analysis of the access rights to land for each category of women.

The relevance of land proprietorship for the marga raja is again illustrated in the
discussion about land for individual graves which symbolizes the ultimate honour in a Toba-Batak life. The search for an individual grave in the huta seems to be the final effort of a Toba-Batak to fulfil the highest goal in life as defined by the terms "hamoraon, hagabeon and hasangapon", meaning "prosperous, blessed with descendants and honoured". This final effort to reach the highest pinnacle of prestige is rigidly and unnegotiably defined as the privilege of the marga raja alone.

The chapter ends with a section that includes a discussion, analysis and conclusion of the empirical research conducted in Siraja Hutagalung village.

4.1. THE FEATURES OF DESA SIRAJA HUTAGALUNG

Desa Siraja Hutagalung is a village located in the Tarutung Sub-district (Kecamatan Tarutung), North Tapanuli District (Kabupaten Tapanuli Utara). The area is about 160 hectares wide, one of the biggest of all the villages in the District, and is located only six kilometres from the District capital, Tarutung. Situated in the Silindung Valley between 800-1000 metres above sea level, the area is ideal for rice cultivation. It consists of 120 hectares of irrigated rice fields and 25 hectares of housing compounds, waterways and roads. The landscape is plain and the river Aek Situmandi runs through part of it. Some distance from the river the traditional water canal has been renovated by the Irrigation Department and is now encased in concrete. Another stretch of the canal is still in its original condition so that a water manager, Raja Bondar, constantly has to control the flow and keep the sides cleared.

Table 4.1. Hutagalung landscape

<table>
<thead>
<tr>
<th>No.</th>
<th>Items</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Irrigated rice fields</td>
<td>120 ha</td>
</tr>
<tr>
<td>2.</td>
<td>Housing compounds</td>
<td>25 ha</td>
</tr>
<tr>
<td>3.</td>
<td>Waterway</td>
<td>3 km</td>
</tr>
<tr>
<td>4.</td>
<td>Asphalt road</td>
<td>3 km</td>
</tr>
<tr>
<td>5.</td>
<td>Gravel/sandy road</td>
<td>6 km</td>
</tr>
<tr>
<td>6.</td>
<td>River Situmandi</td>
<td>2 km</td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

Individual and familial plots are more or less clearly divided by their physical appearance. There is no more uncleared forest or communal grazing area in the village. The only communal tract left in Hutagalung is an abandoned huta called huta na tarulang, located near the river Aek Situmandi. Though no trace of housing construction could be found on the abandoned tract, one could still see the remnants of the huta from its physical features. There are some coconut trees still standing along with the clusters of bamboo trees that once marked the boundaries of the huta. In the 1930s, the people of this huta all left together because they believed that the huta had brought them grievous misfortune. "Many of the huta dwellers suffered from mental illness, children died at a young age, some huta couples were barren and their harvest was always bad. Perhaps when they set up the huta, they did not properly perform an adat ceremony to the ancestral spirits," explained several of the villagers. Still, almost all parts of this communal tract have been put to practical
cultivation by various local people, usually for rice seedlings and temporary gardens. Since the old practice of opening new rice fields by clearing a forest is no longer possible, the existing land and the rice fields in particular have become more economically valuable and culturally significant over time.

The number of people living in the desa is 1,664, consisting of about 340 ripe or households (Kantor Kepala Desa 1993). The average number of household members is almost 5.2. Women constitute 53.06% of the total population. However, as Table 4.2. indicates, the proportion of the female population varies in different age categories. There are fewer females (only 48.42%) for the category of 0-5 years, while 54.42% of young children aged 6-12 years are female. Teenagers between 13-19 years old are almost evenly divided between the sexes with females constituting 50.77%. Until the age of 19 it is common for villagers to stay in the village.

Table 4.2. Hutagalung Inhabitants according to gender and age

<table>
<thead>
<tr>
<th>No.</th>
<th>Age/years</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0 - 5</td>
<td>98</td>
<td>92</td>
<td>190</td>
</tr>
<tr>
<td>2</td>
<td>6 - 12</td>
<td>139</td>
<td>166</td>
<td>305</td>
</tr>
<tr>
<td>3</td>
<td>13 - 19</td>
<td>160</td>
<td>165</td>
<td>325</td>
</tr>
<tr>
<td>4</td>
<td>20 - 26</td>
<td>104</td>
<td>93</td>
<td>197</td>
</tr>
<tr>
<td>5</td>
<td>27 - 45</td>
<td>156</td>
<td>218</td>
<td>374</td>
</tr>
<tr>
<td>6</td>
<td>46 &gt;</td>
<td>124</td>
<td>149</td>
<td>273</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>781</td>
<td>883</td>
<td>1664</td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

Beyond that age some may decide to migrate, either for study or finding a job, or getting married. Therefore, the distribution of the male-female population in the category beyond 19 years old should take into account the migration factor. There are 47.21% females in the category of 20-26 years old, the age where many women start getting married. For the age group of 27-45, the female percentage of the population is much higher than the male, that is 58.29%, indicating that some married men probably work and live outside Hutagalung while their families stay behind, a common situation among the Toba-Batak (c.f., Rodenburg 1997). Finally, for the category above 46 years old, the female population still makes up the higher proportion, that is 54.58%. It is likely that the life expectancy of men is shorter than for women, as is the case throughout Indonesia.

A Toba-Batak village is comprised of a cluster of living compounds or hamlets called huta. In Hutagalung there are 25 huta scattered in the three lineal divisions: Datu Harean with six huta, Tuan Napitu with eight huta, and Siraja Inaina with 11 huta (Kantor Kepala Desa Hutagalung 1993). The existence of the 25 huta is recognized during adat feasts and ceremonies in which each receives a share of a ceremonial meal, parjambaran\(^1\). There are some communal and public facilities in

\(^1\)In an interview on 22 March 1994, Farel Hutagalung, the Raja Huta in Hutapulo specified the name of each huta which received a share in the ceremonial meal, parjambaran. In Datu Harean: Sosor Silindung, Huta Dame. Sosor Dalan, Kampung Melayu, Huta Bagasan, Sosor Jae. In Tuan Napitu: Tanjung Marulak, Hutabagasan, Purbatua, Sosor Saba, Lumban Tongatonga II, Huta Parmulaan, Sosor Jabijabi and Iparniaek. Siraja Inaina I: Lumban Hariara, Sosor Topiaek, Huta Parserahan, Sosor Tampahan, Lumban Tongatonga I, Sosor Tongatonga, Lumban Motung, Siraja Inaina II: Sosor
conjunction with the religious communities (Christianity and Islam) and the State as seen in Table 4.3.

Table 4.3. Hutagalung Communal/Public Facilities

<table>
<thead>
<tr>
<th>No.</th>
<th>Facility items</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Village Head's office</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>Medical home</td>
<td>1</td>
</tr>
<tr>
<td>3.</td>
<td>Posyandu</td>
<td>2</td>
</tr>
<tr>
<td>4.</td>
<td>Delivery Clinic (Polindes)</td>
<td>1</td>
</tr>
<tr>
<td>5.</td>
<td>Church</td>
<td>3</td>
</tr>
<tr>
<td>6.</td>
<td>Mosque</td>
<td>1</td>
</tr>
<tr>
<td>7.</td>
<td>Elementary School (SD)</td>
<td>2</td>
</tr>
<tr>
<td>8.</td>
<td>Kindergarten (TK)</td>
<td>1</td>
</tr>
<tr>
<td>9.</td>
<td>Government office</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

Around sixty years ago, in the colonial period, Vergouwen (1964:105) described the physical features of original Toba-Batak huta as follows:

... (A huta)... is a small square with a fine, hard and bare courtyard in the centre of it. On the side of this square there is a small group of houses, usually set in a row; each house has its own kitchen garden at the back. Opposite the row of houses there is a row of rice granaries. There is usually a mud-wallow or two. The whole is enclosed by a wall on which there are tall bamboos....

Looking at the present conditions in Hutagalung, one can observe a variety of changes in the physical aspects of each huta. I would now generally depict many of the huta in Hutagalung as follows:

The huta is a small square with a fine, hard and bare courtyard in the centre of it. It is a relatively open space, with only some clusters of bamboo plants at the huta fringe. On two parallel sides of the square are rows of small and big houses, some made of simple wood, and some built permanently. Since there are now two rows of houses opposite each other in the huta square, there is no longer the scenery of the rice granaries. Some of the houses have fences around them. Each house has its own kitchen, either in a special room attached to the main building or a simple hut in the back garden. Extension of the Huta tends to occur along the line of the road instead of continuing the row of houses.

In pre-colonial time Hutagalung was divided into four villages (desa) named after the descendants of Siraja Hutagalung: Tuan Napitu, Siraja Inaina I, Siraja Inaina II and Datu Harean. In the colonial period, the administration of the four villages fell under one Negeri. The Negeri institution was abolished in the early days of independence and each of the desa regained its administrative autonomy. However, Padang, Huta Topiaek, Huta Pulo, Huta Godang.
in 1990 the four desa merged into one which is now called desa Siraja Hutagalung. The boundary of the present desa matches that of the former Negeri which quite accurately covers the territory of the entire lineage. The present desa is surrounded by villages belonging to the other descendants of Guru Mangaloksa, the father of the first Hutagalung. Bordering to the north are desa Parbaju Toruan, Sisunggulon and Hapoltahan. To the south: desa Parbubu Pea. To the west: desa Parbubu Pea, Hutatoruan I and Hutatoruan IV. To the east: desa Endoportibi, Simorangkir Julu, Lumban Siagian Jae, Lumban Siagian Julu and Simorangkir Habinsaran.

Hutagalung well represents a Toba-Batak community that has been changing since colonial time. The establishment of the institution of Negeri and appointment of a Kepala Negeri in the colonial period substantiated its political importance apart from its economic merit as a self-contained and irrigated rice cultivation area. According to oral history, Raja Hainni Hutagalung, a descendant of the Miralopak/Tuan Napitu lineage from Huta Purba, was installed as a Kepala Negeri by the Dutch. Because Raja Hainni was given power to control the other Hutagalung lineages, there was always feuding especially between the Raja Inaina and Miralopak descendants. The Miralopak, the descendants of Datu Harean, were not satisfied with the appointment of a member of Tuan Napitu, a lineage which was, indeed, younger than theirs (see figure 4.6.). This oral history confirms the statement of Hutauruk (1993:26) which says that between 1915 up to 1942 there had been local political turmoils stemming from the appointment of Kepala Negeri by the Dutch.

A good rice producing area since pre-colonial times, Silindung Valley, in which Hutagalung is perfectly situated, has attracted men from other areas to come as seasonal migrants or to settle. This is also due to rather easy access provided by the then Sumatra highway traversing Hutagalung, connecting the inner Batakland to Pahae up to Padang Sidempuan in the South Tapanuli District. Most probably, the road was constructed right after the Islamic Bonjol troops raided the valley in the 1820s. It is generally considered that Islam was first brought by force to Batakland by the Bonjol troops (Dobbin 1983). The Hutagalung tarombo itself confirms that si Tambirik and his son, the eighth and ninth generations of Hutagalung, were captured by the Bonjol and brought to West Sumatra. However, both local Christians and Moslems explained that Islam was brought to Hutagalung by peaceful means. According to them, the Moslem traders from South Tapanuli used to use Hutagalung as a place of transit where they could rest during the night before and after the weekly big market day, the Onan, in Tarutung. Hutagalung provided them easy access to a fresh water source, necessary to perform prayers as required by the Qur’an. When the number of Southern Batak Moslem traders increased, they required a more proper site, where they could be free from scenery that included pigs-at-large and could be served with religiously uncontaminated, halal, food. Local people who chose to become Moslems profited the most from the presence of those traders which encouraged a number of Hutagalung members who lived around the fresh water source to convert to Islam. This area then became known as Kampung Melayu because of the

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2See point 4.3.2. on the Division of Hutagalung Marga, and figure 4.8. and its explanation.
Weaving ulos is another option for women.
identification of Islam with non-Batak, and especially with Melayu or Malay\(^3\). Thus, there is a small concentration of Moslems, either Hutagalung or other Bataks and non-Batak in Kampung Melayu. A number of non-Batak Moslem civil servants (Javanese, Sundanese, Minangkabau) rent houses near the eight-meter-wide asphalt road, the Sumatra highway, passing through Kampung Melayu.

Like other villages in the Silindung Valley, Hutagalung was central to the operations of the German Protestant missionaries at the turn of the 20th century. It shares the border with Huta Toruan I, exactly the area where the first church was set up in Saitnihuta in 1864. Two Hutagalung families were considered one of the first to have converted to Christianity in Silindung. Their names, namely Madja (Abraham) Hutagalung and Ompu Tarida (Joseph) Hutagalung and their immediate families were mentioned as members of the *huta Dame*, a village set up by the pioneering missionary Nommensen in 1862, allotted to those who were expelled from *adat* because of conversion (cf. Schreiner 1972; Hutauruk 1993:38). It is not clear whether those Bataks from the Silindung Valley who became Moslems much earlier than the arrival of German missionaries were also expelled from the *adat*. This subject has not been properly studied yet\(^4\). Indeed, the emergence of a small concentration of Islam in Kampung Melayu was used by the local Rajas in the surrounding areas to beseech the missionaries to intensify their work in Silindung Valley (see e.g., Pakpahan and Samosir 1984; Hutauruk 1980/1993; Pardede 1975; Tobing 1992). With such an historical background, the majority of Hutagalung villagers are affiliated to Christianity. The remaining 8.10 per cent are Moslems, including other ethnic groups who are mostly civil servants and their families. The composition of religious affiliation in Hutagalung is shown in Table 4.4.

### Table 4.4. Religious Affiliation in Hutagalung:

<table>
<thead>
<tr>
<th>NO.</th>
<th>Religion</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Protestant</td>
<td>672</td>
<td>780</td>
<td>1452</td>
</tr>
<tr>
<td>2.</td>
<td>Catholic</td>
<td>13</td>
<td>17</td>
<td>30</td>
</tr>
<tr>
<td>3.</td>
<td>Islam</td>
<td>96</td>
<td>86</td>
<td>182</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>781</strong></td>
<td><strong>883</strong></td>
<td><strong>1664</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

Most of the Hutagalung residents work on agricultural land. From among the 340 households in the desa, there are at least 320 identifying themselves as peasant households. However, the available farming land which is completely irrigated only covers a width of 120 hectares. Provided the 1993 statistical data in the Kantor Kepala Desa is reliable, on the average each household has a farming plot of not more than 0.35 hectare\(^5\). This is considered small compared to the 0.82 hectare of

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\(^3\) As a comparison, the Karo-Batak who converted to Islam would drop their *marga* name and identify themselves no longer as Karo-Batak, but as Malay (see Kipp 1993). For further information on the spread of Islam among the Toba-Batak see Jongeling (1966:110-119); Castle (1972:91-105) and Pardede (1975:43-154).

\(^4\) An important study on the influence of Islam in Batakland is by Pardede (1975).

\(^5\) The 120 hectare's irrigated rice fields in Hutagalung are divided by 340 households.
average farming plot in North Tapanuli District ten years earlier in 1983 (van der Mijl, 1988: 39), though that data does not differentiate between irrigated and non-irrigated farming plots. However, considering the proportion of the households in the desa, that is 170 of marga raja and 163 of marga boru out of which 54 are boru na hinela or a boru with direct blood relation to Hutagalung through the wife (see Table 4.6.), and assuming that marga raja and some boru na hinela control the farming land, it is likely that at least 109 households do not farm on their own land. This gives a different picture of land control. Assuming that 170 marga raja and 54 boru na hinela households control the farming land, that adds up to 224 households each of which controls about 0.54 hectare on average. Without wanting to assume that only those who are under the category of boru are landless, the above calculation indicates that land scarcity exists in Hutagalung. It is estimated that 109 households are landless. This data is confirmed by the Village Head when he says that "more than half of the rice fields in Hutagalung are owned by the migrants. Almost every household here would be using migrants' land under different arrangements".

Thus, the peasants in Desa Siraja Hutagalung diversify their income-earning activities. This has been the case particularly following the influence of a monetized economy since the colonial period. The need for cash is rapidly increasing in almost all aspects of daily life. People need cash to buy clothes, household equipment, cigarettes and food stocks other than rice from the market and to pay for electricity. For the rice fields, people have to buy seeds, fertilizers and pesticides from the market. In addition, many households have to pay farm labourers to help them in the rice fields, especially for preparing the fields and during harvest. The monthly tuition fee for local elementary school is now paid in cash, also medical services either received from modern healthcare providers or traditional ones. Older children require cash for daily transport to secondary schools in a neighbouring village and in Tarutung. In general, nobody goes to town or market by foot which is only about three kilometre walk because it is now considered shameful, except when the mini bus is already full or when at certain times of the day it does not operate. When invited to certain adat ceremonies, one also has to contribute some money to the host families. Likewise, a substantial amount of cash should be available if one wants to perform an adat ceremony because most of the food provisions need to be bought, equipment for the feast rented, and some money given to those who have helped in the feast arrangement. Church membership also implies the payment of cash, first, every Sunday as a voluntary and personal contribution during the Sunday service, and secondly, the toktok ripe, or household contribution, the amount of which is decided by the senior member of the respective households according to their annual income from harvest and salary. Each household is also subject to paying an annual tax in cash imposed by the state, the so called pajak bumi dan bangunan. Furthermore, at least in the initial period when young adults start off on migration for study or work, the family in Hutagalung has to allocate some amount of money. In short, earning some cash is necessary for those living in Hutagalung.

Some income-earning activities are performed along gender lines. Rice farming, for instance, has been a long-standing agricultural activity in the village, involving men and women in various activities. Almost every household identifies itself as a peasant household regardless of the different degrees of involvement in the activities related to rice farming. In the 1970s, new developments in rice farming such as modern rice varieties, fertilizers and pesticides were introduced which made double cropping
possible. But even though the rice fields are all irrigated, local farmers have opted to perform only single cropping. Double cropping would keep women from performing other important traditional labour-intensive cash-earning activities, namely making traditional cloth, *ulos*. Double cropping requires a considerable extension of women's work for a large part of the rice cultivation duties, from planting to harvesting. About one month after transplanting, the first weeding, *marbabo*, takes place. This, like transplanting, is traditionally women's work. Once the weeding has been completed, the period of intense labour in the field is over until the harvest begins. Harvesting requires the labour of all household members that children are obliged to help after school. Men and women pick the harvest with a sickle and the subsequent threshing is jointly done. Subsequent drying and winnowing is done by women at home while hand pounding has been replaced by a local rice mill established by one of the villagers in the 1970s. Sometimes people make use of the rice mill owned by a neighbouring villager in Hutabarat which is located on the main street. The unhusked rice would be picked by the owners of the rice mill and transported back home. In this way less labour is needed to produce husked rice.

### Table 4.5. Diversified source of income in addition to rice cultivation and *ulos*-weaving

<table>
<thead>
<tr>
<th>No</th>
<th>Source of income/ occupation</th>
<th>Total persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Teacher</td>
<td>25</td>
</tr>
<tr>
<td>2.</td>
<td>Healthcare worker</td>
<td>6</td>
</tr>
<tr>
<td>3.</td>
<td>Construction worker</td>
<td>10</td>
</tr>
<tr>
<td>4.</td>
<td>Midwives</td>
<td>2</td>
</tr>
<tr>
<td>5.</td>
<td>Active civil servants</td>
<td>56</td>
</tr>
<tr>
<td>6.</td>
<td>Retired civil servants</td>
<td>24</td>
</tr>
<tr>
<td>7.</td>
<td>Private employees</td>
<td>20</td>
</tr>
<tr>
<td>8.</td>
<td>Self-employed</td>
<td>30</td>
</tr>
<tr>
<td>9.</td>
<td>Religious workers</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>179</strong></td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

In addition to rice cultivation as a common source of income for both men and women and the weaving of *ulos* as women's particular source of quite a steady income, there is diversification of income in Hutagalung (see Table 4.5). *UlOS* weaving is not always mentioned as work in the data provided by the Kantor Kepala Desa. A small number of broker-women has made a great deal of profit from *ulos* trading. These women, generally in their forties and older, are usually good *ulos* makers and have other sources of household income either from rice fields or from their husbands' salaried jobs or pensions. *UlOS*-brokers should always have cash at hand so that they can pay the *ulos*-makers well in advance. The majority of poor women, who rarely have enough cash to buy *ulos* materials, would depend on these brokers for cash earning. Some other women would buy their own materials, work at their own pace, and sell the *ulos* every Saturday morning at Tarutung. This makes Friday the busiest day for many women who try to finish weaving *ulos* for sale the next morning. The loud noise of wooden weaving equipments every Friday midnight is a common feature of almost every home. Trading household utensils, making cakes for
sale in the town market and running a food stall or coffee shop are some other women's activities. Men usually work as a taxi driver or driver's assistant, construction worker or palm-juice tapper. These types of work are quite competitive since the number of vehicles, construction projects and palm trees is limited. Moreover, the owners of vehicles, construction projects and palm trees are likely to give opportunities only to their closest relatives. There are also male and female civil servants such as low-rank administrators, school teachers and healthcare workers.

In the colonial period and as the result of the missionary work, many men from the area became highly educated which then propelled a growing number of men to out-migrate in their hunt for salaried jobs. Later on, quite a number of women from Hutagalung and the surrounding Silindung Valley became the first educated Toba-Batak women in the colonial period (Bemmelen 1992). The first missionary schools were built only a short walking distance from Hutagalung which made Hutagalung villagers able to enter formal education without having to leave the village or spend a substantial amount of resources on board and lodging. Later, missionaries set up a primary school in the church compound for Hutagalung children which is now run as a public school. Secondary schools are available in a nearby village and in the capital, Tarutung. The proximity of the village to the capital town of Tarutung made Hutagalung one of the preferred destinations for Toba-Batak secondary school students, petty traders and agricultural labourers from other areas to stay temporarily. In time some decided to stay permanently in Hutagalung and raise a family. The indwelling people and the family obtained a new status in relation to the Hutagalung land as boru. The relative importance of Hutagalung in the colonial period can, arguably, be traced by the bulk of people dwelling-in indicated by the substantial number of boru groups now in existence.

After independence, and especially since the New Order, the opportunity for migration has been relatively open for people of different levels of education, economic status and lineage status within Hutagalung. The phenomenon of out-migration, either permanent, seasonal or circular as described by Rodenburg (1997) in the case of the Toba-Batak in Simarmata and Simatupang villages nearby Lake Toba, also occurs in Hutagalung. This means that members of both marga raja and marga boru are under a continuous cycle of out-migration. One implication of marga raja member's migration is the considerable number of farming plots owned in absentee in Hutagalung. While the exact number of these is not clear, the number of vacant and abandoned houses is 40. Thus, out of the total of 380 house buildings, only 340 are occupied (Kantor Kepala Desa Hutagalung 1990). However, unlike the situation in most other Toba-Batak villages, Hutagalung has also become a destination for in-coming migrants. This makes for a continuous process of new marga boru formation in Hutagalung, meaning that there is always a continuous renegotiation process of accessing rights to land.

4.2. MARGA COMPOSITION IN HUTAGALUNG

The existence of marga boru in a huta is a common feature. However, Vergouwen (1964:105) implicitly contravenes this social feature in the colonial period when describing: "One's eyes and one's mind tell one that... (a huta) is a small closed world, a living unit consisting of a small group of people who belong to each other and who
have lived together for a long time in this place where their children were born and where they themselves hope to die." The application of such a static description to the present situation in Hutagalung is totally problematic for various reasons. A huta is obviously never a closed world. Such a description is apparently gender biased, for it does not take into account the aspect of a continuous exchange of people residing in and outside of the huta through marital or other modes of relations. Vergouwen talks basically from the point of view of married men (and not all men) who happened to be members of the marga raja. He denies the existence of the female members of the marga raja and all the members of marga boru alike, the latter having been an inherent part of huta life from the very beginning.

The condition and situation of marga boru in Hutagalung is worth analyzing. There are a significant number of boru now living in Hutagalung. Although in daily practice lineage status plays important roles, the statistics provided by the Kantor Kepala Desa do not distinguish the inhabitants according to different marga categories. Therefore, in the context of Hutagalung and in accordance with Toba-Batak land relations, I categorize the inhabitants based on whether they belong to the first settler group (marga raja), or an in-dwelling group (marga boru). Tables 4.6. and 4.7. display the number of households and persons in each of these Hutagalung areas. Under the column marga boru I put information in brackets on the number of households/persons with a direct link to the Hutagalung marga through the woman.

Table 4.6. Number of households in Hutagalung

<table>
<thead>
<tr>
<th>Desa Siraja Hutagalung</th>
<th>Marga Raja Hutagalung</th>
<th>Marga Boru</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Datu Harean</td>
<td>55</td>
<td>67 (20)</td>
<td>122</td>
</tr>
<tr>
<td>Tuan Napitu</td>
<td>48</td>
<td>34 (8)</td>
<td>82</td>
</tr>
<tr>
<td>Siraja Inaina</td>
<td>74</td>
<td>62 (26)</td>
<td>136</td>
</tr>
<tr>
<td>TOTAL</td>
<td>177</td>
<td>163 (54)</td>
<td>340</td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

Table 4.6. indicates that marga boru households have formed a substantial proportion of all households in Hutagalung. Almost half (47.95%) belong to the marga boru. Almost one third (33.13%) of the marga boru households have a direct link to the Hutagalung lineage through the woman, forming 15.88% of the total number of households in Hutagalung. However, the distribution of marga boru households in three lineal-spatial areas varies. In Datu Harean, marga boru households form more than half (54.92%) of the total number of households which include the non-Batak, in Tuan Napitu 41.46% while in Raja Inaina 45.59%. More specifically, the number of marga boru households which have a direct link to Hutagalung marga compared to the total number of boru is 16.39% in Datu Harean, 9.75% in Tuan Napitu, and 19.11% in Raja Inaina. A parallel comparison can be made to the proportion of the number of persons belonging to the marga boru in Hutagalung, as seen in Table 4.7. At least 48.74% of the Hutagalung population is directly affiliated to marga boru.

In general there are different categories of boru counted on the basis of their generational length of stay and marital relations. The highest category is called boru na gojong or boru sihabolanan, or the great boru, who, for various reasons, have
been settled in the village for more than five generations. They are considered as the *boru* of the whole lineage. Most of them, (e.g., *boru* from *marga* Pasaribu, Manik, Tarihoran, Tampubolon and Siahaan), have access to vast plots of land compared to the average Hutagalung. Another category is the *boru huta*, one generation of *boru* settled in the village. They are given access to land as long as they stay in the village. The other category is *boru na hinela*, that is when the men of other *marga* marry women from Hutagalung *marga* and live in the Hutagalung village. They are usually given access to land through *pauseang*, a land gift from a father to a daughter upon marriage.

<table>
<thead>
<tr>
<th>Desa Siraja Hutagalung</th>
<th>Marga Raja Hutagalung</th>
<th>Marga Boru</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Datu Harean</td>
<td>299</td>
<td>344 (113)</td>
<td>643</td>
</tr>
<tr>
<td>Tuan Napitu</td>
<td>223</td>
<td>145 (47)</td>
<td>368</td>
</tr>
<tr>
<td>Siraja Inaina</td>
<td>331</td>
<td>322 (137)</td>
<td>653</td>
</tr>
<tr>
<td>TOTAL</td>
<td>653</td>
<td>811 (297)</td>
<td>1664</td>
</tr>
</tbody>
</table>

Source: Kantor Kepala Desa Hutagalung (1993)

If *marga boru* daughters continue to stay in Hutagalung and marry with non-Hutagalung men as is required by the *adat*, they are called *boru ni boru* or literally the daughters of daughters. Totally alien *boru*, where both the husband and wife come from another area and belong to a non-Hutagalung lineage, are called *boru gomgoman*. It is common for many in these two latter categories to have a rather weak access right to agricultural land. However, the categories may overlap at different points in relation with the Hutagalung. The son of *boru gomgoman*, for instance, may develop his status as *boru huta* if he is married to a non-Hutagalung woman but resides there. Should he marry a Hutagalung woman and reside in Hutagalung, he is called *boru na hinela*.

### 4.3. HUTAGALUNG LAND AND HISTORICAL CLAIM

In this section I describe the process of land ownership among the Toba-Batak which is often based on a rather mythical history of lineage fission and land colonisation, perfected in the current *marga* configuration. The first mythical figure in Batak history is Siraja Batak who is believed to be the progenitor of all Bataks. The spread of his descendants is claimed to be the basis of land ownership of the various Batak *marga*. Each *marga* or lineage also develops its own particular history, justifying its current presence in one *huta*, to which an individual Batak would establish his or her own identification. The mythical history of Hutagalung land plays around the figure of Guru Mangaloksa. The following rehearses the basis of Hutagalung's and their great *boru*'s historical claim over the land.
4.3.1. Early Land Acquisition

In the beginning, so explains the Batak family tree, *tarombo*, Siraja Batak had two sons, Guru Tatea Bulan who propagated all Batak lineages belonging to the Lontung group, and Raja Isumbaon, who propagated all lineages belonging to the Sumba group. This Lontung and Sumba division becomes central in understanding further Batak lineage fission⁶. According to a version of the *tarombo*, Guru Tatea Bulan had five sons, namely Raja Biakbiak, Saribu Raja, Limbong, Sagala and Malau; while Raja Isumbaon had one son named Sori Mangaraja (figure 4.1). Raja Biakbiak, the first son of Guru Tatea Bulan, is believed to have gone to Aceh. Saribu Raja, the second son who propagated Borbor and Lontung, moved to Sabulan, and then the Borbor continued to Silindung and ended in Angkola, the Southern Batakland. Sori Mangaraja, the only son of Raja Isumbaon, moved to Pangururan on the island of Samosir, right in the middle of Lake Toba. He had three sons, Nai Ambaton, Nai Rasaon, and Nai Suanon. The descendants of Nai Ambaton, namely Simbolon, Munthe, Saragi, and Tamba had a quarrel about the entitlement of the eldest son among them. Simbolon moved to Dairi and Barus, while Saragi, Tamba and Munthe moved to Northern Samosir. The migration of Nai Rasaon's descendants was initiated by Manurung and Sitorus who also had a quarrel about the eldest son's entitlement.

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⁶More complete but sometimes discrepant pictures of Batak genealogy can be found among others, in Hoetagaloeng (1926); Ypee (1932:apex); Vergouwen (1933/1964).
Abandoned houses: a common scenery

Consuming rice-flour cake after erecting the four sides of the house frame of a *marga boru*
Nai Suanon's son, Tuan Sorba Dibanua, migrated from Pangururan, Samosir, to Balige, with his two wives. The first wife, Boru Pasaribu had five sons: Sibagotni Pohan, Sipaettua, Silahisabungan, Siraja Oloan and Siraja Hutalima. The second wife, Boru Sibaso Paet, had three sons: Toga Sumba, Toga Sobu and Nai Pospos. Conflict arose among the descendants of the two wives which caused those of Sibaso Paet to migrate to Dolok Immun, Siborongborong, from which Toba Sumba (namely Simamora and Sihombing) moved to Lobu Lala around Humbang. The Toga Sobu moved further on: Sitompul to Pahae, Hasibuan to Padang Lawas, and Nai Pospos to Sipoholon.

The five sons of Boru Pasaribu, Nai Suanon's first wife, were also feuding. The eldest son, Sibagot ni Pohan, insisted on staying in Balige. His younger brothers were then scattered away. Sipaettua left for Laguboti while Silahisabungan and Siraja Oloan moved to Pangururan. Later, Silahisabungan continued to Silalahi and Paropo, while Siraja Oloan went to Bakkara and Dairi. The steps of Siraja Huta Lima are lost.

Figure 4.2.
Nai Suanon's Descendants:

Nai Suanon

Tuan Sorba Dibanua

<table>
<thead>
<tr>
<th>first wife</th>
<th>second wife</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boru Pasaribu</td>
<td>Boru Sibaso Paet</td>
</tr>
</tbody>
</table>

Sibagotni Pohan
Sipaettua
Silahisabungan
Siraja Oloan
Siraja Hutalima

Raja Soba
Raja Sumba
Nai Pospos

The five sons of Boru Pasaribu, Nai Suanon's first wife, were also feuding. The eldest son, Sibagot ni Pohan, insisted on staying in Balige. His younger brothers were then scattered away. Sipaettua left for Laguboti while Silahisabungan and Siraja Oloan moved to Pangururan. Later, Silahisabungan continued to Silalahi and Paropo, while Siraja Oloan went to Bakkara and Dairi. The steps of Siraja Huta Lima are lost.

Figure 4.3.
Early Batak Migration from Sianjur Mulamula:

a. Migration by the descendants of Guru Tatea Bulan:
Sianjur Mulamula —> Sabulan —> Silindung —> Angkola

b. Migration by the descendants of Raja Isumbaon:
Pangururan —> Porsee/Sibisa —> Balige —> Siborongborong

c. Migration by the descendants of Nai Suanon's first wife, Boru Pasaribu:
Balige —> Laguboti —> Silalahi —> Dairi/Gayo Alas

d. Migration by the descendants of Nai Suanon's second wife, Boru Sibaso Paet:
Dolok Immun —> Lobulala —> Sipoholon —> Pahae —> Padang Lawas
(Siborongborong) (Humbang)
Figure 4.3. summarizes the first waves of migration of the Siraja Batak’s descendants from their place of origin, Sianjur Mulamula, to wider Toba-Batak areas and beyond.7

Figure 4.4.
Raja Sobu’s Descendants:

RAJA SOBU

RAJA TINANDANG

RAJA HASIBUAN

GURU MANGALOKSA

GURU HINOBAAN

SIRAJA NABARAT  PANGGABEAN  HUTAGALUNG  HUTATORUAN/LUMBANTOBING

Batak tarombo explains how further lineage fission resulting from migration in connection to founding a huta took place. This includes the history of the Hutagalung ancestry, from Sumba moiety, down to Sorimantaraja, to Nai Suanon whose second wife is named Boru Sibaso Paet (figures 4.2. and 4.3. point d., on the first waves of migration), and further to Raja Sobu. The outline of the Hutagalung ancestry from Raja Sobu is shown in figure 4.4. (Vergouwen 1964:15; Hoetagaloeng 1926: 223, 235-239). When arriving in Sipoholon, Raja Sobu with his brother Naipospos founded a huta called Lobutanga. The son of Raja Sobu, Raja Hasibuan, later founded another huta called Lumbanbatu in Sigao Uluan, quite far from Silindung Valley where Hutagalung is presently located. It was Raja Hasibuan’s son, Guru Mangaloksa, who later started occupying the Silindung Valley. Guru Mangaloksa had four sons, one of which was Hutagalung. The outline of Hutagalung ancestry from the mythical figure of Si Raja Batak is clearly drawn in figure 4.5.

There are many versions of the oral history, turiturian, about how Guru Mangaloksa, the great founding father of margga Hutagalung,8 acquired land from his hulahula or father-in-law, Raja Pasaribu, and then evicted him from the Silindung Valley. The most well-known version is provided by Waldemar Hoetagaloeng (1926) which is widely narrated by the Hutagalung members I met both in the village and in Jakarta and Medan as well as by some margga Pasaribu presently living in Hutagalung as margga boru. The same turiturian is also narrated by other descendants of Guru

7Mobilitas Tradisionil Marga Marga Batak, in: Dalihan Natolu, Majalah kebudayaan batak, Nomor Perdana (1985), pp. 11-13. The detail concerning which area was occupied by which margga prior to colonial time is well described by Ypes (1932, especially on pp. 24-54).

8Guru Mangaloksa had four sons whose names have become four separate marggas. The four sons were Siraja Nabarat, Raja Panggabean, Raja Hutagalung and Raja Hutatoruan/Lumbantobing.
Mangaloksa, namely members of *marga* Hutabarat, Panggabean and Hutatoruan/Lumbantobing I met in the Silindung Valley as well as in Medan and Jakarta.

The *turiturian* tells us that Guru Mangaloksa accidentally appeared in *huta* Marsait-bosi in the Silindung Valley inhabited by *marga* Pasaribu. Being a good hunter, he was allowed to marry the daughter of Raja Pasaribu named Tumaledung and then lived in there as a *boru*. How he took over the area and evicted his *hulahula* is narrated by Waldemar Hoetagaloeng (1926: 220-221; my translation) as follows:  

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9 For practical reason, I have shortened this *turi-turian* without abandoning its essence nor ignoring the Batak nuances it contains.
Guru Mangaloksa sent his young bride to offer a ritual meal, *juhut*, to his father-in-law with a message: "If your father asks the purpose of the ritual meal, then please beseech him to give a little portion of earth for me to tire my feet on." The young bride brought the meal in a basket to her father, Raja Pasaribu. After consuming the meal, he inquired about the purpose of the visit. The young bride passed the message on. "If that is what you want, my daughter, then you may take my rice field." The daughter politely replied: "Your son-in-law only asked for a little portion of earth for him to tire his feet on." "If that is so, then just take as much soil as you can carry in your basket." With those words, Raja Pasaribu put some soil into the basket. Upon returning home, the young bride gave the basket to Guru Mangaloksa who was very disappointed. "How come your father did not respond in a proper adat way to my request? I honoured him with a ritual meal, but he only gave soil in return.

As a result, Guru Mangaloksa devised a plot to chase his *hulahula* away. He asked his young bride to get some *napuran*¹⁰ and ground chili pepper, pretending that he was going hunting. At night he sprinkled the *napuran* around the *huta* and spread *bulung motung* leaves¹¹, covered with ground chili pepper paste. With his hunting stick he repeatedly punctured the ground all the way around. The next morning, acting as if he had been terribly shocked, he shouted: "The enemies surrounded us all the night long. Look at the trails of their hunting equipment and the leftovers of their meal and the spit of their *napuran* all around the fringe of the *huta!*" He reported it to his father-in-law who, unfortunately, was not at all impressed.

Guru Mangaloksa came up with another plot. He stuck some branches uphill, and covered them with *bulung motung* so that they looked like men draped in white cloth. He also hid some yam stalks, *hodong niporing*, under the stairs of Raja Pasaribu's house and along the border side of the *huta*. He went back home and told his young bride about the appearance of enemies. Having seen the man-like figures over the hill, the young bride rushed to tell her parents. Raja Pasaribu jumped off the stairs and happened to step on the hidden yam stalks which made loud noises like gun shots. He dashed off and shouted, "*Boru di ho rajanami! Boru di ho rajanami!*" (Meaning that he would give the enemies a daughter to marry if they ceased fire). He ran to the border side of the *huta* and, again stepping on the hidden yam stalks and thinking he heard the sound of gun shot, he rushed down to Barus and never returned.

Indeed, such a *turiturian* is relevant in relation to the study and analysis of law in developing countries. It precisely shows that contradictory principles and practices often exist within a single (adat) normative system. Discrepancies persist between the idealized vision of harmonious adat kinship relations, especially between the *hulahula* and the *boru*, and the practice of adat (or even what is believed to have been an

¹⁰ *Napuran* is a mixture of *sirih* leaf with arecanut, calcium paste and sliced tobacco dry leaf. In the Batak tradition the *napuran* mixture is chewed by men and women after meals, or served as a gesture of honour toward guests.

¹¹ *Bulung motung* is a type of wide leaf which is green on one side and white on the other. It is widely used for wrapping reserved rice meal, usually for hunting or travelling.

¹² See the elaboration on the ideal thinking of relations between *hula-hula* and *boru* in chapter two.
adat practice in the past). The turiturian explains the process of land acquisition between different marga which is not only ritualistic in essence as is expected of adat kinship relations, but turns out to be actually scandalous. The widely believed turiturian about how Guru Mangaloksa acquired land from his father-in-law can be interpreted in many different ways. First, there is a legal recognition of a ritualized transfer of land between affines (different margas related by marriage). Guru Mangaloksa had asked for land from his father-in-law by offering him a ritual meal, juhut. Secondly, there is an assumption of legal certitude in adat: a request performed in an adat way should be responded to also in a proper adat way. In this sense, adat is seen as a reciprocal way of dealing with each other. Thirdly, as a result of Raja Pasaribu's ignorance of this adat expectation, Guru Mangaloksa chased his hulahula away, an act which totally goes against the wider adat expectation of relations between hulahula and boru. In the adat ideal the hulahula is perceived as a visible god in the world, symbolising Batara Guru as the source of existence and life, who is supposed to be respected by boru (see chapter 2). Fourthly, the turiturian depicts the unequal gender relations in the Batak society. The daughter of Raja Pasaribu is pictured both as a naive daughter and a subservient wife. She is subject to her father's authority as a daughter, and later to her husband's as a wife. This makes her incapable of deciding things for herself. Furthermore, she is easily deceived by her husband and ends up helping to chase her father away. This indicates that a wife in Toba-Batak society can be used as an instrument by a man to get access to the land of his father-in-law. In this way the turiturian precisely gives significance only to a man, it is the story of how men alone get or lose access to land rather than the other way round. Along with the instrumentality of a woman, however, she also provides negotiating power to her male relatives. In this turiturian Raja Pasaribu has tried to offer his daughter in marriage to his "enemies" in exchange for reconciliation.

4.3.2. The Division of Hutagalung Marga and Land

Some time after Guru Mangaloksa evicted his father-in-law and occupied the Silindung Valley, the area was divided among his four sons. Siraja Hutagalung acquired the middle part, bordering Raja Nabarat to the north, Panggabean to the east, and Hutatoruan/Lumbantobing to the west and south. Together with the areal division, the four sons formed separate margas. This probably occurred in order to accomplish a subdivision into several exogamous groups which could function as wife-giving groups in relation to each other. Given the rule of marga exogamy, retaining the "one marga" status would have made intermarriage impossible.

The then-called Hutagalung area was further divided among the two sons of Siraja Hutagalung, namely: Miralopak and Raja Inaina. Until today this early spatial division has been used to mark the Hutagalung lineage fission. When asked about their marga identity, members who have long migrated to other areas also identify themselves as descendants of either Miralopak or Raja Inaina. Within the Miralopak there is further lineage and spatial division between the two sons, namely Datu Harean and Tuan Napitu. In prevailing practice, the spatial division of the Hutagalung
area is divided into three: Hutagalung Harean, Hutagalung Tuan Napitu and Hutagalung Raja Inaina. The Datu Harean and Tuan Napitu are one against the Raja Inaina. Likewise, the Raja Inaina identify themselves as one against both the Datu Harean and Tuan Napitu who belong to the Miralopak. Hence, in internal relations, there occurs a lineage and spatial division between the four sons of Raja Inaina, namely Raja Inum or Matasapiaklangit, Datu Sorga, Bulung Motung and Pantombus. This latter division of Raja Inaina, however, is not explicitly materialized in the current village spatial differentiation.

**Figure 4.6.**
Descendants of Siraja Hutagalung:

```
Siraja Hutagalung
(I)

Miralopak
(II.1)  Raja Inaina
(II.2)

Datu Harean
(III.1) Tuan Napitu
(III.2) Raja Inum
(III.3) Datu Sorga
(III.4) Bulung Motung
(III.5) Pantombus
(III.6)
```

The Hutagalung lineage fission can be seen in figure 4.6. above. The Roman numbering of lineage strata starts with Siraja Hutagalung who is here numbered (I). The numbering of the lineage strata is in accordance with the common practice by which Hutagalung members, both in the village and beyond, identify themselves.

**Figure 4.7.**
Descendants of Datu Harean:

```
Datu Harean
(III.1)

(IV.1)     (IV.2)        (IV.3)          (daughter)  (IV.4)
```
Waldemar Hoetagaloeng (1926: 236-237) recounts the whereabouts of some of the great grandsons of Siraja Hutagalung. To make it less complicated, I start with the offspring of the Miralopak: Datu Harean (figure 4.7.) and Tuan Napitu (figure 4.8.).

**Figure 4.8.**
Descendants of Tuan Napitu:

![Diagram showing the descendants of Tuan Napitu:](image)

Datu Mulia, Datu Nalimuton, Ompu Ni Hobol and their sister Siboru Oloan had decided to leave the Silindung Valley and find some other place to live. Equipped with a knife from their father, Datu Harean, they walked in the direction of Habinsaran, passing by Sipahutar, until they reached Aekbila, a small but deep river. Unfortunately, there was no bridge to pass to the other side. In the end, only Ompu Ni Hobol and his sister Siboru Oloan managed to cross. Realizing that the other two would not make it, the three brothers proclaimed a divine vow, *padan*, from the two sides of the river. As the Toba-Batak legal maxim says about the power of a *padan*: "*Togu urat ni bulu, toguan urat ni padang; Togu hatani uhum, toguan hata ni padan*" ("The root of a bamboo tree is strong, but the root of a grass is stronger; The words of law is strong, but the words of a vow is stronger"). They professed that any of them who would later find good land on which to live should remember and inform the others. As a reminder to their descendants, Ompu Ni Hobol received the knife and Datu Mulia and Datu Nalimunton kept the knife-jacket with them. Before the separation, they bowed down and prayed to *Mulajadi Nabolon* and their ancestors' spirit, begging that they would live long enough and be blessed with good land on which to live, wishing to be given the opportunity to see each other again or, at least, that their descendants might meet each other.

Ompu Ni Hobol (and his sister) continued to Padang Bolak in South Tapanuli and his descendants are now called Hasibuan Harehare. The other two brothers returned to Silindung to reside in Hutagalung Harean. Therefore, those of Datu Harean who now reside in Hutagalung Harean are the descendants of Datu Mulia, Datu Nalimunton and Ompu Ni Raja Ulangdongan. The three sons of Tuan Napitu resided...
in Hutagalung Tuan Napitu. Thus, those living now in Hutagalung Tuan Napitu are mainly the descendants of Ompu Ni Ujung Oloan, Namora Tonggor and Datu Timpus. Vergouwen (1964:19) tells us that the Hutagalung still keep the divine vow, padan, to their descendants:

In 1929, under the leadership of the luat chiefs, they participated with zest in the great marga festival of Huta Galung at which, for the first time in history, the entire Huta Galung marga assembled in the bona ni pinasa, the small territory of its origin in the middle of the Silindung Valley; a gathering that made all the other Batak envious.

The Hutagalung Inaina area is inhabited by the descendants of Raja Inum, Datu Sorga, Bulung Motung and Pantombus. However, some of them from the fourth generation onwards migrated to other areas as mentioned by Waldemar Hoetagaloeng (1926: 238-239). Those not otherwise mentioned are, therefore, assumed here to have mainly remained in Hutagalung. From Raja Inum's line, for instance, some went to Angkola and formed the marga Dasopang and Motung\(^{13}\). Some of the descendants of Datu Sorga migrated to Sibolga in Central Tapanuli\(^{14}\). Two of Datu Sorga's descendants, si Tambirik and his son, the eighth and ninth Hutagalung generations, were captured by the Islamic Padri troops from Minangkabau of West Sumatra\(^{15}\). Some Hutagalung seventh generations from the Datu Sorga line migrated to Sitahan Barat/Hurlang.

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\(^{13}\)Waldemar Hoetagaloeng (1926:238) mentions that in Angkola some of Raja Inum's descendants resided in Bakap, Sipiongot, Hambulo, Sikulambu, Gunungtua and Bila.

\(^{14}\)Those who left for Sibolga are Datu Ronggur (VI), Ompu Raja Setan (VI), Ompu Maol Ni Huta (V), and Ompu Ni Hurinjom (VII). See Waldemar Hoetagaloeng (1926:236).

\(^{15}\)Therefore, the eighth and ninth Hutagalung generations were already in existence in the 1820s, the years when the Islamic Padri troops raided the Silindung area.
From the Bulung Motung line, quite a number have also migrated. Tuan Nahabot (VI) left for Marubun, Tuan Sigar (V) and Guru Pulungan (V) left for Pagaran Lambung in Hurlang, while Ompu Ni Huturaja (V) left for Raso, also in Hurlang. From the Pantombus line, descendants of Ompu Sadion (IX) and Ama Ni Martua (IX) left for Pagar Batu also in Silindung Valley. The descendants of Ompu Baritaraja (IX) went further to Simamora in Humbang. Raja Panopa’s youngest son (VII) left for Bululaga in Pahae, and his descendants later continued to Hurlang, Simangumban and finally to Angkola where they formed marga Hasibuan. One of Pantombus’ descendants, Ompu Ni Anggasana (VI), went to Parsambilan Toba, to Batunabolon, Batumamak Habinsaran and finally to Angkola.

The family tree, tarombo, of the Hutagalung marga has been maintained for generations and the knowledge is transferred through oral history, turiturian, of which many members keep a record. This is used as the basis to cluster all members of the Hutagalung into different patrilineages and spatial areas. The division between Miralopak and Raja Inaina is, indeed, currently used as a valid reference to both lineage and spatial category within the area. Hence, the Miralopak is further divided into two, namely the Datu Harean and Tuan Napitu. The maintenance of the tarombo has made it possible for each male member to trace his position in the marga hierarchy as well as providing the basis to claim common ownership of the Hutagalung land. This is given religious significance by means of, for instance, a vow or padan of mutual recognition in the case of the separation of the Hutagalung siblings. The tarombo, however, does not always include the line of women or daughters of the Hutagalung. It is only in the family tree of Datu Harean (figure 4.6) that a woman, Siboru Oloan, who migrated to South Tapanuli with her brother Ompu Ni Hobol, is mentioned. Tuan Napitu’s two wives are also included without bothering to mention their names and/or marga of origin (figure 4.5).

4.3.3. The Marga’s Ownership — The Case of Waldemar Hoetagaloeng:

The act of founding a huta legitimates the hierarchical marga position in a spatial context, marked by the emergence of the ruling marga or marga raja and the in-dwelling marga or marga boru. If a person does not belong to the ruling marga, any right acquired to land for cultivation is a derived right and not one to which the person is automatically entitled. In short, the right of a person who does not belong to the ruling marga is much weaker than that of one who does, though it is stronger than a mere right of usufruct resting on a terminable contract. The in-dwelling marga’s use right becomes stronger as the length of time of the stay increases together with the development of the many-sided relationships with the ruling marga. However, there

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16This section is written in reference to the Afschrift dari Verslag dari Permufakatan Rapat Hadat Negeri Hoetagaloeng, 24th of July 1939, on the deliberation of Waldemar’s request to found a sosor (kampoeng) on the shore of Aek Situmandl in Negeri Hoetagaloeng. The document was provided by Nagani Hutagalung, Hutagalung, February 1994. The information was countered-checked during the fieldwork.
are local variations that form the categories of in-dwelling marga and ruling marga when it comes to actual relations within the village. The in-dwelling marga designation not only includes the marga boru, but sometimes the ruling marga members belonging to different lineages as well. Vergouwen (1964:114) notes that lineage difference within the Hutagalung marga was already crucial in the early 1930s. Members of the Hutagalung marga belonging to the Hutagalung Raja Inaina lineage but who lived in the area of Hutagalung Datu Harean, for instance, were considered as in-dwelling by the Datu Harean. They were called dongan parripe. I knew a Hutagalung Tuan Napitu man and his family dwelling in Huta Godang of Hutagalung Raja Inaina. The Tuan Napitu man had just retired from a low-ranking civil servant's position in Sibolga but did not have a house of his own in Tuan Napitu. So he occupied an empty house in Huta Godang. However, because the man was categorized as older in lineage rank compared to other huta dwellers, the others felt hesitant to and could not ask him for a hand on various adat occasions, a task which would have been easy had the man been a marga boru. In the end, and because of a dispute with other huta dwellers in which he was accused of abusing a neighbouring girl, the man was asked to leave Huta Godang.

This explains why founding a huta was still desirable in the last decade of Dutch colonialism. A retired first rank sergeant, Waldemar Hoetagaloeng, brought his request to found his own huta in Hutagalung before the adat deliberation forum or the Rapat Hadat Negeri Hoetagaloeng on 24 July 1939. Waldemar was one of the descendants of the third son of Raja Inaina, Bulung Motung (III.5). Most of the other descendants had migrated out. As a mobile public appointee in several colonial governmental positions, he had never resided in Hutagalung during his active life. Having enjoyed a Dutch education and privileged, high-salaried public appointments, Waldemar attempted to combine Batak adat formality with the Dutch pseudo-legal formality of founding a huta. The analysis here is based on the deliberations of the Rapat Hadat and my interpretation of the content of the Rapat without discounting other possibilities provided by the sorts of people participating in such deliberations.

Upon his retirement, in February 1938, Waldemar moved to Hutagalung and occupied a plot of land measuring 23 metres x 11 metres which was located in Huta Sosor Tongatonga, Hutagalung Raja Inaina. He bought the land permanently, manuhor pate, from the owner Loecas Hoetagaloeng, and set up a house. Afterwards, he informed the head of Huta Sosor Tongatonga about his intention to set up his own huta on the housing site. Sixteen months after moving in, on 11 June 1939, Waldemar performed an adat ceremony, mangan sulangsulang na tabo, before all the rajas, elders and the boru of Raja Inaina descendants, asking their permission to set up a huta. According to him, the Bulung Motung, unlike the other Raja Inaina

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17 This is the same person who wrote about the Batak tarombo, e.g., Hoetagaloeng 1926.
18 The Dutch spelling for "u" in Hutagalung is "oe". Since this document was written in the time of the Dutch, often "u" is spelled "oe".
19 See afschrift dari verslag..., 24 July 1939, p.4.
and wider Hutagalung lineages, had not had a huta of its own in the ancestral village. The members of the other three lineages of Raja Inaina responded positively to the request by accepting a sum of money as a token, batu ni sulangsulang. The Mata Sapiaklangit was awarded f 1.95 which was received by the head of corvee-labour or kepala-rodi named Raja Jonathan Hoetagaloeng; the Datu Sorga was awarded f 5.90, received by Raja Samoeel Hoetagaloeng, the head of the withdrawn huta, Sosor Tongatonga; while the Pantomboes was awarded f 1.95, received by Raja Aletzander Hoetagaloeng. As a reciprocal gesture, the Raja Inaina members agreed to grant the title Hoeta Siboeloeng Motoeng to the site on which Waldemar had set up a house.

A month later, on 24 July 1939, the Raja Inaina’s decision to grant the title of huta was brought before the higher adat forum, Rapat Negeri Hoetagaloeng, covering all the Hutagalung lineages including the Miralopak (e.g., the Datu Harean and Tuan Napitu). The Rapat Negeri was attended by 21 persons, all of whom were men according to the registered list of participants. Besides the head of the Negeri and his secretary, there were ten appointed village heads or kepala kampoeng, five adat elders, two heads of corvee-labour or kepala rodi, one church and adat elder, and one great boru. However, it is rather unusual that an adat meeting is attended exclusively by titled men. Usually ordinary men and married women or aged widows also participate. Most probably the Rapat Negeri registered these titled men only, even though some ordinary men and women might have been present. Provided the

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20 See the outline of the Raja Inaina lineages in fig.4.5 and 4.8 of the previous section.
21 See afschrift dari verslag..., 24 July 1939, p.4.
22 See figure 4.3 in the previous section.
23 For the sake of later analysis, it is worth noting the identity of the registered participants (see: afschrift dari verslag..., 24 July 1939, p. 4 and 6):
   a. Kepala Negeri van Hoetagaloeng, Raja Hainni Hoetagaloeng, as chair.
   b. Kepala-kampoeng Samoeel Hoetagaloeng, head of the withdrawn huta of Sosor Tongatonga.
   c. Kepala-kampoeng Oscar Hoetagaloeng from Hoeta Bagasan.
   d. Kepala-kampoeng Aris Hoetagaloeng from Hoeta Parmoela.
   e. Kepala-rodi Elkana Hoetagaloeng from Hoeta Sosor Topi Aek.
   f. Elkana Manik, the great boru or boru sihabolonan from Hoeta Godang.
   g. Kepala-kampoeng Bg. Amos Hoetagaloeng from Hoeta Sosor Topi Aek.
   h. Kepala-kampoeng Aletzander Hoetagaloeng from Hoeta Poelo.
   i. Kepala-kampoeng Keleophas from Hoeta Topi Aek.
   j. Kepala-kampoeng Jessajas Hoetagaloeng from Hoeta Bagasan.
   k. Kepala-kampoeng Amin Hoetagaloeng from Kampoeng Melajoe.
   l. Raja Darioes Hoetagaloeng, adat elder or pangitoea from Hoeta Bagasan.
   m. Kepala-rodi Jonathan Hoetagaloeng from Hoeta Sosor Tampanah.
   n. Kalpin Hoetagaloeng, adat elder or pangitoea from Hoeta Paraserahan.
   o. Kepala-kampoeng Pangeur from Hoeta Sosor Saba.
   q. Zackeus Hoetagaloeng, adat elder or pangitoea from Hoeta Loemban Hariara.
   r. Johan Hoetagaloeng, adat elder or pangitoea from Hoeta Dame.
   s. Thepanoes Hoetagaloeng, church/adat elder, sintual/pangitoea, Hoeta Loemban Tongatonga.
   t. Loekas Hoetagaloeng, adat elder, pangitoea from Hoeta Sosor Tongatonga.
   u. Titus Hoetagaloeng from Hoeta Poerbatoea, de Griffier Rapat Negeri Hoetagaloeng.
Chair: If your housing site was given the title of sosor or kam­poeng, how many households would go with it?

Waldemar: With your permission, I could bring ten households to the new sosor. First, I myself, as Raja Hoeta; secondly, other Hoetagoeng fellows, namely church elder Laoerencius, then Loecaas, Karal, Artius, Rondang, Maroelam, Maroem, Kostan, Oberin, and lastly, Karimoen Hoetagoeng.

Chair: If ten households would co-habit the sosor, what land could you allocate for that purpose?

Waldemar: I believe in the kindness and generosity of my kin and I trust that based on this fellowship the plots of land bordering the north and south of the site could be sold to me for expanding the sosor.

After a long discussion, the Rapat agreed to grant the title of sosor (hoeta) with the condition that Waldemar perform a proper adat ceremony before the rajas, elders and great boru of the whole Negeri Hoetagoeng. He was to slaughter a buffalo that cost f25 and prepare rice as a food offering, soelangsoelang, then serve it to the rajas, elders and the great boru so that they should prosper and be in good spirits, oepa mandok gabe dohot mandok horas. He was also obliged to pay a sum of money, talitali ni Raja or boelang, to the amount of f10 to the kepala-kampoeng Samoeel Hoetagoeng, the head of the huta which had withdrawn and to the Kepala Negeri Hoetagoeng. At the conclusion, he handed over f5 as money to seal the transaction, pago ni Raja, which was divided among the 21 registered participants.

In the consideration and decision of the Rapat, there is a clause stating that Waldemar would fulfil his obligation to perform the adat ceremony only after the Dutch authority in Tarutung, Padoeka Toean Hoofd van Plaatselijk Bestuur Taroetoeng, gave its approval.

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24 Taken from the afschrift dari verslag..., 24 July 1939, p.5., my translation.
25 Afschrift dari verslag..., 24 July 1939, p.6.
26 The f5 was shared among the 21 Rapat registered participants. Kepala Negeri Hoetagoeng as chair and his secretary each received 50 cents. The share of twelve participants was 25 cents each, two participants received 20 cents each, another two received 15 cents each, while three participants received 10 cents each. See Afschrift dari verslag..., 24 July 1939, p.7.
Waldemar’s attempt to found his own *huta* should be analyzed in the context of his time. The general political situation in the Batakland was undergoing great change. The Dutch, by creating the *Negeri* spatial division and appointing the *Kepala Negeri* in 1918, preceded by the *kepala-kampoeng* which had served since 1883, had actually intended to create more effectively ruled local institutions. One of the reasons for instituting the *Kepala Negeri* and *kepala-kampoeng* was to avoid the creation of relatively small independent *huta* with tiny populations, and thereby provide surveyability for the official administration (Vergouwen 1964:127-130). The intent of Waldemar to create an independent *huta* on a tiny plot of land which would only consist of 10 families (and only if he were allowed to buy more land in the surroundings) did not fit the Dutch ideal on territorial division. As a Dutch civil servant, he must have known the official policy on this matter. Nevertheless, despite his high position in the Dutch government, Waldemar maintained the urge to glorify the honour of his ancestry which, in turn, would raise his own image in the eyes of his fellow *marga* members. Waldemar’s efforts to found a new *huta* did not actually disturb the Dutch administrative hierarchy because such a tiny *huta* would impact only on relations internal to the Hutagalung. What he was doing, indeed, was creating a multifaceted position of high status for his time by capitalizing on both the modern institutions and the traditional ones. Since clearing the forest as a traditional means to found a *huta* was no longer possible, buying a plot of land and submitting a request through *adat* meetings was seen as a justified way. He carefully followed the *adat* rules of buying a plot of land located in *huta* Sosor Tongatonga from the owner, *dondon pate*, then willingly agreed to reside in the *huta*. He informed the head of *huta* Sosor Tongatonga about his intentions. Afterwards, he approached all members of the Hutagalung Raja Inaina, offering them a proper *adat* ceremony, *mangan soelangsoelang na tabo*. After permission was given by the Raja Inaina, the request was brought before the highest Hutagalung *adat* forum, in this case the *Rapat Hadat Negeri Hoetagaloeng*. The steps Waldemar took, however, would not have been possible had he not been a high-salaried colonial government officer. Each step cost money which, when added up in the end, was not worth the 23 metres x 11 metres-sized plot of land concerned. Following is the cost breakdown, which came to f 52.50, as presented in the document:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land commission fee</td>
<td>f 2.50</td>
</tr>
<tr>
<td>Token for 3 Raja Inaina lineages</td>
<td>f 9.80</td>
</tr>
<tr>
<td><em>(batu ni soelangsoelang)</em></td>
<td></td>
</tr>
<tr>
<td>Purchasing one buffalo</td>
<td>f 25.-</td>
</tr>
<tr>
<td>Compensation to the head of withdrawn <em>huta</em></td>
<td>f 10.-</td>
</tr>
<tr>
<td>Compensation to the <em>Kepala Negeri Hoetagaloeng</em></td>
<td>f 10.-</td>
</tr>
<tr>
<td>Sealing money for the <em>Rapat Negeri</em></td>
<td>f 5.-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>f 52.50</strong></td>
</tr>
</tbody>
</table>
The substantial amount of money allotted to buy the land itself, the feast meal offered to all the Raja Inaina descendants, as well as the money to provide a bigger feast for the wider Hutagalung membership was not explicitly mentioned. This is confirmation that entitlement to land, and its subsequent privileges, is, for a Toba-Batak man, highly symbolic in meaning, often far beyond its overt economic value.

The composition of the participants in the Negeri deliberation forum reflected the power relations that existed in colonial time. Looking at their first names, one can see that the participants who were definitely leaders of Hutagalung were all Christians. The only possible exception is Amin Hoetagaloeng, the head of Kampung Melayu, which might have been a Moslem name. This indicates that Christianity at that time was quite well accepted in Hutagalung. There was one person holding the Dutch-created title kepala negeri, another person was his secretary. From the 19 ordinary members, ten persons held the Dutch-created title of kepala-kampoeng or village head, two were heads of the Dutch-initiated corvee-labour or kepala-rodi, one was a church elder, five were adat elders, and one was a great boru. Not surprisingly, the last clause of the Rapat Negeri decision reflected the total submission of the participants to the highest authority, the colonial officials, to give the final decision on matters related to adat. The Negeri deliberation forum did not see itself as the highest authority even in a matter regarding its own territory and concerned with internal marga relations.

In short, the case shows that in the last decade of colonial era people did buy land though it was still considered as an internal transfer performed in an adat ceremony. To a certain extent, the process of adat regarding rights to land had already been influenced by the colonial government, representing the secular side of westernization. One may also wonder about the impact of Christianity, representing the religious ideal of westernization, on the religious significance of land to the Toba-Batak. As a further point, unlike women whose marga identity was ambiguous, Toba-Batak men could easily capitalize on their unequivocal and eternal marga identity to claim a rather strong right to access land. Above all, it is likely that a Toba-Batak man who had managed to gain high status under the Dutch colonial regime would easily make substantial attempts to also increase his status under the adat legacy.

4.3.4. The Proud Marga Boru Na Gojong

Most members of marga boru na gojong are very proud of their great boru status. They can claim that their ancestors played important roles in the history of the huta, either as the co-founder of the huta or as its guardian to whom many huta fellows should be thankful. Their status is well recognized, though not always without contest. At major adat ceremonial occasions, the importance of boru na gojong is demonstrated in their always receiving a share of jambar, part of the ceremonial cooked meat of a slaughtered animal given publicly to the honourary guests and relatives of the hosts according to adat. The Boru na gojong are never left out of important meetings concerning the collective life of the huta. For example, when Waldemar applied for consent to set up a new huta in the colonial period, a boru na
A gojong man named Elkana Manik was among the registered participants at that important meeting. The meeting itself made a decision that Waldemar must slaughter a buffalo and prepare a ceremonial meal to be served for the rajas, elders and the great boru. This means that the boru na gojong's role as the huta co-founder was well recognized and respected. Indeed, the descendants of boru na gojong are still keeping the oral history of their great-grandfather's important role in the huta, which is evidenced by the huge plots of rice field they now own.

4.3.4.a. Marga Manik (Huta Godang, Raja Inaina)

Berman Manik, born in Hutagalung in 1948, held the status of boru na gojong in Huta Godang because his great-great-grandfather, who originally came from Samosir, had worked together with a marga Hutagalung in clearing the forest, mangarimba, to set up the present Huta Godang. In the past, it was common that a huta founder received help from a man of another marga who had special attributes like witchcraft, healing power or fighting or hunting skills. According to turiturian, it was Hutagalung and the old Manik who co-founded Huta Godang. As a huta co-founder, the old Manik was awarded huge plots of rice fields while he and his male descendants became the boru of Ompu Patombus, covering Huta Godang, Huta Pulo, Sosor Padang and Huta Topi Aek. The rice fields accumulated over time because the Maniks cleared more land and married with women from the Hutagalung marga through which in the past they had received pauseang from the Hutagalung. Berman Manik himself then inherited eight plots of good rice field from his father which annually bore 800 kaleng of unhusked rice. In 1950, Berman Manik's four married aunts received a plot of rice field as a collective pauseang from their brother (Berman Manik's father). The pauseang ceremony was conducted in Manik's house where the pauseang land from Manik's family was exchanged for a symbolic amount of money called pasituak na tonggi (lit.: money to buy sweet local brew) from the four boru of Manik.

Berman Manik got married to Riati Hutagalung in 1978 and they then had six sons. As a high school graduate he was lucky to attain the status of a (low-ranking) civil servant. Every day he worked at the District Office (Kantor Bupati) in Tarutung. Berman's wife, Riati, born in 1954, only had a local elementary education. Her parents, who lived nearby, did not expect her to go for higher education. Riati was good at rice cultivation and also had the skills to make elegant ulos. Riati's parents used to tell her: "The two skills, rice cultivating and ulos weaving, are more than enough for women to be able to live here."

Manik and Riati only managed three plots of rice field which guaranteed them 300 kaleng of unhusked rice annually. As a civil servant, Manik did not feel the need to work directly in the fields. Riati, occupied with the care of her six small sons, preferred to stay home and weave ulos to working in the fields. Therefore, even for the three plots of rice field, Manik and Riati had to pay farm labourers who came from Lobu Hole, a remote huta up hill. It was Riati's task to find the farm labourers, negotiate and pay the wages, and prepare them lunch and dinner. Manik and Riati let the remaining five plots be share-cropped, bola pinang, by marga Hutagalung poorer families who were landless. The share-cropping guaranteed them an extra net
income of 250 kaleng of unhusked rice per year (one kaleng is about 12-13 kilogram unhusked rice). So, Manik and Riati had enough rice to eat, to contribute for adat ceremonies both in their small family circle and in the wider Hutagalung family as boru na gojong, and also to put some aside for other poorer families in the neighbourhood to borrow. Berman Manik commented:

Yes, there are quite a number of marga Hutagalung who no longer have rice fields to live from. Over time, the rice fields of Hutagalung have been divided among a large number of inheritors. Sometimes they sell the land to their fellow marga because it is easy for them to do so. So, some Hutagalung are now left with nothing and therefore have to share-crop other people’s rice fields. In the case of Manik as boru na gojong, most of our men have migrated and the rice fields are divided among very few. In addition, as a marga boru we tend to keep whatever land we have to ourselves. We do not easily sell because it involves a whole lot of complicated procedures. You do not sell your status, do you? So I have huge rice fields.

When Berman and Riati got married, they received an old wooden house from his parents as a panjaean for starting an independent household. In 1990 they renovated the house and then it was nice and permanent. In addition, Berman inherited another wooden house because he had no brothers residing in the huta. It was left uninhabited. He could have rented it out or just let others live in it, but he did not dare to do so. He told me: "I inherited the house from my parents. If I rent it out, it won’t be good for the huta fellows. They would think that I do not need the house any more. As a marga boru I have to respect the Hutagalung."

4.3.4.b. Marga Pasaribu (Huta Parmulaan, Tuan Napitu)

Nauli Pasaribu was born in Huta Parmulaan in 1924. He was very proud of being born into a great boru or boru na gojong family. He told me about how Pasaribu has become boru nagojong:

My great-great grandfather, Guru Babiat Pasaribu, the son of Pana Lubung Pasaribu, came here a long time ago. Guru Babiat was the 19th generation of Pasaribu while I am the 23rd generation. He was invited from Haunatas, Laguboti, by Tuan Napitu Hutagalung to defend Huta Parmulaan during the internal fights between neighbouring villagers before colonial time. Many of the huta residents had left or died. Guru Babiat was a guard, ulubalang, who had a magical power to protect Tuan Napitu’s descendants during the fights. Later, he helped them to restore the harajaon. Because of the important role he played, Guru Babiat was honoured by the Hutagalung. He was considered a suhaparik or co-founder of the huta. From then on, Guru Babiat was allowed to live in the huta and was allotted the best land. He married a Hutagalung woman who did not have any brothers. So, he got a wife
and huge rice fields from his *hulahula*. We have become a *boru na gojong*, because of our generation's length of stay here and our developed affinal relationships. Now we still occupy the rice fields without any major disturbances from the Hutagalung.

Nauli Pasaribu married a *boru* Hutagalung in June 1947. Five months later, before they got a baby, Nauli Pasaribu and his wife received a plot of rice field as a reminder of a family tie or *hasangkotan ni seong* from *marga* Hutabararat because Nauli Pasaribu's mother was a *boru* Hutabararat who had no brothers. He was given the rice field as a reminder that he had maternal blood relations with *marga* Hutabararat. Since the rice field was located in the neighbouring village, Hutabararat, he let it be share-cropped by a *marga* Hutabararat.

By the time Nauli Pasaribu retired from the civil service in 1979, his children had married and moved to different places outside Hutagalung. Nauli lived in an inherited house in *Huta* Parmulaan which had been beautifully renovated. Compared to his *huta* fellows he looked much better-off. However, Nauli Pasaribu expressed his anxiety about the continuity of his rights to land in Hutagalung:

I remember that my father told me how he was treated during a *kepala kampoeng* election in the 1940s. One *kepala kampoeng* candidate who lost the election in our area was mad at us, members of *marga* boru. He said that because he could not trust our loyalty as *marga* boru, he wanted us to leave the *Huta*. You know what he did to the *marga* boru? He planted a banana tree right in front of our doorstep and also in the four corners of our rice fields. Many of the *marga* boru, especially those of *boru* gomgoman and *boru* huta, would not dare to touch the rice fields anymore. Those who could no longer stand the pressure left without notice. Many others had to apologize verbally if they did not want to leave the *Huta*. Although we were worried, nobody touched us. They did not dare because my great-great grandfather was a *suha parik*. Later I was able to strengthen my *boru* position by taking a wife from Hutagalung. Yes..., I can say we have rights, but rather shaky ones.

### 4.3.5. Hutagalung Land and Historical Claim – a Conclusion

The primal land acquisition by the descendants of the mythical figure Siraja Batak has been used as the basis of various *marga*’s claims to land. Each *marga* later develops its own history, *turiturian*, combining myth and fact to justify its presence and status in the *huta*. Due to this process, contradictory principles and practices often exist within the constructed history. Although the substance of Hutagalung history about Guru Mangaloksa’s conduct contradicts the idealization of harmonious *adat* kinship relations, especially between the *hulahula* and *boru*, it is this history that is binding on the adherents. The present lineal and spatial division of Hutagalung is further based on the history of Hutagalung’s sons. The story of Waldemar which occurred in the time of colonialism shows how someone identifying himself with an
ancestral figure is permitted to start his own huta. Likewise, the claim of Hutagalung land proprietorship is also pronounced by certain marga boru. By claiming themselves descendants of certain figures important to other particular ancestral figures, marga boru nagojong can justify their control over huge plots of land. Establishing and reproducing the turiturian is, therefore, in the interest of the group concerned. The myth becomes the law. Thus, people become subject to this kind of mythical history through their own construction and belief in a myth of the authority of proprietorship which is maintained over time. The myth often claims, or is the basis for claiming, the superiority of the group (c.f., Fitzpatrick 1992).

4.4. GENDERED LAND TRANSACTIONS - CONTEMPORARY PRACTICE

In chapter two I discussed the different aspects of adat land relations in pre-colonial and colonial situations, in particular the social entities that bear the land relations, the object of land relations, and the substance of rights. The rights, duties, privileges and opportunities given to the different groups, families and individuals vary in relation to the different objects of land concerned. The position of marga raja and marga boru is one of the most important determinants in accessing rights to land. Different rules exist as to what the members of the marga raja and marga boru may (not) do in terms of physical land improvements and kinds of land transfers. With the principle that the marga holds the residual rights which extend various rights to individual members, land relationship is further characterized by conditions and procedures under which rights to land may be appropriated, acquired or maintained through specific transactions. Land transaction under Toba-Batak adat is strongly emphasized when it comes to strengthening relations between related generations and affines. This shapes the function of land for augmenting and maintaining the group's magico-religious identity and socio-political power. However, this normative claim of the magico-religious and cultural value of land transaction is often combined with more economic and reciprocal motives.

In this section, I take a systematic look at the different mechanisms of accessing rights to land and their gendered character in the contemporary practice of the Hutagalung village. This gendered character of access rights to land can be seen both in the first cluster of land transaction which I call "generational and affinal land transaction", and in the second cluster called "reciprocal and economic land transaction". In "generational and affinal land transaction" gender is the borderline that rigidly determines the kind of transaction undertaken. Thus, inheritance and collateral inheritance are for men only, while pauseang is for women. The second cluster of land transaction, the "reciprocal and economic land transaction", on the other hand, gives more room to manoeuvre for different categories of women and also for marga boru men. I demonstrate and analyze how different Hutagalung villagers are aided and at the same time constrained by circumstances regarding their kinship, gender and economic status in access rights to land. These in turn affect their strategies to best acquire these rights and to acquire landed property.
4.4.1. Generational and Affinal Land Transactions

4.4.1.a. Waris (inheritance)

Inheritance, which involves a complex of arrangements, is one of the most common forms of land transfer in Hutagalung. Preceding the burial, the amount of ceremonial costs that should be paid by various categories of relatives is determined. In the evening after the burial, a deliberation is held to discuss the formal fulfilment of *adat* obligations and debts. Land partition is not necessarily discussed immediately after the death of the owner. It is quite common that no formal division is established for two or three generations and some of the heirs may keep the land for their own benefit. When the formal partition takes place, the triad family groups, *dalihan na tolu*, of the deceased landowner should be present and a ceremonial meal should be performed to conclude the partition. In Hutagalung, where male migration is a common occurrence, the immediate partitioning of a land inheritance is becoming less frequent. However, because most land is inherited, the cultural value of land increases over time. Many migrants are still keen to hold the land inheritance rights, although in practice they just let the land to a brother who resides in Hutagalung. There are several cases where plots of rice field inherited by male migrants have been cultivated by their residing brothers for more than four decades. As a sign that the male migrants still keep the rights to the land inheritance, the residing brothers from time to time surrender a minor amount of the yield to the migrant brothers. On the other hand, migrant brothers could always come to the village and take a share of the yield, if necessary.

In Hutagalung, the sons of an in-dwelling clan, *marga boru*, automatically inherit the land from their deceased father. However, there are some restrictions on the extent to which an in-dwelling clan may continue the rights to the inherited land. In the first place, an in-dwelling clan may not let the inherited land to others. While some in-dwelling clan members can still keep the rights to the inherited land in absentee, there is strong social pressure for them to obligatorily reside in Hutagalung should they want to continue holding the rights to the land. There are some cases where the sons of the deceased from an in-dwelling clan gave away their land inheritance rights to a brother who still resided in Hutagalung. Some in-dwelling clans have lost their rights to housing plots because none of the deceased's descendants lived in the *huta*.

In the 1950s, Sihombing was granted a plot of land by a *huta* chief on which he built a wooden house. When he passed away in 1980, none of his children lived in Hutagalung. After the funeral, the sons of the deceased divided the inheritance and one of the sons received the house. The villagers acknowledged the inheritance rights of the son. In 1987, after the house had been left vacant for years, the heir wanted to let it to an acquaintance of his. In reaction to the plan, the *huta* chief reminded him that as an in-dwelling clan member he only had the right to use the house, not to let it to others. The heir could not lodge a complaint. In the end, the house was still vacant. Because the house was old, many of its wooden planks were deteriorating. From time to time, when passing by the house, the *huta* chief would break one or two
of the wooden planks. He told the *huta* children to do the same. Later, in 1994, the *huta* chief informed the heir that he was going to demolish the old wooden house because it had become unsafe for the *huta* children. This action on the part of the chief was in effect a renunciation of the land right of the son of the in-dwelling clan.

Hutagalung women, whether they belong to the ruling clan or an in-dwelling clan, are entitled to the land and house left by their deceased husband as long as they have children, especially a son. The woman keeps her access to the inheritance in the capacity of a custodian, on behalf of the (male) children. Tumnus Simanjuntak (case 4.6.1.b.) inherited a rice field from her deceased husband on behalf of her son. The case of Dame Sihombing (case 4.6.1.c.) shows that a woman may feel more secure when she becomes a widow with (male) children than when her husband is still alive but there are no children.

4.4.1.b. Teanteanan (collateral inheritance)

Under the *adat*, if a man dies and has no sons, the land inheritance accrues to the collateral, the *panean*, namely the brothers, uncles or cousins of the deceased. I did not directly encounter a case of *teanteanan* in Hutagalung, but I was informed about a recent case in Tuan Napitu. Once there was an old Hutagalung couple who had no children. The couple, Bonar Hutagalung and his wife Tarida (pseudonyms), had a house and two plots of rice field. Bonar Hutagalung died in the early 1980s, leaving Tarida to become the subject of continuous insults by Bonar’s sister-in-law who lived opposite her house. The sister-in-law was also a widow but, unlike Tarida, she had three sons and a daughter who were all married. One of her married sons lived in the same *huta*. Tarida was in her early seventies and had always suffered from poor health. Her sister-in-law took away one of the rice fields. Later, Tarida became limp and half blind, and could no longer perform even minor activities. She was not taken care of by the family of her sister-in-law who had dispossessed her. Many times she went hungry because nobody prepared her food. Other *huta* fellows who would have liked to help her felt hesitant because Tarida still had a close relative, the sister-in-law, who, by *adat* norms, was considered responsible. When Tarida died in the late 1980s, the same sister-in-law occupied the house and took over the remaining rice field. Thus, although in principle it is a man who is entitled to *teanteanan* fields, the widow of the heir often takes immediate control over the land while the wife of the deceased is still alive.

The case of Jenni Hutagalung (case 4.6.2.a.) who had no brothers involves *teanteanan*. When her father died, her uncle received all the inheritance. Jenni, and her step-mother too, was allowed to live in her deceased father’s house and worked the rice fields until she got married. While she was unmarried, she was still under the responsibility of the uncle. The moment she moved to her husband’s *huta*, Jenni lost her use rights to her father’s land and the uncle retained the house and the rice fields after Jenni’s step-mother died.

Some of the widows in Hutagalung who only had daughters were allowed to continue using the house and rice fields. In fact, most villagers were of the opinion that widows and their daughters were entitled to use, not to inherit, the house and
rice fields. The rights to use were pronounced the evening after burial. No longer were attempts made to evict sonless widows from the house or rice field. A number of sonless widows were convinced that they could use the land as long as they needed it. However, some of them worried that their rights to the land inheritance were not secure. They were really concerned about the fate of their daughters. These widows would not buy land because of the anxiety that their daughters may not be allowed to inherit it should they die.

There was a woman named boru Panggabean, born in 1918, a widow of Siahaan, a marga boru in Tuan Napitu. She had been a widow since 1950. She had two daughters and no sons. Her youngest daughter was married to a marga Simanjuntak and lived in Bangka Island, South Sumatra. In 1989, the son-in-law died from cancer, leaving a wife and a son and two daughters. Boru Panggabean then lived in Hutagalung with her eldest, unmarried daughter, born in 1948, whose face was rather disfigured. Both women were very good ulos makers so they made a lot of money. However, boru Panggabean expressed some worry:

> My daughter and I make expensive ulos on special order. We make a lot of money from this. I could have used the money to buy a rice field. But a rice field may be a disaster for us. I do not have a son and my son-in-law has died. Since then, I have worried that the villagers may not allow my daughter to inherit a rice field should I die. So, why bother investing in land?

4.4.1.c. Pauseang (affinal land gift)

In a situation where clearing a forest is no longer possible, there is a widespread fear among the marga Hutagalung that a land gift to a woman would be too great a loss of land for the ruling clan. We have seen that 47.95 per cent of the households in Hutagalung belong to members of the in-dwelling clans. Though this does not reflect the land control and ownership proportions between the two types of groups, one can estimate that a substantial number of farming plots are owned or, at least, operated by the in-dwelling clans. Field experience in Hutagalung indicates that, because of land scarcity, the granting of pauseang land to a married daughter will soon be a thing of the past. If it is granted it will only be under very special circumstances, and it is likely that existing pauseang land will be claimed back by the Hutagalung. The case of Sondang Hutagalung (case 4.6.2.c.) is a good illustration of the situation because it shows how Sondang, who obtained a pauseang plot in 1950, was threatened by her brothers to return it. The last pauseang land gift granted to a Hutagalung woman was in the early 1970s when Jenni Hutagalung (case 4.6.2.a.), who was married to Napitupulu, was given a rice field located in Tuan Napitu because she did not have a brother. She received the pauseang field only 23 years after her father's death when she finally asked for it after being married and having had children. She lived in Harean, and the distance was considered impractical for Jenni to work on the field herself. So, she had to share-crop the rice field to the family of her father's relative who lived in Tuan Napitu. Later, she let it to her son, a widower, to till it.
In the recent past Hutagalung women were still hesitant to be married to men from the Toba Holbung and Humbang areas because they usually expected the wife to bring pauseang land into the marriage. A woman called D. boru Siagian, born in 1944, told me that her auntie, a boru Hutagalung, was married to a man from the Tampubolon clan from Balige in the 1950s. Though the auntie had one child from the marriage, her husband divorced her because she did not bring pauseang land into the marriage. This, and other experiences from the neighbouring villages in Silindung Valley, has resulted in some parents continuously reminding their daughters not to marry men from the Toba Holbung or Humbang areas. Ironically, when confronted with the issue of pauseang land, many Toba Holbung and Humbang men of the ruling clans complained that a large number of plots, often the best rice fields, in their areas have been under the control of many in-dwelling clans.

Until the 1960s, a number of women from other areas who married Hutagalung men were granted pauseang land. Many belonged to a rich natal family in another huta where the rice field was located and they usually were the only daughter in the family or only had one brother. Some were considered wealthy because of their ability to perform an adat ceremony to compensate for the pauseang field. In 1955, Marintan Simorangkir (case 4.6.1.d.) received a pauseang field from her wealthy father only after she had given birth to her second baby who, unlike her first one, was a boy. When her father died, her only brother gave another field in 1962. Tumnus Simanjuntak (case 4.6.1.b.) received a pauseang rice field, which was originally her mother's, in Parbubupea in 1966. Her mother had received it from her own father, a member of the Tobing clan. It was a rare occasion that a pauseang field was again transferred as a pauseang. In addition, the transfer was confirmed by a written agreement signed by the original owner (Tobing clan) and Tumnus' father. In 1989, when Tumnus needed some cash for her son's adat wedding, the pauseang field was sold to the Tobing clan, the original owner, not to her father's clan, who was the immediate land giver.

As a consequence of land scarcity, younger generations of women from other areas who marry Hutagalung men are no longer granted a plot of pauseang land by their fathers. Many younger women admitted that as a substitution for pauseang land they received marriage gifts from their parents in the forms of jewellery and other valuables such as cooking equipment, a sewing machine or electronic goods. Some Hutagalung men and women have argued that since many Hutagalung women enjoy as high an education as their brothers, the women should take this as a substitution for the pauseang land. Though people will argue that they give their sons and daughters equal opportunity to pursue higher education, the reality is that the limited ability to finance all the children through higher education always necessitates that families give priority to sons over daughters. Many poorer families admit that they send their sons to high school, but their daughters only up to secondary school. An affluent huta chief who has six sons and two daughters told me that he would send his sons to any university they are admitted to, but the daughters will be supported only if they are admitted to a public university which is cheaper than a private one.
4.4.2. Reciprocal and Economic Land Transactions

4.4.2.a. Dondon (pledge)

The term *dondon* is used in respect to land pledged against money with a right of redemption. Such a transaction takes place often in an emergency situation when a landowner desperately needs money, for instance when an immediate family member dies. Poor elderly people and their families usually hope that any family member die, the death would occur after harvest time so that they do not need to pledge a rice field for the funeral. When an elderly man died just after harvesting, a *huta* fellow remarked: "Diboto i tingkina lao mate. Dang bahenonna tamba mara tu anakkonna!" ("He knew the right time to die, right after harvesting. He did not want to add an economic burden to his children"). Pledging no longer takes place merely out of *adat* consideration. In the period of the Japanese occupation, for instance, simply because of daily necessity, Sondang's father (case 4.6.2.c.) had to pledge his rice field to his *huta* fellow while her husband paid only one chicken egg to get a pledged rice field from a needy family.

Recently in Hutagalung, pledging has also been performed to obtain immediate cash to cover the costs of emergency medical services for family members, school tuition fees or financial needs, including the necessary bribery money to apply for salaried jobs in governmental positions. In the situation of a dire emergency, quite often a rice field is pledged for very small sums of money or is left in pledge, notwithstanding the gradual increase in the value of land and its yield. The reason for this, apart from kinship and affinal relationships, friendship, etc., is that the pledger prefers not to borrow more on his/her land than needed to avoid possible difficulties in redeeming it. In daily conversation, the owner of the rice field still refers to the pledged land as "our field".

A *dondon* transaction is frequently a woman's affair, rather ironic since Toba-Batak women do not have ownership rights to land. A needy family usually would send a senior woman (usually the wife) to offer the rice field for pledging to the person with cash. Since pledging is always associated with a family emergency and the need for cash, there is a tendency that many rice fields get pledged to any villager who can instantly provide cash. In each *huta* in Hutagalung there is always a family or two who have extra cash available for that purpose, the so called *parhepeng*. The senior women of the family would have great power to decide whether a transaction should take place. They are usually families with salaried jobs such as civil servants, teachers, healthcare workers, midwives and private employees. These families do not necessarily belong to the clan of the *huta* chief. Some of them belong to an in-dwelling clan. However, a *huta* chief who is also a cash-owner is highly respectable. This is also the reason why one prefers to pledge a rice field to those who always have cash rather than to close family members who are penniless.

Since pledging involves a kind of debt relation, it is likely that the owner of the land
is in a somewhat inferior position. It may happen that, because neither one’s kin or affines have been disposed to help, one gets into great financial difficulty and is finally compelled to surrender the land permanently and unredeemably, dondon pate, to the pledgee. If the pledgee wants to have the money back and to return the land, then he/she could request that of the pledger. Although the pledger is not obliged to comply with the request, an ill-hearted pledgee may develop different strategies to maintain full control over the pledged rice field. Several times I overheard a pledgee making intentionally loud remarks to some debtors encountered on the street: "When are you going to redeem your land? Are you sure you can make it? I can't wait until you say the final word (that the rice field will be mine)." Such remarks are enough to embarrass even the toughest pledger into finally agreeing to the permanent sale of the rice field.

4.4.2.b. Dondon Pate (permanent sale of land)

The inability to redeem a pledged land (dondon) usually leads to the land being permanently sold (dondon pate). It is quite common that after about eight years the landowner would tell the pledgee, thus the money lender, the status of the land. The pledger may then say whether he/she will still try to redeem the land or will allow the pledgee to keep it permanently. If he/she allows the land to be kept permanently, then the pledgee would usually be asked to pay some more money to the pledger to indicate the permanence of the transaction. With the increasing need for cash in Hutagalung, dondon and the subsequent dondon pate have become frequent occurrences. There were a number of plots which initially had been pledged but later acquired the status of sold land. The older generation of the villagers are aware of the fact that the national government introduced a law in 1960 that in theory effects pledge transactions quite dramatically. Section 7 of the law No.56/1960 mentions that after an uninterrupted period of seven years, a pledged land should be returned to the original owner regardless of the amount of money having been borrowed by the owner. In 1964, Land Reform Courts (Pengadilan Land Reform) had been established by Law No.21 of 1964 to deal with conflicts arising out of the implementation of the Basic Agrarian Law. They did not function well and were officially abolished in 1970 (Law No.11 of 1970). Some of the villagers complained that in 1964, because of the imposed state law, they were forced to return the plots of land which were held under dondon pate.

The socialist ideal that a pledged piece of land should be returned to the original owner after a period of seven years seems to be out of line with the Batak notion of fairness expressed not only by the money lenders but also by those who have had their land pledged against a sum of money in Hutagalung. Indeed, Section 7 of Law No.56 of 1960 had been devised to meet the situation on Java where poor people often had to pawn their property or land and later were not able to redeem it. However, on the outer islands pawned land is usually taken by people who do not have enough property of their own for subsistence farming (Benda-Beckmann 1979:420 note 75). Thus, in other areas in Indonesia, such regulations were rejected because they contradicted adat values (for West Sumatra see F. von Benda-
Beckmann 1979:212-213). The socialistic law is no longer operative. However, when this idea of justice was reiterated by NGO activists, the same remark against returning the pledged land was widely expressed among the Batak. In 1985, on celebrating the 125th anniversary of Christianity in Batakland, one of the topics discussed at the local church level was the significance of "jubilee year" in people's daily lives. The Bible states that after fifty years everything should be renewed: debt should be nullified by the money lender and pledged land be returned to the original owner. This idea was immediately rebuked by many. The opinion of a man in Hutagalung who lost his land under a dondon pate transaction represents this wider concern: "We should be thankful to those people who have given us their money to borrow. If not for them, many of the huta fellows would not have been able to send their children to higher education. Many others would have died because they did not have money of their own for medication!"

There is also the situation that a permanent sale of land transaction is made at once without a prior pledging. This is called jual beli (an Indonesian term for buying and selling). In Hutagalung, a transaction of this nature is preferably conducted within the close family circle. A request by a man from an in-dwelling clan who wanted to buy a piece of rice field owned by a Hutagalung was rejected, not by the owner, but by the owner's sibling. Ama Lambas Hutagalung (pseudonym) once desperately needed some cash to pay for his son's education. He wanted to permanently sell his plot of inherited rice field. Unfortunately, after some months of trying it seemed clear that there were no Hutagalung members in the village interested in buying it. When a man of an in-dwelling clan suddenly did want to buy the rice field, Ama Lambas' brother who lived in the city did not agree. In the end it was the migrant brother who felt obliged to buy the rice field. He gave Ama Lambas the amount of money he was supposed to receive from the in-dwelling clan member. Because the brother lived in the city, he allowed Ama Lambas to use the rice field without any direct payment or compensation in return. In the end, Ama Lambas acquired the money he desperately needed, lost his ownership over the land, but still kept his use-rights on the same plot of land.

But Ama Lambas did not receive the land without any reciprocal obligation. Although he did not have to directly share the yield with the brother who lived in the city, he had to take over his brothers' adat familial obligations in Hutagalung. At different ceremonial occasions Ama Lambas had to bring rice or money on behalf of his brother for certain obligatory adat contributions. Ama Lambas did not mind. On the contrary, he took it as a logical consequence of his brother's helping him to retain the family's control over the rice field.

Although it is considered preferable that the permanent sale of land take place only between members of marga Hutagalung, the sale of land to non-Hutagalung has occurred, especially of those plots of land located along the main asphalt road. Some Hutagalung members have expressed concern over the tendency of other members to sell their housing sites to outsiders. Poltak Hutagalung, for instance, made the following reproach:
Many of the landowners have migrated to the cities. As Hutagalung members they are still entitled to the land. Many never turn up but hold the land in absentee. These people tend to sell the land to outsiders. Some plots along the main road have been sold for government office buildings. In Kampung Melayu, where there is a small concentration of Moslems, the permanent sale of land to total outsiders is most likely to occur. The Hutagalung Moslems do not care any more about the cultural value of land. We cannot do anything about it.

The permanent sale of land is likely to be a subject of dispute among close family members. In April 1997, a marga Hutagalung man together with one of his married sons sold an inherited plot of land which was located by the village road on the side of the HKBP church in Harean. The land was sold to an in-dwelling clan member, Jenni Hutagalung, the widow of a Napitupulu clan member and her son, and paid for in cash. The permanent land sale transaction was signed by both parties before the village head and there was no adat ceremonial meal performed following the transaction. A month after the land was sold, another married son of the original owner expressed his objection on the basis that, as one of the legitimate heirs, he should have been consulted prior to the transaction. The claimant brought his objection before the village head but the village head could not do anything about it because it was the original owner, the claimant’s father, who willingly sold the land to the in-dwelling clan member. Jenni and her son became worried about the status of the land. They asked the original owner to return the money or guarantee that they could use the plot without any disturbance from the other son. The original owner did not return the money but assured Jenni that she should not feel worried. He also advised Jenni to immediately set up a house on the plot to confirm the in-dwelling clan’s ownership. On Monday, 28 July 1997, Jenni and her son, assisted by two carpenters, started to construct a very plain wooden house which was completed within two days. The claimant did not attempt to prevent Jenni from constructing the house, but a severe conflict began between him and his father and brother.

While many of the permanent sale transactions take place locally and without any written documentation, some people have started to register the transactions and acquire a certificate to the land. Mostly these are people who feel threatened about the continuity of their rights. In June 1996, a Hutagalung man bought a housing site for his unmarried, 37 year-old daughter. The father had the land registered under the daughter’s name, just to make sure that the daughter could continue to stay there even after his death. In another case, a son of an in-dwelling clan member had asked for his portion of land inheritance from his father. While the land was passed on as an inheritance, the son of the in-dwelling clan member requested his father to sign a sale transaction as if the son had paid a sum of money to buy the land from his father. Later, the son had this land registered as a plot bought from his father. In this way the in-dwelling clan member tried to strengthen the continuity of his rights over the land. The Hermanus Simanjuntak case (4.5.2.) precisely shows how, in the early 1950s, the request of the members of the in-dwelling clans’ collective support group
to permanently buy an abandoned *huta* and set up their own was rejected simply because the Hutagalung did not want to have their territorial power reduced.

### 4.4.2.c. Bola-pinang (share cropping)

This is a form of contract in which a rice field is transferred temporarily, and the recipient is obliged to cultivate it and hand over a previously agreed part of the crop to the owner. Share-cropping is a frequent occurrence, both among the ruling clan and the in-dwelling clans because in different phases of life, villagers may find themselves in situations where only either labour or land is available. A share-cropping arrangement is usually made between village women who have a lot of trust in each other. This does not necessarily contradict the notion that Toba-Batak women do not own land in strict legal terms since the arrangement is temporary in nature and is still seen as an effort to make the field productive for the family. Typically, rice field owners live in Hutagalung but do not labour in their own fields, either because they have too many rice fields to work, they have other economic engagements, or they are either a single mother or an elderly person. Berman Manik and Riati Hutagalung (case 4.3.4.a.) were an in-dwelling clan family who had too many rice fields to work by themselves. They had their fields share-cropped by a ruling clan member. Tumnus Simanjuntak (case 4.6.1.b.) is a widow of a ruling clan member who is engaged in ulos trading. She had her rice field in Hutagalung share-cropped by an in-dwelling clan member. Tumnus once had her pauseang land share-cropped by her brother because the field was located in her natal *huta* where her brother lived. Unlike those who pledge their rice field, the owner of a share-cropped rice field is considered a lucky and even esteemed person for having the choice of not working the field. On the other hand, the recipients of a share-cropped rice field often perceive themselves to be quite unfortunate and even somewhat exploited by the landowner.

In Hutagalung the proportion of the share varies from 1/3rd to 2/5th for the landowner, depending on the relations between the share-cropper and the landowner and the agreed upon arrangement. While the responsibility of the share-cropper is to till the land, the landowner's responsibility varies from providing the seeds, pesticide and fertilizers to covering the labour costs especially during planting and harvesting. In general, share-croppers feel that they actually do not benefit from the arrangement. But many landless farmers still opt to be share-croppers because they cannot afford to lose their status as farmer. In Hutagalung village life, being a farmer, regardless of the type and size of land one has, guarantees that money lenders, both the *huta* internal money lenders and the other Batak people from Tarutung, always trust one

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27 However, there are a number of share-croppers who work on the rice fields owned by migrants, for instance, Lueria Simorangkir (case 4.6.2.g.), Rospine Panggabean (case 4.6.2.h.), and Lasma Sitompul (case 4.5.1.a.). In these cases the migrant landowners still manage to pay a regular visit to Hutagalung and therefore can keep control over the harvest.

28 See the story of Lueria Simorangkir under case 4.6.2.g.
to borrow money\textsuperscript{29}. Although most Hutagalung women earn cash from ulos making, only those who are tilling the land will easily get a loan in times of crises. Moreover, since women have to attend many adat ceremonies especially after harvest, they cannot rely on ulos making alone but must also depend on rice cultivation.

Recently a new form of share-cropping (and also pledging), usually between very close relatives but also between distant ones, has emerged. It has become common for money-lenders to take a rice field as a pledge against a sum requested as a loan and then to give it out on a share-cropping basis to the owner with a condition that the portion of the harvest that must be handed over will serve as the interest. Landowners opt for this arrangement because they do not physically lose the land which is a rather embarrassing situation, while at the same time they can guarantee good maintenance of their land. The money lender then has the right to deal with the land as an owner if the debtor defaults several times on his/her part of the share-cropping bargain. However, the final changing status of landownership should still be made public through a ceremonial meal.

4.4.2.d. Mangongkos (tenancy)

This is a surrendering of the use rights of land and landed property for a certain period of time for a monetary remuneration. A tenancy arrangement usually applies to the land owned by migrants, although there are cases that residing villagers have their rice fields rented out to huta fellows\textsuperscript{30}. Since it is likely that the migrants cannot always control the harvest of the land, they prefer tenancy to a share-cropping arrangement. Under tenancy, the landowner is secured a certain amount of annual rent from the rice field while the tenant bears the risk of the harvest. The risk sharing may be an important factor for the villagers when it comes to choosing between share-cropping and tenancy arrangements\textsuperscript{31}.

Both parties in a tenancy arrangement situate themselves on a relatively equal footing because there is no debt involved in such a transfer. In Hutagalung, members of both the ruling clan and in-dwelling clans may act as a tenant, but the in-dwelling clans are restricted in letting their land to others in a tenancy arrangement. Berman Manik and Riati Hutagalung (case 4.3.4.a.) are an example of in-dwelling clan members who did not dare to rent their vacant house to others because of such a restriction. Villagers may also rent a rice field in other neighbouring villages, usually owned by relatives. Sondang Hutagalung (case 4.6.2.c.) rented a rice field in a

\textsuperscript{29}Money lenders were all Batak, from Hutagalung and other surrounding villages and especially Tarutung, the capital of the district. Chinese and Javanese money lenders did not exist in Hutagalung.

\textsuperscript{30}See, for instance, Riama Napitupulu (case 4.6.2.1) and Lasma Sitompul (case 4.5.1.) who rented a rice field owned by the village head.

\textsuperscript{31}Hermanus Simanjuntak (case 4.5.2.) initially had to pay a fixed annual rent for the three plots of rice field regardless of the amount of the annual yield. Later he asked the owners to change the arrangement to a share-cropping one, so that the cost, risk and yield are all shared with the owners. In another case (4.6.2.h.) Rospine Panggabean and Sahat Simanjuntak opted to rent rather than share-crop a rice field because they could guarantee enough labour and good harvest each year.
neighbouring village, Aek Siansimun, owned by her husband's uncle, a marga Tobing.

Since migrant landowners cannot always control the rice field, it is important for them to have trustworthy relationships with the tenants. Indeed, there is always a risk for the migrant landowner in Hutagalung to either lose control over the land, or have the rice field's boundary gradually reduced each year by the tenants or by the owner of the bordering rice fields. With the introduction of big tractors to Hutagalung in the 1970s, the problem of keeping the traditional rice field boundary has arisen. The big tractor easily destroys the traditional boundary marker, parbalokan, made of big wooden sticks planted in the four corners of the rice field.

The practice of letting a house to others under a tenancy arrangement has become more frequent in certain parts of Hutagalung. Civil servants or teachers from other areas rent many of the houses located along or near the main road. The houses are usually owned by Hutagalung migrants. However, in the inner parts of Hutagalung renting a house is less common. If a house is vacant, the raja huta in principle may let the house to people who need it without any financial return. Those who rent a house usually are in-dwelling clan members who have a salaried job. Sahat Simanjuntak, Rospine's husband (case 4.6.2.h.), worked as a low-level clerk in a bank and he once rented a house in Purbatua. A Tobing clan couple, who are both teachers, rented a house located in Sosor Tonga-tonga, which was owned by a Hutagalung migrant. The house itself is a permanent one and rather big compared to the average huta houses. Since the Tobing clan member paid the rent directly to the owner who did not live in Hutagalung, and since he and his wife were both teachers/civil servants, the couple could easily be exempted from various adat obligations normally paid by an ordinary in-dwelling clan member. The couple, for instance, was not expected to help in the preparation of adat feasts in the huta.

4.4.2.e. Mangaramoti (custody)

Under the custody arrangement, an owner gives the temporary rights to use and dispose the land to a custodian while the owner is temporarily absent. Putting a rice field or a house into custody is frequently practised. Many of the fields and houses under custody are owned by migrants and I do not find that residing villagers put their rice fields into custody. It is common that a Hutagalung migrant leaves his rice field or house in the custody of a raja huta if the migrant has no brothers, close kinsman or inheritor residing in the huta. The custodian, who usually has had his/her own field and house, is entitled to benefit from the field and house under custody, for instance, by renting them out or letting them be borrowed by others. The only obligation for the custodian is to guarantee that the rice field and the house are easily available whenever needed by the owner. A close kinsman of a deceased person may place a rice field or a house which he has managed for young children at their disposal when they have grown up. With the high degree of migration mobility, it is also common for a marga Hutagalung who has been absent for a long time to retun to the village and withdraw from the custodian the land that had been left in his charge. If a rice field or a house has been under custody for years and the owner wants to take it back, he has to thank the custodian by endowing a moderate sum of money.
4.4.2.f. Maminjam (borrowing)

Borrowing a rice field or a house is a frequent practice in Hutagalung. The rice field and the house may be owned by a migrant or residing villager. A person who borrows a house is called a paisolat. Under the borrowing arrangement, the borrower does not have any obligation to pay rent to the owner but on the other hand, the owner may revoke the right to borrow at any time. Thus, the right to borrow is very temporary in nature and the borrower's position in relation to the owner is, in principle, very weak. Yet, there are many cases where people have borrowed a rice field or a house from a migrant owner for over a decade. This happens because usually the migrant owner and the borrower have very close family ties and because the borrowing arrangement is attached to their other mutual interests. While the borrower may perceive an economic advantage from borrowing the rice field or the house, the migrant landowner may benefit from the assurance that somebody trustworthy is taking care of the rice field or the house and the knowledge that he can regain the rice field or the house at any time.

Some male migrants wholeheartedly let their residing married sisters borrow their rice fields or houses. Hearty Hutagalung (case 4.6.2.b.) borrowed the rice fields and a house from her migrant brothers. In Sosor Tampahan, Mangisi Hutagalung, the widow of Marpaung, borrowed a rice field from her brother. It was actually her mother's pauseang which had been inherited by her brother. Since the brother had migrated, he let her use it without any financial obligation in return. Some male migrants are of the opinion that married sisters would be much less likely to deceive them or lay a claim against them over the land just because of the fact that they belong to an in-dwelling clan. Minar Hutagalung, a single woman in her forties, borrowed a housing site from her brother in huta Sosor Onan Silindung. The brother and his family lived in a house opposite hers in the same huta. She once worked in Medan as a petty trader and returned to Hutagalung in 1982. For the first seven years she lived under one roof with her brother and his family. Minar was an economically independent woman who earned money from selling clothes and cooking utensils on credit. In a ceremonial meal, she asked permission from her brother to use a vacant housing site on which she then built her own semi-permanent house.

In Hutagalung, the borrowing arrangement between residing villagers usually takes place between parents and married children. For instance, there were several cases of Hutagalung married women who had borrowed their parents' rice fields or house. Usually they were living in their natal huta and either were considered very poor, or their aging parents could no longer work or control the rice fields or the house. Riama Napitupulu (case 4.6.2.f.) was very poor. She borrowed a rice field from her parents. It is also becoming acceptable that married daughters, not just sons, and their family live under the same roof with their parents. These people are then also considered a house borrower, paisolat. Sondang's daughter (case 4.6.2.c.) and Sinur Pardede (case 4.6.2.e.) were paisolat in their parents' house. The arrangement where a daughter shares the same house with her parents is usually due to the parents' aging condition and their need for her to provide daily care.
In every *huta* one easily finds quite a number of vacant houses because the owners or the inheritors have migrated. As mentioned earlier, in Hutagalung there are at least 40 houses which have been left vacant by the migrant owners. Rospine Panggabean and her husband Sahat Simanjuntak (case 4.6.2.h.) were *paisolat* who borrowed a house from the *huta* chief without any financial obligation. At one *adat* ceremonial occasion in the *huta*, Sahat was responsible for slaughtering a pig, dividing the meat into different portions as required by *adat*, and cooking the meat with the blood and certain hot spices. Indeed, Sahat’s skill in slaughtering a pig is central in Toba-Batak *adat* ceremonial life. It took him half a day to complete the work which he surrendered without receiving any payment in return. In addition, Sahat’s wife, Rospine also helped to prepare and distribute the food to the guests. Riama Napitupulu (case 4.6.2.f.) was also a *paisolat*, having borrowed a house from the village head. Riama always felt obliged to help the village head to prepare any *adat* feasts performed in his house. During harvest time, Riama would be the first to be chosen by the village head’s wife to help in the field. By being a “house borrower” in the *huta*, Riama could get paid for the labour she rendered to harvest the village head’s field while during the harvest she and all her five children could get free meals prepared by the village head’s wife. More importantly, other *huta* fellows would not look down upon her for being somebody else’s paid labourer because all of the transaction was performed under the label of *adat* mutual obligation.

Some people who borrow a house from a *huta* chief may not be categorized as a *paisolat* at all. Lukeria Simorangkir (case 4.6.2.g.), because of her affinal relation to the Hutagalung over periods of time, was never considered a *paisolat* though she borrowed a house from the *huta* chief. Lasma Sitompul and Regarman Hutagalung (case 4.5.1.), having been acknowledged as Tuan Napitu (missing) lineage, were considered proprietors of Hutagalung land and not a *paisolat*. The actual fact that Lasma and Regarman borrowed a house could not reduce their status from land proprietor to a *paisolat*.

4.4.2.g. *Silehonlehon* (land grant)

As in the case of *pauseang*, a land grant to an individual is already a practice of the past. This is due mainly to the fact that there is no more uncleared communal land to be allotted by the *huta* chief. An individual who wants to have access to land has to seek other means, either by borrowing, renting or buying the land from the owner. Robert’s great grandfather (case 4.5.3.) was an exemplary case of how in the past an individual might be granted a piece of land, *silehonlehon*, by a *huta* chief.

In Hutagalung there are some communal facilities which are built on land granted by the Hutagalung lineages, namely: three Protestant churches, a mosque, two elementary schools and a kindergarten. Because the land is used for the benefit of the local villagers and usually managed by the villagers themselves, there is no obligation to pay rent or to compensate for the granted land. Therefore, the granted land is called *silehonlehon*, literally meaning a donation. While only the ruling clan may render a land grant, both members of the ruling clan and in-dwelling clan may participate in the use and management of the granted land.
In 1898, a Protestant church was built on a plot of land located in Harean, let by members of the Harean lineage to the German Protestant missionaries. Indeed, missionaries were the first alien people to be granted a plot of communal land by the Batak (c.f., chapter 2). Some years later, because of the expansion of Christianity in the area, another plot of land was let to the missionaries, this time by members of the Raja Inaina lineage, to build another church and a school compound in Raja Inaina. The granting of land to missionaries for church buildings and schools enhanced the status of Hutagalung as a progressive area. When the missionary period was over in 1940, both churches fell to the succeeding indigenous church organization, the HKBP, with operations covering the whole of Batakland. However, in 1964, because of friction in the HKBP central leadership and organization, the church located in Harean continued to belong to HKBP while the second became a part of GKPI, a split from the mother church HKBP. Despite the different formal church organizations involved, the actual managers of the churches in Hutagalung were the villagers, from both the ruling and in-dwelling clans, who held the title of church elders or sintua. In principle church membership was open to both the ruling and in-dwelling clans. The same thing applied to the schools, in that Hutagalung children from all clans could study there. In the period of the Japanese occupation, the church-run schools were taken over by the Japanese and later transferred to the government. After that they became public schools. Though the organization which then used the granted land was different from the original recipient, and the managers of the schools were no longer people from Hutagalung, the grant could continue because the function of the land remained the same.

The Hutagalung villagers also granted land for government office construction. There are three district government office buildings in the area of Datu Harean, namely the Office of Manpower, the Office for District Income, and the Forestry Office. The land for the office buildings was granted to the North Tapanuli district government by the Datu Harean lineage members. When in 1990 the Hutagalung four kampoengs (Datu Harean, Raja Inaina I and II, and Tuan Napitu) were merged into one village, and when later a member of the Tuan Napitu lineage was elected to be the head of the united village, a head office was constructed in Tuan Napitu. The land on which this was to be built was owned by the extended family of the village head himself and was granted to the village government. A land grant for government purposes in Hutagalung has always been endowed through deliberation and a ceremonial meal. Because all the land has already been allocated to the different lineages, the immediate owner (the individual or the lineage if the land is not yet divided) receives a minor amount of compensation while the Hutagalung adat elders receive the money that seals the transaction (pagopago).

4.4.3. Gendered Land Transaction – an Analysis

In Hutagalung land transaction is predominantly performed within gender and familial relationships and these strongly characterize the generational and affinal nature of the land transaction. Reciprocal and economic land transactions are
becoming more frequent due to the increasing land scarcity. It seems likely that inheritance and collateral inheritance will persist while pauseang, or the land gift given to women through affinal relationship, will disappear. Land scarcity reduces the likelihood of women gaining stronger access rights to land through adat provisions which in turn lessens the possibility that land will fall under the control of other than the ruling clan. Gender restriction in access rights to land is the foremost and only way to keep the land within the boundaries of the patrilineage. The experience in Hutagalung is proof that growing land scarcity has limited the possibility for women to get pauseang land.

Where the shift of land control to other than the ruling clan has occurred under the adat it has been accomplished in two ways: first, through the honourary and proper adat transaction of pauseang, and secondly, through land grants, silehon lehon. However, because of the severe land scarcity in Hutagalung, neither of these transactions are performed any longer. Still, there are various arrangements that create opportunities for people without land of their own to acquire access rights to land. Through various reciprocal and economic land transactions, women as well as non-Hutagalung men may gain enough room to manoeuvre to get access rights to land. For a woman, this depends on her social investment, economic situation and labour availability. A woman’s social relations developed within the huta may be utilized to gain access to borrow land and a house. Her access to cash may be used to arrange secondary rights to land such as tenancy, or pledging which can later lead to permanent purchase. A woman’s labour may enhance her chances to get secondary rights to a share-cropping arrangement. Therefore, the process of land scarcity and monetization have led in two different directions for women’s access to land in Hutagalung. While the shift of land control to other marga through the adat of pauseang is restricted, many women are using their brothers’ rice field without any formal adat transaction. At the same time, the shift of land control to another clan or entity through economic transaction is no longer rigidly discouraged, although not necessarily promoted, by the adat community. However, even with the possibility of gaining access to land through an economic transaction, many women who do not have sons still constrain themselves from buying any land because of the consequences of a rigid patrilineal law of inheritance.

4.5. MARGA IDENTIFICATION AND ACCESS TO LAND:
MAN AND MALE-DEFINED LINEAGES

Being a man of the marga raja is still considered an important attribute to claim land proprietorship in the marga territory. It gives a man certain rights to live in the huta, at most to set up a new huta as in the example of Waldemar (see point 4.3.3.), and at least to be treated as a co-owner of the huta. A woman married to a marga raja man may also benefit from the patrilineal-based land arrangement. The first case below (on Regarman and Lasma) shows how an ordinary man of the Hutagalung marga, whose ancestor left Hutagalung generations ago and never had contact with
the Hutagalung, is recognized as a descendant of the huta founder. This recognition is followed by the endowment of land by his marga fellows on the man to confirm his status as a co-owner of the huta, and not as an in-dweller.

Unlike a marga raja man, a marga boru man does not automatically have easy access to land, especially when the marga boru man has no direct affinal ties with the Hutagalung. The second case below (on Hermanus and Nursintan) briefly describes the experience of a man and a woman in the category of boru gomgoman in trying to establish their access rights to land. The third case (on Robert and Este) describes a situation in which the boru has resided for some generations in Hutagalung. Robert has inherited some rice fields from his parents and is obliged to maintain the house if he wants to continue his right to the housing site.


Regarman Hutagalung, male, was born into a Moslem family in Sibolga, on the west coast of Sumatra, in 1961. Sibolga was a destination of early Hutagalung migration. Regarman’s family originally came from Hutagalung and had been living in Sibolga for generations. He continued vocational high school (SMEA) in Bengkulu, Southern Sumatra, following his uncle. Later, he became a taxi driver. In 1987, Regarman met Lasma Sitompul. Lasma was born into a Christian family in Sitompul village, two kilometres from Hutagalung, in 1965. When she was three months old she was sent to live with her mother’s brother in Perdagangan, East Sumatra until she was in her teens. After completing secondary school, Lasma started feeling the social pressure, as a woman, to marry soon. She had some boyfriends but never married. Later Lasma was invited by her grandmother’s sister to come to Bengkulu with the hope that she might meet a potential husband. After living in Bengkulu for two years, Lasma met Regarman Hutagalung who proposed marriage. Though as a Christian she initially felt hesitant to accept the proposal of a Moslem man, Lasma finally felt that her fate was to marry Regarman. She accepted the proposal.

Since marrying Regarman meant converting to Islam, Lasma’s mother could not agree with the plan. Therefore, Regarman and Lasma decided to elope, mangalua, which they did with the secret consent of Lasma’s auntie. In December 1988, they went to Sibolga to meet Regarman’s family. They were accompanied by another woman, a relative of Lasma, in line with the requirements of elopement in the adat. While Regarman stayed in his parents’ house, Lasma had to stay with his auntie, the sister of his father or his namboru, until the Islamic wedding ceremony was performed. On 22 January 1989, they took a vow before the tuan kadi, by which they were immediately considered formally married under Islamic Law.

After the wedding ceremony, Lasma moved into Regarman’s parents’ house. The parents had a tract of coconut trees planted by his grandfather but they had never been regenerated by Regarman’s father and had become a waste land. Though Lasma and Regarman could use the land, they did not have the substantial amount of money necessary to regenerate the coconut trees. Regarman was jobless so they had to depend on the support of his parents. Meanwhile, Lasma got pregnant and started to miss her own family. Because Regarman and Lasma had not had an adat
wedding ceremony, they were not allowed to visit the marga Sitompul, Lasma’s natal family. Lasma did not see a future in Sibolga while in her natal village she could farm rice. Therefore, they had to find a way to be able to live closer to her family.

After some time, the couple visited Sitompul to ask for forgiveness, manuruknuruk, bringing a pork cooked in spiced blood for Lasma’s mother. After consuming the meal, the mother asked about Regarman’s family tree, tarombo, since she herself was a boru Hutagalung of the Harean branch. At first the mother thought that Regarman was a close relative of a man known as "Letnan Hutagalung". Regarman went to see him. After studying the family tree, the man was convinced that Regarman was closer to the Tuan Napitu branch. Letnan went to see the village head, a Tuan Napitu descendant, who quickly discovered that Regarman was a descendant of "Raja Mangihuthon". In the family tree of Tuan Napitu, the name Raja Mangihuthon had been erased because he left Hutagalung a long time ago and never came back or informed anyone of his whereabouts. Immediately the village head asked Letnan to invite Regarman and his wife to come and stay with his relatives in Tuan Napitu. When Regarman then explained the family tree to the village head, he was thoroughly convinced that Regarman was a descendant of the missing link in the Tuan Napitu’s family tree.

Regarman and Lasma told the village head that they had not performed an adat wedding ceremony so could not reside with Lasma’s family in Sitompul. Realizing that Lasma was in her fourth month of pregnancy and had very little money, the village head and his wife invited the couple to stay with them. In May 1989 they moved into the village head’s house and stayed for almost five months without any financial obligation. Regarman had to take any minor work in Tarutung to earn a little money. When Lasma was eight months pregnant, the village head decided to let them start an independent household. He performed a small ceremony with a feast meal and gave Regarman and Lasma a permit to occupy an empty house with a small garden located next to his. The wife of the village head gave Lasma a set of cooking utensils, some pandan mats to sleep on and two pillows. In addition, she gave them a month’s living provisions consisting of four kilos of husked rice, a kaleng of unhusked rice, salt, coffee, sugar, cooking spices and salted fish. Following this, Regarman took the village head as his (fictive) parent from whom he started an independent household.

In the past, a newly-wed couple would receive a plot of land of their own to set up a house and a rice field. But land scarcity and the lack of availability of communal land in Hutagalung made it impossible to fully continue with the material aspects of adat panjaean. The house they occupied was originally owned by Regarman’s great-great grandfather. The present owner had migrated and left the house in the custodianship of the village head, who gave Regarman and Lasma use of the house without any financial obligation in return.

A month later, in November 1989, Lasma gave birth to a baby girl. Since Regarman could not find a permanent job, Lasma started selling her jewellery and some of her simple furniture. When the rice planting season was almost over in December 1989, Lasma decided she could not wait until she fully recovered from childbirth. She rented a plot of rice field owned by a huta fellow who was a civil
servant. But after a year, she had to return the plot because the rent arrangement had been criticised by other huta fellows since it was the only plot he owned and he still rented three plots of rice field from others. Later, Lasma started share-cropping, bola pinang, a plot of rice field owned by a huta fellow who was a teacher living in Tarutung. The rice field produced 90 kaleng of rice of which 30 kaleng had to go to the owner. Lasma felt that life had become very difficult after the baby was born. Indeed, during the first two years of their independent life, they had to marsali, borrow almost everything for their daily needs from their huta fellows. It was a rather embarrassing period for Lasma who was a member of the ruling clan but had to borrow from others, including neighbours who were in-dwelling clan members.

Six months after Regarman started an independent household, in 1990, the village head organized an adat ceremony to introduce the Raja Mangihuthon in diaspora to the wider Tuan Napitu descendants. "About sixty families came over from Kolang, Sorkam and Sibolga," explained Lasma proudly. The ceremony confirmed the status of Regarman's family as descendants of Tuan Napitu. By then he was considered a rightful co-owner and no longer a guest. Regarman was recognized as representative of the whole missing lineage of "Hutagalung Raja Mangihuthon". With this recognition, he could take his new huta fellows to his wife's huta of origin, Sitompul. Then the village head told Regarman that he should first fulfil the adat obligation of a proper marriage. Otherwise, they could not partake in any adat ceremony and their newly recognized lineage would not be represented when it came to receiving the share of ceremonial feast meat, parjambaran. The Hutagalung asked for forgiveness from the members of Sitompul because they had taken Lasma without a proper wedding. Then an adat formalization of the marriage called mangadati was discussed. The real adat formalization ceremony took place several months later, after which Lasma and Regarman could freely visit Sitompul32.

In October 1991 Lasma had a baby boy. By that time Regarman had found a relatively permanent job as a local taxi driver and was bringing home a regular daily income. Lasma was relieved and always felt that her baby boy had brought good luck. In 1994 Lasma decided to rent a plot of the village head's rice field. The village head had asked for 20 kaleng of unhusked rice as annual rent but Lasma asked for a reduction to only 15 kaleng instead. Lasma no longer had to borrow for their daily income.

32I also encountered a case where the absence of an adat marriage ceremony was used by a woman to challenge the rights of the deceased man's relatives over the children. Nursintan Hutapea, a Hutagalung widow born in 1929, had four sons and a daughter. One of her sons married a bom Pasaribu and they resided in Medan. After they had three children her son died. A year or two later, Nursintan heard that her daughter-in-law would like to marry another man (a marga Siahaan). Thinking that her grandchildren belonged to the Hutagalung marga, Nursintan requested that the grandchildren be under her custody in Hutagalung. The daughter-in-law refused on the basis of not having gone through an adat wedding ceremony, meaning that the Hutagalung had not paid a bride-price to her family. The daughter-in-law put it clearly that Nursintan may take the children if she (and the wider Hutagalung) paid the bride-price and compensated her for what she had spent on the children since the death of their father. Nursintan could not do anything because she was a very poor woman and her other sons were equally poor.
needs, *marsali*. She now felt quite secure. The relations with her parents were restored. She had a house which was borrowed permanently. In times of emergency she could always ask for help from the village head and his wife, whom she had taken as her own parents.

4.5.2. Hermanus Simanjuntak & Nursintan Gultom (Tg. Marulak, Tuan Napitu)

Hermanus Simanjuntak, male, was born in a remote area of Sipahutar in 1927 and was baptized the same year by Tuan Markus, one of the first German missionaries in Batakland. He completed *volkschool* (a five-year elementary school) run by missionaries in 1940. In 1947 he decided to go to Hutagalung, a harsh and difficult time in the early years of independence. He was motivated by his youthful desire to travel to a better place because, unlike in Sipahutar, the rice fields in Hutagalung were well irrigated. However, in our conversation he was hesitant to talk about what he did in the early years after his arrival. When counter-checking the information with some elderly members of Tuan Napitu, they informed me that Hermanus had become a *pangula*, or bond servant, primarily working the fields of the Hutagalung for some years to be able to meet his living expenses. A *pangula* at that time was considered a very low-grade job, only slightly better than a slave, and slavery had been ardently abandoned by the missionaries and the Dutch.

In 1950, after some years as a bond servant and paying his living expenses to the landowner, he married a *boru* Simanungkalit whose father was the third generation of *marga boru* in Tanjung Marulak. Hermanus' mother-in-law was a *boru* Hutagalung. He expressed his intention to reside more permanently in Hutagalung with his wife. Because he was very diligent, he was endowed with a plot of land for a housing site by his father-in-law. The *Raja Huta* of Tanjung Marulak gave him a verbal permit to set up a house on the land. As a *boru gomgoman*, Hermanus and his wife regularly rendered various services to the *Raja Huta* as a social cost of being a member of *huta* Tanjung Marulak. Hermanus shared his bitter experience of being a *marga boru* with the status of *boru gomgoman* in Hutagalung:

> I remember how difficult it was in the beginning for *marga boru* to live in Hutagalung. Because we resided in their *huta*, we had a lot of social and economic obligations towards *marga* Hutagalung, through which our loyalty to them was always under scrutiny. Whenever they performed *adat* feasts and ceremonies, they would call us to help them prepare the food. We never dared to say no. We also had to help them harvest their fields before we did ours.

Though they were given a housing site, they could not get rice fields for free so they had to rent three plots which needed four-and-a-half *kaleng* of seeds. In the beginning they paid an annual rent of 60 *kaleng* of rice. This was hard for them because the rent always had to be paid even if the harvest failed. So they started *bola pinang* or share-cropping where they had to give away 2/5th of the yield to the landowner only when there was a successful harvest. Under this arrangement, the landowner provided the seeds and cash to pay the labourers for harvesting.
It was not only Hermanus who found it difficult living in Hutagalung. Other marga boru, too, could not stand the harshness of providing constant service to the marga raja. As Hermanus explained:

When I arrived in Hutagalung, I found that some marga boru had been operating a collective support group or kongsi since 1936. The members supported each other economically by renting huge rice fields through dondon with 500 kaleng for annual rent. In times of need, members could fall back on the group and borrow rice without any problem. Therefore, I immediately joined. In 1947, the group members could no longer stand the harsh treatment, especially after what they had done following the village head (kepala kampoeng) election. They planted banana trees in front of our doorstep and in the corners of our rice fields. The message was clear that they wanted us to leave. So, some of the marga boru members wanted to be free of this huta bondage. I was the one who led the group to realize our dream. In 1955 we wanted to buy permanently, dondon pate, an abandoned hamlet, huta na tarulang, on the other side of the river Situmandi and set up our own huta. Though our group was ready to pay 2,000 kaleng rice which was more than enough to pay for the land, the Hutagalung would not allow us to have our own territorial power, harajaon. But since then, they have treated us better because they realized that they could not afford to let us go. In the end we forsook our dream of setting up our own huta. We are quite happy with the present situation.

In the early 1970s, after the couple had had four children, Hermanus' wife, boru Simanungkalit, passed away. But Hermanus still occupied the housing site granted by his father-in-law. Hermanus' youngest daughter was only four years old at the time. In the mid 1970s, Hermanus visited his own huta in Sipahutar to discuss the possibility of getting a second wife. He married Nursintan boru Gultom, born in 1944, from Garoga, a remote place near Sipahutar. Nursintan had already been considered rather old to be single, therefore she accepted Hermanus' proposal. After marriage they returned to Hutagalung where they continued to occupy the house in Tanjung Marulak and worked on the share-cropped rice fields. Nursintan Gultom quickly learnt weaving and started to enjoy her own small sum of cash earned from selling ulos. With the new marriage, Hermanus was considered an alien boru, because the new wife did not have any direct relation with the Hutagalung.

Hermanus did not feel comfortable with his rather lowered status. It is probably this that prompted him to start his own small church congregation which, unlike the Lutheran orientation of most of the congregations in Hutagalung, he claimed to be Pentecostal. He followed a short bible course and, in 1975, became a church minister of a congregation with about eight families as members, and of which only one family belonged to marga Hutagalung who granted the land to the church. In the Pentecostal tradition, unlike that of the Lutheran and other Protestant denominations, it is possible for an ordinary man to become a church minister without attending formal theological training.
In 1995, after twenty years of marriage with Nursintan, Hermanus passed away. Nursintan Gultom had borne no children from the marriage. In her widowhood Nursintan felt very uncertain about her position in Hutagalung and her rights to occupy the house which was actually owned by Hermanus’ first wife. Nursintan had nowhere else to go. Her father had no rice field to share and her natal village was rather remote. Nursintan Gultom was awaiting her fate, depending on the mercy of the Simanungkalit family and her step-children who had migrated to the cities.

4.5.3. Robert Simanjuntak and Este Marbun (Purbatua, Tuan Napitu)

Robert Simanjuntak, born in 1952, lived in Purbatua. His great grandfather came to Purbatua as a guard of the Raja Huta. In the time of colonialism the Purbatua huta chief was appointed a Negeri chief, Kepala Negeri, by the Dutch. It was then quite common for a huta chief to endow land to marga boru in order to gain support in the election for village head (kepala kampoeng) and Negeri chief. Robert’s grandfather was appointed a special guard by the Negeri chief. Along with this, his grandfather was endowed with plots of rice field as a grant, silehonlehon, and a housing site in Purbatua to use as long as he and his descendants needed them. They were then inherited by Robert.

Robert had suffered from polio when he was small and one of his feet was disabled. He was married three times. Both his first and second wives left him (but there were no further stories about the two wives available). He had two children from these marriages. In 1988, Robert married Este Marbun, born in 1962, who came from a poorer area of Hutatinggi, Humbang. They resided in Purbatua with the two elder children. Later, the couple had another three children. Because Robert was rather crippled, he took daily care of the household chores and the five children while Este worked the fields. She was quite happy to have two irrigated rice fields of their own. Her father’s fields in Hutatinggi were not irrigated. Este could also use a plot of dry field located in the abandoned huta because Robert had asked for it from the former abandoned huta dwellers. She used the dry field for vegetables and rice seedlings. From time to time Este would weave ulos although she had very little time for that because Robert was not able to help in the fields. Este Marbun was gradually able to save some money from the rice fields and ulos weaving.

Robert’s small wooden house that had been built by his father was already decayed and almost falling apart. As a marga boru Robert and Este Marbun only had the right to use the housing site for a dwelling, so rebuilding the house was a priority if they did not want to lose entitlement to the site. Robert had asked permission from the huta chief to rebuild the house, panjongjonghon jabu, confirming his intention to continue using the site. Robert and Este gladly invited some of the huta fellows and relatives to attend the ceremony which was conducted on a Friday in July 1997, according to the wishes of the three professional carpenters. However, from Purbatua only the huta chief and another ruling clan member were invited; the rest of the indwelling clans in Purbatua were not. Early that morning, surrounded by the sounds of an overly loud tape-recorder of Robert’s uninvited immediate neighbour, the huta chief opened the ceremony with a Christian prayer and then all the guests helped
erect the four sides of the house frame which had been prepared on the ground by the carpenters. Next, the rice-flour cake or *itak gurgur*, banana and coffee were served. Robert took one rice-flour cake and distributed its flour to the four corners of the house after which all the guests consumed the edibles. Then they continued working until midday when lunch with blood-spiced pork was served. The ceremony made public that Robert and Este confirmed their right to live in Hutagalung. Afterwards, the guests returned home and the professional carpenters continued the work which took another two weeks.

4.5.4. Being marga raja and marga boru – an analysis

Being a male member of a Hutagalung *marga* is of considerable social and political significance in the Hutagalung spatial context. Before formally being recognized as a descendant of Tuan Napitu, Regarman was treated as a close relative by the village head who happened to be a member of Tuan Napitu. Lasma, being Regarman’s wife, could also enjoy the hospitality of the Hutagalung fellows. Regarman’s family tree made the village head, as a member of the Tuan Napitu lineage, feel obliged to receive the couple, whom he had not personally known before. They stayed in his house for five months without any financial obligation. They were treated as his own son and daughter-in-law. The village head helped them to start an independent household according to *adat*. The lack of communal land made it impossible to endow an uncleared plot for Regarman as would have been the usual practice. As a solution, the village head allowed Regarman to occupy a migrant’s vacant house set up by Regarman’s great-great grandfather which had been put under the village head’s custody. The endowment of the housing site was performed through a *panjaean* ceremony to announce the couple’s independent household. Regarman did not have any financial obligation in return. Though he borrowed a house, he was not considered a borrower (*paisolaf*) by his *huta* fellows because he bore the name of the Tuan Napitu lineage, therefore he was a co-owner of the *huta*. Regarman and Lasma understood that they could reside in the house as long as they needed it and that they would not be removed from the house by the village head or by the original owner.

With the recognition of Regarman’s status as a co-owner, and his explicit intention to reside in the village, Regarman and Lasma could start share-cropping a rice field owned by a Hutagalung member living in Tarutung. The share-cropping agreement was made verbally and stipulated that the landowner would provide seeds, fertilizer and pesticides and be entitled to one-third of the yields. Regarman and Lasma opted for share-cropping because they did not have the money to buy seeds, pesticides and fertilizer. This arrangement implies considerable trust placed in the couple by the owner. The couple’s good relationship with the village head made it possible for them to rent a plot of his rice field, for which the amount of rent was negotiable and much lower than usual. The normal annual rent for the plot was 25 *kaleng* of unhusked rice. The village head had asked for 20 *kaleng*, which, on the young couple’s request, was reduced to 15 *kaleng*. Renting this rice field fostered a continual relationship between the couple and the village head. It created a bumper of economic security for
Regarman and Lasma because the couple did not have to pay the rent immediately when they did not have the money\textsuperscript{33}.

Unlike Regarman, Hermanus did not belong to a Hutagalung marga. He had the right to occupy a house in Hutagalung through his deceased wife, boru Simanungkalit, who was a daughter of a marga boru in Hutagalung. When his wife died, Hermanus continued to occupy the house. However, when he got remarried to Nursintan Gultom, the couple was treated as an alien boru because Hermanus no longer had a direct link to the huta fellows. The situation was not so problematic for Hermanus himself since he had four children from his deceased wife. It was more problematic for the second wife, Nursintan Gultom. Nursintan’s access to the present house was dependent on her husband who, indeed, was occupying his deceased’s wife property. The death of Hermanus shook Nursintan’s right as a dependant to occupy the house. The fact that she had not borne children to Hermanus could be used at anytime by her step-children and her in-laws to evict her from the house.

In Robert’s case, although he was a marga boru, his family had been living in Hutagalung for three generations. Robert himself inherited some rice fields which had been granted to his grandfather by the huta chief. In addition, he also inherited the use rights to the housing site. Therefore, unlike Hermanus, Robert had inherited all the property from his father which made his relation to the property relatively stronger. Under these conditions, Robert’s wife, Este, could affiliate herself to these strong rights. Both Nursintan and Este were not the first wives of their husbands but Este’s status in Hutagalung was much better than Nursintan’s. The difference lies in the property status of their husbands. Robert’s property was directly inherited through a generational transaction, while Hermanus’ property was acquired through affinal transaction from the first wife’s family.

4.6. THE POSITION OF WOMEN IN THE MARGA RAJA AND MARGA BORU SYSTEM

The position of a Toba-Batak woman and her access rights to land must be understood in the context of the marga system. Since a marga system is a category of patrilineality, there is no other way to study a Toba-Batak woman’s position and her access rights to land except by examining her relations with her male counterparts. An important phase of life for a woman that determines her strategy in accessing rights to land is marriage. Before marriage, a woman has access rights to

\textsuperscript{33}Regarman’s and Lasma’s relationship with the village head became a source of socio-economic security for the couple. Lasma herself admitted that she was quite lucky to get to know the village head. She explained: “When I was treated in the hospital because of my abortive pregnancy in February 1994, it was the village head’s wife who helped us with the expensive medical cost. In March 1997, the village head also helped my husband to pay a substantial amount of compensation for somebody who was injured in a car accident”. 
her father's land which are normally limited to working the land for the benefit of the whole natal family. Thus, a woman's access rights to land before marriage are closely related to her gendered responsibility and obligations as an unmarried daughter to contribute to the sustenance of her natal family. The nature of a woman's pre-marital access rights to her father's land makes it impossible for her to consider possible long-term undertakings with her father's land. This tendency is fostered by the adat normative notion that patrilocality is the most appropriate and best post-marital arrangement. Only in certain exceptional situations when patrilocality is not possible do other forms of post-marital arrangement become an option. With this normative notion underlying daily social and cultural life, right from the beginning a woman's orientation is to live in her future husband's hutu, outside her own. This implies that a woman's socio-economic status is likely to be perceived through her husband in marriage, and not through her father. Consequently, when married a woman does not think that it is necessary to ask for her father's rice field.

According to Toba-Batak gendered perception, a husband should provide land for his wife because she has brought along labour and reproductive capacity as her contribution to the marriage. The different degrees of a woman's access rights to the land later strongly depend on her capacity to bear children, especially sons. Furthermore, a woman's request for a pauseang land from her father cannot be detached from her particular reproductive capacity to bear sons. Thus, a married woman, regardless of whether she belongs to a marga raja or marga boru, is always haunted by this particular demand because at a later stage in life, the sons normatively guarantee her access rights, especially to her husband's land. This important role of sons for a Toba-Batak woman comes into play especially when the husband dies.

In most cases, a woman follows the patrilocal post-marital arrangement whereby she starts developing her access rights to her husband's land. The status of a marga raja woman is thus ascribed through marriage, followed by the patrilocal post-marital residence. After marriage a woman affiliates herself to the marga of her husband although she is still called the daughter of (boru) her father's lineage. Thus, when referring to a marga raja woman in the spatial context of a Hutagalung village, we talk about the category of a non-Hutagalung woman who marries a Hutagalung man and moves from her natal village to reside in Hutagalung. Initially she is a stranger in the hutu of her husband and has a minor right to access land. She usually shares the house of her parents-in-law where she helps with the household chores and works in their rice fields under the supervision of her mother-in-law. When she has given a sign of pregnancy, she and her husband may create an independent household which implies that she may gradually, in different phases of life, gain even stronger access rights to land.

When referring to a marga boru woman in the context of Hutagalung, we are talking about a category of woman who is married to a non-Hutagalung man and residing in Hutagalung. In relation to access to land, the position of a marga boru woman is more complex. There are two important aspects of boru-hood that affect a woman's access rights to land. First, whether or not the husband has a direct link
to the Hutagalung, either through his mother or paternal grandmother. Secondly, whether or not the woman’s natal family belongs to the Hutagalung marga. Thus, I cluster the different degrees of ties a marga boru woman has with the Hutagalung: a woman as boru, bere or no ties at all, or, her husband as bere or no ties at all. In the context of Hutagalung the term bere refers to a man or a woman whose mother or paternal grandmother is a boru Hutagalung. With this positioning, there are six possible variations of marga boru relations with the Hutagalung:

(1) the woman is a daughter of a Hutagalung while her husband is a bere Hutagalung because his mother is also a daughter of a Hutagalung;
(2) the woman is a Hutagalung’s daughter and the husband has no direct link to Hutagalung;
(3) Both man and woman are bere Hutagalung because their mothers are boru Hutagalung;
(4) the woman is a bere Hutagalung and the man has no direct link with Hutagalung;
(5) the woman is not a boru or bere Hutagalung while her husband is a bere Hutagalung;
(6) both man and woman are not directly linked to the Hutagalung.

Theoretically, a daughter of a Hutagalung who is married to a man whose mother is also a daughter of a Hutagalung, has the strongest claim to land among the marga boru in Hutagalung. In the second rank comes the daughter of a Hutagalung who is married to a man whose mother is not a daughter of a Hutagalung. In the third rank comes a woman who is not a daughter of a Hutagalung and married to a man whose mother is not a daughter of a Hutagalung. While the marga links of a husband and wife play a crucial role, it is the different phases of life of the woman that determine her ability to develop increasingly stronger access rights to land in Hutagalung. This, as mentioned earlier, depends very much on her reproductive capacity to bear sons. Thus, analyzing access rights to land of the wife of a marga raja and marga boru in Hutagalung would deepen our understanding of the complex nature of woman’s access rights to land among the Toba-Batak. This allows us to make a comparison between the access rights to land of women belonging to the different status groups based on wifehood under the Toba-Batak kinship structure in a concrete spatial context. The cases below, which are clustered into marga raja and marga boru women, demonstrate how a woman’s status in the marga system, her different phases of life, her reproductive capacity and her many-sided relationships with the Hutagalung fellows, could determine her opportunities and strategies for different degrees of access rights to land in a Hutagalung village. The oral life-property histories below try to demonstrate the circumstances under which a wife of a marga raja and marga boru may or may not acquire strong access rights to land throughout her life course.
Next to harvest, paying the debt

A pile of dishes to do after an adat ceremony
4.6.1. Marga Raja Women

4.6.1.a. Mundi S. (Datu Harean)

Mundi S. (pseudonym) was born in the neighbouring village in 1953. She finished elementary school but her father did not have money to pay for secondary school. Thus, she had to help her parents in the field during the day and make ulos in the evening. Mundi S., who was the village beauty, met several men who wanted to marry her. However, only in 1980, when Mundi was 26 years old, did she accept the marriage proposal of Mabo Hutagalung (pseudonym), born in 1921, a widower with five children who were around her own age. The couple, whose age difference was 32 years, got married in 1980. Since Mabo was a Moslem, Mundi had to follow her husband's religion, and therefore converted from Christianity to Islam. Mundi's natal family was not very happy with her choice.

By the time they got married, Mabo had been retired from the government civil service for four years. He received a monthly retirement allowance. Three of Mundi's step-children were married and lived in separate houses, cultivating their own portion of rice fields. Therefore, in the beginning Mundi had to share the household with the other two step-children. One by one they also got married and moved to separate houses. In due time Mundi gave birth to four children, the eldest born in 1982 and the youngest in 1993.

Mundi's husband was quite ill throughout their married life. So besides having to take care of her four children, she had the obligation to attend to her husband continuously. Because of this she could not perform activities far from home, meaning that she could not work on her husband's rice fields. Mundi actually had wanted to rent the rice fields out to other huta fellows. Yet since her step-sons were living in the same huta, she did not feel comfortable letting the rice fields to others. Under these conditions, her eldest step-son, who was a village functionary, took the rice fields away. Therefore, in order to get extra income, Mundi concentrated on making ulos at home while attending to her husband and children.

In 1996, when her youngest son was only three years old, Mundi's husband passed away. Since Mundi could not read and write properly, she asked her eldest step-son to help her secure her widowhood's pension. Unfortunately, the step-son deceived her and, instead, used Mundi's signature to withdraw the monthly widowhood pensions for his own benefit. Mundi was very disappointed and felt betrayed by her step-son who, according to Mundi, should have been grateful for her taking care of his ailing father. However, Mundi felt that she had actually been supporting herself economically throughout the marriage. She could make beautiful and expensive ulos and earn a good profit from which to live. Mundi threatened her step-son that she would leave the huta and take her four children along. Moreover, Mundi frightened him by saying that she and her four children would convert to Christianity. Mundi asked help from the village head who advised her on how to get the pension back. Her approach seemed to be working because, by the time I left the Hutagalung village, the step-son had stopped interfering with her widowhood pension.
4.6.1.b. Tumnus Simanjuntak (Huta Godang, Raja Inaina)

Tumnus Simanjuntak was born in Parbubupea in 1921. After completing elementary school, volkschool, she got married to a Hutagalung man at the age of twenty. Her husband was a policeman who, because of his work, had to rotate to different towns in North Sumatra. After almost ten years of marriage, Tumnus gave birth to their only son. Tumnus' father, Simanjuntak, who was a wealthy farmer, was very happy to have a grandson. In 1966 he decided to bestow upon Tumnus a rice field located in Parbubupea. The rice field was granted in a ceremony, marsipanganon. After the ceremony was completed, the land transfer was confirmed by a written agreement, signed by her father and her mother's brother or Tulang. Indeed, the rice field itself was her mother's pauseang from marga Tobing. Tumnus' father, Simanjuntak, was himself a marga boru in Parbubupea, the huta of marga Tobing. Tumnus would talk about her father as a man who treated his sons and daughters equally. Yet Tumnus' three other sisters had been granted a pauseang much earlier than she, in the early 1950s, soon after they had each had their first baby.

My father had to be assured that our marriage would last for long before he gave me a rice field. My uncle, Tulang, who was the original owner of the rice field also thought the same. They were a bit worried that my husband would leave me because I did not bear a baby. So when our only son was born, my father and Tulang were convinced that our marriage would last long. Indeed, I was very happy to have a son and a pauseang rice field.

A year after they got the pauseang, in May 1967, the husband died at the age of fifty. In November 1967, Tumnus and her son returned to Hutagalung where the husband had inherited a house and a rice field. On behalf of her son, she could inherit and use the house and the field. Tumnus share-cropped the land out to a marga boru and made an arrangement through which she received 17 kaleng of unhusked rice each year. She also received 20 kaleng of unhusked rice from her pauseang rice field in Parbubupea which was share-cropped to her brother. In addition, she received a monthly widowhood pension.

As her son got bigger, the income was no longer enough to support his education. Tumnus started to sell ulos to Sibolga once a week. She would collect ulos produced by women in Hutagalung. Since there were always more ulos than demanded locally, she fulfilled an important economic function and enjoyed a superior position over many Hutagalung women. Because of this, she could send her son to a Maritime Academy in Jakarta. In 1987, at the age of 66, Tumnus stopped her trading activities for health reasons. By then she had some bank savings. In 1989 Tumnus sold her pauseang rice field to the son of her mother's brother, a marga Tobing. So the rice field was returned to the real, original marga owner. With the money she could perform a proper adat ceremony for her son's wedding. Indeed, it was her ultimate adat obligation towards her son. He now had a job and lived in Jakarta so she was released from the burden of providing for him.
4.6.1.c. Dame Sihombing (Huta Dame, Harean)

Dame Sihombing was born in Bahal Batu, Siborongborong, in 1944. Her natal village was poor and rather remote. Her father had two plots of dry rice fields and a garden in which he planted pineapple. In 1963, when she was 19 years old, she was married to a Hutagalung man after which she moved to Hutagalung. The husband worked as a horse-cart driver and she cultivated her husband’s rice field inherited from his parents. In the beginning Dame was regarded as a backward woman because she could not make ulos. Her in-laws and neighbours looked down upon her because she originated from an area where many seasonal farm labourers, pangula, in Silindung came from. She was considered unintelligent and lazy for not being able to make ulos, and thus not bringing cash into the family. At that time ulos weaving was considered a woman’s natural talent in Hutagalung because every woman there could do it. It was in Hutagalung that Dame started learning to weave ulos.

After years of marriage, Dame did not get pregnant and became subject to constant humiliation by her in-laws. They harassed her by repeatedly saying in public: "Loja do mamiaro boru-boru na so marianakhon. Tagonan do mamiaro babi. Ai molo babi do dipiaro, mintor godang do anakna!" ("It is useless to have a woman who cannot bear children. It would be better to rear piglets instead, because pigs breed quickly"). When her youngest sister-in-law delivered her first baby, the harassment increased. While breast-feeding the baby, the sister-in-law insulted her, saying: "Bereng ma ahu on. Boi do ahu marianakhon. Ai molo ho, holan penteon tingki ma. Andigan do dibolonghon ho!" ("Look at me. I am able to give birth to a baby boy. But you, you can only wait for the time when they will throw you away!").

Dame and her husband started consulting a number of medical doctors and traditional healers in east Sumatra. Although they earned a lot of income from horse-cart driving, ulos making and rice farming, they could never save because of the various infertility treatments. They became very poor, exhausted and indebted. They sold their rice field to a family member. In the early seventies, the income from horse-cart driving started to decline because of the proliferation of modern vehicles. Feeling guilty for having spent enormous amounts of money for the unsuccessful medical treatments, Dame once asked for a divorce but her husband refused.

Fourteen years after being married, in 1977, Dame gave birth to a baby girl. She was very happy about it. Three years later, she had a boy and another boy in 1983. This made her satisfied. Her in-laws no longer harassed her. Some years later, Dame’s husband passed away, leaving her with a house, a plot of rice field and some unresolved debt. Though Dame was very sad about his death, she still considered herself fortunate to have been able to give birth. Her self-esteem before the wider Hutagalung family was restored. She could now proudly join the various adat ceremonies as a complete woman. In reality, it was her sons, not her husband, who could give her genuine protection in the huta. She was confident that she could continue staying in Hutagalung and working on her late husband's rice field. She said that now she only had to work hard to provide for her children and pay the debt.
4.6.1.d. Marintan Simorangkir (Parserahan, Raja Inaina)

Marintan was born in the neighbouring village, Simorangkir, in 1926. She attended a girls’ school (Meisjesschool) run by missionaries in Pearaja. In 1944, during the Japanese occupation, Marintan was married to Tahi Hutagalung who was the same age. She immediately followed her husband to Hutagalung. Marintan’s husband inherited some rice fields from his father. Indeed, his grandfather had had huge plots which he divided among all his children including his daughters. Between 1920 and 1922, Tahi’s grandfather allotted a plot of rice field to each of his three married daughters (one married to marga Sianipar, and two to marga Panggabean). So, all Tahi’s aunts from his father’s side received a pauseang rice field.

Marintan’s father also had huge rice fields in Simorangkir. In 1946 Marintan asked her parents to give her a pauseang rice field. Her father refused because she had not yet had a baby. In 1949 Marintan gave birth to a girl. Once more, she asked her father to grant her a pauseang. This time the father refused because Marintan had only given birth, unfortunately, to a girl. When in 1954 a boy was born into the family, Marintan again put her request to her father. Her father delightedly agreed. In 1955, Marintan and her husband performed a feast meal ceremony and gave the father a sum of money, pisopiso, in exchange for the rice field.

Marintan happened to have only one brother who lived in Simorangkir. When Marintan’s father died, her brother inherited all the plots of rice field. However, Marintan’s brother felt obliged to share the inheritance with his only sister. Therefore, without having to request it, Marintan received another pauseang field from her brother in 1962. Marintan and her husband again had to perform the same feast meal ceremony, and paid a counter-gift of about two kaleng of husked rice. Marintan was happy with her situation. She considered herself lucky to have received two pauseang rice fields from her own parents while she also has access to her husband’s huge rice fields in Hutagalung.

4.6.1.e. Mutiara Pardosi (Sosor Tampahan, Raja Inaina)

Mutiara Pardosi was born in 1939 in a remote and poor village in Garoga. In 1960, when she was 21, she got married to a Hutagalung man and then lived in Hutagalung. Mutiara’s husband did not like working the fields. After three years, Mutiara and her husband decided to try their luck and migrate to Bandung, West Java. Mutiara became a petty trader in Bandung and she was able to own a small shop next to her house. Unfortunately, Mutiara’s husband became a heavy gambler that she eventually had to close her shop down. In 1976, when they already had ten children and the youngest was two years old, Mutiara’s husband died. Mutiara tried to live in Bandung for two more years. Then she moved to Jakarta with all the children, following her brother. Mutiara sold cookies in the market but the income was never enough for the family.

In Jakarta, some of Mutiara’s in-laws advised her to return to Hutagalung where there was a family house and two irrigated rice fields she could use. Mutiara thought that it was a good offer since the cost of living in Jakarta was unbearable and it was
not possible to live in her natal village, Garoga. In 1980 Mutiara decided to return to Hutagalung with seven of her younger children. The three elder children stayed with her in-laws in Jakarta. She then occupied a very modest one-room 2.5 metres x 3 metres wooden house with a zinc roof. With the verbal consent of her brothers-in-law, Mutiara could also use two plots of rice field, which were originally owned by her deceased father-in-law but had not yet been divided. Mutiara became the only one from her husband's family to reside in the huta, therefore she did not have to worry about sharing the rice fields. She and her daughters quickly learnt weaving so that they could earn regular cash every weekend. Later, one by one the children migrated to the cities and stayed with relatives. In the mid-1990s Mutiara only had three of her youngest children around. Her elder children sent her, though irregularly, remittances from the cities.

4.6.1.1 Marga raja women – an analysis

The starting point for a woman to develop a more permanent right to access land is the moment she marries. Who a woman marries, whether he is a bachelor or a widower, matters. Mundi S (case 4.6.1.a.) was married to a much older widower, a retired civil servant, who already had some married children. Because her husband was constantly ill, in practice it was her step-son who took over the position as head of the wider family, meaning that her step-son was entitled to control over the rice fields even while her husband was still alive. In reality, even though they were married Mundi had no access at all to her husband's rice fields. She had to weave ulos and be dependent on her husband's pension in order to provide for herself and her own children. Indeed, a marriage between an old widower and a younger woman is often used as a disguised gender- and age-based slavery practice for the benefit of the patrilineal family. While the step-children were released from the demanding task of caring for their ailing father, Mundi was excluded from the benefit of her husband's rice fields. Whenever a husband dies, the widow's fortune is always at stake whether or not she has children. When Mundi became a widow, she did not receive any rice fields while her step-son attempted to grab the widowhood pension to which she was entitled.

Marrying a bachelor, although it does not necessarily increase a woman's opportunity to get access to land, at least reduces potential hazards in relations with the step-children. After marrying a bachelor, a marga raja woman automatically has the right to work her husband's family land. The need to secure and maintain her access to her husband's land is a constant issue. While good relations with the in-laws are necessary, her ability to bear children, especially sons, is of ultimate importance when

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34 This statement is based on careful observation among the wider Toba-Batak society. Many women who are married to much older widowers often experience similar or even worse things. The worst is when these women, especially those who are childless, later become widowed themselves. In 1995 in Hutabarat, for instance, a childless widow was deposed by her step-children following the death of her husband who had been ill for years.
it comes to the continuity of her right to access the land. It is common that a married man is given a plot of land and/or housing site as a *panjaean* to start an independent household only after his wife's first pregnancy. Thus, for the first fourteen years of marriage, Dame Sihombing (case 4.6.1.c.) felt insecure about the continuity of her access to land in Hutagalung because of infertility problems.

The economic status of a woman's natal family may affect her ability to maintain her esteem and prosperity before her husband's lineage. When their position in their husband's *huta* was at stake, both Mundi S. and Dame Sihombing could not ask for help from their poor natal families. Being born into a rich family and having good ties with her natal family may later enhance a married woman's access to land. Tumnus Simanjuntak (case 4.6.1.b.) and Marintan Simorangkir (case 4.6.1.d.) are lucky to have been born into rather rich families. After marriage, and also when a woman has delivered a baby, a well-off natal family is likely to grant her a *pauseang* field. The land gift by a father to his daughter is always related to the daughter's fertility. After finally giving birth to her only son, Tumnus' father gave her a rice field. A married woman's access to her father's land is not just related to fertility, but a specific fertility which sustains her husband's patriliny. Thus, the presence of a son is a pre-requisite to a *pauseang*. Marintan’s first request was turned down by her parents because she had not had a baby. Her second request was also turned down because she had only had a girl. It was only when she delivered a boy that her parents finally bestowed upon her a rice field. Marintan’s good relations with her brother resulted in his endowing upon her another *pauseang* field.

Ascribing the status of *marga raja* is especially important for a migrant woman when she becomes widowed. Access to a deceased husband's family land can always be claimed by a widow if she has children and stays unmarried. Immediately after the husband died, Tumnus Simanjuntak (case 4.6.1.b.) brought her son back to Hutagalung. Without any problems, she received a house and a rice field as her deceased husband's portion of an inheritance. Mutiara Pardosi (case 4.6.1.e.) is a good example of how a destitute migrant widow can claim access to land in her deceased husband’s *huta* even though the deceased husband himself had not had the land. This social security aspect of being a *marga raja* is particularly important for a woman to be able to survive in her widowhood.

**4.6.2. Marga Boru Women**

**4.6.2.a. Jenni Hutagalung (Huta Dame, Harean)**

Jenni Hutagalung, born in 1930 in Saurnatinggi, Sibolga, was the last to ever receive a *pauseang* rice field from Hutagalung. Jenni’s father left Hutagalung for Sibolga in the early 1920s. He became a Moslem and married with a *boru* Panggabean. Jenni had an elder sister, but no brother. When Jenni was six months old, her mother passed away. Jenni’s father returned to Hutagalung and occupied his inheritance share in *Huta* Bagasan, Tuan Napitu. He received a housing site plot and two plots of rice fields. Jenni’s father became Christian like most of the other *huta*
fellows. After a while Jenni's father got remarried to boru Naibaho, but the couple did not have any children.

Thus, Jenni spent her childhood in Hutagalung. She and her sister were often subject to humiliation because she did not have a brother, ndang mariboto. The huta children would always remind her of this. "There was never a single day I did not weep. I looked at myself as worthless. As a small girl I always felt worried that my father would die and then the huta fellows would treat me even worse!" recalled Jenni. Jenni also remembered the sad story of another brotherless woman. There was once a Hutagalung couple who had three daughters. When the daughters were adult and one was already married, they came to their mother and told her to allow their father to take another wife in the hope of having a brother. Jenni recalled their suggestion to the mother, saying: "Ai molo ho uma, tung sonang be roham ala nga adong be haml borum dohot helam. Alai anggo ham, hantis do na so mariboto il" (Mother, you should be happy because you have daughters and son-in-law. But for us, your daughters, it is indeed very painful to have no brothers!).

Jenni's father passed away in 1948 when Jenni was 18 years old and her sister was already married. Before dying, Jenni's father asked his younger brother who lived in Pangururan, Samosir, and his sons to come to Hutagalung. On his deathbed he asked his nephews three times: "You are my sons, aren't you?" And then continued, "If you are really my sons, then please take care of your two sisters. They are your sisters, indeed (ai ibotom do nasida). And you have to remember that you have sisters!" In reply the nephews promised Jenni's father that they would take care of their "sisters".

After the burial, there was a discussion about the inheritance. In principle, the house and rice fields were inherited by Jenni's uncle. With his permission, Jenni and her step-mother continued to stay in the house and worked the two rice fields. Ten years later, in 1958, Jenni got married to a marga Napitupulu, born in 1919, who was a second generation marga boru in Huta Dame, Harean. It was her father-in-law who came from Lobutolong, sub-district Sipahutar, to Hutagalung and married a boru Hutagalung. Jenni moved to Huta Dame. Her natal house was then occupied by her step-mother who also worked the rice fields. When some years later the step-mother died, both the house and rice fields were returned to Jenni's father's relatives. Jenni then worked her husband's inherited rice fields in Huta Dame and made ulos.

In 1970, when Jenni had already had sons and daughters, she and her husband approached Jenni's cousins. Jenni asked her cousins to endow her with a plot of her father's rice fields as to fulfil the wishes of her father on his deathbed. The cousins eventually agreed that Jenni be given a pauseang field. A certain day was then set to perform the pauseang ceremony. Jenni prepared the ceremonial meal for her father's relatives, and gave them ten kaleng of rice as a counter-gift. Since that day Jenni could use the rice field for her own benefit. In the beginning she let it be share-cropped by her father's relatives in Huta Bagasan. Later, it was tilled by her son, a widower, who was allowed to occupy the house of Jenni's deceased father.
Collected leftovers of the harvest from the rice fields of the huta fellows
4.6.2.b. Hearty Hutagalung (Datu Harean)

Hearty Hutagalung (pseudonym) was born in 1951. She was the third of her parents' nine children. In 1965, when she was 14 years old, her father died. Hearty then lived with her mother, a boru SM, and four brothers and four sisters. Her father's death changed the fortune of the family. In 1962, her eldest brother had been sent to her mother's brother in Pekanbaru who worked for an oil company, because her mother could no longer pay his school tuition fee. In her early teens Hearty had to make ulos to help her mother provide for her siblings. The mother's burden was slightly reduced when Hearty quit secondary school and the eldest sister got married and moved with her husband to a neighbouring village in Panggabean. In 1970, the mother passed away, leaving them with a house and three plots of rice field. Hearty's mother once told her that one of the fields was originally her grandfather's pledged rice field which had been redeemed by her father.

Being the eldest living in the house, Hearty had a very tough time providing for her six siblings, especially because her youngest brother was only six years old. The orphans, however, kept on living by themselves in the parents' house. Hearty did not want her eldest sister to stay with them because it might disturb her marriage. She took over the responsibility of the six siblings. The orphans, according to Hearty, received hardly any substantial help from Hutagalung fellows. Rather, some of her deceased mother's valuable possessions, like jewellery and cloth, were grabbed by them which only added to her grief.

Hearty organized her siblings to work the fields while she continued with ulos making. Fortunately, her maternal uncle who had a good job in an oil company in Pekanbaru quite regularly sent them money. One by one Hearty sent her three brothers and a sister to live with him. The orphans were registered as his own children, therefore they were entitled to receive child benefits from the company. While rebuking the behaviour of her paternal uncles, Hearty was thankful for the generosity of her mother's natal family. Hearty's sister who managed to continue her studies in Jakarta got a good job in a bank and sent money to renovate the house. Her brothers, thanks to the kindness of the maternal uncle, later had salaried work.

In 1976, an uncle took the redeemed rice field away, claiming that it was his share of inheritance. The uncle argued that he was the one responsible for the property of Hearty's father because none of Hearty's brothers had married while Hearty was only a woman and also unmarried. Hearty was very upset because the other huta fellows did not support her in contesting the uncle. Three months after the rice field was taken away, Hearty eloped with Tumpal, born in 1950. Her husband came from the neighbouring village. He worked as a bus driver. When they were married, Hearty still had four teen-aged sisters to take care of. In the beginning, Hearty resided in Tumpal's huta. Two years later, Hearty and Tumpal decided to move into the house in Hutagalung to take care of her younger siblings. They had to go through adat manuruknuruk, asking for forgiveness, and then perform the adat formalization of their marriage, mangadati. After the ceremony they were allowed to stay in Hutagalung. They worked the two plots of rice field left by Hearty's parents.
In the course of time all the sisters were married and the couple lived with their five children.

In 1986, Hearty’s husband lost his job as a bus driver. A year later, an earthquake struck Silindung Valley. The couple moved to Pekanbaru upon a relative’s invitation. They were not happy in the new place. Hearty could not get cotton thread to weave ulos nor could they get any rice field. The husband was not satisfied with driving a small bus since he had a SIM B, a license to drive a super big bus. In 1990, when his license expired and lots of procedures and money were required to have it renewed, the couple decided to move back to Hutagalung. When they arrived back, one of the huta fellows claimed that Hearty’s father had borrowed a plot of rice field from him. The fellow wanted it back. Hearty and her husband did not dare to contest the claim. Hearty bitterly remarked:

My husband and I only borrow the house and rice fields from my brothers who are away. It was my four brothers who should have inherited my parents’ property. My brothers are the rightful owners of the house and rice fields. As a marga boru, I feel that it is not appropriate to argue about the status of land with the marga raja Hutagalung. It is my brothers, as Hutagalung members, who should claim the rice field back. I do not have the right to make a claim.

The migrant brothers did not want to claim the rice field back. They could not expect the support of their uncles which is why they did not want to return to Hutagalung. Hearty then worked the only remaining plot borrowed from the brothers. With the money from selling ulos, Hearty share-cropped two plots of rice field from a Hutagalung fellow whose wife was a boru SM, the marga of her mother. Through her good relations with the boru SM, who was regarded as her own auntie, Hearty could get access to Hutagalung’s rice fields.

4.6.2.c. Sondang Hutagalung (Datu Harean)

Sondang Hutagalung (pseudonym) was born in Hutagalung in 1924. She completed volkschool when she was about 15 years old. Her father had big plots of rice fields in Hutagalung which made for a nice childhood. In 1942 Japan occupied Indonesia. Life became very tough. Soon, the brutality of the Japanese soldiers became known to the villagers. They robbed the villagers of all their valuables including rice and cattle, chicken eggs, fish, fruits, vegetables, ulos and jewellery. Sondang said that some young women she knew were brutally raped by the soldiers. She remembered all the villagers being in a panic. Husbands would hide their wives and daughters. Her father also hid her mother and herself in different places. While in hiding, women certainly could not work in the fields or perform daily activities. Economically, life was very difficult. Sondang’s father had to pledge some of his rice fields.

Later, a rumour spread that the Japanese soldiers would only rape young and unmarried women. It was in that period that many young women in Silindung Valley
were married off to any man, often a total stranger, without a proper adat ceremony. By that time Sondang was hiding in Huta Baginda, the huta of marga Tobing. Under fear of being raped by the Japanese soldiers, she was married off to a man called Saut (pseudonym) whom she had not known before. Sondang heavily cursed the Japanese occupation period which had forced her parents to beg a total stranger to marry her. She also expressed her disappointment at having an improper wedding, mauhepe, no bride-price, and no banquet or ulos. The husband was born in Huta Baginda, also in Silindung Valley, in 1920. His father was a marga boru there. After marriage, the couple lived with her brother-in-law’s family in Huta Baginda. She did not feel comfortable living there because she had no valuables to contribute. When Sondang was in her fourth month of pregnancy, the brother-in-law wanted them to be independent and offered the couple a piece of land to set up their own house and a plot of rice field in Huta Baginda. Though Sondang would have liked to have stayed in there, her husband insisted on moving to Hutagalung.

Sondang and her husband then lived with her parents in Hutagalung. In 1944 life had become extremely difficult for most people. The exchange price for goods and food was very unstable. Many would sell out their entire rice field, dondon pate, in exchange for only one chicken egg. This, though unbelievable, was the real price during the Japanese period when food was very difficult to obtain. At that time her husband managed to buy, impermanently, dondon, a plot of rice field, paid for with only one egg. When the Japanese soldiers left, life went back to normal. Sondang’s husband started to work as a horse-cart driver, transporting people and farming products from remote locations around Hutagalung to the weekly big market in Tarutung. During the PRRI rebellion, around 1950, Sondang and her husband set up a simple house on a plot of garden owned by Sondang’s father and moved in there.

By the time they moved in, Sondang had two married brothers who lived in Hutagalung. One of them had his rice field pawned during the Japanese occupation. Her husband helped him to redeem it. After some time Sondang and her husband made a request to her father to give them the plot of garden on which they had set up the house. In a ceremonial meal, the father gave the garden as a pauseang. According to Sondang, the ceremony was attended by her father’s siblings and some marga boru. The two married brothers were also present on that occasion. Sondang was aware that the pauseang gift had reduced her brothers’ share of land inheritance. As a courtesy, she and her husband helped to pay the cost for renovating the brothers’ house. Sondang rented another plot of rice field in Aek Siansimun, a nearby village, owned by a marga Tobing. They paid an annual rent of 16 kaleng of unhusked rice for the land. By then Sondang and her husband had three plots of rice field to work and with this they could live a proper life. Years later, Sondang and her husband had savings enough to buy their own rice field.

In the 1960s Sondang’s father died. The two brothers started to question the pauseang status of the plot. Their objection was invalid and Sondang and her husband could prove it by referring to the Hutagalung fellows who had attended the pauseang ceremony. But her brothers began intimidating Sondang’s family. It went on for almost thirty years. Her husband’s horse, which was essential to their family
economy, was found dead. Sondang suspects her brothers of having poisoned it. Once hundreds of chicken and several pigs were also found poisoned; again she suspects her brothers. In her grief Sondang wished: "Ai untabo do naso mariboto!" ("It would have been much nicer to not have any brothers!").

Sondang had four sons and a daughter. All her sons left the huta to find salaried job. They did not like staying in Hutagalung as marga boru. Sondang's daughter, who worked as a self-employed dressmaker at home, got married to a man who worked as an unspecified low-paid labourer. Sondang and her husband lived with the young couple and their baby in Hutagalung. In 1989, the rice field bought impermanently during the Japanese occupation was redeemed by the owner. Later in 1994, because of aging problems, Sondang returned the rice field she had rented from the marga Tobing. She kept the pauseang garden and asked her daughter to cultivate vegetables on her behalf. Her daughter actually wanted only to make dresses and to lease the garden plot to others. But Sondang did not dare to have it rented by somebody else. She always felt pressure to prove that the pauseang garden was hers by constantly putting direct labour into it.

In March 1996, Sondang and her husband decided to have the problem settled. They invited their huta fellows, some elder fellows who had attended the original pauseang ceremony and the two brothers for a ceremonial meal. Sondang's husband explained the intention of the ceremonial meal: that they would like their huta fellows to fix the pauseang status of the housing plot and garden by signing a letter of acknowledgement which had been prepared by Sondang's husband. The two brothers did not want to sign it. Instead, one brother said before the guests that he would tell his children about the fixed status of the land as a pauseang endowed to Sondang by her father. Since the two brothers did not want to sign the letter, the guests were also divided about whether or not to sign and all felt hesitant.

Their failure to sign the acknowledgement made them somewhat embarrassed to consume the meal. Some said that they did not want to eat. However, Sondang said that she, as a boru, had prepared the meal for them and that it was necessary for them to eat in order to properly end the meeting. In the end they all consumed the meal. After it was over and most of the guests had left, one who had been present at the original pauseang ceremony approached Sondang's husband and informed him that he would be willing to sign the acknowledgement. He said that just in case there were to be a dispute about the pauseang status, Sondang could use his signed acknowledgement as proof. Yet, he continued, Sondang and her husband should keep this a secret and use it only as a last resort. Though Sondang accepted this condition, she was not satisfied with the whole result.

4.6.2.d. Rotua Tambunan (Huta Pulo, Raja Inaina)

Rotua Tambunan was born in 1958. Her mother was a boru Hutapea. Rotua's father, Tambunan, was initially married to a boru Hutagalung who died after she had two daughters and a son. Thus, Rotua's father was a marga boru over there. Tambunan's mother, or Rotua's grandmother, was a boru Hutagalung from Huta Pulo. Rotua's grandmother had two sisters but no brothers. Because of her brotherlessne-
ss, the grandmother received a pauseang rice field located in Huta Pulo from the Hutagalung, consisting of a housing site and a plot of rice field. Rotua then occupied the house and the rice field since her only brother had migrated and the other two sisters had moved to their husbands’ huta.

Rotua had been married to Barita Mangunsong from Porsea since 1984 but had no children. They had tried various traditional methods to treat their infertility problem. They had spent a lot of money on it. Fortunately, according to Rotua, the traditional healers told them that it was her husband and not Rotua who had the problem. She was thankful to have resided in Hutagalung, in her own father’s house. "Had I lived in my husband’s huta in Porsea, I would have long been ousted by my in-laws for not bearing any children!"

Rotua made ulos to earn extra income. She always felt it was important to have own income although her husband had quite a good income as a bus driver. Nevertheless, she did not want to buy land or set up her own house. She would rather stay in her father’s house and work her father’s rice field which she borrowed from her migrant brother. "I am afraid that when I die, my husband’s relatives would take all my property away. Moreover, it is not guaranteed that my husband will stay forever in marriage. Who knows what is to come? Isn’t it easy for a bus driver like him to be influenced by evil?"

4.6.2.e. Sinur Pardede (Huta Purba, Tuan Napitu)

Sinur Pardede was born in 1957. Her father was the fourth generation of marga boru in Purbatua. Sinur was married to a man of marga Simorangkir in 1983 and since then had lived in the neighbouring village, Simorangkir. Her husband was a local mini-bus driver who followed the short route from Simorangkir to Tarutung. He earned just enough money to meet the family’s basic needs. Sinur could not do much to earn extra income because she was very busy with her three small children. The first year after getting married she had a girl, the third year she had a boy, and the fifth year another girl. In 1988, only six years after marriage, Sinur’s husband died in a car accident. Because she did not have money, her in-laws paid everything for hospital care and the funeral, for which she was grateful.

Being a relatively young widow of 31 years old, Sinur felt obliged to stay in Simorangkir with her in-laws. Although they did not suggest it, Sinur was worried that she would not be given custody of her children if she ever left. She had to work hard in the rice fields of her mother-in-law. Two years later, she was given a rice field as part of her husband’s allotment. As a relatively young person, she felt that the in-laws put too much of a burden on her to perform wider family obligations. "My in-laws controlled me a lot while giving me no financial support." It was not easy for her to be a widow in her late husband’s huta. One day, Sinur had to work in the field and left her three children at home with her in-laws. When she returned she found her youngest daughter, by then almost two years old, in critical condition. She had fallen off the stairs and broken her backbone. Since then Sinur’s daughter was never able to hold her back straight again and became disabled.

Sinur was very sad but could not blame her in-laws. She just had no power to do
so. However, she realized that her relations with her in-laws had come to the lowest point. Sinur started visiting her own mother, Lukeria, in Hutagalung to release her anguish. The visits occurred more often because her mother provided her the necessary psychological and financial support. When later Sinur's mother completed the construction of a new house in Hutagalung, she asked permission from her mother to be allowed to move in with her three children. Sinur took her belongings to Hutagalung bit by bit until finally she took all her children in 1992.

Since her moving to Hutagalung, Sinur was not allowed to get the share of the rice field in Simorangkir. The relationship with her in-laws almost totally broke down. They took away the rice field even though Sinur kept on arguing that her son was a legitimate Simorangkir heir. She was very bitter. Sinur then worked on her mother's share-cropped rice fields. She stayed in her mother's newly constructed house and was registered as a resident of Hutagalung. Indeed, Sinur was in a rather low category of boru, namely the daughter of a daughter or boru ni boru, without rice fields or a house of her own. She only had her labour to work in the field and to make ulos. But she did not mind. Her children were kept well in Purbatua and she could always fall back on her mother in times of contingency. However, in 1995 Sinur's mother was disabled as the result of a stroke. Then Sinur had to take care of her ailing mother while doing the house work and field work alone.

4.6.2.1 Riama Napitupulu (Lumbantongatonga II, Tuan Napitu)

Riama Napitupulu was born in Hutagalung in 1954. Her father was a son-in-law or boru na hinela in Hutagalung because he married a Hutagalung woman. Riama's parents received a pauseang rice field from Hutagalung soon after they had their first child. Riama completed high school (SMA) in 1973 but she had to stay home afterwards because she could not continue her schooling or find a salaried job. Riama helped her parents in the field and at home. Because her mother had taught her to weave ulos, Riama provided the family with regular weekly income. However, she never had the chance to save some money for herself. Life went on and Riama started to feel bored living under her parents' roof. In addition, she felt that she was getting older but could not find a man who wanted to marry her.

When she was almost 30 years old, she got married to Noswerbin Tambunan, born in Sidagal in 1950. A high school graduate, he worked in an oil exploration project in Pekanbaru, in the province of Riau. Soon after being married, Riama followed her husband to Pekanbaru. She was shocked to learn that he earned very little money as a low, blue collar worker. They had to pay a lot of money to rent a shabby shelter in town while food was not cheap. Riama's daughter was born in Pekanbaru in 1984, making their economic situation and life much tougher. Riama missed the support of relatives and friends in Pekanbaru while her husband was always busy in the mining project. When Riama was about to deliver her second baby, she and her daughter went to see her parents in Hutagalung. Riama delivered the second child there safely and only returned after four months.

When returning to Pekanbaru, Riama took with her a set of weaving equipment. Her mother gave her a package of cotton thread, enough to make eight ulos. After
she had used all the materials, she realized that it was not easy to get the same supplies in Pekanbaru. So, she could not continue making ulos. After her third child was born in 1988, Riama tried to persuade her husband to move to Hutagalung, but he refused to live in a huta as farmer. They started to quarrel about it. In 1991, when their financial situation was totally in ruins, they moved back to Hutagalung, just several months before Riama gave birth to their fourth child.

Riama and her family first stayed with her parents. They could not pay a penny because they were totally broke. Some months after the fourth child was born, fortunately Riama was given permission by the village head to occupy an empty house next to his. She did not have to pay rent for such a simple house, sized 3 metre x 4 metre. In addition, Riama was allowed to rent a plot of rice field owned by the village head. The field would produce 40 kaleng of unhusked rice from which she had to give 12 kaleng to the village head. Now Riama could start a new life. She made two ulos every week from which she earned about Rp. 13,000 netto weekly. In 1993, Riama could borrow her parents’ rice field which provided them with 25 kaleng of extra unhusked rice.

The couple could have rented more rice fields in Hutagalung. However, Riama’s husband did not feel comfortable working as farmer. He wanted to find a salaried job. In February 1994, Riama’s husband got a job as a seed planter at the Indorayon Company. His work was to clear the forest and plant new eucalyptus seedlings which required spending weeks in different forest areas. Therefore, Riama’s husband could only visit her once a month for two or three days. Because to earn a living he was almost always away from home, he was not able to put aside money for his family. Riama’s husband had to spend all the money he earned for board and lodging at the work site. Though Riama missed her husband a great deal, she found the present situation much better than the previous one. She was still poor, but she could always somehow fall back on her relatives in Hutagalung.

4.6.2.g. Lukeria Simorangkir (Huta Purba, Tuan Napitu)

Lukeria Simorangkir was born in the neighbouring Simorangkir village in 1915. She completed volkschool, a five-year elementary school, in Simorangkir. When she was 22 years old, she got married to a man of marga Pardede who lived in Hutagalung. Her husband’s family originally came from Parlombuan, sub-district Sipahutar, and had resided in Hutagalung for three generations. Lukeria’s mother-in-law was a boru Hutagalung. By then Lukeria and her husband had become the fourth generation of marga boru. The couple was allowed to stay in a simple house owned by a Hutagalung. They did not pay any rent for the house because it was just not the common practice at that time. They only had to maintain and make necessary improvements to the house since it was in poor condition. They were quite happy with the arrangement. Her husband used to work as a clerk in the sub-district office. Every month they always had some cash and a small ransom of rice as income. They did not bother much about not having their own house or rice field. In order to have additional income, however, Lukeria share-cropped, bola pinang, three plots of rice field from a Hutagalung who lived in Siantar. The rice fields would produce 150 kaleng of
unhusked rice from which 50 kaleng would go to the landowner. She also produced ulos. Her income, combined with her husband’s, was enough to sustain a proper life in Hutagalung. In 1976, Lukeria’s husband passed away, leaving her with a small widow’s pension. Since then the income from the rice fields has become important for Lukeria. She started complaining about the share-cropping, "It is not a fair arrangement! We work really hard on the land but the landowner gets one third of the net yields. I could have bought a rice field when my husband was still alive. I was just stupid not to think about it much earlier."

When her husband later passed away, Lukeria became aware of her landlessness. She was worried about the security of her right to stay in the house in the huta. She did not want to go to her deceased husband’s huta of origin, Parlombuan, nor did she have a place to live in her natal huta in Simo-rangkir. When she had enough savings she asked permission from the house owner and Raja Huta to establish a permanent house on the site for which she had to perform a ceremony. Commenting on her landlessness, Lukeria said:

My father had never had enough rice fields to give his daughters a pauseang. Only rich people would do that. However, land belongs to men only. Even if there is an abundance of land, there is no obligation for a father to give land to his daughter because a woman should live from her husband’s rice field. Thus, I would not ask my brothers to give me their small portion of inheritance. I decided to perform a ceremony to be able to construct a permanent house. I do not have a rice field of my own but at least I have a permanent house. Thus, they will not chase me away from here, for sure!

4.6.2.h. Rospine Panggabean (Huta Purba/Lumbantongatonga, Tuan Napitu)

Rospine Panggabean was born in Hutabarat, a nearby village, in 1957. Her father was a marga boru in Hutabarat. Rospine got married to Sahat Simanjuntak in 1976. Born in Kisaran in 1956, Sahat was a secondary school graduate and later was admitted as a clerk in a bank in Tarutung. Since Rospine could not get a plot of land in Hutabarat, they decided to try their luck in Hutagalung where Sahat had an uncle (father’s elder brother). Uncle Alder Simanjuntak, born in 1931, was a boru gomgoman in Purbatua. Uncle Alder, who was a hard-working and by then affluent man, introduced Sahat to the huta chief of Purbatua. He was able to get permission from the huta chief to rent a vacant old house in Purbatua, next to his uncle’s. They were then considered a boru gomgoman in Purbatua.

Rospine started to share-crop two rice fields from a migrated Hutagalung family. Though the yield was not much, she could earn additional income from ulos weaving. Rospine and Sahat stayed in Purbatua until they had five children. Rospine later taught her eldest daughter, Rosma, born in 1977, the skill of weaving. Together they could produce at least two ulos per week and sell them to the market. Rosma was mature enough to do the household chores while her brothers took care of the piglets. This made it possible for Rospine and Sahat to share-crop another plot of rice field. In short, they had enough income to support a proper life.
In 1981, Uncle Alder's wife passed away at the age of 45. Uncle Alder, by then 50 years old, was deeply distressed and started to become indifferent. Two years later he married another woman, Riris Aritonang, born in Hutabarat in 1957. At the time of the marriage, he had lost more than half of his wealth. Unfortunately, Riris, who was 26 years younger than her husband, did not work as hard as Alder's former wife had. Instead, she started claiming that she was gifted with a magical healing power because the spirit of her ancestor dwelled in her. Some would say that Riris was mentally disturbed while others would believe in her healing power.

Although Rospine and Sahat were happy about their economic achievement, their fortune did not please Riris at all. She started insinuating that Rospine and Sahat had used the evil spirit, begu, to accumulate wealth. Riris was able to convince her husband that Rospine and Sahat had become wealthier at the expense of the uncle's fortune. The best way to regain his fortune was therefore, according to Riris, to chase Rospine and Sahat out of the huta. Because Uncle Alder was only a boru in Purbatua, he tried to persuade the huta chief to make such a decision. Unfortunately for Rospine and Sahat, Riris managed to convince the chief that they harboured a dangerous spirit that would steal the huta's wealth. Rospine and Sahat were asked to leave the huta immediately.

That night Rospine and Sahat and their small children moved to a vacant house in Raja Inaina. They stayed there for about two months during which their children were always ill. Riris continued to try to chase them away from this new dwelling. Rospine and Sahat reported the case to the village head, but he was reluctant to interfere in another huta's internal affairs. In the end, he offered Sahat and Rospine lodging in the village's office building located about forty metres from his house. The office building was newly constructed but had never been used. Because there was no need for the office space, the village head allowed Sahat's family to use the building as their new dwelling. Sahat's new neighbour, also a marg boru, Siahaan, allowed the family to share electricity from his house. Thus, Sahat and his family lived in a much nicer, permanent house, without any obligation to pay rent. They became the boru gomgoman in the new huta.

4.6.2.i. Marga boru women – an analysis

I have previously mentioned that there are six possible variations of marga boru relations with the Hutagalung. Jenni Hutagalung (case 4.6.2.a.) is an example of the first variation of marga boru. She is a daughter of a Hutagalung and her husband is a bere Hutagalung. Since Jenni was a child she realized her insecurity in not having a brother. This feeling increased when her father died and she was still unmarried. The discussion on the status of inheritance after her father's funeral verified to Jenni that she was only a temporary user of her father's property. When she got married Jenni left her father's house and the rice fields for those of her husband. Being married to a man who had a direct link with Hutagalung, Jenni could get access to some rice fields. Thus, after marriage Jenni gradually developed a more permanent access right to her husband's land, particularly after she gave birth to sons and daughters. It was only later on when she felt settled that Jenni asked for a pauseang
from her uncle. Because they had a good relationship, the uncle agreed to her request.

Hearty Hutagalung (case 4.6.2.b.) and Sondang Hutagalung (case 4.6.2.c.) are examples of the second variation of *marga boru* relations where the women are daughters of a Hutagalung and their husbands are not related to Hutagalung. The case of Hearty gives us an idea about the importance of a father figure in maintaining access to land. The death of her father substantially reduced the portion of land she could use as well as the degree of security over the use rights she then retained. There are some factors unfavourable to her situation. Her father died when Hearty and her siblings were still young and none of them had been married. They were considered immature under the *adat*, thus could not have direct control over the rice fields. When the mother died, only one sister had been married but none of the brothers. This was used as the basis for the uncle to take over one of the rice fields. Rohani was later married to a man who had no ties to Hutagalung. When the couple was away for some time, a *huta* fellow took over one of the rice fields, claiming that it was originally his own. Hearty and her siblings did not really know the status of the fields because the history of the land, *turiturian*, was commonly the monopoly of the senior male member of the patriline. Having no access to the history, Hearty and her brothers could not contest the *huta* fellow who took over the rice field. As a *marga boru* Hearty completely believed that it was not right to contest the *marga raja*. Her migrant brothers were also aware that they would not get the support of the other *huta* fellows in contesting the uncle.

Sondang Hutagalung (case 4.6.2.c.) is considered quite a complete woman from a Toba-Batak perspective. Her father was alive when she was married, she had two married brothers and a number of sons and daughters who were already married. Her father gave her a *pauseang* on which she built the house and established a dry-farming plot. The only problem for Sondang which adversely affects the security of her access to land lies in her bad relationship with her two brothers. The brothers contested the validity of her *pauseang* land. Because her husband had no direct link with the Hutagalung, her bad relations with her brothers easily cut her off from the social support of *huta* fellows. Whether or not Sondang was to blame for the situation, it seems that the burden to restore the relationship is put more on her than her brothers. As a *marga boru* who receives a *pauseang*, she is expected to behave herself. Another *marga boru* women who confessed that Sondang's *pauseang* was indeed legitimate remarked: "Even if we as a *marga boru* are rightful, we should always pay due respect to the *marga raja*. Sondang is rather arrogant to the brothers. She thinks that because she received the *pauseang* from her father and not from her brothers, she can just ignore them. It's not right!"

The three cases of Hutagalung daughters: Jenni (case 4.6.2.a.), Hearty (case 4.6.2.b.), and Sondang (case 4.6.2.c.) are exemplary in showing that being a daughter of a Hutagalung and residing in Hutagalung after marriage does not necessarily guarantee a strong access right to land. When a *marga boru* woman has a conflict about land with her brothers, it is likely that the *huta* fellows will not dare to act against the brothers. Thus, maintaining good relations with the *huta* fellows and
siblings throughout the life cycle is very important for a woman.

The third variation of marga boru relations can be seen in the earlier cases of the great boru, namely Manik (case 4.3.4.a.) and Pasaribu (case 4.3.4.b.). Both Berman Manik and Nauli Pasaribu have a direct link to Hutagalung because their mothers and grandmothers are daughters of a Hutagalung. At the same time, the two men are married to the daughters of a Hutagalung. The two cases show that under this variation category, the women enjoy a strong access right to land. I happened to not encounter any cases of women in this variation category who have no children. This would have been useful to observe the different life cycle of those women concerning their access to land.

The fourth variation of marga boru relations in Hutagalung, where the woman is a daughter's daughter or bere of a Hutagalung and the husband an alien, can be seen in the cases of Rotua Tambunan (case 4.6.2.d.), Sinur Pardede (case 4.6.2.e.) and Riama Napitupulu (case 4.6.2.f.). Rotua Tambunan and Sinur Pardede are considered the bere because their paternal grandmothers are daughters of a Hutagalung. Riama Napitupulu is considered a bere because her mother is a boru Hutagalung. Rotua Tambunan's father has inherited his mother's pauseang rice fields and a house. The rice fields and the house were then inherited by Rotua's brothers. Since the brothers have migrated, Rotua and her husband are allowed to borrow the rice fields and the house without any financial obligation. Rotua accepts this borrowing arrangement with gratitude because she does not have any children. She assumes that, because they live from her brothers' property, the husband will not dare to mistreat her. Their being childless has made her consciously opt not to establish her own house or rice field.

Sinur Pardede (case 4.6.2.e.) started to develop her access rights to her husband's land in another village. But she became a widow quite early, only after six years of marriage. Because she has children, she has been given her husband's portion of rice field to work. As a young widow she feels uncomfortable living in her husband's village. Sinur totally lost her access rights to her husband's land when she, together with the children, moved to Hutagalung. She could have enjoyed the rice field by letting it be share-cropped while she is in Hutagalung. But Sinur has decided to live with her poor widowed mother. She realizes that she should develop her access to housing and rice field in Hutagalung while her mother, a boru Hutagalung, is still alive so, if the mother later dies, she may continue using the house. Having access to housing is important for her because she can make ulos.

Riama Napitupulu (case 4.6.2.f.) is married to a poor man. They migrated to Pekanbaru and have children. When they could not stand the harsh life over there, they returned to Hutagalung and stayed with her parents for the first few months. Riama was able to borrow a house and rent a rice field from the village head. Her parents allowed her to borrow their field. Economically and socially, she cannot rely on her husband because he is almost always absent from the huta and hardly brings in any money. While she makes ulos and has to take care of the children and the field, she has to bear all the adat obligations alone as a consequence of residing in the huta. Riama has been put in a rather shameful situation because of her
husband's inability to provide for her.

The case of Lukeria Simorangkir (case 4.6.2.g.) is an example of the fifth variation of *marga boru*: the woman has no direct link to Hutagalung while the husband does. Though her husband was a third generation *marga boru*, he did not have a rice field or a house of his own. When the husband was still alive and had a regular income as a civil servant, Lukeria did not perceive the importance of having their own house and rice field. The question of land and housing gained importance when she became a widow. As a wife of a *marga boru*, she is entitled to continue to use the house. To increase her right to access, she has intentionally asked permission from the *huta* chief to build a more permanent house.

The case of Rospine Panggabean (case 4.6.2.h.) is an example of a total alien *boru* where both the man and woman have no direct link to Hutagalung. The case shows that the position of a totally alien *marga boru* (*boru gomgoman*) is rather shaky. They are very much dependent on their good relationships with the *huta* fellows, not only with the *marga raja*, but also with more senior *marga boru* who may have a stronger position than them. Rospine and her husband were evicted from *Huta Purba* because of their bad relations with a more senior *marga boru*. It is by the mercy of the village head that they could stay in Lumbantongatonga in the village head's own *huta*. Their move there has meant the couple has to again start developing relations in the new place. Rospine and her husband, and also their children, are at all times ready to help the village head for various occasions.

4.6.3. The Position of Women, the *Marga* System and Access to Land:

4.6.3.1 a Conclusion

This section has elaborated upon the close relationship between the position of a woman in the *marga* system and her access rights to land. Toba-Batak rules about access to land take form always in the concrete correlation between *marga* identity and its socio-spatial context. In this respect, gender plays an important part in the process of *marga* grouping and the social hierarchy this creates. Thus, in the Toba-Batak socio-spatial context there always exist two *marga* groups: one considered as *marga raja* (ruling clan) and the other as *marga boru* (all the in-dwelling clans). As shown in the previous section, in contemporary practice being a male member of the ruling clan carries social and political significance in the ruling clan's socio-spatial context. Ruling clan identity for a male member is valid ground on which to claim co-ownership over land. This implies that male members of the ruling clan can never be evicted from the *huta* and they are entitled to inherit their father's property and the property of other male members who do not have children. The in-dwelling clans' access rights to land always, in principle, depend on that of the ruling clan. This implies that a Toba-Batak woman's access rights to land must be understood in terms of her relations with her male counterparts.

A woman's pre-marital access to her father's land is closely related to her responsibility and obligation to contribute to the sustenance of her natal family which makes her unable to consider possible long-term undertakings with her father's land.
Thus, usually the starting point for a Toba-Batak woman to develop a more permanent right to access land is the moment she marries. Coming from a landowning natal family and marrying into a landowning family in a patrilocal marriage is the best situation that a woman can have. The need to maintain secure access to her husband’s family land becomes a constant issue for a woman. She has to develop good relations with her immediate in-laws and huta fellows but at the same time has to bear children for the husband’s patri-clan.

A woman marrying a man of an in-dwelling clan faces more intricate relations with the huta fellows. Being a daughter of a ruling clan member and residing in the natal huta after marriage does not necessarily guarantee her strong access rights to land. A woman’s strong access right to land depends very much on the quality of the relationship she has with her brothers. If the relationships are good she may easily obtain and maintain access rights to land. But if bad, whatever the causes may have been, she may be denied the social support of the other huta fellows, through whom her access rights to land can be defended against all other interests. Thus, maintaining good relations with the huta fellows throughout her course of life is very important for a woman marrying a man of an in-dwelling clan. It is likely that among the various categories of in-dwelling clan the one in which both the husband and wife have a direct link to the ruling clan may most easily develop the stronger access rights to land. In contrast, a totally alien in-dwelling clan couple has the weakest access rights to land.

Nevertheless, a woman’s access rights to land, whether she belongs to the ruling clan or an in-dwelling clan are very much dependent on her ability to bear children. A ruling clan woman without children becomes constantly subject to humiliation by her in-laws. She then usually feels worthless because she cannot realize her reproductive potential, the only asset (according to Toba-Batak precepts) which she brings to the marriage. Thus, the very crucial period for a ruling clan woman is the time after being married and before having her first baby boy. Being childless for an in-dwelling woman may have a different significance on her access rights to land. Those women who have a direct relation to the ruling clan and have direct access to their natal family land will likely feel more protected against their husband’s possible maltreatment.

Lastly, as is discussed in the next section, the relation of marga identification and gendered access to land takes its ultimate form in the rules regarding individual land use for one’s grave. In contemporary practice, only members of the ruling clan may situate a grave on their housing site or rice field. Members of the in-dwelling clan, regardless of their socio-economic status are rigidly restricted from situating a grave in the huta of the ruling clan.

4.7. THE ULTIMATE HONOUR - LAND FOR A GRAVE

Prior to the arrival of Christianity, the Bataks had an ambiguous attitude towards the dead. On the one hand, they praised the spirits of the dead ancestors, sumangot
ni ompu, as resourceful spirits which would bless the living with prosperity and fertility. On the other hand, they were fearful of the evil spirits of the dead, begu, which could bring disease and disaster to the living. In addition, the Batak believed that the spirits wandered around by night while human beings lived by day. Therefore, it was common for the Batak to have a separate area for the dead and the living. As they often say, "Asing huta ni na mate, asing muse do huta ni na mangolü" ("The dead have their own hamlet, separate from that of the living"). A village communal graveyard, partangisan hatopan, is usually set up quite far from the huta, often in a hilly and sloping area, so that the spirits of the dead are not able to return to the huta. A grave itself is traditionally considered a valid physical symbol for the descendants' rights to the land site. The descendants of the deceased would build a traditional tambak: burial mounds in which the descendants of an ancestor of considerable reputation re-buried his bones during an opulent joint funerary ritual (Schefold 1988:241). In the past, the border of a clan's territory was marked either by plants such as bamboo (bona ni bulu) and jackfruit trees (bona ni pinasa), or by a tambak, the grave of an ancestor. The ruling clan members, indeed, are therefore called the descendants of the one who has planted the bamboo, sisuan bulu. Before the inception of Christianity, graves used to reinforce the resemblance between one land-holding marga group and one religious and sacrificial community (see chapter 2).

The situation among the Toba-Batak has changed over time. Schefold (1988:240-241) has noted that while traditional Batak houses are disappearing, there are new and typical Batak creations along the main road: these are the enormous tugu, the ancestor monuments built from painted concrete. In the 1950s people began, on the occasion of a secondary burial for the common ancestor of a marga, to construct a tugu for him. Although now communal graveyard still exists, an increasing number of the Hutagalung bury the dead in the huta, right in the foreyard of their house or at the side which can be easily seen by passers-by. Like the situation in other parts of the Toba-Batak area, the number of individual graves in Hutagalung has increased since the 1970s. Many of them have been built at the initiative of successful Hutagalung migrants in order to honour their deceased parents. Sianipar (1973:10) has asserted that Toba-Batak migrants, especially those who are successful, are the prime initiators and sponsors of this individual graves in the ancestral area. The erection of a first tugu in Toba-Batak area coincided with a time of economic growth and great mobility among the Toba-Batak (Schefoled 1988:241). The adat occasion when the deceased is buried, followed by the construction of a concrete grave, is used as a means to publicly make known the success of the deceased according to the Batak precepts, namely having been honoured, prosperous and blessed with descendants, "hasangapon, hamoraon, hagabeon". Consequently, only a handful of selected people can be buried in the huta. While they have to be a member of the Hutagalung by patri-clan and thus the descendants of the huta's land proprietor, they must have

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35 For a complete elaboration on the spirits of the dead among the Toba-Batak see Philip Tobing (1964).
married sons and daughters as well as grandchildren by the time of burial. An *adat* burial requires a lot of money for the three to four consecutive days' feast in the *huta* performed for hundreds of guests, meaning that only rich people can afford it. As an affluent Hutagalung villager once remarked: "The ultimate honour for the deceased is ultimately completed through this generous burial feast. Those who attend the burial feast should be able to get a good impression that even after death the deceased is still able to provide a plentiful good meal for the *huta* fellows!"

The increasing number of individual graves indicates a growing interdependent relationship between the villagers and the migrants. Even when there is no one in the family residing in Hutagalung, there are many successful migrants who would like to have their deceased parents or grandparents buried in Hutagalung. A parent's or grandparent's grave in the *huta* gives the migrants a sense of identity that they still count as part of Hutagalung as Schefold (1988:241) aptly states: "...especially for members living in the diaspora, an ethnic accent is... unmistakeably present. In belonging to a homeland they gain a feeling of emotional security and a practical guarantee of possessing, in times of distress, a spiritual and material refuge to which they can always return". If nothing else, the grave would always give the migrants a proper reason to visit the *huta*. For their part, the villagers who have contributed to the whole process of an *adat* burial ceremony may expect that one day the migrants can also be a source of help for them and their children in times of contingency.

The desire to have an individual grave and secondary burial for a deceased man of considerable reputation is propagated not only among the *marga raja*. Recently, there have been at least two cases where successful *marga boru* migrants have put their request to the Hutagalung members to have their deceased parents buried in the *huta*. Family "TP" had been a *marga boru* for three generations and he had sons and daughters living in the cities. He had a house in Tuan Napitu and a plot of rice field located at the village roadside bordering the church compound in Raja Inaina. Some years after "TP" died in the city, his sons put a request to allow them to erect a grave for him in the rice field. The request was rejected by a Hutagalung deliberation on the basis that "TP" had not had a *huta* of his own. "Dang adong marhuta na mate molo dang marhuta hian tingki mangolu" (If alive one has no *huta*, when dying he/she may not have a *huta* either). On one occasion, a Hutagalung member told me that the request was totally not proper especially because the site was located in a prominent area, just next to the GKPI church and on the roadside where passers-by could easily see it.

The second case is about another three generations of *marga boru*, "TM", in Hutagalung. Mr. TM, who had a big old wooden house on a substantial plot of land, had left Hutagalung for about ten years. He had several married sons and daughters and a number of grandchildren who were financially successful in Medan and Jakarta. Mr. TM died and was buried in the city. After a year or two, his sons came to Hutagalung and asked permission from the Hutagalung to bury the deceased in the house yard. Since the housing site was located in Raja Inaina, the deceased's sons invited all the elders of Raja Inaina lineages. They performed a feast meal for the *adat* elders. However, one of the adat elders, Ama Panangkas (pseudonym) from
Siopat Bahal who had known the purpose of the feast meal, refused to touch the meal. After the meal was consumed by the other adat elders, the deceased's sons expressed their intention to build the grave which was immediately rejected by Ama Panangkas. The other adat elders felt trapped by the fact that they had consumed the meal. Several weeks after the feast meal was offered to the Raja Inaina lineages, the deceased's sons invited all the elders of the wider Hutagalung lineages to ask for their approval. The big meeting took place in the church building in Raja Inaina. Because Ama Panangkas kept on rejecting the plan, the wider Hutagalung adat elders could not approve it. Arguing that the site for the would-be grave was theirs, the deceased's sons were very disappointed with the decision. In the end, the adat elders assertively ordered them to remove their wooden house from the land site should they keep on insisting on the construction of the grave.

The relation of marga identification and gendered access rights to land takes its ultimate form in the rules for individual land use for a grave. In contemporary practice only members of the ruling clan may erect a grave on their housing site or rice field. The in-dwelling clan, whatever their socio-economic status may be, is rigidly restricted from establishing a grave in the huta of the ruling clan. Establishing a grave in the huta has become a new trend especially among migrants. The function of many housing sites and rice fields has changed to that of a grave. The grave has recently been developing into one of the most important symbols for honouring an ancestor. By constructing a grave in the huta, the deceased's descendants' proprietorship right is confirmed. In Hutagalung, a grave in the huta symbolizes the ultimate borderline of access rights to land between the marga raja and marga boru that creates the ultimate symbol of gender-based segregation concerning Toba-Batak's land proprietorship.

4.8. DISCUSSION, ANALYSIS AND CONCLUSION

This chapter has attempted to demonstrate the complexity of the issue of access rights to land in internal village and lineage relations within a relatively normal daily life situation. The adat principles of access to land define the layered social entities that hold the rights to land, the different objects of land relations and also the substance of rights that are held by the layered social entities over different land objects. These adat principles of access to land are permeated by the principle of "first occupancy" and the overriding special rights of the first settlers (c.f., Adeyoju 1976:29). In the context of the Toba-Batak this is recognized by the terms 'sipungka huta' and 'sisuan bulu'. The chapter has proven that gender-based arrangement in accessing rights to land is the foremost and the only traditional way to keep the land within the restricted boundaries of the patrilineage.

The Hutagalung family tree (tarombo) and the story of how the first ancestor occupied the present Hutagalung land (turituriari) which has been handed down orally over generations, are used as a legitimate basis for Hutagalung male descendants to lay claim over land co-ownership in the village. While the essence of Hutagalung
turiturian – in which a Hutagalung ancestor drove out his father-in-law – totally contradicts the idealized vision of harmonious adat kinship relations, nevertheless, it presently legitimizes Hutagalung land co-ownership under the adat. The case of an attempt by a Hutagalung man to found his own huta in the colonial period (see point 4.3.3.), for instance, refines our understanding of how clan membership entitles one’s eternal claim over land. The effort to set up a huta is, indeed, a struggle over both resources and meaning. A recent occurrence has proven how an ordinary male descendant of a Hutagalung lost lineage may acquire access rights to land on the basis of the family tree (case 4.5.1.). Hence, since land co-ownership is a category based on patrilineage and not only on regional boundary, a number of Hutagalung migrants may retain their rights to land in absentee.

The Batak family tree legitimizes the founding of group hierarchy in relation to land in the village, based on common descent and common residence. The two groups are generally called the ruling clan (marga raja) and the in-dwelling clans (marga boru). The distribution of and access to land under Toba-Batak adat are deemed to fulfil the principle of honouring the founder of the huta, therefore augmenting the territorial power or the exclusive prerogative of the ruling clan. Thus, the in-dwelling clans confirm the centrality of the founder’s descendants’ authority.

The interaction between gender and kinship group formation strongly impacts on one’s access rights to land in a specific way. In this regard, kinship relations are treated as a broader system of inequality in which gender is a key dimension. Changes in a Toba-Batak woman’s phases of life significantly determine her access rights to land. Unlike men, women’s membership in the kinship group is ambiguous: they are situated between their natal clan and the clan of their husband. It is precisely because of this ambiguous kinship position that, as the cases show, not all Toba-Batak women are (dis)advantaged in the same way by the existing customary land tenure. Some cases show that a wife of a great boru or boru na gojong may have greater access to land through the husband than does a wife of a landless ruling clan member. Similarly, a man of an in-dwelling clan may not necessarily have greater access to land than that of a woman who happens to be a wife of a prosperous ruling clan member.

Because of the pressure of land scarcity, the basic traditional practice of acquiring land for men through clearing empty land or a forest no longer occurs. This reduces the possibility of men, and consequently of women too, to have stronger access rights to land by simply putting their own individual labour in clearing the bushes or forest as the basis for claiming land. Therefore, what is left as the most common and basic way for men to acquire stronger access rights to land under the adat is through inheritance. For women, the bottom line is that they may have access rights to land through their male relatives, father, husband, son, brother and uncle. In the process of inheritance, thus, almost all plots of land in Hutagalung have been individualized to different degrees. Despite the controls and limitations over the rights to use and alienate land imposed by the adat, however, in reality there are various ways for men and women to access rights to land. The embeddedness of gender, kinship and economic status in the end determines how one is aided and at the same time
constrained in strategizing access rights to land.

The chapter has elaborated different land transactions, hence the ways of accessing rights to land in Hutagalung. Land resources are transmitted through generational and affinal transactions, as well as in other reciprocal exchanges. Concerning women, problems may arise particularly in relation to generational and affinal transfers of land. The ability of a woman to bear children, especially sons, highly counts when it comes to whether she may keep her access to her late husband's land. In this way the biological fact of being barren and unable to bear a son is culturally and ideologically constructed as the weakest point in a woman's life. The attempt made by the state to improve the legal status of women is not easily applied in Hutagalung. Many women who are deprived access rights to land because they do not bear sons, for instance, do not even dare to contest their male relatives. Even her likelihood of obtaining a pauseang land from her father implicitly pre-requisites a woman to first prove her fertility. Married women who have no children are highly aware of the hazard of barrenness. Although the idea of allowing a barren wife to continue working on her late husband's land is becoming acceptable, childless women still face a heavy social stigma. The chapter indicates that, indeed, quite often it is a woman, especially the sister-in-law, who renders the most offensive criticism against a childless woman. In this regard, the notion of solidarity among women does not indiscriminately apply here. Women who are childless or sonless often have to face the problems by themselves in the extended family. Other women in the immediate family of her husband (for instance, the sisters-in-law of the husband) are, on the contrary, the potential beneficiaries of the situation. A woman's childlessness may mean another woman's gaining extra property, either for herself or for her son.

Ironically, while land is given a high cultural value, staying in the village and tilling the land are no longer lucrative. Rodenburg (1977:205) has meticulously talked about this irony among the Toba-Batak when posing a question: "what freedom is working the land?" Access rights to agricultural land are no longer seen as the only important power resource. Having access to cash, labour and non-material goods such as a support network, information, education, market and association with the elites and migrants, are other important dimensions. There are examples of women who abandoned their access rights to land in their husband's huta and opted to live in their natal village Hutagalung because of a comparative advantage offered by Hutagalung. Cash is becoming increasingly important in the village economy. The majority of Hutagalung women have direct access to cash through ulos weaving and relatively easy access to marketing the ulos. This alternative for obtaining cash has selectively defined the importance of land to women in two ways. First, since ulos weaving is a home-based activity, women may not be desperate to expand their access to agricultural land as long as they have access to housing. Secondly, easy access to

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36 Sinur Pardede (case 4.4.3.e.) abandoned her status as marga raja in her late husband's huta and opted to be a bom ni bom in Hutagalung because of the availability of her family's support in Hutagalung.
cash has resulted in them opting for single cropping even though double cropping is possible since modern agricultural inputs are easily available. While land may be exchanged for cash, women who have money may not be encouraged to invest in agricultural land. The availability of labour, indeed, counts when it comes to a woman deciding to maintain or transfer her access rights to land.

The nature of Toba-Batak relations to land requires that one considers linking two features of the social order, conceptually distinguished as the material and ideological (cf. M. Bloch 1975, pp. 205, 211). The Toba-Batak have culturally-specific values which are intrinsic to the definition of what constitutes ultimate wealth in pursuit of "hamoraon, hagabeon, hasangapon". The earlier account on "land for a grave" has demonstrated how certain land use is exclusively reserved for selected members of the marga raja. Members of the marga boru, although they may have abundant land and money, are not allowed to have their grave situated in the huta of the marga raja. Therefore, it is clear that land serves the interest of the marga raja, not only for the present and coming generations, but ultimately for the dead ancestors as well.

While women learn to accept the cultural and ideological construction of the limit to generational and affinal transfers of land, they employ different means of accessing rights to land through the various practices of land transfer. In practice, transfers of land are marked by reciprocal relations between land giver and land recipient which may not necessarily be termed pure economic relations. I have discussed the common practice of land transfers in which women may take part, e.g., pledging, permanent sale of land, share-cropping, tenancy, custody and borrowing. The increase in absentee land has also increased the possibility of Hutagalung women's access to land through such different arrangements. In Hutagalung land may also be granted for certain communal purposes. Therefore, a land grant must fulfill the condition that its use benefits the community, especially the descendants of the huta founder. This supports the argument that, although it is rather gender and kinship blind, an important social goal of customary land tenure is "to provide members of the community with the means for making a basic living" (Lawry 1988:6).

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Reworking the dumped land in Dolok Martalitali with the background of Asahan River and the pulp mill

An elderly woman in Dolok Martalitali after twenty year's struggle for land
CHAPTER 5

LEGAL COMPLEXITY
IN THE COLLECTIVE STRUGGLE OVER LAND

5.0. INTRODUCTION

In the previous chapter, I discussed how, in a relatively normal daily life situation, the actual access rights to land in internal village and lineage relations are devised and showed that in a small-scale rural settlements such as the Hutagalung village, the state law and judiciary system have had little influence over the local people or the ways in which villagers conceptualize their relation to land and each other. This is in spite of the rapid socio-political, legal and economic development at the national level which has led to considerable changes in the official perception regarding landed resources, socio-political control over resource allocation as well as on access rights to land of different local groups and individual men and women. But lately conditions have been changing in the whole region. As mentioned in chapter three, the Toba-Batak have been subject to various and often contradictory state development policies which have accelerated the process of state centralisation and the gradual weakening of local as well as traditional socio-political organizations. In this process, state law manifests more clearly as a dominant force which directly and indirectly confronts the existing adat rules regarding property. Such confrontations dramatically influence and change the ways villagers, peasant men and women, local authorities and private investors conceptualize their relations to land.

In this chapter, I describe and analyze three cases which I was able to investigate in more detail during my research. They involve the taking of local people's communal land by the state and private investors through the granting of operational and exploitation licenses by the central government and higher level authorities which followed from the New Order Government's preoccupation with national economic development. The three cases, which are named after the villages in which they occurred, are selected on the basis of three criteria: the decades of the New Order period they represent, the nature of the capitalist economics concerned and the scale of investment involved. Case one, Dolok Martalitali, arose in 1977 and entails state capital as well as investment of a foreign government and international private companies through the Asahan Project. The scale of the capital involved is considered huge. Case two, Sugapa, started in 1984 and involves very large
amounts of Indonesian Chinese capital and foreign investment through the pulp and rayon producing company, Indorayon. It results directly from the national policy on industrial forestry which aims at gaining foreign exchange (see chapter 3). Lastly, case three, Parbuluan, which emerged in 1990, involves medium-sized Batak/indigenous capital of the ACWG agro-business company. The three cases demonstrate how the process of land appropriation takes place and the extent to which such a process affects peasant men and women, and it involves the elaboration and manipulation of different and often competing principles, rules, practices and strategies of both the state and adat. How do the different sources of capital involved (state, foreign, Chinese and indigenous) matter to the way that land appropriation takes place and in the way peasant men and women respond to it?

For each case I start with a brief description of the involved area, followed by background information. Next is a section on the course of the case including important descriptive details. Each case ends with an analysis divided into two sections, one focussing on the issue of legal pluralism and land struggle and, the other on the issue of gender and land struggle. However, the two clusters of analysis should not be seen in isolation from each other since they are heavily interrelated. After the three cases are described and analyzed, I then draw an overall conclusion on the issue of legal complexity and land conflict.

5.1. CASE ONE - DOLOK MARTALITALI

The Dolok Martalitali case involves state capital and investment of a foreign government (Japan) and international private companies in a highly strategic industry through the Asahan Hydro-electric project (see chapter 3). The case, which started in 1977, entails a very large scale of capital investment, the first and largest one of its kind in the initial period of the New Order Government’s industrial history (Siahaan 1986 and 1996).

5.1.1. Brief Description of the Area

Dolok Martalitali is a huta located in Siantar Tongatonga I, kecamatan (sub-district) Porsea, kabupaten (district) North Tapanuli. The size of the entire area of the huta is about 50 hectares. Though the area is situated only some five kilometres away from the nearest town, Porsea, there is not a proper road leading up to the huta. Local people have to walk about two kilometres until they can find a mini-bus to bring them to Porsea, a journey which they usually take once a week on the big market day. Children go to elementary school in the nearby village, and to secondary school in Silimbat near Porsea. Electricity only arrived in 1996. "We are the last to profit from the electricity provided by
the Asahan project though we were the first victims of the project because our rice fields were used for dumping," was the overall sentiment of the Dolok Martalitali people as expressed in a group discussion held in August 1997.

By the time the case came to light, Dolok Martalitali was inhabited by 38 peasant families, numbering about 190 people. The *huta* had been set up by a *marga* Siahaan, the landowner, whose descendants at the time made up 26 of the 38 peasant families. The rest of them belonged to the in-dwelling clan (*marga boru*), namely Manurung (four families), Marpaung (three families), Napitupulu and Siagian (two families respectively), and one Simanjuntak family. The people of Dolok Martalitali are multi-religious. Some of them are Catholic and Protestant, some are Moslem and many are adherents of the old Batak belief. Despite their multi-religiosity, Toba-Batak *adat* is a strong uniting element in their daily life. For example, land tenure, life cycle rites, marriage (and divorce) are arranged according to the *adat*.

As the name suggests (which literally means "a hill decorated with waterways"), Dolok Martalitali lies bordering the Asahan River which has become a source of drinking water and irrigation for local peasants. The peasants have used the belt of the riverside as wet rice fields for generations, and rice cultivation has been the main source of livelihood for the people of Dolok Martalitali as well as others living in the Asahan River surroundings. The 38 peasant families used to work the 38 hectares of irrigated rice fields located near the Asahan River bank; each family had on average a one hectare rice field. Since the rice fields were well irrigated they managed to have an annual yield for a single crop amounting to 400 *kaleng* (bucket) of rice per hectare. With easy access to water, they could also grow vegetables and root crops or raise fish in between two harvests to get extra cash. With the rice fields the peasant families could maintain their daily life at a subsistence level while sending their children to school. Almost everyday the peasant families could catch fish, particularly *dengke jahir*, from the river or from the waterways and this provided a constant supply of protein. In addition to the rice fields, the 38 peasant families possessed tracts of communal grazing land on which they raised water buffalo. At night they would keep the animals under their traditional tall wooden houses. Early in the morning the water buffalo would be ushered to the grazing area (communal land) where they would stay unattended. It is a common practice that local people would invest any surplus funds in water buffalo which, in turn, would guarantee them a substantial amount of cash in times of contingency.

5.1.2. The Background of the Case

The Dolok Martalitali case emerged in 1977 when the Asahan project was about to start with the main construction of the Siguragura hydraulic power station which was located about 200 metres below the ground surface.
According to the main project's plan, an intake dam would be constructed in Simorea, 23 kilometres away from the river mouth, and a regulating dam would be built in the upstream of Siguragura waterfall, in Siruar. The regulating dam would keep the water level of Lake Toba at 902.5 - 905 metres above sea level. Since Asahan River was the sole drain of the lake, keeping the lake at a constant water level would guarantee a constant flow of water to the river. The project was meant to utilize a continuous water flow of 105.8 cubic metres per second from Lake Toba to the Asahan River. In order to guarantee the flow from the lake up to the regulating dam in Siruar, the river bed would have to be excavated and expanded for 13.6 kilometres from the mouth of the river. The excavation would be carried out both by dynamite explosion and mining vessel. The quantity of excavated material from the river bed would reach a total of 2,300,000 cubic metres of soil and mud, while exploded boulders and big stones would be about 263,000 cubic metres. The river bed in the upstream would expand to thirty metres, while the river mouth would narrow to twenty metres. It was the excavation of the river bed that was the onset of the case. When the excavation was about to begin, villagers along the riverside were informed that their land would be used as the site to dump the mined soil and exploded boulders. It was announced that the government would appropriate the dumped land by paying due compensation to the owners. In 1977, the first excavation took place in Dolok Martalitali where 38 hectares of rice fields were covered with muddy soil and stones, causing the 38 peasant families to totally lose their rice fields. The dispossessed peasants repeatedly protested the work. In December 1980, after three years of protests, the 38 families were relocated to Siomaoma resettlement area in Silantomtonga village, Pangaribuan Sub-district, North Tapanuli District. The resettlement project was to be carried out in three phases. In 1980/1981 it would accommodate 100 families, the victims of the Asahan project from Porsea. In 1981/1982 it was intended for another 100 families from Porsea and 100 local families from Siomaoma. Finally, in 1982/1983 another 100 families from Porsea and 100 more families from Pangaribuan, who were accused of ruining the forest environment in the sub-district, were to be resettled here.

Before the relocation took place, the peasants had been promised by the District Government in a letter of agreement dated on 5 June 1980, that each family would be compensated with a hectare of arable dry field, a hectare of

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1 For details on the Asahan Hydro Electric Project see Siahaan (1986). The information on the physical features of the hydraulic power station rendered here is based on this source.

2 It was hoped that the river bed would drop evenly with the altitude 1:8000, or one metre drop for every eight kilometres of river length. Therefore, the digging would lower the river bed to an average of four metres.

3 Letter of the North Tapanuli District Head/Bupati, dated 5 May 1980, reconfirmed by the North Sumatra Province Governor on 20 May 1980.
arable wet rice field, a house and a restitution of Rp.130.- per square metre (or US$ .30 cents) for the appropriated land. In addition, the local government would provide them with proper public facilities in the settlement area such as a walking path, church, mosque, medical clinic, elementary school and village meeting hall. Many families decided to send their men first to the new settlement area before women and children came over. These men left for Siomaoma with travel money and a three-month's food stock given by their wives. Only a year later all other members of the families followed to Siomaoma. To their disappointment, when the 38 peasant men arrived in Siomaoma, they only received a living compound to lodge them without proper facilities or the promised two hectares of arable land. Indeed, since the resettlement project was hastily prepared, by the time of arrival the local government could only provide each family with a house and a poor dry field without easy access to water, not to mention a proper irrigation system. Every three months throughout the first year of resettlement, the peasant men had to come to Dolok Martalitali to fetch another three-month's food-stock from their wives. When all the family members later moved to Siomaoma, their economic situation became unbearable. Because of the difficult access to water, according to the peasants, three persons became ill and eventually died.

Though each family received a dry-field in the resettlement project, they had problems cultivating it since they were basically experienced only in wet-land cultivation. According to them, the soil condition was poor, access to water was difficult, and raids by mice often occurred. Many of the dry-fields were located in a site continuously threatened with land slides. Unlike in Dolok Martalitali where they could harvest about 400 kaleng of unhusked rice per hectare of wet rice field, in Siomaoma they only obtained 35 kaleng per hectare of dry-field. Ompu Siantar, an elderly woman who moved to Siomaoma, explained:

I received a pauseang from my parents which produced a good harvest. Unfortunately, because the pauseang land was located just by the River Asahan, I lost the rice field in the dumping of excavated soil by the Asahan project. Moreover, I also lost one plot of my husband's inherited rice field. That was why I agreed to move to Siomaoma. But the rice fields we got there were very bad. We soon became very poor. In Dolok Martalitali I could have easily pawned the pauseang land or the other rice field to my close relatives because it is quite easy to find people who would temporarily take the fertile rice fields against money. But when we were in Siomaoma, nobody was interested in taking the infertile land against money.

Therefore, in the beginning, many of them were forced to rent or share-crop the existing wet rice fields owned by the local people in the neighbouring area.

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4 An interview with Ompu Siantar, Dolok Martalitali, 1 August 1997.
in Siomaoma. This substantially reduced their income, and resulted in them being unable to continue sending their children to school. Above all, they mentioned the difficulties in getting access to informal credit because they did not have good arable land that could be mortgaged, and were also cut off from the extended familial networks they used to have in Dolok Martalitali. Later, each family was awarded a certificate to the one-hectare dry land and housing site in the new resettlement area. The certificate entitled the 38 families ownership rights to the specified plots of land which amounted to 404,374 square metres in total. The plots were a "grant of state land", or *pemberian hak atas tanah negara*, made in accordance with the Governor's decision dated 18 December 1981 (No. Sk.593.2.21-159/12/1981). Following registration, the certificates were issued on 24 December\(^5\). The land was registered under the name of each family head according to the Toba-Batak assumption that this was the senior male member of the family\(^6\).

In August 1980, because of the unbearable circumstances, some of the peasant men returned to Dolok Martalitali to inquire about their former rice fields. They found out that the fields had been fully dumped with the excavated materials from the river, but left vacant. They started thinking about re-occupying their former rice fields. When all the families had received the certificate to the one-hectare dry field and the housing site in the new settlement area, they started seriously discussing among themselves the possibility of returning to Dolok Martalitali. One by one they returned, until by January 1983, 35 of the 38 peasant families had done so\(^7\). After re-occupation and making some improvements, the peasants warned the Asahan Project management not to continue disposal of the excavated materials onto their fields. On the 1st of March 1980, the peasants reconfirmed their position by sending a letter to the Porsea sub-district head (*Camal*) containing the following statements: (1) that in principle the rice fields in which excavated material had been dumped

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\(^5\)The certificate was signed by the District Agrarian Office head and/or the head of the Land Registration Section; and by the head of the District Agrarian Office himself on behalf of the District head/Bupati.


\(^7\)The three families who decided to stay behind were those whose members died because of illness. One of the family members was later appointed as a workman for the newly built waterworks in the settlement project.
were still theirs as long as they were not properly compensated for; (2) that the excavation process should be discontinued until compensation had been properly settled; (3) that compensation should be renegotiated.

5.1.3. The Course of the Case

5.1.3.a. Implication of the return

The return of those peasants to Dolok Martalitali posed big problems to the local government. First, the local government was embarrassed that the resettlement project in Siomaoma was a total failure, and that they were seen as unable to fully support the realization of a national development project. Secondly, the peasants re-occupied their former rice fields which, according to the local government and the Asahan Project management's understanding, was the Asahan Project's land since it had been appropriated and compensated for. The local government and the Asahan Project management tried to impede the re-occupation but this only served to flare the peasants' continuing protest. Nine months after the return to Dolok Martalitali and in reaction to their protest, the local government tried several times to persuade the peasants to return to Siomaoma without any results. After a series of tough negotiations, finally a written agreement between the local government and the Dolok Martalitali peasants was made public on 19 October 1983. It stated that the local government would gradually assume the completion of the resettlement project with the construction of infrastructure, irrigation and other public facilities. In addition, irrigated wet rice fields would soon be allocated and improvement of the fields would take place in February 1984.

With such a statement guaranteeing the provision of irrigated rice fields, the peasants agreed to move back to Siomaoma. This was scheduled to take place on 12 February 1984. However, the plan could not be carried out because the local government did not manage to fulfil its promise to prepare the plots of wet rice field in time. A few weeks before the agreed upon time, the plan was one-sidedly postponed by the local government to an unspecified date. Indeed, the existing road and transport system nearby the re-settlement area was not at all ready to suddenly support the re-settlement project. In the meantime, in January 1983, an independent study on the condition of the re-settlement site was conducted by some NGO activists upon the peasants' request. The study found that the Siomaoma re-settlement area was suitable only for tree crops, not for wet-rice cultivation as had been previously suggested by the local government's information.

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8 The independent researchers who were also NGO activists concluded several points: (a) the physical soil condition of Siomaoma had not yet reached a proper stage to be cultivated; (b) the soil was muddy and sandy which was only good for annual crops and tree crops; (c) the soil still required intensive fertilization; (d) the site of the area was at risk of land slides, therefore should not be used for wet rice field cultivation.
The result of the independent research discouraged the peasants even more. On the day they were supposed to move back to Siomaoma, they confronted the local government with the research findings. The peasants announced that they were no longer willing to move back to Siomaoma or to alternative places possibly offered. While promising that they would not disturb the operation of the Asahan Project, the peasants insisted that they would keep working the former rice fields dumped upon by the Asahan Project because they did not have any other option. Therefore, they beseeched the local government to understand their position and to allow them to re-occupy the land without any interference. In addition, they asked the local government to pay them compensation for the wasted two-year period spent in Siomaoma.

The decision of the peasants to reject any attempt to move back to Siomaoma disappointed the local government. They accused the independent researchers of intentionally spreading incorrect information on the physical condition of Siomaoma. To counter the findings, two irrigation officers were sent to improve the water supply system. Later, an inspection team, consisting of university researchers and officers from the public works irrigation section, were sent to counter-prove that a water supply was readily available in Siomaoma. Unfortunately, the new waterways broke down repeatedly and just an hour before the inspection team arrived they totally fell apart, which the team was able to witness\(^9\). There were actually some attempts made to promote some of the positive aspects of Siomaoma's physical condition. The chair of the inspection team, for instance, mentioned that water was readily available and the waterways constructed in the area would be able to supply 2.5 litres per second, as compared to 0.9 litres per second normally found in North Sumatra Province. Although Siomaoma land was poor in nutrient availability, the land had between 5.2 \(pH\) and 6.2 \(pH\) nutrient retention, while wet rice field would normally have only between 5.0 \(pH\) and 7.0 \(pH\)\(^10\). However, the people were not impressed by this positive information and still insisted on staying in their home village. As they said\(^11\):

> Please do not misunderstand us. Do not think that we do not trust the government. But long before the independent research was conducted, we had had enough actual experience ourselves. The land in Siomaoma is not good at all for rice farming. So don't say that we refuse to move back there because of the research findings!

Since the Dolok Martalitali peasants started thinking that they would eventually stay permanently in their original village and not return to

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\(^9\)See the report on the incident by Ramlo Hutabarat in SIB (14 April 1984).

\(^10\)See SIB, 14 April 1984.

\(^11\)Quoted from the daily newspaper SIB (18 October 1984). Similar opinion was expressed by a group of women I interviewed in Dolok Martalitali, 1 August 1997.
Siomaoma, they felt compelled to find ways to survive with less rice field. One of the ways to survive was to start a dry farming plot because they still have an 18 hectare's undivided grazing land. In a deliberation conducted by the Dolok Martalitali elders and attended by all adult members, men and women, the grazing land became individualized and divided among the 35 remaining peasant families so that each family, regardless its clan status, received almost 0.5 hectare to start a dry farming plot. The land was divided among the 35 peasant families with ownership rights recognized under the adat.

5.1.3.b. The question for compensation

Upon returning to Dolok Martalitali, the compensation issue specifically came to the fore in the overall process of land appropriation by the Asahan Project. In 1979, the district head had formed a Land Pricing Committee to establish the basic land price in North Tapanuli\(^\text{12}\). The Committee was comprised of five members all of whom were district officers\(^\text{13}\) and the amount of compensation for the appropriated land was based on their decision\(^\text{14}\). Falling under area B category in North Tapanuli, the basic land price in Porsea was decided according to existing function and location (see Table 5.1.).

As the first group being relocated by the project, the Dolok Martalitali peasants were offered a land compensation the amount and form of which were set prior to the land pricing decision made by the Committee. The local government thought that the amount of compensation was fair enough:

The land is appropriated for development, meaning that their village will be developed. Therefore, people should be thankful that land appropriation has taken place in their village. Concerning compensation, the price setting is good enough because many of the appropriated plots of land are not cultivable, and some are merely swamp land\(^\text{15}\).

They were promised compensation far below the amount set by the Committee, namely Rp.130.- per square metre or US$ 30 cents, although in


\(^{13}\)The officers were: the District head as chair, the head of the Agrarian Bureau, the head of the Mass Agriculture Bureau, the head of the Development Surcharge Bureau, and the head of the Public Works Bureau. See also chapter 2 of the Home Affairs' Minister Regulation No. 15/1975 on the land appropriation committee members.


\(^{15}\)An expression of the local authority, quoted in SIB, 25 January 1983. My translation from the original: "Kan tanah itu dibebaskan untuk pembangunan. Seharusnya penduduk berterimakasih tanahnya dibebaskan untuk pembangunan sekaligus membangun sekaligus daerahnya. Soal harga itu juga sudah tepat, sebab tanah yang diambil banyak yang sulit untuk dikelola, ada yang sejenis rawa-rawa".
addition they were also offered a new settlement area. Many other groups in Porsea whose land had also been appropriated received different amounts, ranging from Rp.130.- per square metre to Rp.244.- per square metre to Rp.299.- per square metre to Rp.400.- per square metre (or, from US$ 30 cents to 55 cents to 65 cents and 90 cents). Having said that, the local government ignored the fact that people used different types of land for a variety of purposes and not only for cultivation. The swampy land, for instance, was commonly used as a place for fishing, therefore it was a source of protein and cash for the local people.

Table 5.1. Land Pricing in Porsea Sub-District

<table>
<thead>
<tr>
<th>LAND USE</th>
<th>LAND LOCATION</th>
<th>PRICE/m2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business</strong></td>
<td>1. Near state road &amp; lake</td>
<td>Rp. 750.-</td>
</tr>
<tr>
<td></td>
<td>2. Near province road</td>
<td>Rp. 600.-</td>
</tr>
<tr>
<td></td>
<td>3. Near district road</td>
<td>Rp. 500.-</td>
</tr>
<tr>
<td></td>
<td>4. Other than 1,2,3</td>
<td>Rp. 400.-</td>
</tr>
<tr>
<td><strong>Housing Site</strong></td>
<td>1. Near state road &amp; lake</td>
<td>Rp. 600.-</td>
</tr>
<tr>
<td></td>
<td>2. Near province road</td>
<td>Rp. 500.-</td>
</tr>
<tr>
<td></td>
<td>3. Near district road</td>
<td>Rp. 450.-</td>
</tr>
<tr>
<td></td>
<td>4. Other than 1,2,3</td>
<td>Rp. 400.-</td>
</tr>
<tr>
<td><strong>Wet Agriculture</strong></td>
<td>1. Near state road &amp; lake</td>
<td>Rp. 400.-</td>
</tr>
<tr>
<td></td>
<td>2. Near province road</td>
<td>Rp. 350.-</td>
</tr>
<tr>
<td></td>
<td>3. Near district road</td>
<td>Rp. 300.-</td>
</tr>
<tr>
<td></td>
<td>4. Other than 1,2,3</td>
<td>Rp. 250.-</td>
</tr>
<tr>
<td><strong>Dry Agriculture</strong></td>
<td>1. Near state road &amp; lake</td>
<td>Rp. 250.-</td>
</tr>
<tr>
<td></td>
<td>2. Near province road</td>
<td>Rp. 200.-</td>
</tr>
<tr>
<td></td>
<td>3. Near district road</td>
<td>Rp. 150.-</td>
</tr>
<tr>
<td></td>
<td>4. Other than 1,2,3</td>
<td>Rp. 80.-</td>
</tr>
<tr>
<td><strong>Empty Land</strong></td>
<td>1. Near state road &amp; lake</td>
<td>Rp. 150.-</td>
</tr>
<tr>
<td></td>
<td>2. Near province road</td>
<td>Rp. 80.-</td>
</tr>
<tr>
<td></td>
<td>3. Near district road</td>
<td>Rp. 50.-</td>
</tr>
<tr>
<td></td>
<td>4. Other than 1,2,3</td>
<td>Rp. 20.-</td>
</tr>
<tr>
<td><strong>Commercial Centre</strong></td>
<td>Sub-district capital city</td>
<td>Rp.2500.-</td>
</tr>
</tbody>
</table>

Source: Basic land pricing in North Tapanuli, dated 6 March 1979.

In 1980 a number of people from Porsea sent a letter to President Suharto, the Internal Affairs Minister and the Secretary of State, beseeching them to reexamine the land price based on the amount of land compensation set by the District Committee. In his reply dated 15 September 1980, the Secretary of State did encourage the local government to reexamine the amount being paid and increase it to Rp.1500.- per square metre (or about US$ 3.50). Since the Dolok Martalitali people had earlier accepted a much lower compensation and
moved to Siomaoma, their request to renegotiate the compensation was rejected. Moreover, since the computation for compensation was based on land use and its location, it is unlikely that Dolok Martalitali land, which is not "economically" strategic, would be compensated more than what had been decided on before. This process dissuaded the people from leaving their home village in favour of staying in the new settlement area.

5.1.4. Analysis of Dolok Martalitali Case

5.1.4.a. Legal pluralism and land struggle

The Dolok Martalitali case, which started in 1977, involves state capital and investment of a foreign government (Japan) and international private companies through the Asahan hydro-electric project. It entails a very large scale of capital investment. Its importance lies in the fact that it was the first largest investment ever made at the initial period of the New Order Government's industrial history (cf., Siahaan 1996). In this regard, the success of the Asahan hydro-electric project was economically and politically important for the Government to be able to take further step for modernising the country on the one hand, and inviting more foreign investors, on the other hand.

With such a background, the struggle over land in Dolok Martalitali is an arena of the unequals, that is between the local peasants and the state, in this case the local authorities and the Asahan project management. Although there was ample room for manoeuvre for both parties to go for "forum shopping and shopping forum" (K. von Benda-Beckmann 1981), however, under such an unequal power position, the local peasants were forced to comply with the framework of state law pushed by the state authorities. In this regard, the peasants' compliance, like resistance, should be seen as a strategy, part of a process of negotiation, which has no beginning and no end (Scott 1985). The state authorities managed to selectively use the state law and imposed it on the Dolok Martalitali peasants. In the first place, acquisition of the Dolok Martalitali land was unilaterally decided by the state by means of the state-sponsored Asahan project. The local authorities based their action in the state hegemonic claim over land throughout Indonesia as stated in the Basic Agrarian Law No.5/1960 and further regulations such as the Home Affairs Minister's Regulation No.15/1975. They assumed the right to dump the excavated material from the Asahan Project onto the rice fields of the people of Dolok Martalitali. To question whether the peasants agree with the dumping is never even considered. The state law does not protect the interests of those who do not agree with the appropriation of land. Instead, it only allows people to question how much and in what form compensation should be given.

Under such conditions, intimidation became a weapon and a pattern on the part of the local authorities to tame the struggle of the peasants. Indeed, the rest of the Dolok Martalitali stories involve continuous intimidation experienced
by the peasants and their struggle to survive on the disputed land of Dolok Martalitali. While the peasants were busy trying to recultivate their former rice fields, they were subject to repeated intimidation by various organs of the state. On the morning of 13 March 1985, for instance, three peasant men were summoned by the regional military (KODIM) in Tarutung, about 80 kilometres away, without due process. They were fetched by the military and investigated the entire day until they were allowed to leave (and go home by themselves) at nine o’clock that night\(^{14}\). The act of summoning and investigating the peasants became a repeated occurrence even years after their return\(^{17}\).

On other occasions the local government repeatedly asked the peasants to return the land certificates should they refuse to move back to Siomaoma, but this request was ignored. While the status of land in Dolok Martalitali was under dispute, the status of land in the Siomaoma resettlement area was also contested by the local government. Despite the fact that the government had awarded the peasants certified plots of land, the same government wanted the plots back because they had been left abandoned for years. Indeed, the Basic Agrarian Law requires that land should be utilized for productive purposes. Abandoning certified land could be used as a basis to withdraw the certificate and repudiate the rights to it (BAL chapter 10 section 1). Therefore, the latest struggle of the Dolok Martalitali peasants concerns the legal status of the land and the peasants’ strategies to defend their rights.

On 25 October 1996, the village head of Silantomtonga to which Siomaoma belongs, announced that those who held the plots of land in absentee (and thus, who had abandoned the land) were asked to return it voluntarily\(^{18}\). In response, three men representing the Dolok Martalitali peasants were sent to Siomaoma on the 30th of October. To their disappointment, they found that the resettlement project workers had tilled their plots and some others had been ploughed with a tractor. This situation clearly demonstrates that state-derived land rights can be easily revoked as a logical consequence of the state’s growing authority over land allocation. As a reaction, in November the peasants sent a petition to the local authorities\(^{19}\) indicating that, as the legitimate owners of the land and holders of the land certificates, they objected to the attempts of the local authorities to cultivate the land. They made five statements: (1) that the Siomaoma plots were theirs; (2) that the plots had

\(^{16}\)Compare this to the info in the daily newspaper Sinar Harapan (21 March 1985).
\(^{17}\)An interview with Yusuf Siahaan, one of the leaders, and with Ompu Dogor in Dolok Martalitali, 30 July 1997.
\(^{18}\)See the announcement of the Silantomtonga village head, Pengumuman No.41/08/x/96, signed by Mr. R. Ritonga on 25 October 1996.
\(^{19}\)The letter was addressed to the District head (Bupati), the National Land Board (BPN) head in the District, the Pangaribuan Sub-district head (Camat), and the Silantomtonga village head. A copy of the letter was also sent to the District Parliament, the District Agricultural Office, and the District Plantation Office.
never been transferred either in the form of sale or lease; (3) that the ongoing attempts to cultivate and plough the land should be terminated because they were against the law and harmful to their rights as owners; (4) that the local authority should restrain from issuing a permit to anybody who would like to utilize the plots; (5) that the plots in Siomaoma were no longer owned by the local government, but by the Dolok Martalitali peasants. To legitimate their ownership rights over the plots of land in Silantomtonga, the peasants enclosed with the letter copies of the land certificates.

In short, the peasants are easily subject to coercion and repeated intimidation by various state local apparatus. Nevertheless, the peasants are not totally powerless. Their insistence on re-occupying their former rice fields makes it difficult for the local authorities to ignore them. The inability of the local government to fulfil its promise to provide a proper re-settlement area in Siomaoma has been used by the Dolok Martalitali peasants to justify re-occupation of their former fields. The later attempt by the peasants to convert the remaining 18 hectares of grazing area into dry-fields has strengthened their determination to stay in Dolok Martalitali and has made it more difficult for the local government to evict them. The widespread supposition on the part of the state law that "waste land" may easily be taken over by the government and should be used in a productive manner has encouraged the Dolok Martalitali peasants to divide up the only remaining communal land. As a result, the 18 hectares of grazing land became individualized. It was divided evenly among the 35 remaining peasant families so that each family received almost 0.5 hectare. In this way they have followed the tendency of the state law: to prize individualized farming fields over communal land. From the compensation being paid by the Asahan Project, for instance, the people were given the impression that individual plots would be valued more than communal land.

For the peasants, there were no such unrestricted choice for "forum shopping and shopping forum" (K. von Benda-Beckmann 1981) in the struggle over land. Having no coercive power to defend their rights, the Dolok Martalitali peasant had to comply with the state law framework and create room for manoeuvre within it. After receiving the certificates to the land in the new settlement area in Siomaoma, the peasants were encouraged to retain both the land in Dolok Martalitali and Siomaoma. The right to the land in Dolok Martalitali is defended according to the adat claim combined with the universal claim to live a basic life; while the land in Siomaoma is defended according to the state's ultimate legal recognition of ownership through the holding of land certificates. Because the local government could not do much to hamper the peasants from reworking their former rice fields, they tried to annul the certification rights to the land in Siomaoma.

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20See the petition of the Dolok Martalitali peasants on the utilization of the Siomaoma plots, dated November 1996.
5.1.4.b. Gender and land struggle

Dolok Martalitali peasant women have played various important roles in different fronts and facets of the struggle. Right from the beginning they refused to leave for the new settlement area. Immediately after the local government announced that their rice fields would be used for dumping, the women pronounced their objections through different means. Some of them participated in removing the notice boards jabbed into their land. Once they tried to move the excavated soil back to the river but this was too difficult. In fact, women were the supporting force behind the entire struggle of the Dolok Martalitali peasants particularly during the first three years of the protest. Only after all the rice fields along the Asahan River had been dumped with excavated soil, did the Dolok Martalitali people agree to leave for the new settlement area. In the first year, only men left for Siomaoma while women remained in Dolok Martalitali to care for their children, the gardens and the cattle. For that one year, women provided the food supply for the men to be able to start new rice fields in Siomaoma. When they were no longer able to provide food for their daily meal in Dolok Martalitali, they agreed to leave for the new settlement area. In short, whenever the reproductive role of women as daily food provider for the family has been disturbed, it has led to a significant decision on whether the Dolok Martalitali people would move or stay, or return. Thus, the interruption to pursue the daily practical needs, has led peasant women to defend the land to pursue their "strategic gender needs" (c.f., Molyneux 1985; Moser 1989).

Though all Dolok Martalitali peasants are affected by the relocation, women have suffered differently than men during the two year stay in Siomaoma. The lack of basic facilities, especially water, in the new resettlement area added to the burden of the women in performing the household chores. The cooking and cleaning tasks which were relatively easy in Dolok Martalitali became more time consuming. Because of the bad harvest due to the bad condition of the land, food scarcity occurred in Siomaoma in the first two years of their stay. The difficulties of the peasant women in providing enough food for the daily meal in Siomaoma was one of the reasons the women encouraged their husbands to find ways to return to Dolok Martalitali. Under such critical conditions, the resilience of the peasant women and their finding ways to survive in Siomaoma while their husbands returned to Dolok Martalitali has become a strong element in the overall struggle of the Dolok Martalitali people.

When finally the people decided to return to Dolok Martalitali, they all had to start from zero. The men started with preparing the rice fields. Since the larger part lay under dumped soil, land preparation was difficult. In the end they only managed to acquire half of the former rice fields. Throughout this time, the local government and the Asahan project management both tried to impede the Dolok Martalitali peasants' re-occupation of their former rice fields.
In countering the actions of the authorities, the women took a leading part in organizing demonstrations on the site. Many times delegates would be sent to the district head office in Tarutung and the majority of them were women. They carried sleeping mats, blankets, cooking equipment, and raw cassava so that they could sit-in by the yard of the district head office for three to four days in order to attract public attention\(^{21}\).

Although in the later stages of the process Dolok Martalitali peasant men were the formal negotiators who were present at the negotiating table with the local government representatives, it was Dolok Martalitali peasant women who had strongly insisted within the group that they would be willing to return to Siomaoma only if the resettlement project completed the construction of the infrastructure, waterworks and other public facilities. These items were included in the written agreement of 19 October 1983. The final decision of the peasants not to move back to the resettlement area was very much supported by the women. They shared the fear of being intimidated by different local authorities yet they were the ones who dared to enter the re-occupied rice fields to grow rice. Their stubborn attitude to keep on working the former rice fields has been their main strong "weapon of the weak" (Scott 1985). Making use of the wide-spread image of masculinity and femininity that holds that women are not supposed to be harmed, but protected, by men, the peasant women were able to restrain the police and military officers from prosecuting them. In this way the Dolok Martalitali struggle was carried out by women when it involved demonstrations and attempts to attract public opinion, and by men when it involved negotiations with various local authorities.

Since the rice fields could no longer yield as much as before the soil dumping, peasant women started to consider dry farming. The women attended local meetings on how they could survive. There it was decided that the Dolok Martalitali peasants would transform the 18 hectares of communal grazing land into dry fields and divide it among the 38 families. Each family regardless of its clan status as *marga raja* or *marga boru* received an equal share; however, the fact that it was a family-based land division reconfirmed that, according to *adat*, land should be divided among senior male members of the family. The shift of the grazing land into dry fields has changed the nature of the traditional land tenure itself. Traditional cattle grazing would no longer be an easy option because, unlike in earlier times, the cattle would have to be attended to year round except in the short fallow period after harvesting. At the same time, Dolok Martalitali peasants had to learn dry farming which was not an easy process. They decided to start by sending one man to Karoland\(^{22}\) to learn,

\(^{21}\) On 13 October 1984, for instance, the Dolok Martalitali delegates, many of whom were women, came to the district head office to demand better treatment from the government. Compare this to the article in SIB, 18 October 1984.

\(^{22}\) His name was Idris Siahaan.
and he would be followed by several others. Eventually they decided to start growing hybrid ginger on the subdivided communal land and bought the tubers from Siantar, Simalungun District. The peasant women, who were experts in growing rice, suddenly had to depend on the knowledge of these men to grow ginger together. In the first year, the harvest was good. However, because of their limited knowledge of dry-farming, many of them did not buy the hybrid tubers, which were not cheap, but used the harvested ginger for the next sowing and this resulted in crop failure. As a result, many of the peasants ceased to grow food crops on the divided land and some even abandoned farming altogether.

5.2. CASE TWO – SUGAPA

While the Dolok Martalitali case involved state capital and investment of a foreign government and international private companies, the Sugapa case, which started in 1984, involved very large amounts of Indonesian Chinese private capital and foreign investment through the pulp and rayon producing company, Indorayon. The emergence of Indorayon resulted directly from the national policy on industrial forestry which has the primary aim of bringing in foreign exchange (see chapter 3).

5.2.1. Brief Description of the Area

From Medan, the capital of the province, one follows the Sumatra highway, passing Porsea, and turns left in Silimbat until reaching Laguboti. From that point on, the road to Sugapa is small, with only room enough for one car to pass. Old and unadorned houses are scattered along the road, contrasting with the scenery of splendid tombs and graves. Sugapa is a small village located about five kilometres from Silaen, the capital of Silaen sub-district, North Tapanuli. The village is inhabited by 62 families consisting of about 300 members who mostly live in traditional plain houses which, according to general opinion in North Tapanuli, indicates that the people are relatively poor. They are members of the Baringbing clan, descendants of Raja Sidomdom Baringbing who was believed to be the landowner who established the village. His descendants (pomparan) are clustered into four lineages: Ompu

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23 The ancestry of Raja Sidomdom Baringbing goes further back to Baringbing, Raja Mataniari, Tuan Shihubil, Sipalatua (Tampubolon), Sibagotnipohan, Tuan Sorbadibanua, Sorimangaraja, Raja Isumbaon, and finally to Si Raja Batak. Waldemar Hoetagaloeng (1926:166) notes that Tampubolon is the unifying clan (marga parsadaan) that includes Baringbing. In the beginning the Tampubolon set up a huta in Luat Tampubolon, Balige. Later the descendants spread to the surrounding areas and Baringbing resided in Sigumpar, Toba. From Sigumpar, Raja Sidomdom Baringbing came to a nearby area, Sugapa, and set up his own huta there.
Sipal Tua Paduahon, Ompu Silitonga, Pagar Batu and Raja Maruhur. There are some in-dwelling clans, boru, for instance Naipospos, Sianipar, and Manurung. The villagers live from rice fields and subsistence dry farming on individual plots of land. They possess plots of communal land (tano hatopan) called Baringbing communal land of about 52 hectares which are covered partly by alang-alang grass (imperata) and partly by forest. The communal land borders Sugapa village to the north, Pintu Batu village to the south, Silaen and Pintu Batu villages to the east, and Bano Butak and Butak Nabirong villages to the west. Local people refer to the different plots as Dolok Tongatonga, Parsibarungan, Lombang Naoto, Pea Torus, Sitangkurak, Dolok Nabolon and Sitalolo.

For generations the communal land has served various economic and security functions. The alang-alang grass found there is mainly used to feed the cattle. Water buffalo are grazed by men and children. In times of contingency, traditional cattle grazing guarantees a substantial amount of cash for the peasants. Though the elderly and widows may not have time to raise cattle themselves, they may still benefit from the availability of grazing areas. Indeed, many younger families are asked to care for the cattle based on an unwritten agreement that the cattle raiser should get sahae (lit. one leg) or one fourth of the value of each buffalo born during the raising. This means that poorer families can also benefit from the grazing areas by raising somebody else's buffaloes. Alang-alang grass is also used as compost or as soil cover under tree crops. In this way, according to Eijkemans (1995), the soil moisture under the crops is controlled since the micro-elements enter the soil as fertiliser and erosion of the most fertile top layer is reduced. Sometimes peasant women start a rice-seedling plot or a temporary garden to grow crops for extra income. Newly-wed couples can get a plot of the communal land to set-up a dwelling, a garden and a rice field. It is indeed a long-term practice to provide a newly-wed couple a plot from the communal land as panjaean for them to start an economically independent household. From all these ways that the so-called "empty" communal land and alang-alang fields are made to be agriculturally productive, one sees that it is never regarded as "waste" land.

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24 Naipospos clan is the descendant of si Raja Naipospos from Dolok Imun. From Dolok Imun his descendants scattered to different places, one of these was Hariarasimanggulu in Laguboti (see W.M. Hoetagaloeng 1926:256). It is the closest Naipospos huta to Sugapa village. Therefore, the Naipospos presently living in Sugapa may have come from Hariarasimanggulu.

25 When the buffalo has matured, which takes two to three years, it is sold to the market. The raiser then gets one fourth of the selling price of around Rp.2,000,000.- (approx. US$ 1,000), so about Rp.500,000.

26 There are at least six running wet rice fields on the communal land, namely those owned by Sinton Baringbing, Ompu Simanasar Baringbing, Badia baringbing, Sahat baringbing, Udo Naipospos and Selamat Baringbing; and two running gardens owned by Selamat Baringbing and Marulak Manurung. There are also some tracts of abandoned rice fields and gardens.
The forest cover of the communal land also benefits the peasants in a variety of ways. It is the provider of items essential for household survival. Firewood is the most important because then they do not have to buy it. Some food items such as fruits, vegetables and herbs are regularly collected there particularly by peasant women, often from the poorer families, either for their own consumption or for sale to the nearby market twice a week. In addition, many families fetch water when passing by the communal land. Thus, the communal land performs the function for economic and social security to the many poorer peasant households.

Eijkemans (1995), who did an evaluation study of agricultural land and peasants' decision making in North Tapanuli, includes Sugapa in his study. The land in this area is generally allocated for wetland rice, alang-alang and forest, and very little dry land farming. The area has 0-15 per cent slope angle and is predominantly of a podsolic soil-type with a low ability to retain water and relatively low pH (5.3). According to Eijkemans the long tradition of wetland and upland rice and maize is unsuitable for Sugapa. Among the perennial crops, he believes coffee, tea and citrus can do quite well, while for the annuals, potatoes, ginger, cabbage, tomatoes and chillies have a moderate growing potential with some soil texture improvements. Eijkemans adds that the area is reasonably suitable for pastures, while for forestry the potential of pinus trees is moderate and that of eucalyptus trees is high after the application of lime.

5.2.2. The Background of the Case

The Sugapa case originated with the intention of Indorayon Company to acquire 150,000 hectares of state-owned forest land in North Sumatra to grow eucalyptus for its pulp mill. This was done by the company through first obtaining the license to exploit the forest areas for industrial forestry. I have previously explained that since the colonial period the state has declared many forest areas to be "state-owned" under the provision of "empty" land referred to by the declaration of state domain (see chapter 2 of this book). Moreover, with the introduction of forest reservations and re-greening programs, the state has one-sidedly claimed bigger portions of the forest areas. The essence of this colonial policy is continued by the post-colonial state. The Basic Provisions on Forestry Act claims that forest management and administration is the responsibility of the central government which may delegate some of its authority to the regional government (chapter 10-11 of Law No. 5/1967). Local people may reiterate and interpret the adat communal land rights (tano hatopan) to the idea that all forests adjacent to their living compound and beyond are theirs, while the state claims that all "empty" land is under the control of the state. Section 5 of the Basic Provisions on Forestry Act (Law No.5/1967) establishes state control of all forests in Indonesia, private and
state owned which potentially undermines people’s communal forest land. This has been the case in North Sumatra and now the boundaries between the state’s and people’s forests are not always easily drawn (see chapter 3 of this book).

With the not always clear boundaries between the state forestry and people’s communal forest, the pulp company also wanted to include the many plots of people’s communal land of about 1,600 hectares which were scattered around the so-called “state-owned forest” that was granted to the company as part of their exploitation area to grow eucalyptus. One of these was the 52 hectares of people’s communal land located in the Sugapa village. At the peak of the campaign for advancing industrial forestry in Indonesia in general and the rise of the pulp industry in North Sumatra in particular, it is not accidental that a scholar from abroad, Eijkemans (1995:113), when talking about the most suitable crop for Sugapa and its surroundings, blatantly states: "for forestry purposes Eucalyptus trees show a high score (after the application of lime)".

In March 1987, without prior notice, some Indorayon workers cleared the trees, bushes and alang-alang from the communal land and planted young Eucalyptus trees. Immediately, more than forty peasant men and women went to see the village head and asked him to drive the Indorayon workers off the land. The village head was hesitant to do this and eventually admitted that the communal land had been contracted to the company. Not satisfied with the explanation, the peasants went to the Sub-district head (Camat) who failed to give sufficient explanation and accused them of “trying to obstruct development program”.

Later it was discovered that the village head had secretly transferred the land to the company by forging some signatures. Despite all the petitions gathered by the peasants against this illegal land transfer, the local authorities took no proper action. The peasants lost patience and decided to take the

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27 My information, gathered from the local Sugapa people who were against the appropriation of their communal land, shows that there was no open process of land transfer right from the beginning. For many of them it was not very clear what kind of land transfer had been made between the village head and the pulp company. Many of them anxiously asked for an explanation from the village head: "Is the land sold, rented, borrowed or is it freely granted and for how long?" Only later was it found out that the right to use the land was granted by the village head to the company for 15 years. This very fact totally goes against the statement made by a scholar, Eijkemans (1995: 138, 158), when talking about the difficulty of reaching an agreement on land alienation among the Toba-Batak: "In Sugapa ... agreement was reached with the majority of the population and the planting of Eucalyptus and Pinus trees was started. However, some people who did not agree repeatedly destroyed the newly planted seedlings... (my emphasis)".

28 See also note 27. According to Ompu Sitiar and Ompu Marintan who led the dialogue between the forty impetuous and angry Sugapa people and the village head in March 1987, the village head told them that the land had been granted with compensation - not sold - to the company for a period of 15 years.

29 As told by Ama Sinta Baringbing and Ama Paremean Naipospos who joined the other villagers to meet the sub-district head.
necessary actions to stop the company's activities. They asked the workers to leave the plot but the workers refused. In response, some peasant women started to remove the young eucalyptus, then put them in plastic bags and brought them to the village head. This was immediately responded to by both the local government apparatus and the company's management. The sub-district head together with company management representatives, and escorted by the Koramil (Military Regional Command), came to the village and warned the people not to repeat the act. But the women kept on uprooting the eucalyptus every time the company planted them on the communal land.

In May 1987, six Sugapa peasant men and women went to the District Parliament House (DPRD Tingkat II) in Tarutung to report the illegal land transfer and alert the authorities to the heated atmosphere in Sugapa. They made clear to three Parliament members who received them that they wanted the company to leave the land. The District Parliament members told them that they would examine the matter. Promising that they would soon come to Sugapa to solve the problem, the Parliament members asked them not to remove the planted eucalyptus trees for the time being. Three weeks later, the members of Parliament did visit the village only to find that the villagers had removed the eucalyptus trees and planted maize on some of the plots.

5.2.3. The Course of the Case

The many meetings with local officials have been used as a means to persuade the local people to accept the land appropriation. A month after the visit to Parliament House, an official team composed of district parliament members, officers from the directorate of society and politics (Ditsospol), the military regional command (Koramil), the sub-district head (Camat), and the police paid a visit to Sugapa. They summoned three of the peasant men whose signatures appeared on the land transfer contract, namely Ama Paremean Naipospos, Ompu Lisma Baringbing and Ompu Marintan Baringbing. It was discovered that their signatures were false. Later it was found that there were seven more peasant men whose signatures had been forged. According to the peasants, they had never been asked to sign a deal with the company. The only thing they remembered was that once they had signed a registration list mentioning their presence in the office of the Sub-district head, Camat. They concluded that the Camat must have copied their signatures for the contract. However incriminating the finding was, the district parliament members persuaded the peasants to reconcile with Indorayon Company. This drew an

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30 Namely the signatures of Ama Bilson Sianipar, Ama Doly Baringbing, Julius Baringbing, Togar Naipospos, Joheng Naipospos, Ama Jenty Sianipar, and Bilson Sianipar. Furthermore, Bilson Sianipar was illiterate and had no signature; on any official document he would only give his finger print.
angry response from one adat elder, Ompu Marintan:

We could only reconcile with the Indorayon Company if the village head's authority over the Baringbing communal land was given up and the company would negotiate with us again from the very beginning, considering the wishes of all the villagers.

At the end of the meeting, the visiting team asked five peasant men to sign a letter. As the night was dark, they asked a team member to read it aloud for them. The letter said more or less that the village head's authority over the communal land was relinquished, and that the Sugapa people were ready to deliberate with the company.

Having learnt that the men had signed a letter and no copy of it was available, four peasant women went to the parliament house to inquire about the content of the letter. They were suspicious. Nai Sinta, one of the peasant women remarked: "Although the letter has been signed by my husband, I am against it because it may harm us later on!". The parliament member, however, was only concerned with the issue of compensation. He asked whether the village head had already paid a visit to each of them to solve the problem. What he meant by "solving the problem" was that each of them would get compensation money given by the company through the village head. Learning that the money had not been distributed, the parliament member told the peasant women to ask for it directly from the village head. The women left the parliament house greatly disappointed.

In the period between June 1987 and February 1989, the peasants continued to negotiate with the local authorities but without success. The company workers were still free to work on the disputed communal land but the peasants were not allowed to even go there. "Indorayon, backed by the village head, would fine us Rp.5,000.- (about US$ 3.00) for one buffalo that entered the communal land! Of course then it is difficult for us to find a free grazing area for our buffalo. We are used to leaving them unattended," explained a Sugapa peasant woman. When one afternoon in February 1989 three young women were harassed by the company's workers, some Sugapa women became so furious that they lost their temper and boldly up-rooted the young Eucalyptus trees planted on the communal land: "We were very angry that

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31 My interview in Sugapa, August 1990, translated from the Toba-Batak language. Two years after the interview, Ompu Marintan passed away.
32 The five men were Ompu Marintan, Ama Sinta, Ama Paremean, Ompu Sitiar and Ompu Lisma.
33 The four women were Nai Sinta, Nai Paremean, Nai Jujur and Ompu ni si Ramses.
34 Sources from the company indicate that 62,000 young Eucalyptus trees were destroyed on 22 March 1988; four hectares on 15 September 1988; 10 hectares on April 1989; not to mention the company's accusations that the destructive acts of the Sugapa women also took place on 2 June 1988, 3 June 1988, and 8 September 1988 (See SIB, 18 December 1989).
they took our land and then harassed our women," they complained. After the incident, about fifty local policemen came to arrest the ten peasant women following an official report received from the company on 14 April 1989.\(^\text{35}\)

After police and attorney's investigations, the criminal case was filed at the Tarutung District Court which conducted hearings in Balige. After the arrest and during the court hearings the peasants submitted letters of petition to all relevant local and national authorities\(^\text{36}\). In addition, they went to see the Governor "to seek for legal protection" as the media called the action.\(^\text{37}\) The alleged Sugapa women themselves and their relatives used the court hearings as an opportunity to attract public attention. They would start each court hearing by performing sentimental spiritual songs at the entrance of the court room, which built up their image as "old religious peasant women being abused by the state legal system!"\(^\text{38}\) In addition, the Sugapa women sent a letter of request to local and national newspapers to publish their version of the case.\(^\text{39}\) However, the district court sentenced the ten women to six months in jail on February 1990\(^\text{40}\). A few months later, the high court in Medan reduced the sentence to three months in jail with six months probation.\(^\text{41}\)

The arrest of the ten women, the subsequent court hearings and the court decisions were subject to severe criticism by the public. Because of the pressure brought about by the Sugapa case, the Indorayon company felt compelled to hand over not only the 52 hectares of disputed Baringbing communal land owned by the Sugapa people, but also the remaining 1,600 hectares of other people's communal land throughout North Tapanuli which had been illegally acquired by the company. This illegality is twofold, firstly, the company was supposed to acquire only state forestry land and not people's communal land, secondly, the company secretly approached the village heads without the consent of the rest of the villagers.\(^\text{42}\) This is proof that the company not only appropriated state-owned forest land as stated in the

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\(^\text{35}\) See the local newspaper SIB, 18 December 1989.

\(^\text{36}\) On 16 September 1989, a letter of petition was sent to the District head with copies to the Governor, Kodam VBB in Medan, Kapolda, Chair of the Provincial Parliament (DPRD), Kodim Tapanuli Utara, Kapolres Tapanuli Utara, Chair of the District Parliament, Silaen Sub-district head, and the village head of Sugapa. Another petition was sent to the same addresses on 15 October 1989. On 1 December 1989 a petition was sent to the Silaen police, and another one to the President, dated 13 December 1988.

\(^\text{37}\) See the media coverage in e.g. SIB, 16 December 1989; Sinar Pagi, 16 December 1989.

\(^\text{38}\) Almost all the media label Sugapa peasant women according to these images: elderly (ibu-ibu tua, ibu-ibu tua renta, ompung, nenek), poor and faithful churchgoers (pararakamis).

\(^\text{39}\) See the letter dated 9 December 1989 sent to the six newspapers: Sinar Indonesia Baru, Horas, YSM, Kompas, Suara Pembaruan and Mimbar Umum.

\(^\text{40}\) Decision of the Tarutung Lower Court on 1 February 1990, No.104/Pid.B/1989/PN Trt-Blg.

\(^\text{41}\) Decision of the Medan High Court on 14 April 1990, No.43/Pid/B/1990/Pl-Mdn.

\(^\text{42}\) See Suara Pembaruan, 28 April 1990.
license, but also people's communal land. The act of the Sugapa women to defend their communal land has, indeed, inspired other local groups to reject the taking of their land. Yet, the company did not properly communicate its intent to return the land to the people concerned but instead rendered the land to the district head (Bupati). In handing it over, Indorayon set a condition that the local people must be willing to plant their communal land with eucalyptus and then sell the trees to the company, an arrangement which is commonly called the Nucleus Estate and Smallholder System (NESS or PIR HTI)\textsuperscript{43}. Explaining about the handing over of the Sugapa land, the district head (Bupati) remarked (my translation)\textsuperscript{44}:

The people's reactions were too "heavy" to having to approach the Indorayon company and ask them to return the land under the condition that the people would agree to plant Eucalyptus to supply the Indorayon pulp mill which is to be arranged according to the Nucleus Estate and Smallholder System (NESS).

For most villagers it was only a rumour about the hand-over of the land and the Nucleus Estate and Smallholder System (NESS), but later local and national media coverage spread the story. The Sugapa people rejected the condition put on them though it was said that under the NESS local people would not lose the rights to their land but would also be able to participate in cultivating eucalyptus. "People still possess the right to the profits of wood that will be purchased by the pulp mill," argued the company management. Indeed, an example of the NESS from the North Tapanuli plantation areas in Parsoburan indicates that local people still keep their land but loose their control over the types of trees to be planted. Moreover, the NESS forces local people to enter into monopsonic trade patterns, completely dependent upon the consumer's market where price is always determined by the buyer.

Learning that the high court decision was unfair, the women applied for a cessation to the supreme court early in May 1990. Having doubts about the possible outcome of the supreme court's decision, on 21 May, ten women suddenly appeared in the office of the home affairs minister in Jakarta to submit a letter of request to President Suharto. They were initially rejected by the officers in the ministry and could meet the minister only on the 25th of May. In the intervening days they gained nation-wide media coverage. The action taken by the Sugapa women to directly meet high officials to reject the land appropriation effort was shocking news for most people. They were pioneering

\textsuperscript{43}PIR HTI (Perkebunan Inti Rakyat - Hutan Tanaman Industry).

\textsuperscript{44}See Suara Pembangunan, 1 May 1990 as was written originally in Indonesian: Reaksi masyarakat terlalu "berat" sehingga kami mendekati PT IIU agar mengembalikan tanah tersebut dengan syarat akan ditanami keb utuhan pabrik PT IIU sesuai dengan pola Perkebunan Inti Rakyat Hutan Tanaman Industri (PIR HTI).
The disputed land in Sugapa

Sugapa women after a discussion on the disputed land
Indonesian peasant women to be pursuing justice in this way. Their action embarrassed both the local authorities and Indorayon management since they had thought that the conditional hand-over of the communal land had finally solved the Sugapa problem. In the letter to the President dated 16 May 1990, the Sugapa women strongly demanded that their 52 hectares of communal land be returned unconditionally, without any eucalyptus trees or NESS, and that they should be released from the criminal charges, their names rehabilitated and they should be compensated for the harm done during the court proceedings. Though the land was finally returned to the Sugapa people after six years of waiting, a rumour spread that in 1996 the supreme court reconfirmed the decision of the high court to sentence the ten women for their criminal act. However, the women never formally received the final verdict, they did not have to go to jail since they were on probation, and the circumstances of the land remained status quo whereby Indorayon did not continue their operations nor manage to impose the NESS system. All the 1,600 hectares of scattered communal land owned by different groups of Toba-Batak was finally returned to the owner without the pulp company manages to impose the NESS system. However, the biggest portion of the existing forest in North Sumatra - of about 150,000 hectares categorically owned by the state which surrounds those people's communal lands - has been under the exploitation of the pulp company. The exploitation of the categorically state-owned forest by the Indorayon has, in a way, reconfirmed the process of clearing the boundaries between the state-owned forest and people's communal lands.

5.2.4. Analysis of Sugapa Case

5.2.4.a. Legal pluralism and land struggle

In the Sugapa case the local peasants, the company and state authorities were actively shifting the contest from one forum to the other, as well as from one normative framework to the other. Thus, the idea of "forum shopping and shopping forum" (K. von Benda-Beckmann 1981) was actively used by all parties. They selectively used the elements of the different normative orders and manoeuvred to different forum: adat and the state law. Again, the one who manages to mobilize a large extent of coercive power, both within and outside the boundaries of state law, is likely to benefit the most from the conflict. In this regard, Indorayon company has had the means to mobilize support from the state and para-statal institutions. In addition, unlike the protesting Sugapa peasants, the Indorayon company has had more than enough material basis to be able to go through a long-term and uncertain process of land struggle.

The ideology of "national development" in general was used by various state apparatus and private investors to suppress peasants’ resistance to land appropriation. The strategic importance of the pulp industry under the national forestry policy gave power to both the private company and local government
Nai Sinta in front of the broken window glass
to justify their act of massive "land grabbing" by taking over people's communal land on the basis of the exploitation license granted by the central government on the one hand, and by discreetly acquired it from a few male *adat* leaders who were treated as the owner of the land. The accusation "trying to obstruct the development program" became an effective weapon for the state to criminalize the peasants' struggle over land. The case shows how the sub-district head (Camat) from the very beginning pronounced this accusation against the peasants. Ironically, the same sub-district head manipulated the signatures of the protesters to be used as evidence of their supporting the land transfer. The district court also included the accusation in its verdict, namely when considering the compelling factors in assigning punishment for the criminal act of the Sugapa women. The district court pronounced: "the self-judging act of the accused has caused a big loss and obstructed the ongoing development program" (my emphasis).

The State's coercive power is not only to be seen at the ideological level; it also manifests in the direct physical violence suffered by many of the Sugapa people. While formal physical punishment (e.g., imprisonment) did not take place because the women were "only" sentenced to probation, they experienced different forms of direct physical violence by local authorities and para-statal forces. They recalled the violence of the police when they were trying to arrest them, the exhausting investigations at the police station, mysterious midnight raids, etcetera. *Nai* Sinta, one of the alleged, had a window with broken glass in it. Because the glass was a dark-blind type, it was easy to see the broken piece at day time. *Nai* Sinta commented:

One night in 1994, some unknown men came to our compound. They brought a hammer with them and pitched it towards my window glass. They shouted very loudly, "You learn your lesson!" and left in the dark. I was very afraid and at the same time angry. I decided not to repair the window glass. I keep it simply as a monument so that everybody will be reminded how ugly is the power of those people.

The idea that projects supported by the state and private investors were inherently good for the people was postulated by various state apparatus. After Indorayon was forced to return some of the plots, both Indorayon and the state spread the idea that NESS was the appropriate system for the people. *Fraksi ABRI* (parliamentary faction from the military forces) commented: "...the NESS should be instituted in order to generate people's income in North

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46An interview with *Nai* Sinta in Sugapa, 28 July 1997.
Tapanuli..." while Indorayon argued "People still possess the right to the profits of the wood that will be purchased by the pulp mill". From the point of view of the state, people should maintain an attitude of abiding by the state law and fulfilling their obligations as good citizens. How a good citizen should behave was supposed to be self-evident. As the Fraksi ABRI explained:

Land conflicts are continuously taking place especially between Indorayon and the people, and among the people themselves, some of which have been processed by the judiciary. Therefore, legal education and positive information should be improved so that people are aware of the existing regulations (and) understand their rights and responsibilities as a good citizen.

The land appropriation was inherently an unlawful transfer, both from the perspective of adat and the state law alike. Neither the village head nor the company properly informed the peasants about the intention to appropriate the land. Instead, the village head forged some signatures for the land transaction. It seems that forging local peasants' signatures has become a pattern in land transfers to big investors while the state apparatus often shows its indifference towards local peasants' pursuit of justice. The peasant women mourned, "We have reported to the relevant authorities in Silaen about the act of the village head and his assistant to have forged our signatures in the land transaction, but the authorities have turned around and made criminal charges against us!" The criminal act of the village head and his assistant in facilitating the land transfer did not receive further investigation by the relevant authorities.

Fraksi Karya Pembangunan-FKP (parliamentary faction of the ruling party) reacted positively to the judiciary process when asserting that development demands sacrifice which will lead to growth and prosperity. Thus:

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49 See, for instance, the letter of Wilson Sianipar to the police in Silaen, dated 5 December 1989, reporting the criminal act of Ramot Baringbing and Ponis Baringbing of having forged his signature (and five others) in the transfer of Baringbing communal land. The letter was not responded to properly by the local police.
The court process of the Sugapa case is orientated towards the development of law which is aimed at clarifying the problem, meaning that all parties involved will receive due response in order to bring prosperity to the nation and state.... Therefore, all parties should restrain themselves, no one should try to be a hero, but let us allow the government to solve the problem, because the government, including the court, will always care about the interest and prosperity of the people.50

Moreover, the practice of processual law concerning this case is clearly inconsistent. Prior to the proceedings of the criminal case, the court did not at all consider the status of land on which the eucalyptus was planted. About this fact the Sugapa women’s lawyers aptly remarked51:

...it is obvious that the Tarutung District Court in making the verdict did not at all consider the legal status of the land on which the eucalyptus was planted,... whether the land was handed over legally to the company. This is important because the legality of the eucalyptus planting on the land was closely related to the legality of the status of land itself; the status of land is inherently essential in deciding whether the act of the ten Sugapa women to up-root the eucalyptus was a criminal one.

In their defence, the women argued according to "the law of garden" or patik porlak, recognized by the adat, that any seed sown in a garden automatically belongs to the garden’s owner. Indeed, patik porlak recognizes the rights of the owner to uproot any unwanted trees grown in the garden52. Symbolically speaking, under the adat uprooting of the trees means rejecting the rights of the planters over the land. Hence, the judge ignored the adat argument of the ten women that the communal land was theirs. By supporting the idea that the land was, by then, owned by the company, the act of the Sugapa women to up-root the eucalyptus trees would be considered criminal under the state law.


52 As the lawyers recited in Toba Batak: "molo disampakhon halak boni tu porlak ni halak, molo tubu boni i, nampunasa porlak i ma nampunasa" (See Memori Banding, id. p.17).
On many occasions, the company management asserted that the land had been legally transferred to them. The public relations manager of the company, for instance, confirmed: "...the land has been leased from the competent local population and paid for in cash with the approval of the local and district authorities (customary law) to the owners." Indeed, the company provided a *pago-pago* of only Rp.12,500.- (or US$ 7.00) per hectare of land for a 30-year contract. The company applied a highly legalistic approach to the case by referring to both the state and customary norms whenever necessary. Company management argued that compensatory payment had been settled with the rightful owners under the (state) law. One of Indorayon's public relation staff explained:

We know that the land is an *adat* land. That was why we consulted about our plan with the district government and later the local *adat* leaders as the representative of the villagers. When the land was transferred, they did not say anything. But when the eucalyptus was planted they started claiming that the land was theirs. I think we have followed the right procedure. And the two *adat* leaders are still around. Why don't they address their protest to the two *adat* leaders who transferred the land on behalf of the villagers?

Concerning compensatory payment, the company management argued that it had been concluded properly according to customary procedures, *pago-pago*. However, *pago-pago* is merely a remuneration a chief receives when he has cooperated in settling a dispute or in concluding a contract (Vergouwen 1964:153). Therefore, it is not the actual compensation that should be considered to be rightful. Still, the assumption that *pago-pago* should be replaced by another kind of more satisfactory compensation dominated the thinking of many of the state functionaries. Like the provision of the Land Appropriation Regulation, state functionaries often think that it is "compensation" which should be re-negotiated, not the consent to the act of appropriation itself. *Fraksi ABRI* blatantly said: "...in acquiring land for the investors *pago-pago* and *pisopiso* should be avoided so that the status of land is not changed...." *Fraksi PDI* (parliamentary faction from the Democratic Party) gave its further opinion on the question of *pago-pago* and the call for recognizing *adat* value and reactivating the institution of *adat* elders:

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53 A letter sent by the company’s public relations officer, August Marpaung, an intellectual Toba-Batak man, addressed to Ms. Theresa Mawson B.A., in U.K., who protested against the action of the company, dated Jakarta, 3 October 1980.

54 Chapter 11 Home Affairs Ministry Regulation No.15/1975 on Land Appropriation Procedures.

55 As expressed by Adil Sugiharto, Indorayon’s public relations staff, in SIB, 18 December 1989.

56 See *Pendapat akhir Fraksi ABRI*... idem, p.3.
If in the transfer of adat land, whether in the form of pago-pago or use right/lease, there are people (owner) who are (still) against it, the land taker should not start using the land, because the transfer is not valid according to the adat.... We recommend that in the future the alienation of adat land should be based on adat value, meaning that the role of adat elders should be reactivated so that there will not be any more problems like that in Sugapa which have to be processed by the court.... We are really concerned if the court verdict in the Sugapa case is executed. We recommend that the transfer of Sugapa land through pago-pago be renegotiated in order to restore the rights of the landowners, to keep up North Tapanuli's reputation, and avoid similar occurrences in the future.

The company management's definition of customary landownership ignored women's well-recognized secondary rights to land under the same customary law. Those women were, in fact, the most deprived. In defining the "owners" of the communal land the company management conveniently cited the significantly patriarchal Toba-Batak customary norms:

Our Company started to plant Eucalyptus trees on the newly acquired land. After a month or so, the ten women went on a rampage and damaged the newly planted trees, claiming that they had not given permission to anybody to grow trees on their land. However, no men participated in this effort and according to our local customs, only men are legally entitled to land, not women. Ipso facto, legally the women cannot claim...
that their property has been taken by Indorayon. Indorayon has paid the money to the owners (men) and maybe they have kept the money only for themselves and not shared it with the wives. (my emphasis)

The company also refused to recognise the in-dwelling clans, *marga boru*, as landowners. In their response to the lawsuit, the company questioned the legality of the in-dwelling clan as "owners" of the land simply because they were in-dwelling groups\(^59\), arguing that only the first settlers, the Baringbing clan, were the rightful "owners". Such opinion was also shared by the head of the Sugapa village: "some of those who are bringing charges against the Indorayon Company come from the *marga boru*, who do not have full rights to lay a claim to the Baringbing communal land"\(^60\).

As a result of land scarcity and the increasing economic value of land due to rapid development, some ruling clans have started questioning the rights of the in-dwelling clans. Claims are even put on *pauseang* land which has been formally given by ruling clans upon their daughters’ marriages. In-dwelling clans are often on very insecure footing when it comes to land appropriation, precisely when the state and private investors enter into the domain of customary law\(^61\). Compensatory payment which should be received by in-dwelling clans is taken by ruling clans who claim that the land is theirs under customary law. In other cases, the male descendants of in-dwelling clans are expected to take a wife from a ruling clan to keep the *pauseang* land as their affinal ties are reconfirmed\(^62\). Failure to meet this expectation is often used as a reason to revoke the rights to the land. As many would say, "*mulak horbo tu bara*" (lit. the buffalo returns to its stall), meaning that without continuous affinal ties after three generations, the land has to be returned to the original owner. Nowadays, it is rather difficult to meet such expectations because both men and women are relatively free to choose a marriage partner.

### 5.2.4.b. Gender and land struggle

It is interesting to observe the various actions and arguments forwarded by those involved in the case. First of all, within the village itself, a contrast emerged between men’s and women’s perceptions of the land transfer. For

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\(^{59}\) See the Civil Case No.68/Pdt.G/1990/PN-Trt, Eksepsi point 4, page 1, on the argument of the Indorayon Company against the claim of Mangantar Baringbing and his fellow villagers.

\(^{60}\) Civil Case No.68/Pdt.G/1990/PN-Trt, Part II, on “Pokok Perkara, p.3. The Sugapa village head argues against the charge brought in by Mangantar Baringbing and his fellow villagers.

\(^{61}\) It is worth noting that in 1992, when land was appropriated for the development of an outer ring road in Samosir, a Nadeak clan chased a Naibaho clan off of *pauseang* land. A more recent case on the attempt of a company to appropriate a vast plot of communal land covering the three villages in Sibandang Island of the Lake Toba also creates problem regarding the customary rights and status of *marga raja* and *marga boru*.

\(^{62}\) These expectations still abound, especially in Samosir and Humbang but less in Silindung (compare this to the situation in Hutagalung in chapter 4).
most men, recognition of the proprietary status of the Baringbing clan and homage to their ancestors were of utmost importance. They felt they were being neglected because, instead of approaching the rightful proprietors according to adat, the company settled the deal only with the government-created official leader, the village head\textsuperscript{63}. The clan elders would actually have agreed to transfer the communal land had the company negotiated with them in a sincere, polite manner. Only some time later, after the peasant women insisted they did not want the land transferred, did the peasant men and elders of the Sugapa village demand their land be returned to them unconditionally.

Unlike the peasant men who had once thought of selling the land, from the very beginning the women would never have considered transferring it even if the company had legally and politely asked their permission. With village politics having traditionally been the active domain of the male members of the village, peasant men had a tendency to treat the question of land control as part and parcel of that game. On the other hand, village women mainly saw the question of control over (especially communal) land as their domain, for the sake of family survival, therefore fulfilling their ultimate (re)productive obligation as traditionally expected by the adat. It is in this regard that communal land serves both the "practical and strategic gender needs" of Toba-Batak women (Molyneux 1985; Moser 1989). The peasant women explained\textsuperscript{64}:

\begin{quote}
The communal Baringbing land is very important for us and especially for our children and future generations. We can freely collect firewood and wild fruits from the forests on our land, we can use the land for keeping our cattle, and if necessary, we can grow crops on the land to meet our daily needs.
\end{quote}

Another woman added:

\begin{quote}
You know that we are mere peasants. We need the land for feeding our children, and also for their future. I don't want to die of hunger. Neither do I want my children dying of hunger. For if that happens, it would be a sheer humiliating slap in our face...very, very humiliating ... I'd rather die for defending this beloved land\textsuperscript{65}.
\end{quote}

The peasant women expressed their disagreement because, as wives and mothers, they were considered most responsible for supporting their families. Based on their daily experience they could easily estimate the loss they would have incurred if they had transferred the land. The different reaction between

\textsuperscript{63} See again previous discussion on the ambiguity of the village head's position under the Law No.5/1979 on Village Administration.

\textsuperscript{64} My translated interview with the accused women conducted in Sugapa, August 1990.

\textsuperscript{65} An interview with Nai Sinta boru Sibarani, Sugapa, August 1990.
men and women is quite clear: men often argued for the honour of the clan, women for the provision of daily necessities and concern over the future of their children. I found that this gender-based difference in their argumentation was widely repeated in other land appropriation cases in North Tapanuli.

The vulnerable position of Toba-Batak peasant women motivated them to seek ways and means to defend their rights to land. The impression I got was that there was a split between individual and collective struggles. In general I can say that when confronted by outside and alien parties, and when involving a relatively large plot of (often communal) land, Toba-Batak peasant women were very persistent in collectively defending their rights over the land. They applied the "everyday forms of peasant resistance": passive non-compliance, subtle sabotage, evasion and deception (Scott 1985). Solidarity among related women is likely to be expected in the struggle over communal land. In collective struggle women together acted as the spearhead especially against any foreign, complex forces at local, regional as well as national levels.

Women would easily see through to the unjust structures originating from the state. On the other hand, they often failed to recognize this within their daily familial interactions. Consequently, solidarity between women within daily familial relations cannot be expected (see also chapter 4). For example, one of the Sugapa women who participated in the collective struggle was a widow with three daughters. After the death of her husband she mortgaged her rice field through the traditional pawning custom, _dondon_, because she was aware that as women she and her daughters had no right to maintain the husband's rice field. She said, "...if the clan of my husband want to have the land, I will let them redeem the rice field and repossess it." Such practice is frequently performed by village widows who do not have sons. In other cases a widow without sons who has funds to purchase land may not opt to invest in land because of the fear that her husband’s relatives may take over the land at the expense of her daughters.

The company management pronounces highly gender-biased opinions on the appropriation of the Baringbing communal land and on women’s access...
rights to the communal land in general. One example applies to the allocation of communal customary land which is always problematic since it is difficult to determine who is entitled to give the approval to the transfer of communal land rights. When broaching this point, the company assumed that "according to Toba-Batak customary law, the transfer of rights over communal land needs permission not from every villager. Approval from the elders of the local clans is enough". Such opinion on the right to transfer communal land threatens the continuity of women's access rights to customary land. This is simply because those considered as elders are elitist and highly exclusivist, which may easily facilitate their collusion with outside parties. Moreover, it is detrimental to women because they are never regarded as elders under the patrilineal Toba-Batak customary law. The company's redefinition of patriarchal Toba-Batak customary norms regarding access to land precisely ignores women's well-recognized secondary rights to land under the adat. In this way women are, in fact, the most deprived.

5.3. CASE THREE – PARBULUAN

The two cases presented above pertain to large-scale capital investments directly related to the wider national economic development interest. The Dolok Martalitali case involved a highly strategic industry (a hydro-electric power station) supported by state capital and investment of a foreign government and international private companies. The Sugapa case involved one of the most important national sources for gaining foreign exchange next to oil mining, namely the pulp industry. It was supported by a very large amount of Indonesian Chinese capital and foreign private investments. Now I shall analyze the third case, Parbuluan, which emerged in the early 1990s, and involved medium-sized capital of the ACWG agro-industry. The company was based in Jakarta and owned by a migrant Batak who also lived in Jakarta.

5.3.1. Brief Description of the Area

Parbuluan can be reached by the main road connecting Dolok Sanggul of the North Tapanuli district, and Sidikalang, the capital of Dairi district. It is presently part of the Dairi district. Genealogically speaking, it is a Toba-Batak area under the bius Lontung Sinaga Situmorang which encompasses 15
lineages, sampululima turpuk. As has been said earlier, a bius is a traditionally defined territorial and genealogical area entailing the relatively highest level of related margas hierarchy (see chapter 2 of this book). A bius is headed by a raja bius whose position is highly based on the seniority in the genealogy of the ruling clan. Ypes (1932: 28-29, 536) notes that in the beginning the descendants of Si Raja Lontung from Sabulan spread out to wider areas, and one of the destinations was Parbuluan. Local people say that it was Guru Dagang Sinaga and Ompu Mangantar Situmorang who first arrived in Parbuluan and set up a huta. Until colonial time the bius Parbuluan was divided into three sub-areas: first, Parbuluan sub-area, inhabited by margas Situmorang, Sinaga, Pandiangan, Nainggolan, and Sihombing; secondly, Parbuluan Pasaribu sub-area, inhabited by margas Pasaribu, Malau and Sagala; thirdly, Sibira sub-area, inhabited by margas Sagala, Situmorang, Sihotang, and Sigalingging. Parbuluan and its surroundings became a hiding place for the legendary King-priest Sisingamangaraja XII from Bakkara in the later period of his long fight against the Dutch. In 1906 the Dutch occupied the surrounding area in their attempt to subdue him; he was shot to death in 1907 (Sidjabat 1983; Situmorang 1993). Following the conquest, the bius Parbuluan became part of the Onderafdeling Dairiland, causing the uniquely Toba-Batak area to fall under Pakpak-Batak administrative authority72. The colonial administrative division was later taken over by the post-colonial state in which, administratively, Parbuluan forms a sub-district of Dairi district. In both colonial and post-colonial times, however, although the institution of bius survives, the political power of raja bius in general has been reduced to the minimal and appointed state administrators either a village head or Sub-district head took over the greater part of the former power of the bius (see chapter 2). Parbuluan shares the border with Harian sub-district, which belongs to North Tapanuli district. Parbuluan is presently divided into seven villages of which Parbuluan I and II would become the focus of the conflict.

Most people in Parbuluan are Christians. This area was christianized much later than the Silindung and Toba areas which were massively converted by German Protestant missionaries starting in the 1860s and 1880s (cf. chapter 2). In the early 1930s Catholicism was introduced in Parbuluan by some members of the Carmelite Order. They set up a congregation among those who were still strong believers in animism. The Christian Batak Protestant Church (HKBP) that developed in the Silindung and Toba areas later expanded to Dairi toward the end of colonialism and in the early decades following independence. The fact that a large number of Toba-Batak people had migrated to Dairi District and many of the originally Toba-Batak villages fell

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72There are at least six Batak sub-groups: Toba-Batak, Pakpak-Batak, Karo-Batak, Simalungun-Batak, Mandailing-Batak and Angkola-Batak, each of which maintains its own identity (see chapter 1).
under the district's administration enabled the Batak Protestant church to easily spread to this area, too. This has resulted in Parbuluan people basically belonging to all the different Christian churches. Presently in Parbuluan I alone, there are 146 households/families belonging to the Catholic Church and 70 households/families belonging to the HKBP (Christian Batak Protestant Church). While Christianity in this area is divided into different and often competing denominations, adat is still a persistent and valid authority over the daily life of the community under the raja bius Lontung Sinaga Situmorang which covers the 15 lineages.

Parbuluan is located on the western side of the Lake Toba highland plateau with an elevation of 1300-1400 meters above sea level. The area is surrounded by nine small rivers (aek or binanga) namely: Aek Bontar, Aek Sopo Hambing, Aek Unite Hau, Aek Lumbang Nabogas, Binanga Ronuan, Aek Parsoting, Aek Ompu Manggur, Aek Ompu Siatas and Aek Sopo Hambing. The inhabitants mainly live from horticulture dry farming. They produce food crops such as cauliflower, lettuce, carrots, tomatoes, chili pepper, maize and potatoes from their individualized farmland inherited over generations. The area is fertile and so good for dry farming that even in colonial times foreign investors could not resist coming to the area. Brentus Sihombing, a great indwelling marga or boru habolonan, recalls the story he heard from his father:

The Dutch once tried to open up a tea plantation in Parbuluan. At that time the Dutch-appointed Kepala Negeri, Raja Japet Situmorang, who was supported by the local people, resisted the idea that the land bordering the area would be occupied by foreigners and converted into a tea plantation. During the harsh protest some local people were wounded and some died. Eventually, the tea plantation was given up and no other attempts were ever made again. However, Raja Japet Situmorang had to quit the position of Kepala Negeri for which he had no regrets.

Some Parbuluan inhabitants have bought their own pick-ups and small trucks to regularly transport tons of farm products collected from the individual farms to the big market in the district capital, Sidikalang, located about 35 kilometres away, and to the surrounding areas. From this single farming activity, the inhabitants gain enough cash to provide for their daily necessities, renovate their houses, pay school tuition fees and fulfil adat ceremonial obligations. In addition to the individualized farming land, the Parbuluan inhabitants possess some hectares of undivided communal land. One part of the

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73 As the local people express it: "We are Catholics and Protestants. There are already two churches: Catholic and HKBP. We do not allow Pentecostal churches or any other denominations to enter the area!" (Interview with Brentus Sihombing in Parbuluan, 31 July 1997).

74 An interview with Brentus Sihombing in Parbuluan, 3 August 1997.
communal land lies between the Parbuluan I and II villages and is uncultivated and partly covered with forest. The area has, for generations, been used as a site for gathering firewood and herbs and partly as a reserve for people to expand their housing and farming sites. From time to time, the inhabitants also use the communal land for temporary gardens.

5.3.2. The Background of the Case

The month of December 1992 marked the beginning of the seemingly endless land conflict in Parbuluan. It was then that people became convinced about the real threat of losing their communal land. A year earlier it had only been a rumour that the communal land located between Parbuluan I and II had been transferred by some members of the community to a Jakarta-based private company called ACWG\textsuperscript{75}, an agro-business owned by a Toba-Batak man, but not from Parbuluan. Now the people watched with their own eyes as the workers of the company put a big sign in the field announcing the intention to utilize the 1,300 hectares of land for an estate project to grow ginger (jahe gajah) for export. For that purpose ACWG had acquired a location permit from the Governor of North Sumatra (SK Gubsu No. 593.41/24/27/K 1991)\textsuperscript{76}. The issue of communal land transfer divided the Parbuluan people between those who endorsed it and those who were against. The pro-transfer group was led by five men including the head of the two villages who received money from the company, while the contra group was comprised of the remaining members of the 15 lineages of the raja bius Lontung Sinaga Situmorang and, indeed, formed the majority.

According to those who were against the land transfer, the communal land located in Parbuluan I and II was illegally transferred to the company by five men who claimed to be the leaders and representatives of the Parbuluan people. They were involved in three separate transfers. I give their pseudonyms. Firstly, an elderly man named NikS (then 72), JaS (the village head of Parbuluan II), and ManS received Rp.78,800,000 for 788 hectares of land. Secondly, JoS, on behalf of 15 villagers, received Rp.29,700,000 for 297 hectares of land. Thirdly, MarS (the village head of Parbuluan I), on behalf of seven villagers received Rp.22,500,000 for 225 hectares of land. The land was valued at Rp.100,000 per hectare, an amount which was actually much bigger than, for instance, the pago-pago provided by the Indorayon company for appropriating the land in North Tapanuli\textsuperscript{77}. The money given for the land was

\textsuperscript{75} ACWG stands for Agrocitra Wahanamas Gemilang.
\textsuperscript{76} The permit was extended in 1992 and expired in 1993 (see Waspada, 6 December 1995).
\textsuperscript{77} The compensation paid by ACWG in Parbuluan is eight times bigger than the one in Sugapa in which Indorayon, in 1987, paid only Rp.12,500.- for each hectare of appropriated land.
defined as "compensation or pago-pago" (uang pembayaran ganti rugi atau pagopago). However, in the beginning the transfer was not conducted openly, nor later in the process was the compensation money ever divided among the rightful Parbuluan people.

In December 1992, when some heavily guarded ACWG workers started to install fences, over 100 peasant women came to the location and told them to stop. A harsh quarrel followed and ended in a violent clash between the ACWG workers and the Parbuluan women, in which many of the women were injured. While the incident put an immediate check on ACWG's first attempt to install fences, it also triggered widespread (counter) reactions against the alienation of communal land. These occurred in three interrelated arenas and took both a formal and informal form. First was the arena of the internal relations within bius Lontung Sinaga Situmorang, to which all the Parbuluan were affiliated. Second, the arena in which ACWG personnel who were directly involved in the construction project in Parbuluan interacted with the people who were against land appropriation. Third, the arena in which the state apparatus were involved.

As soon as the transaction took place, on 19 December 1991, the raja bius Lontung Sinaga Situmorang, encompassing 15 lineages, sought the help of a Legal Aid Institute (LBH) in Medan and formally gave it the authority to represent them in overcoming the land conflict in Parbuluan. With the help of the Legal Aid Institute (LBH), they sent a letter of objection to different levels of local state authority: to the Dairi district head on 21 December 1991; to both the North Sumatra Governor and a provincial parliamentary member (DPRD) on 26 December 1992; and to the Purbuluan sub-district head on 11 January 1993. In the meantime, the peasants found out that JoS, who had transferred 297 hectares of the communal land, had forged the signatures of some villagers. In reaction, Saudin Malau, whose signature was one of the one's falsified in the illegal transfer, reported the criminal act to the head of police (Kapolres) in Dairi. The report on the forging of the villagers' signatures never received proper follow-up by the relevant state authorities.

On the other hand, the publicly pronounced complaints by the bius members received a rather quick reaction from the company. Backed by local authorities, the company managed to persuade a Pakpak-Batak man, a marga Capa of Sulang Silima, who was an ordinary man living in Bangun village near Parbuluan IV, to proclaim that all Parbuluan land belongs to the Pakpak-Batak, particularly marga Capa, and not to the Toba-Batak. This move simply echoed the internal political dispute of the early 1960s when the post-colonial state, following its colonial predecessor, included Parbuluan as part of the Dairi district. In October 1963, Mr. J.A. Silalahi, then Dairi District head, made an accord with the Parbuluan people that Parbuluan would then be called "Parbuluan Toba Dairi" to emphasize the fact that it was genealogically a Toba and
not a Pakpak area. Indeed, the notes of Ypes (1932:536) clearly indicate that by the time of the Dutch intervention, bius Parbuluan belonged to the Toba-Batak and the residents of the bius were Toba-Batak marga members. Ypes (1932: 535-536) also mentions that in early colonial time marga Capa belonged to two Pakpak-Batak administrative areas called Kepas in Sitelunempu and Siempatnempu. Furthermore, by recalling the 1963 accord and arguing that all the rivers in Parbuluan have a Toba-Batak and not a Pakpak-Batak name, the attempt of that marga Capa eventually failed.

As a second counter reaction, a meeting was held between the company representatives and the five Parbuluan men who had transferred the land along with a number of their supporters. It was chaired by the commander of the regional military, Dandim 0206/Dairi. ACWG wanted to list the plots within the transferred communal land which should be excluded from the transactions. The company expected that they could soon start the estate project undisturbed on plots which had been legally transferred, thereby reducing further local conflict and unnecessary problems. However, since the land was communal and undivided, they soon realized that no part of it could be divided or appropriated without the approval of all the members of the bius.

The impossibility of defining and allocating the plots of land which could be "legally" transferred under the adat led to the company and the five local men inventing other means. In January 1995, the group which had transferred the land, backed by ACWG and the military, formed a competing raja adat (or adat elders) institution in Parbuluan which was called Ramot. The self-declared raja adat institution wanted to establish a competing position of adat elders. This was done obviously to gain adat credibility for the actions of the group members regarding the transferral of the communal land to ACWG. The existing raja bius Lontung Sinaga Situmorang demanded that the Ramot group dissolve itself as a competing adat elders institution, but this was totally ignored and led to their having to repeatedly proclaim their validity as the original adat elders institution of bius Lontung Sinaga Situmorang in whose hands the authority over land division and appropriation was exclusively preserved. Those who were against land transfer were later called the Lambasar group. Therefore, the partition of adat elders was affirmed in the

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78 On the colonial political-administrative map, the Dutch had included two Toba-Batak areas under the Onderafdeling Dairilanden (Dairi administrative jurisdiction). Those two Toba-Batak areas were Parbuluan and Silalahi. As the post-colonial state took over and continued to walk in the steps of its predecessor, the 1963 accord with the Dairi District head, Mr. J.A. Silalahi, included the two areas to be called respectively Parbuluan Toba-Dairi and Silalahi Toba-Dairi.

79 See the name of the nine rivers in Parbuluan mentioned before. The Toba-Batak would call a river Aek or Binanga while the Pakpak would call it Lae. The Parbuluan people argued that it was impossible to have Toba-Batak names for the rivers if the area belonged to the Pakpak-Batak. Indeed, other rivers in Dairi are called Lae like the big river Lae Renun on which construction of a hydro-electric project is taking place.
founding of the two groups: Ramot and Lambasar.

Behaving as an authorized *adat* elders institution, Ramot (the pro-transfer group) took part in the second attempt of the ACWG to install fences on the communal land. On 3 February 1995, workers from the ACWG, accompanied by representatives of the Dairi district and the National Land Board (BPN) and guarded by the military (*Kodim*) and local police, turned up at the site to continue the attempt. In reaction, over 200 peasant women arrived to try to stop them and they were violently attacked by the military and local police. In their anger, some members of the *bius* later burned down a hut built in the farmyard of one of the pro-transfer group members. Later on 6 February, still angered and humiliated because of the treatment of the women, the *adat* elders of *bius* Lontung Sinaga Situmorang, along with many of the men of the community, came to the site to demand that ACWG suspend its installation efforts. They were dressed in their full *adat* elders' costumes and ornamentation. However, not only did the military rudely chase the *adat* elders and male protesters away, but late in the night they burned down people's huts built in their farmyards. Such para-statal intimidation was repeatedly experienced by the Lambasar group members.

Since the protests continued, the attempts of the para-statal forces at repression became more violent. In the evening of 9 February 1995, seven men of the Lambasar group were abducted and tortured in the house of one of the Ramot group members before they were taken to the regional military office, *Kodim*\(^\text{\textsuperscript{80}}\). Driven by fear, the rest of the group, including sixty women, fled in the middle of the night and walked for two days through the forest until they arrived at the parliamentary office (*DPRD*) in Medan, the capital of the province. They did not dare to return to their home village and eventually stayed in hiding in Medan for about two weeks. Finally, on 13 February, the protesters sent four members to Jakarta to seek legal protection from the National Parliament, the General Commander of the Indonesian Military, and the National Commission for Human Rights (*Komnas HAM*). Their appearing in Jakarta resulted in the local case becoming the subject of national attention.

5.3.3. The Course of the Case

On 23 February 1995, ten days after the intimidation was reported to the central authorities by the peasants who had fled the area, representatives from the National Commission for Human Rights (*Komnas HAM*) visited Parbuluan, talked with the peasants involved and discussed matters with the local state authorities at the district and provincial levels. The next day, the human rights

\(^{80}\)Sources from Lambasar members said that they were first tortured in the house of a Ramot member named MagS before brought to the *Kodim* office. Because of the torture, one person named BS suffered broken ribs. (An interview with BS, Parbuluan, 29 July 1997).
commission envoy\(^{82}\) and the District head held a public meeting for reconciliation in the village school yard (SD Negeri). At the meeting the ex-Lambasar group members insisted that the status of communal land and its transfer should be discussed first before they go further into talks about reconciliation. They wanted the ACWG location permit revoked and that no activities of the company be allowed to take place. However, the District head argued that the procedure for revoking the location permit was beyond his authority\(^{82}\). The other state functionaries present were able to convince the meeting that discussion on that matter would only worsen the conflict.

Finally, a three-point agreement (kesepakatan) was reached. First, that a secure, peaceful, safe and tranquil condition in Parbuluan be restored. Secondly, that the disputed land be utilized for the interest and welfare of the local people. Thirdly, that attempts be made to solve the land dispute in a familial adat way, in accordance with the advice of the military commander as well as the local people's tradition, and that these be rendered by the Dairi District head together with the advisory bodies at the district and provincial level\(^{83}\). The agreement was witnessed and signed by 24 persons. There were six state functionaries including the military high commander (Kodam I Bukit Barisan), head of the district parliament (DPRD), the military district commander (Dandim 0206 Dairi), head of the district court (Pengadilan Negeri), head of the district attorney (Kejaksaan Negeri), and head of the Dairi district police (Polres). Two were from the Human Rights Commission and one was head of LPPH (Golkar affiliated legal aid institute), two were NGO activists who accompanied the fled people, three were Ramot group members, and the remaining ten were the members of the Lambasar group.

A week after the agreement between the Human Rights Commission and the District head was signed, on 1 April, the military district and sub-district officers (DAN REM 023/KS and DAN DIM 0206/Dairi) came to Parbuluan to initiate a reconciliation between the Ramot and Lambasar groups. The terms were put into a written agreement which was signed by both of the conflicting

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\(^{81}\)The commission was represented by Dr. A. Hasibuan, a Toba-Batak but not from Parbuluan.

\(^{82}\)Compare this to the information in Kompas, 25 February 1995.

\(^{83}\)The original three-point agreement is as follows: (1) Mewujudkan rasa tenteram, aman, rukun dan damai diantara sesama warga masyarakat di Desa Parbuluan I dan II, Kecamatan Parbuluan Kabupaten Daerah Tingkat II Dairi, sehingga dengan demikian diharapkan kembali hidup seperti sediakala; (2) Mengharapkan agar pemanfaatan tanah rakyat yang disengketakan dapat dipergunakan untuk kepentingan dan kesejahteraan rakyat setempat demi pertumbuhan dan pengembangan pembangunan daerah tersebut; (3) Mengusahakan penyelesaian persoalan tanah tersebut melalui cara kekeluargaan/peradatan, sesuai anjuran Pangdam I Bukit Barisan Mayjend TNI Arie Kumaat dan tradisi rakyat setempat, yang dilaksanakan oleh Bupati Kepala Daerah Tingkat II Dairi dibawah Bimbingan Muspida Tingkat I Sumatera Utara (See Pokok-pokok kesepakatan Komnas HAM dan Bupati..., dated 24 February 1995).
parties and by the military commandant as mediator\(^{64}\). The agreement covered seven points. First, that the land dispute would be discussed later and would not be of concern to the reconciliation process. Second, the Ramot and Lambasbar groups would be dissolved and both return to the previous adat institution *bius* Lontung Sinaga Situmorang encompassing 15 lineages in Parbuluan. Third, the present and future conflicts would be solved in a familial way through deliberation (secara kekeluargaan dengan musyawarah) and should such attempts fail, a legal procedure would be sought. Fourth, both parties should refuse any outside intervention which may divide their unity. Fifth, both parties acknowledged their appreciation of the Military General Commandant in Jakarta for his attention to the problems in Parbuluan, and to the military high commander (*Pangdam l/BB*) and the military district commander (*Dan Rem 023/KS*) who initiated the reconciliation, and to the military sub-district commander (*Dan Dim 0206/Dairi*) who brought the reconciliation about. Sixth, both parties apologised for the trouble caused to the concerned state apparatus. Seventh, in bringing the reconciliation about, a prayer gathering (*partangiangan/doa syukuran*) followed by an adat ceremonial meal (*mangan indahan sinalor*) would be held by the people of Parbuluan I, II, and III, after Easter Sunday, 1995.

As a follow-up, on 19 April 1995, a Christian prayer gathering, *partangiangan*, and an adat ceremonial meal, *mangan indahan na sinaor*, were held. The event was widely attended by members of the *bius* from both parties (including the Parbuluan III villagers) as well as ten state functionaries\(^{85}\). After the prayer ceremony, the gathering held an adat ceremonial meal during which rice was served with pork cooked in hot-spiced blood, *na nibontar*, to symbolize the reconciliation. Following the meal, the attendants pronounced the purpose of their gathering and the ceremonies. A long series of speeches was made by both parties as well as the state functionaries. In this way, the so called "adat ceremonial meal" was a constructed medium in which conflicting parties presented their speeches in accordance with adat formalities, while those state functionaries who actually had no place in the original adat institution played a leading role in the whole process of adat ceremony.

\(^{64}\)The reconciliation meeting was attended by 37 people including observers. The name of the military commandant and his function appears on the lower part of the agreement: Komandan Komando Resor Militer 23 sebagai penengah, Jorry Tuwaaidan, Kolonel INF NRP 22100.

\(^{85}\)Those ten state functionaries were: the provincial Governor represented by his deputy, Pieter Sibaranl; the Military Commandant *l/BB* represented by Kakumdam *l/BB* Colonel Timur P. Manurung; the provincial Chief-police represented by Kadit Binmas Poldasu, KolPol. Syahrul Hamzah; Commandant Korem 023/KS, Kol Inf. Jerry Tuwaaidan; Dairi District head, S. Sihotang; Military Commandant Kodim 0206/Dairi, Letkol Inf. Bakty Tarigan; District chief police, Kapolres letkol Pol. Sukarni Ismail; District chief prosecutor (Kejaksan Negeri), Amir Hamzah; District court chief (Pengadilan Negeri), Rapotan Harahap; and head of local parliament (*DPRD Dairi*), V.H. Togatorop.
This is the disputed Parbuluan land!

The author with some Parbuluan people
At the end of the meeting the bius released a three-point agreement which was basically in line with the previous agreement. First, acknowledgement that the 15 lineages of the bius in Parbuluan I, II, and III had been reconciled through a Christian prayer gathering and an adat ceremonial meal. Secondly, that all problems within the bius would be solved in a familial manner in accordance with the living law and principles of bius Lontung Sinaga Situmorang; and if the problem was not solvable, the (state) law would be pursued. Thirdly, both parties accredited various agents of the state apparatus for having supported the unity of the bius Lontung Sinaga Situmorang. The agreement was signed by the representatives of all 15 lineages in their adat capacity: two bius elders (Raja Jolo), two marga elders (Ujung Barita), nine lineage elders (Parbaringin), and two in-dwelling marga (Boru Tano).

This last agreement made among the bius members succeeded in temporarily preventing further physical conflicts between the two groups. At least for the first seven months there was no overt confrontation between the two and no signs of ACWG activities being conducted. Life became normal again although members of the two groups were still hesitant to talk to each other. However, on 16 November 1995, the company, again, entered the communal land in an attempt to construct a base camp to be able to start the estate project. They were accompanied by members of what had previously been designated the Ramot group and some police officers. On the same day, some peasant women (ex-Lambasar members) confronted them and asked them not to continue. The women were chased away from the site by force and were maliciously intimidated. Under such heated conditions and heavy military guard, the ACWG could continue with the construction of the base camp.

Knowing that the ex-Ramot group members and ACWG had again entered the communal land, the ex-Lambasar group members became very angry. On 20 November, about 500 ex-Lambasar members came to the site and approached the ACWG construction workers. Again, the workers were defended by some local policemen who did the talking with the angry people, and again the ex-Lambasar members were intimidated by the heavily guarded ex-Ramot members. Threatened with intimidation, about 300 ex-Lambasar members (including children) left the village on foot at about eight o’clock in the evening and arrived in the district capital, Sidikalang, just after midnight. They reported the incident to the district parliament (DPRD) and (consultation

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86. They specifically mentioned the Indonesian Military General Commander, PANGAB; Military Regional Commander, Pangdam I/BB; Military Sub-regional Commander, DAN REM 023/KS; and the District head (Bupati).

87. The bius clearly represents the two margas and their relations: Situmorang and Sinaga. The two Raja Jolo were Jalima Situmorang and Paulus Sinaga. The two Ujung Barita were Linclius Situmorang and Galbus Sinaga. The nine Parbaringin were Jansen Pandiangan, Borhat Situmorang, Markus Nainggolan, Maridup Sitohang, Burehem Samosir, Jariko Sinaga, Gomar Sinaga, Derik Sinaga and Pandapotan Sinaga. The two Boru Tano were Epo Sihombing and Gala Sihombing. See the list of undersigned in the agreement, dated 19 April 1995.
of the regional government) Muspida and sat in at the yard of Parliament House in Sidikalang for three days. To their disappointment, the DPRD and Muspida told them that it was not in their capacity to impede the activity of the ACWG company in Parbuluan. On 24 November the 300 people returned to Parbuluan full of discontent.

An incident three days later marked a shift in this conflict from the state apparatus being in the background to its coming to the fore. On the morning of 27 November, about 300 discontented ex-Lambasar members, men, women and children, appeared at the site to request that the ACWG workers and the ex-Ramot members refrain from their activities. A direct confrontation could not be prevented. The workers and ex-Ramot members were equipped with their tools such as sticks, knives, hammers and spades, and they boldly refused the request and started to reproach and threaten the protesters. How exactly the incident took place is not very clear to me. The local people's version says that the workers began to pitch their tools into the crowd. In reaction the people, greatly frustrated and no longer able to control their emotions, attacked the under-construction base camp as well as the ACWG workers and ex-Ramot members with any stones they could find. Many ran away, except one worker who was a karateka. Unfortunately, he was caught in the clash and eventually died. Defending themselves, the local people say: "Anybody could see that at the site there were no tools owned by the local people. All the sharp instruments scattered on the ground after the incident were owned by the company. We went there in peace but they blatantly attacked us!"

At about 11:30 on the same day, ex-Lambasar male members went on foot to the police station in Sigalingging, 13 kilometres from Parbuluan, to inform the police about the incident and ask for legal protection. While they were on the way home in the evening, three ex-Lambasar members were mysteriously abducted. After this, abduction became a daily threat for the Parbuluan people. The fear was so great that even in daytime people did not dare to leave their homes to work the fields. As a result, their farming yields which were due for harvesting rotted. Everybody suffered greatly and even children were afraid to go to school. After 20 days of living under such fearful conditions, on 16 December, eight Parbuluan peasant men agreed to end the situation by surrendering themselves to the police in Sidikalang. They were concerned about the security of the rest of the people and their terrible suffering from the threat of abduction by the local police. On 19 December, the

88 The name of the ACWG worker who died in the clash was Charly Hutagalung.
89 The three kidnapped men were MM, MS, and DM.
90 On 28 November 1995 at about 10 o'clock, NS was kidnapped from the road by the police; on 30 November 1995 JM was kidnapped also from the road side in Sitinjo.
91 The names of the men who surrendered were: Monang Sihombing, Sabar Sinaga, Oloan Situmorang, Marulam Nainggolan, Josen Sihombing, Damianus Situmorang, E Sitohang, and Paian Siringoringo.
formal letters of arrest were received by the wives and families of the eight surrendering men, indicating that the men had trespassed the criminal law book chapter 340 subider 338 subider 351(3) jo. 170(2)\(^2\).

The criminal procedural law requires that a person who is alleged of a criminal act that is subject to a minimum of five-year's imprisonment be accompanied by a lawyer\(^3\). However, during police investigations concerning the eight Parbuluan men this was never the case. The police hampered their attempt to appoint a lawyer from the LBH Medan. Instead, on 15 December, the men all signed a letter of authorization for a lawyer provided by the police, but this lawyer never turned up\(^4\). The eight men were processed in two criminal cases in the District court in Sidikalang. The first was registered as Case No.20/Pid.B/1996/PN.SDK alleging defendants Dameanus Situmorang, Edison Sihotang, Sabar Sinaga, and Paian Siringoringo for trespassing the criminal law book (KUHP) chapter 338 jo 55(1.1.e), subcoder chapter 170(1 and 2.3.e.), subcoder chapter 351 jo 55(1). The second was registered as Case No.21/Pid.B/1996/PN.SDK. alleging the defendants Oloan Situmorang, Josen Sihombing, Marulam Nainggolan, and Monang Sihombing for trespassing the criminal law book (KUHP) chapter 338 (1.1.), subcoder chapter 170 (2.3), subcoder chapter 351(3) jo 55(1).

The court hearing is a perfect illustration of how the Parbuluan people's ignorance of the state processual law on the one hand, and the monopoly of the criminal case in the hands of the state legal experts on the other hand, were harmful to them\(^5\). In the lower court seven defendants were each sentenced to seven years' imprisonment while one was sentenced to eight years, including the days under arrest, and to pay Rp.1,000.- for the case fee. The defendants had asked for time to think the sentence over. There was a heated debate among the defendants and also with the wider Parbuluan population on whether to accept the sentence or forward the case to the higher court. Many of them were afraid that, having learned from their experience in the lower court, the higher court would only lead to a longer period of imprisonment and a prolongation of the Parbuluan people's suffering. However, in the end the defendants decided to reject the sentence and to bring the cases to the higher court.

While the defendants were waiting for the decision of the higher court, their arrest period, which had started on 16 December 1995, reached the maximum (360 days) warranted in the criminal procedural law (KUHAP)\(^6\). This meant

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\(^2\)See the criminal law book (KUHP, Kitab Undang-undang Hukum Pidana).

\(^3\)Chapter 56 criminal procedural law (KUHAP, Kitab Undang-undang Hukum Acara Pidana).

\(^4\)The appointed lawyer was from a legal aid institute "K" in Dairi.

\(^5\)See Telaumbanua (1996) on the unfair treatment during the whole process of the court hearing.

\(^6\)See UU No.8/1981; KUHAP chapters 24 to 29 on the maximum of 360 days arrest.
that on 10 December 1996 the arrestation should have been lifted even if the cases were still to proceed. Because the arrestation continued beyond the warranted period, the state and its judicial functionaries were sued by the wives and a female relative of the defendants through the help of lawyers from the Legal Aid Institute (LBH) in Medan. On 21 January 1997, the administrative case was open, but only resulted in a simple rejection of the lawsuit by the judge. On the next day, the eight defendants received the decision of the high court on the main criminal charges, and the decision confirmed the previous sentence handed down by the lower court.

The arrestation has shifted the focus of the Parbuluan case to a criminal one. The issue of the (il)legality of the land transfer which is, indeed, the root cause of the case, has not been properly addressed. The ACWG company no longer as yet continues the attempt to construct the base camp while some of the local people start to cultivate the disputed land. Yet, there is no clear conclusion on the present status of the disputed land.

5.3.4. Analysis of Parbuluan Case

5.3.4.a. Legal pluralism and land struggle

The Parbuluan land conflict involved a rather small scale agro-business company which was based in Jakarta and owned by a Toba-Batak, though he was not from Parbuluan. In the effort to acquire land for their enterprise, the company obtained a location permit (ijin lokasi) which it used to appropriate the 1,300 hectares of Parbuluan communal land received from five villagers. However, the process of land appropriation itself was invalid in two respects: first, it was transferred only by a small number of people without prior consent from all members of the bius Lontung Sinaga Situmorang who are the legitimate owners under the adat; secondly, the land transfer was based on falsified signatures of some of the villagers. Though neither the state law nor the adat considered the land transfer in Parbuluan legitimate, the Parbuluan people could not easily regain their land.

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97 The Indonesian state; the Government of the Republic Indonesia, Jakarta; the Minister of Justice, Jakarta; the Head of North Sumatra Justice Ministry; the Coordinator of Penal Institutions (Lembaga Pemasyarakatan) of North Sumatra Justice Ministry, Medan; the head of Prison House in Sidikalang.

98 Those women who sued the state functionaries were: Tiermin Sagala, 40, wife of Oloan Situmorang; Sarma Ambarita, 26, wife of Josen Sihombing; Tioma Situmorang, 35, aunt (inangtua) of Monang Sihombing; Kristina Situmorang, 34, wife of Marulan Nainggolan; Mita Sagala, 33, wife of Paian Siringoringo; Hotria Limbong, 27, wife of Sabar Sinaga; Sari Siburian, 32, wife of Dameanus Situmeang; and, Kasta Ginting, 35, wife of Edison Sitohang.

99 See, Permohonan Pra Peradilan, Medan 13 January 1996 (sic, it is supposed to be 1997).
The struggle over the communal land took place within a complex legal framework. It is, again, a perfect example of how the different parties in the conflict were exposed to the idea of "forum shopping and shopping forum" (K. von Benda-Beckmann 1981) by (ab)using different forums and applying different arguments to legitimise their rights to the disputed Parbuluan land. In doing so, they selectively used the elements of different legal systems. At the normative level, the conflicting parties referred to both the state law and adat law in acquiring and defending their rights to the land. However, interpretations of the different normative legal frameworks may not always be consistent, and throughout the conflict the parties manipulated the institutional frameworks of the state and adat alike to gain power over each other. While in the end both parties counted on the state and its legal, non-legal and illegal frameworks, the different state apparatuses took a leading role in the effort to solve the conflict. Indeed, the fact that there are various layers of the state authorities has created reasonable ways for each to avoid due responsibility. The state proved to be partial in the conflict resolution by clearly taking the side of the company. Moreover, instead of looking to itself as part of the problem, the state played a leading role as a peace mediator and treated the conflict as an internal problem of the Parbuluan people.

The case can be divided into three phases in relation to the active involvement of state and non-state mediation in the conflict resolution. The first phase started in 1991 and lasted until mid-February 1995, when the Parbuluan people were in direct conflict with the ACWG and the involvement of other actors was not yet substantial. The second phase, conflict resolution, started after mid-February 1995 when the people asked the Human Rights National Commission to intervene. The Commission's involvement opened the way for further interventions by state apparatus and substantially changed the direction of the conflict. When the situation received national public attention, it was made to appear as a domestic problem, that is as only an internal conflict between groups of the Parbuluan villagers. The third phase started on 27 November 1995 with the killing of an ACWG worker, followed by criminal trial by the state court.

In the first phase of the case the company deliberately tried to take control over the communal land by various means. Equipped with the location permit from the Governor, they were able to approach five local men and appropriate the land by paying compensation defined in adat terms as pago-pago. As a Toba-Batak, the company owner must have known that the land was owned collectively by all the members of raja bius Lontung Sinaga Situmorang and not only by the five men. However, the chosen five, in the opinion of the company management, represented both the adat and the administrative leadership, since an adat elder and the two village heads were involved. In addition, the amount of compensation being paid for each hectare of land was quite substantial in comparison to other instances of land appropriation that had
taken place in rural North Sumatra. In this way the company tried to fulfil its ultimate obligation to compensate the land as required by state regulation: the old Home Affairs' Minister Regulation No.15/1975 which has been replaced by separate regulations for private investors, namely, the Presidential decree (Keppres) No.97/1993 on the procedure for investment, the regulation of Agrarian Minister (Permenag/Kepala BPN) No.1/1993 on the procedure to obtain location permits and rights to land, and, the decision of the Agrarian Minister (Kepmenag/Kepala BPN) No.22/1993 on guidance to the procedure for the endowment of a location permit (see Chapter Three this book). By defining the compensation as pago-pago, the company tried to meet what was wrongly understood as an adat requirement for land transfer.

The company's attempt to manipulate the adat became more obvious when the majority of people started to protest. First, with the help of local (state) authorities, the company tried to recreate an ethnic dispute over adat proprietorship between the Toba- and Pakpak-Batak by persuading a Pakpak-Batak to put a claim on Parbuluan land as Pakpak-Batak's land. Secondly, the company, with the help of the military, attempted to divide the communal land between plots belonging to the protestors and those belonging to the pro-transfer group so that those of the protestors could be excluded from the transaction. Based on the wrong assumption that it was possible to divide adat communal land into fixed plots depending on the number of male members, the company detached the communal land from the existing social relations that had long governed relations to the land. Like in the western conception, the company treated the communal land "as attached to imaginary grids and identifiable as parcels or plots which can be held, owned, rented, or sold" (cf., Adeyoju 1976:28). Thirdly, when the company's attempt to identify the plots belonging to members of the protestor group failed, it devised a new raja adat, namely the Ramot group, as a competing institution to the existing raja bius Lontung Sinaga Situmorang. This seemingly adat construction was invented in January 1995 in order to legitimise the transaction. Based on the establishment of a competing adat institution, the Ramot group took part in the second attempt of the company to install fences on the disputed land in February 1995. Since the second attempt to install fences was attended by the district officer and officers from the National Land Board and was heavily guarded by the military (KODIM) and local police, the Ramot group was implicitly recognized as a valid adat representative by the state apparatus.

The recognition of the legality of the land transfer on the part of the state enabled the company to mobilise support from the state and para-statal forces. It seems that the company counted greatly on their coercive power. As a result, the attempt of 200 peasant women to stop the fencing was violently put down and the male protesters were easily chased away. Direct intimidation by the para-statal forces took place when they burned down people's huts in the farmyards in the middle of the night. Finally, physical violence was unleashed
when seven male members of the Lambasar group were abducted, tortured and held in the military office (KODIM).

On their part, the Parbuluan people developed various strategies to get the land back. As soon as they learned about the illegal land transaction, the raja bius held a meeting and decided to ask for help from the Legal Aid Institute (LBH) in Medan on 19 December 1991. The raja bius was aware that, since a Jakarta-based company was involved, the case would need a solution which might go beyond their adat authority. However, an immediate legal process in court as warranted by the state law was not seen as an appropriate solution to the problem. Instead, the Parbuluan people sent a petition to the district head (Bupati) on 21 December 1991. A year later, the peasant women came to the site to physically halt the first attempt by the company to install fences. This move, although it did not shift control over the disputed land, did slow down the activities of the company, resulting in economic loss due to the uncertainty. The physical confrontation was followed by another petition sent to a higher authority than the district head (Bupati), namely the North Sumatra governor and the provincial parliament (DPRD). When the district head (Bupati) passed away because of sudden illness, the people sent another petition to his successor on 11 January 1993, asking him to pay attention to the Parbuluan case. Meanwhile, a story developed among many of the Parbuluan people and surrounding villagers that the district head (Bupati) had died because of uhum, or supernatural punishment, from the Mulajadi na Bolon, the Batak supreme god. A neighbouring villager told me:

People may not have enough strength to struggle for their ancestral land. They have suffered a lot from the injustice. There is a point when people have to stop fighting because justice will reveal itself. As you see, the Bupati died in the midst of his great power to solve the Parbuluan conflict but he did not do justice... Yes, hukum, or the penal law of the state may not work, but the divine law, uhum, is a fair trial.  

Another move by the people was to report to the local police the criminal act of JoS' forging the signature of Saudin Malau in the discreet transaction. Some of the protesting villagers burned down a hut in the farmyard owned by a man who transferred the land. When the competing adat institution called Ramot was formed, the existing raja bius demanded that the group be dissolved. On various occasions the raja bius explicitly declared that they were the genuine and authorized adat institution for decisions on Parbuluan land. Their strategy seemed to be working in the beginning when the company did not dare to continue with its activity on the site. But more than two years after the failure

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100 As told by a neighbouring villager, JS, who followed the case involving his marga fellows, during an interview in his house in Harianboho on 31 November 1993.
of the first attempt to install fences, the company tried a second attempt. This was again blocked by over 200 women. When the women were intimidated, *raja bius* male members directly confronted the company on site. People kept guard on the land and this slowed down the activities of the company.

The Parbuluan were victims of violence (such as abduction, torture and the burning down of farm huts) at the hands of the company. When they could no longer bear this treatment around 300 members fled in the middle of the night. They arrived at the parliament house (*DPRD*) in Medan, asking for legal protection from the parliament members, and stayed (they say "hid") in the building for two weeks. Their sitting-in at the parliament house embarrassed the district government and the company. Parbuluan people later decided to send four members to Jakarta to seek legal protection from national level authorities such as the central parliament house (*DPR*), the military general commander and the national commission for human rights. This last move proved to be very effective because the case suddenly became the subject of nation-wide media coverage. However, it was characteristically reactive because in the end the Parbuluan were forced to adjust to the rhythm of the company's actions. In the perception of the Parbuluan people, the local state apparatus and para-statal forces that were backing the company's activities had to be countered by state apparatus at the national level.

The second phase of the conflict was marked by the direct intervention of the state and para-statal institutions in conflict resolution. The intervention by the human rights commission was upon the invitation of the intimidated Parbuluan people, so it was initially seen as advantageous to them. The Parbuluan people who had fled could return home and were guaranteed protection against further intimidation. The Commission managed to gather all important state functionaries, namely: the military high commander (*Kodam I/BB*), head of the district parliament (*DPRD*), the military regional commander (*Dandim 0206 Dairi*), head of the district court (*Pengadilan negeri*), head of the district attorney (*Kejaksaan Negeri*), and head of the district police (*Polres*), to discuss the matter with the Parbuluan people. Ironically, the Parbuluan had earlier approached the relevant state functionaries to help solve the problem, but they had done nothing worthwhile for the people.

Although beyond its intention, the human rights commission's intervention served only to open the way for the state apparatus to present the conflict as an internal local problem. Ironically, high officials of the local military, whose members had backed the company's operation and intimidated the people, suddenly became mediators in this conflict concerning civilians. While the land status question which was at the core of the conflict was not subject to discussion, the agreement clearly declared that the two groups within *bius* Lontung Sinaga Situmorang should be reconciled. State functionaries, indeed, had played the superior role in the patron-client relation within the dispute resolution. For instance, the military officials explicitly put themselves in a
superior position when the agreement stated that the people were grateful for the initiative taken by them in seeking peace and expressed their regret for having troubled the military. The content of the agreement was full of conformity with the Pancasila state ideology. This could be seen in the statement that there was to be a Christian prayer gathering, followed by an adat ceremonial meal performed by the people, followed by the actual reconciliation ceremony. The timing of the reconciliation, after Easter, was not without an ideological agenda. Easter symbolizes peace and reconciliation in Christianity, the religion to which the Parbuluan people belong. Under the often declared "a godly Indonesian state" (negara Indonesia yang berketuhanan), people were somewhat forced to show their obedience to the call for reconciliation. By leading a Christian prayer gathering and adat ceremonial meal, the state functionaries were able to appropriate power over the people. In addition, the agreement was a clear manifestation of the constructed legal hierarchy in that adat deliberation should be sought first but state legal procedure would be the final solution. The process and the whole content of the reconciliation agreement indicated that the problem was considered to be only at the level of the domestic and the local, that it was merely an internal conflict among local people, and that neither state functionaries nor the ACWG company were inherent parts of the problem. Indeed, the state functionaries' intermediation in the Parbuluan land conflict prolonged rather than solved the problem. The peaceful period after the reconciliation was occasioned by repeated attempts of the local police (Polres) to persuade the Parbuluan people to approve the land transfer.

The third phase of the conflict began when the company attempted to re-enter the communal land and was marked by the killing of an ACWG worker. The movement to reject the land transfer ultimately gained momentum because of the tragic incident. After the deadly incident, the Parbuluan people became subject to violence and repeated intimidation by state apparatus. In fact, the one criminal act that they did carry out legitimised the almost unlimited power of the state apparatus and para-statal forces to cause the people great agony. The surrender of eight men to the police was a conscious decision on the part of the people to conform to the authority of the state law. "It is better to be arrested through the right legal procedure than to be intimidated by unknown para-statal forces!", said a Parbuluan man. Yet the arrest of those eight men did not end the uncertainty because they could not exercise their full rights as warranted by the state's procedural criminal law book (KUHAP) during the arrest and court hearing.

Suddenly, the arrest of the eight Parbuluan men shifted the emphasis of the problem from a civil case (namely land appropriation) to a purely criminal case. In the process even greater authority was rendered to the state functionaries to shape the whole struggle over communal land. The arrest of the eight men demonstrates the uneven nature of the conflict. Local people's pursuit of justice
for their rights to the "stolen" communal land was undermined, while the death of the ACWG worker was treated as a purely criminal act committed by the Parbuluan people, disengaged from its root cause. Moreover, the state apparatus applied a double standard towards its citizens. The criminal act of the pro-transfer group of forging the villagers' signatures during the land transfer was never given equal attention by the state apparatus. Instead, those who were against the (illegal) land transfer to commercial interests were easily subdued by the state apparatus precisely when they became involved with a criminal act in the effort to struggle for their land. Indeed, criminalizing the victims rather than victimizing the criminals became a pattern in the whole process of collective land struggle.

5.3.4.b. Gender and land struggle

The course of the Parbuluan case was experienced and perceived differently by Parbuluan men and women. In the first place, the standing of women in the struggle was very much dependent on their men's standing. As "invisible" landowners under the Toba-Batak adat, women had no potential or capacity to directly initiate a transfer of land to a total alien such as the ACWG company. Therefore, the position of conflict they were put in was almost always by chance, if not by fate. Parbuluan women were divided into two groups, depending on where their husbands and closest senior male relatives stood. Wives of the members of the pro-transfer group, Ramot, for instance, also identified themselves closely to that group. The same applies to that of the Lambasar. The wives of Lambasar group members greatly supported the struggle of their husbands to repossess the communal land. There is no evidence, at least from the outset, that women had a different standing from that of their husbands or senior male relatives. The gendered clan affiliation which was culturally constructed became more important than affiliation to the natal clan. The case of two women originating from the same natal clan, Situmorang, is illustrative. One of the boru Situmorang women was married to a man who was a member of the Ramot group, while the other was married to a member of the Lambasar group. Early in September 1995, during the heated conflict between the two groups, the two boru Situmorang women were found beating each other. The supporter of the Lambasar group was in her eighth month of pregnancy and was so badly wounded that she could not be treated in the public hospital in Sidikalang but had to be transferred to a better one in Kabanjahe of the Karo district. The beating of a pregnant woman thoroughly contradicts the long-standing Batak attitude to protect a woman who is carrying the unborn. It symbolically shatters the very core of the Toba-Batak ultimate goal in life: to have offspring. The cause of the beating was quite simple. The victim, as usual, had followed the narrow path leading to her field. The path was adjacent to the field of the other woman. There had never been
a problem before with people passing through there, nor had the two women had a personal quarrel. However, the fact that their husbands belonged to different competing groups in relation to the land conflict indicates that women's standing was very much dependent on that of their husbands.

Additionally, however, there are internal gender differences within the group according to opinions regarding action and strategy on many aspects of the land struggle. Women (and children, too) were taking part mostly in the initial attempts to chase the ACWG workers off the land. The role they played in the struggle followed from the idea that women are weak and, because of that, they did not take a violent approach. They simply walked in a group to the site where the workers were working and kept on standing there, pleading, crying, shouting, singing and grumbling directly at the workers. Their non-violent presence had the impact of slowing down the process of the fence installation and base-camp construction. In their attempt to attract the attention of the state functionaries many of the women involved in the protest surprised themselves when it came to their moral and ideological standards. In a two-week strike before the province's Parliament House, for instance, many of the women, who were in their late forties and early fifties, intentionally took a bath naked in the splendid water fountain located just in the centre of the provincial capital. Several times during dialogues, too, the district state functionaries, who were mostly Batak men, were embarrassed by the women suddenly revealing their bare asses before them. For the Batak, revealing one's ass in such a manner would be taken as a disastrous embarrassment by the viewer. To sue the women for having done such a thing in the state court would only publicly lead to even greater embarrassment on the part of state functionaries. This strategy may be aptly called a "weapon of the weak" as has been explicated by Scott (1985) in the case of peasant resistance in South-east Asia.

It is in their weaknesses that women found their strength. Indeed, the most vocal protestor and the most resilient person in Parbuluan is a very ordinary woman, a widow in her early sixties, totally illiterate, and considered poor. Her name is Ompu Lira boru S, living in Parbuluan I. Born in Pangururan of Samosir island, she came to Parbuluan when married to a marga Situmorang. I visited her plain, two-room, wooden house on a Sunday in August 1997. Ompu Lira had just returned from church and was still wearing her fine baju kurung dress. She changed into an ordinary outfit, fetched a pot of tuak (sweet local brew) from her married daughter's small coffee shop nearby, and sat down with me on an old pandan mat spread on the floor. She was hesitant to talk in the beginning because she thought she was just an illiterate woman. After almost an hour of an ice-breaking conversation she talked for three hours, almost uninterruptedly, about her sour experiences during the struggle. She shared, among other things, her escape to the jungle when she was
Ompu Lira in Parbuluan
chased by some policemen in February 1995:

It was Thursday evening, 9 February 1995, when I heard that seven men had been abducted from the house of a Ramot group member and were tortured in Kodim (the regional military office). Next morning on Friday, my house was surrounded by some policemen who were looking for me because they said that I was responsible for slowing down the company's operation. I was on my way home for a meal after working my garden when another woman told me about the chase. We rushed to the jungle where we met three other women who also ran away. It was raining throughout the day but when the night came the moon accompanied the five of us. We arrived at a small abandoned hut and slept there amidst the mosquitos flying in the dark above our empty stomachs. When we woke up we realized that our hands were covered with bloodied cuts from the sharp bushes. We were very hungry and weak but had to continue walking. We arrived at Aek Unite Hau, a haunted river. I could not believe that I would ever touch that spiritually possessed river. Never before had I seen such big woods like the ones near the river. Suddenly we were followed by a tiger. We wept tears because we did not want to die in the jungle. Thank God, we survived and managed to arrive at an adjacent huta. But we did not stay there because we found out that it was Silalahi, a huta we believed to have a lot of black magic. Later we arrived in Huta Sagala. We knocked at the door of the first house we saw. The hostess was shocked to see us in such condition. We lied to her, telling her that we had been looking for rattan when we lost our way and had to leave the collected rattan in the jungle. The hostess cooked four cups of rice and some fish for us. She was astonished to see how fast we consumed the meal. When we told her that we would like to go to Pangururan, she told us that Mr. N who owned a small bus would go there. We were allowed to join him. Unfortunately, on our way the tire went flat so that we had to walk again. We happened to meet another car. We told the driver that we urgently needed a lift to Prapat because we were supposed to cook for a wedding party. Knowing that I was a boru Sb, the owner who was the same marga Sb welcomed us while saying: "It is shameful that my sister has to work as a cook at someone's wedding party!" So, on Monday we arrived at Prapat. Though we had never been there before, we managed to meet NGO people there. We told our story. On the next day we left for Jakarta to meet the Military General Commander. I became the spokesperson at the meeting with the General and on other following occasions.

101 An Interview with Ompu Lira boru Sb in Parbuluan, 3 August 1997.
102 "Na masihotang do hami, dungi liluma hami di harangan-ganjang i. Gabe pintor hutadinghon hami barang nami di harangan i asa mura hami mangalului dalan mulak."
The situation has created leadership roles for women like Ompu Lira. The endowment of informal leadership on a woman is almost typical among the Toba-Batak when they come across structural conflicts involving external investors and state authorities. In March 1997, for instance, it was again three women—Ompu Lira, the spokesperson; Nai Ari boru Limbong, the sister of one of the jailed; and Nai Erni boru Siburian, the mother of one of the jailed—who represented the Parbuluan people when meeting with representatives of the Human Rights Commission and the Supreme Court in their pursuit of justice for the jailed. In such structural conflicts, men would readily feel themselves easy targets of violence by the (para)statal forces. Under such circumstances, the so-called "natural", and patriarchal, claim of Toba-Batak men to command the public role suddenly collapses.

Hence, the company's strategy of encouraging some Parbuluan members to found a competing adat institution, Ramot, succeeded in orienting the overall struggle towards men as the dominant actors under the adat patrilineality. The existing adat authority, the Lambasar group, was under existential threat and had to succeed in this situation precisely by appearing itself as a powerful male group. It turned out also in its practice to be an arena of male authority, definitely at the expense of female members. Later, the shift of the strategy from bashing the ACWG workers to bargaining at the negotiation table further shifted the scene of the struggle in terms of gender. Suddenly, Parbuluan men (along with many other male state functionaries) became the dominating actors in the process. Under the state-sponsored and related negotiation efforts, dispute resolution simply turned into a domain of the Parbuluan men while women were left behind. To this tendency many women expressed their regret, especially when the process led them to a violent act. One woman remarked: "Male domination in decision making and in action during the struggle will only result in violent acts as proved by the killing of the ACWG worker!"

The whole negotiation process, either initiated by the National Commission on Human Rights or the Military Regional Commander involving various state functionaries, only confirmed male dominance in the public sphere under the Toba-Batak adat. This is precisely because Batak men are considered "by nature" leaders of the adat institution and therefore the owners of the disputed land. However, since the state functionaries presumed a superior position as peace mediators and were able to create a setting that presented the land problem in Parbuluan as an internal problem, Parbuluan men were forced to accept a condition which only reduced their own authority in overcoming the problem. It is precisely because of Batak men's central presence in public life guaranteed by the adat that in their struggle over land they would easily be co-opted in the unjust processes of land grabbing. After one of the ACWG workers was killed and the Parbuluan people were living under continuous threat of abduction by invisible para-statal forces, the people held deliberations to find ways to end the unbearable situation. They decided to appoint some of their
members to give themselves up to the police. The selection process was aimed at male members only and was concluded after consultation with the wives of those selected men. In this sense the Parbuluan people were consistent in their holding that it is a man's obligation to take responsibility for the family against the outside world, in this case the state, while women are responsible for the daily sustenance of the family. In the deliberations it was decided that the remaining Parbuluan people would take care of the family members (wives and children) of the eight selected men. They formed a commission made up of men whose task it was to care for the eight families in Parbuluan as well as the eight surrendering men until their release. However, after the eight men surrendered, their wives felt rather neglected by the commission members. They received financial support only in the first month. The women complained that members of the commission spent a great deal of their time negotiating with various state functionaries and in due time had been easily co-opted. The women critically reproached the commission members as follows (cf., Perempuan 1996):

We are fed up with the attitude of the commission members. We do not agree with their bribing the state functionaries because the ACWG company has much more money than we all do. The commission members spend much of the collective funds on bribing the state functionaries by giving away ulos and gold fish in order to minimise the sentence. When we have nothing to eat, they give away gold fish to other people. When we no longer feel the warmth of our husband's presence, they cover other people with warm ulos. They are not aware of what they are doing. If we start by giving away ulos and gold fish, in the near future it's possible that they will also give away the Parbuluan land. This is, indeed, the danger of bribing the state functionaries.

5.4. LEGAL COMPLEXITY AND LAND CONFLICT – A CONCLUSION

In previous chapters I have argued that access rights to land is gained, prevented, diminished and made impossible through the three processes of adat, privatization and statization. I have described how Toba-Batak peasant women in mainly gain access rights to land through adat, namely through social identity based on descent and residence in inter-familial relations. In this chapter I put the issue of access rights to adat land in the context of pressure from the expanding processes of statization and privatization. While statization of land takes the form of land appropriation, privatization of land is not necessarily associated with the land market, but with state licensing. In this way the process of accessing rights to land through adat competes in a very unequal way with the other two processes. The state assumes the right to appropriate land. While this sometimes involves outright expropriation for public
use, the government also appropriates the right to allocate land to private users who are large investors, usually other than local people. This chapter has shown how the authority of the central and supra-local government to issue licenses and permits to private and corporate land users is to be seen as the most crucial means for current land concentration (c.f., Reich 1964). The process of granting licenses and permits is highly selective and rather discreet in that local people have almost no say in it. Current land conflicts are likely to be dominated by simultaneous involvement of the state and private investors in accessing communal land in local settings through adat, statization and privatization. Thus, the issue of gaining, maintaining, losing land rights in developing countries has to be discussed in the context of a multiplicity of actors, structures and process as the cases here have shown.

State hegemony over land is not only achieved through imposing state or state-derived land rights on the local people and their land. The state expands its hegemony through establishing administrative and political institutions down to the village level. The implementation of often contradictory state programs and policies are equally detrimental to the majority of the local people. Whether the state functions as an investor itself or a guardian of public interest, or a protector of the environment, the examples in rural North Sumatra indicate that the state is never as equally concerned with protecting local peoples' interests as with those of others. Moreover, private investors who are awarded licenses and permits are likely to obtain unlimited protection from the state. In addition to "legal" protection, the huge economic interests of private investors have legitimised other means of protection too, both non-legal and illegal. The non-legal and illegal protection for private investors includes the enormous degree of violence provided by para-statal forces against the local people, as well as state legal protection for the investors' illegal conduct. These forms of protection have enabled private investors to abuse and manipulate the adat legal framework to gain access to land at the expense of the majority of the local people. The cases of land conflict described and analyzed above show how private investors have been privileged by the state and para-statal forces in gaining and defending their rights to land against the local people.

Under such conditions, local people are forced to develop their strategy to defend their ancestral land, a strategy which is highly reactive in nature. The first and foremost legal resource for the local people is to reassert their rights based on adat. As we have seen, it is the descent, or tarombo, of the ruling clan who have first established the territorial power over an area which becomes the basic legitimation. The tarombo, though often rather mythical, proves to be difficult for both the state and investors to deny. Since descent is considered the main legal resource, however, Toba-Batak women are put in an ambiguous position because they are easily considered non-owners and non-legitimate claimants by the investors.

The state administration is quite ambivalent towards any competing socio-
political control over communal land. On the one hand it denies ownership rights of any other authority because, through the declaration of state domain and the Basic Provisions on Forestry (UU No.5/1967), it is assumed that communal land (ulayat, tano hatopan) is not owned by local people or organizations. Yet in their practices they do recognize some rights such as interpreting adat rights in terms of private land holding. This means that rights of socio-political control and traditional allocation rights of a local organization such as the bius are ignored. Also the communal land is seen to be owned by certain local individuals, and because it is owned, it can be sold. This interpretation is easily shared by private investors. Therefore, in most land appropriation cases, discussions between the local people and the state/investors are reduced to the issue of compensation only. The state law's interpretation of ownership ignores the multiple access rights of women (as well as the in-dwelling group). A gender-biased perception has been gradually implanted in the minds of the local people so that in their struggle they clearly divide the tasks along gender lines: men as the negotiators and claimants, women as the demonstrators. In addition, since the para-statal forces can be quite violent towards the peasant men, Toba-Batak women have consciously opted to become the spearhead of the many land struggles.

Looking at the cases presented above, it is obvious that local people do not use the state judiciary system to defend their rights. They reactively follow the path of the investors, that is by asking for legal protection from different state organs, from the local to national levels. In doing this, they become totally dependent on the mercy, authority and power of the state to solve their problems. The cases discussed indicate that the state almost never acts in the interests of the local people. Moreover, local people have to deal with the state judiciary system only when they are sued by the investors or charged by the state with a "criminal" act. It seems that the state agencies' strategy of transforming disputes about land rights into criminal cases where the local people become associated with a criminal act as (flexibly) defined by the state, has been rather successful in subduing the peasants' struggle.

Under the pressure of the ongoing processes of statization and privatization, peasant women see that it is not the local men, their husbands or male relatives, who ultimately deny their rights to land. Although some local men are easily co-opted, most local men and women consider the state's enormous authority and private investors' privileges as the real threat to their communal identity, and it is their communal identity that guarantees their social and economic security as a whole. Therefore, the struggle for peasant women's access rights to land should be seen in a wider context, and the sole emphasis on women's individual rights is not always appropriate.

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6.0. INTRODUCTION

This final chapter draws some conclusions from the material presented in the previous chapters. The main concern is with the change over time which has occurred within the Toba-Batak society of rural North Sumatra regarding the issue of access rights to land especially for peasant women. A summary of the factors which have contributed to this change since colonial time is presented and their functional interconnections are analyzed. This is followed by interpretations of what this change over time means in relation to the present situation of the Toba-Bataks and especially peasant women’s access rights to land. Certain points that have arisen in the study can now be summarised for discussion as we recall the two sets of questions posed in the introductory chapter. The first set of questions relates to changing familial and inter-lineage relations to land and its impact on women. The second sets of questions relates to the pressure on communal land and its impact on women. Therefore, I recapitulate both issues of gender and changing inter-familial relations to land on the one hand, and gender and external pressure on communal land on the other. Finally, in the last part of this chapter, I briefly revisit some of my basic assumptions mentioned in the introductory chapter and evaluate them in the light of their usefulness concerning the description and analysis of the empirical data on Toba-Batak society.

6.1. THE FACTORS OF CHANGE

Land relations manifest in different kinds of social phenomena in a "layered structure of property regimes" (Benda-Beckmann, forthcoming): in ideological notions, in legal regulations and institutional frameworks, in social property relationships and practices. This layered structure of property regimes has taken its current form through a long period of historical development. Based on this inclusive and interrelated layered structure of property regimes, I have discussed the changing process of the patrilineal-based Toba-Batak society in which the discussion on adat and its relations to land is treated as the central focus. There has been a considerable change in Toba-Batak society within the domain of adat, social-political organization, land relationships and the status of women. The most important changes that took place during the colonial period have been described
in Chapter Two. The Toba-Batak encountered two competing supra-local authorities, German Protestant missionaries and Dutch colonialists who, in different ways, introduced the idea of an encompassing leadership that extended beyond the traditional spatial-lineage areas, and was characterized by a rigid hierarchical structure (Castles 1972; Sherman 1982). However, the power of the (colonial) state was becoming more and more central to the further processes of change. This power was not without contest from the missionaries and the Toba-Batak alike. The holistic meaning of *adat* was selectively narrowed by both the German Protestant missionaries and Dutch colonialists through the introduction of the western construction, and understanding, of a total separation of the sacred law/authority from the secular. Thus, there were attempts by the missionaries to endow sacred authority on the church functionaries while granting secular power to the traditional rajas. In this way, relations to land were selectively detached from the sacred nature of the *adat* and from the essence of the *adat* community as an association of worship and ritual between the living and the dead (Schreiner 1972 and 1994). Further in the process, the already restricted secular authority of the rajas became circumscribed by the rapid expansion of Dutch administrative power.

The processes of de-sacralization of *adat* and the decreasing authority of the rajas were not simply an imposition by external powers or a process of “false consciousness” (c.f., Scott 1985). Instead, the Toba-Batak themselves were active participants in these processes, by attempting to gear them to re-interpret and augment the Toba-Batak ultimate goal in life termed "*hamoraon, hagabeon, hasangapon*" or "prosperous, blessed with descendants and honoured". The German Protestant missionaries were amazed by the eagerness of the Toba-Batak to invite them in and shift to Christianity for their schooling and later to embrace the more secular and even more promising Dutch administrative positions (Joustra 1918; Kraemer 1958; Pedersen 1970). Toba-Batak rajas, for instance, were competing among themselves to attract German Protestant missionaries and to grant plots of land to set up missionary posts, church compounds, schools and healthcare services (Aritonang 1988; Lumbantobing 1992). Granting plots of land to the missionaries/church was the first revolutionary step towards the control and ownership of land by non-individual but alien entities with relatively permanent rights. The promotion of formal education for males and females, the opening of prestigious salaried positions within the church, and later the spread of (well) paid employment provided by the Dutch colonial bureaucracy and commerce in Batakland and beyond provided a marked alternative to the Toba-Batak traditional land-based livelihood. Thus, the Toba-Batak saw that land was not the only means of reaching the ultimate goal in life, "*hamoraon, hagabeon, hasangapon*". It is in the process of the Toba-Batak actively participating in introducing change that we should understand their attitude towards the external intervention. The Toba-Batak demanded a better schooling system from the German missionaries and then eagerly shifted to the Dutch schooling which was of a better quality. At the same time they pressed for the leadership of the Batak ethnic church founded by the German missionaries to be endowed to the Batak themselves.
All these processes of change have provided more room to manoeuvre in the re-negotiation of new relations to land, both internally and externally. Changing internal land relations may have an impact on inter-familial gender relations as was attempted through the education of female students by the missionaries and later by the Dutch, as well as through the acts of various colonial adat jurisprudence. Educating Toba-Batak women was seen by the German missionaries and the Dutch colonialists as facilitating the civilizing process of the Toba-Batak according to western standards, and hopefully would both enhance the Christianization of the Batak children and improve the standard of conduct of the Batak colonial administrators. This also merged with the Toba-Batak’s interest of strengthening affinal relations among people of high position by educating their daughters in how to be proper wives (Bemmelen 1986). Both missionaries and the Dutch colonial government started to impose the idea of gender-equality in terms of, for instance, restrictions to polygamy, levirate and promoting a more equitable share of inheritance to sonless widows (cf., Schreiner 1994:68-69). The promotion of a gender-equality principle into the Toba-Batak patrilineal-based society is, therefore, to be seen as part of a wider process of the "de-sacralization of adat". Likewise, changing external relations concern the increasingly active role of the (new) outside actors, including the German Protestant missionaries, the colonial state, private companies and individual Batak as well as non-Batak, in accessing, managing and allocating the local land.

Chapter three attempted to demonstrate how contemporary Toba-Batak internal and external relationships around land are increasingly affected by the power of the post-colonial state, especially in the New Order period. Many scholars (e.g., Lucas 1992; Benda-Beckmann, forthcoming) and Indonesian NGO activists (e.g. Aditjondro 1993; Bachriadi et.al. 1997; Fauzi 1997; Sofwan Husein 1995; Suhendar and Kasim 1996) have critically pointed out that there tends to be a selective focus on one specific economic function attributed to land: the function of "efficiency" in terms of production and transfer. This specific function has become the main driving force behind the government’s attempts to restructure land relations and make allocations for economic development. The intensification of attempts at unification and centralisation of the post-colonial state may be seen, from the point of view of the Toba-Batak peasants, as asserting the pattern of intervention by what is often considered to be an alien power. In this process, too, the Toba-Batak adat principles and authorities are selectively neutralized to make them consistent with the national ideological notions of a more universal ideal of justice and legitimacy (c.f., Lev 1990). At the levels of ideology and legal regulations, the patrilineal and patriarchal Toba-Batak adat internal relations to land are ameliorated by the Indonesian Constitution which upholds the principle of gender equality for all citizens. The most obvious attempt by the state to guarantee the principle of constitutional gender equality is through protecting women’s rights to land in the family sphere. Direct interference of the state in matters concerning Batak patrilineal family law has taken place through its court jurisprudence (Hadikusuma 1993; Subekti and Tamara 1965; Lev 1962 and 1990).
Yet the ideological and normative contest by both the state intervention and neutralization processes of the Toba-Batak *adat* has gone far beyond the family sphere. While state intervention in the family sphere remains restricted to matters of an ideological and normative nature, state intervention in the wider community socio-economic sphere increasingly invades all layers of property regimes. Following the path of the colonial government, the state claims itself the ultimate authority, if not the owner, of the land under the notions of state domain over waste land and state derived land rights. Under the post-colonial state's legal construction of the triad "individual land, state land and communal land", the variations of land rights that combine the control and allocation rights vested in local groups with different forms of (women's and men's) individual rights are easily overlooked. Thus, the Indonesian agrarian legal policies have been geared towards converting *adat* rights to land to new categories of rights largely modelled on European legal systems (Benda-Beckmann, forthcoming; MacAndrews 1986; Wignjosoebroto 1997). It is assumed that legal reform towards marketable and individual private ownership rights would significantly contribute to economic growth, by creating greater legal security and freeing the individual property holder from various communal constraints. The opportunity to convert *adat* rights to the European model of private ownership is, however, favoured by a section of the population who usually live in the urban areas and whose main income, far from solely depending on subsistence farming, is based on a more stable flow of cash earnings within a monetized economy. The state has increasingly acted as the owner of the public good. With this claim, the state creates a number of legalized access rights to land with "strong lesser rights" by handing out licenses and permits to private companies to use vast quantities of land. This increasing power of the government to create wealth has been termed the "new property" (Reich 1964). With the increasing institutional, coercive and penal power of the state, the state has penetrated deeply into the local organization of authority and land rights, narrowing the authority of the localized Toba-Batak *adat* community in wider matters related to land.

Chapter Three also describes how different levels and segments of state authority may implement contradictory and even conflicting policies, programs and projects in a single local spatial area. This tendency, rather than exceptional, is becoming a phenomenon throughout Indonesia (c.f., Quarles van Ufford 1987). In the context of the Toba-Batak area, this contradictory situation has emerged among various levels of different state agencies: industry, forestry and tourism. For example, the Asahan hydro-electric power project depends, to a great extent, on the constant flow of Lake Toba water. Therefore, preserving the ecology of Lake Toba is deemed necessary if the hydro-electric power project is to maintain its operations. The need to preserve a clean natural environment for Lake Toba and the surrounding land is also shared by the state agency for tourism. However, the establishment of a pulp factory has destroyed rather than maintained existing wood in the reforested and watershed areas around Lake Toba. The monocultural forestry developed by the pulp industry destroys the ecological value of the existing
forests while it causes air and water pollution. In view of, among other things, protecting the environment and the tourist industry, the local government has released a regulation on the environmental management of Lake Toba which has restricted local people's access rights to land and water while undermining their long traditional land use practices. Thus, instead of looking at state bureaucracies as well-integrated systems and agents of modernity, it is more correct to see them as loosely integrated wholes in which different, possibly competing, configurations of actors are operative (Quarles van Ufford 1987:12). Under this situation, there emerge often uneven, competing rights and rules pertaining to land and land rights, deriving from different sets of authority: the state and the adat. Local processes of statization and privatization compete in a very unequal way with the existing Toba-Batak adat land rights under the unilaterally claimed state legal framework.

6.2. GENDER AND CHANGING INTER-FAMILIAL RELATIONS TO LAND

While the government tends to focus on a specific economic function of land in its development policy and practice, other functions often are neglected or detached from social relationships. As von Benda-Beckmann (forthcoming) has noted, land may serve quite a number of different functions for the local people. For instance, it may serve a function in the continuity of social groups, social security, cultural-religious identity, political positions, and the social-culturally equitable distribution of wealth. Consequently, all these functions are reflected in the conditions and procedures under which access rights to land may or may not be appropriated, acquired or maintained through specific transactions. I have presented the discussion on gendered access to land among the Toba-Batak in the light of these multifold functions which mark the conditions and procedures for men and women to acquire, maintain and lose access rights to land. These are highlighted in Chapter Four on the Hutagalung village which indicates that gender-based arrangement in accessing rights to land is the foremost, and the only traditional, way to keep the land within the restricted boundaries of the patrilinage. While the arrangement of generational and affinal land transfer is heavily gender-biased, there are other forms of land transfers which are more reciprocal and economic in nature geared towards fulfilling the functions of an equitable distribution of basic livelihood, augmenting economic benefits and confirming each other's political position within the kinship and residential unit.

However, rights to land in the context of a kinship-based society, as in many other contexts, should be seen as relative and variable. There are stronger and weaker rights to land as well as stronger and weaker rights to allocate or transfer the rights. The interaction between gender and kinship group formation strongly impacts on one's access rights to land in specific ways. Rights to land may be contingent upon the fulfilment of certain duties which, in a woman's case, is strongly related to the reproductive spheres. This study and many others (Berg 1995, K. von Benda-Beckmann et.al., 1997; Mackenzie 1991; Portier and Slaats
1987; Rodenburg 1997) have shown that women's access rights to land are often dependent on their affiliation to their male relatives. Thus, there is an interrelation between accessing rights to land and performing reproductive duties for women in a patrilineal-based society. In the case of the Toba-Batak, the main duty of women is to bear male off-spring for the husband's patrilineage (Bovill 1987; Nasoetion 1943; Niessen 1985; Rodenburg 1997). In this regard, kinship relations can be treated as a broader system of inequality in which gender is a key dimension. A woman's temporal aspect of kinship affiliation, manifested throughout different phases of her life, significantly determines her access rights to land (Niessen 1985; Rodenburg 1997). Yet, it is precisely because of this ambiguous kinship position that, as the village study has shown, not all Toba-Batak peasant women are (dis)advantaged in the same way by the existing customary land tenures. The study demonstrates that the wife of a great in-dwelling clan member (boru na gojong) may have greater access to land through the husband than does the wife of a landless ruling clan member (marga raja). Similarly, a man who is a member of an in-dwelling clan (marga boru) may not necessarily have greater access to land than does a woman who happens to be the wife of a prosperous ruling clan member (marga raja).

The multifold function attributed to land is, perhaps, the most important factor in explaining the attitude of Toba-Batak peasant women when it comes to deciding whether or not they should strive for land in inter-familial relations. The idea of a multifold function attributed to land, though it may be heavily gender-biased, is almost equally shared by both Toba-Batak peasant men and women. In this process, as is shown in the village study, the economic function of land is not the ultimate reason for women or men to strive for land. Toba-Batak peasant women share the gendered idea that land fulfils the functions of continuing the marga/patri-clan, of ascribing Toba-Batak cultural identity, and also of assigning the political positions of men within the marga hierarchy. It is understandable that some Toba-Batak peasant women even think that their non-access to land assures their good relations with the patri-clan, thereby guaranteeing their social security. This tendency is quite common worldwide (see Agarwal 1994, for the South-Asian case; van Halsema 1991, for the South-Brazilian case). In the context of Hutagalung, where farming land is becoming increasingly scarce, peasant women never overtly strive for inheritance rights nor do they eagerly make use of the adat provision of asking the parents for a land gift. In fact, the pauseang, which has been the strongest adat means to get land for Toba-Batak women, has almost disappeared even though in principle the adat acknowledges equitable distribution of wealth between genders. In other Toba-Batak villages like those of Simatupang, Simarmata and Lumban Sibangun, there has also been a tendency for the gift of pauseang land to women to become an increasingly rare occurrence (Rodenburg 1997; Simanjuntak 1983). Instead, peasant women pursue other forms of land transfer to get access rights to land and housing, for example through leasing, pawning, share-cropping and borrowing. These lesser rights to land, combined with their ability to earn cash by various means like traditional cloth weaving, are seen
as sufficient to guarantee the minimum daily requirements needed to carry out their reproductive function.

Yet, a woman's (non)access rights to land, like many other rights too, are likely to be framed as potentialities in the form of principles. The rights given to or received by women may require processes of negotiation and decision-making in which the potential right is transformed into an actual right (c.f., K. von Benda-Beckmann 1984). Thus, both the Toba-Batak principles that women cannot inherit land on the one hand, and that women may only make a request for a land gift to their father or brothers on the other, do not give an adequate description of the actual situation of Toba-Batak women's access rights to land. The study has shown how these Toba-Batak principles concerning women's (non)access to land take actual form in normal daily life situations. Despite the claim that the state protects the principle of gender equality, the study indicates that state law and state legal institutions do not play any significant role in the efforts of Toba-Batak peasant women to have greater access to land in inter-familial relations. The study indicates that the rights guaranteed by the state law remain potential weapons but are rarely used by Toba-Batak peasant women in rural North Sumatra. Thus, when encountering the issue of access rights to land in inter-familial relations, Toba-Batak women do not put themselves in the position to opt for "forum shopping and norm shopping" (K. von Benda-Beckmann 1981). Instead, by conforming themselves to the rule of adat patrilineality, they try to create room to manoeuvre for greater access to the lesser rights to land. In Hutagalung village itself I did not encounter any residing peasant women suing their brothers or other male relatives in the state court for land inheritance. However, in other places involving urban women, I came across two very particular cases where women have sued their brothers in the state court. One case involves educated urban women against their educated urban brothers who were the children of an outstanding Toba-Batak businessman. Another case involves an educated and rather prosperous urban woman and her less prosperous rural brother. This situation supports the argument that, in general, Toba-Batak women are basically hesitant to use the state law and state judiciary system to defend their rights to land in inter-familial relations. Not surprisingly, Ihromi (1994:536) has noted a similar tendency among Toba-Batak women living in Jakarta to accept unequal rights to inheritance even

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1 During my fieldwork in 1993-1994, many Toba-Batak people were talking about the case concerning an outstanding Toba-Batak businessman, the late Dr. T.D. Pardede. The eldest daughter of Dr. T.D. Pardede organized her sisters to bring a law suit against their brothers for an equal share of their late father's properties. In the battle, the sisters were highly dependent on a testament written by their father in favour of an equal share among brothers and sisters. The brothers were able to gain the support of their marga elders using the argument of Toba-Batak patrilineal inheritance. After a severe conflict, the case was withdrawn by the sisters and until now there has been no report about the outcome of the conflict.

2 A man of marga Tampubolon who lived in Jetun-Silangit village sold an inherited rice field to his fellow villager. In 1992, one of his sisters who lived in a city sued the brother in the state court based on the argument that she had rights, along with her brother, to the rice field (An interview with M. Simarmata, a lawyer, conducted in Prapat, February 1994).
6.3. GENDER AND EXTERNAL PRESSURE ON COMMUNAL LAND

In all societies, land is an important means through which positions of socio-political authority are acquired. The legitimate authority to control, allocate and exploit land is one of the most salient aspects of power by which people can be subordinated at all levels of socio-political organisation. Control over land and its diminishing resources will continue to provide the most effective leverage in the governance of people (Benda-Beckmann, forthcoming; Shipton and Goheen 1992). This study has suggested that the allocation of people's communal land is increasingly determined by the state law and state apparatus alone. In this process the traditional allocation rights of the local community over the exploitation and usage of communal land are easily ignored by the state.

Chapter Four indicates that the traditional allocation right of the adat community to any in-dwelling clans (or outsiders) always confirms the power and authority of both the ruling clan and the local adat community. In Hutagalung it is obvious that the traditional allocation of land to outsiders has always been geared toward the benefit of the wider local community. This communal power and authority is not only recognized in the process of initial transfer of land to those outsiders, but also extends to defining the further process of its use and exploitation. On the reverse side, the current shift of allocation rights over communal land from the adat community to the state has noticeably marginalised the residing local people and adat community both in the initial process of land transfer and in the subsequent process of deciding its use and exploitation. Once land is expropriated, the local adat community loses its control over the immediate and future use and exploitation of that land.

Since 1945, the themes of "unification" and "modernisation" have been the main driving force behind general attempts at legal change in Indonesia (Soepomo 1959). Judges in the Supreme Court, for instance, no longer talk about the intervention of adat law. Rather, they talk about the creation of ethical justice through nationalizing adat law and setting it in a lesser position to the national concept of legal policy (Lev 1990). In this way, the Basic Agrarian Law and its

Batak women themselves do not make too much fuss about this matter of discrimination regarding the right to inherit. When they have no brothers, and uncles (father's brothers) want to claim the property of the deceased man, they certainly will take the case to court. But when brothers are given land and houses and they themselves are given proportionally less, they tend to accept the matter.... Not many families have much to quarrel about, because only a few of the urban residents own a lot of property... The more well-to-do Batak people apparently tend now to regard daughters and sons as more nearly equal.
subsequent regulations are, more or less, the result of state legal reform in the direction of a western style legal system which, according to Brown (1995), has given the state elites increased power over control, centralization, and penetration. As seen in the cases presented in Chapter Five, the central government and the governor of the province have full authority to issue permits and licenses to investors both for the exploitation of state land resources and for appropriating local people's land. Private companies which are granted a permit to appropriate people's communal land by the government often do damage to the local environment while do not necessarily benefitting the local community. In addition, often at the beginning of the appropriation process the compensation terms are not properly discussed. Discussions with the local people on whether or not certain development projects may take place on their land almost never occur. Moreover, as the study has indicated, the local people who are involved in such negotiations are usually the clan elders, all of whom belong to the male elite of Toba-Batak communities. In this highly patrilineal society, women are never found in these positions.

The study has confirmed the idea that in most communal land appropriation cases, the discussions between the private companies and local people are reduced only to the issue of "compensation" in minimal economic terms. Indeed, it is not much different from other land appropriation cases by private companies in other parts of Indonesia (see for instance: Aditjondro 1993; Bastaman 1995; Fauzi 1997; Sofwan Husein 1997; Suhendar and Kasim 1996; Wiradi 1993). This supports the argument that the state development policy and practice often place more emphasis on the economic function of land while neglecting other functions communal land might have for the local people. Meanwhile, Toba-Batak peasant women and men may also place different emphasis on the functions of communal land. While social security is considered an important function of communal land, local men and women's perspectives on the social security function of communal land do not always have similar value. Toba-Batak men tend to fall into the trap of negotiating land appropriation in terms of a proper amount of compensation which may cover the immediate and short term economic loss. Toba-Batak women, on the other hand, look at this issue in the context of performing their gender-defined reproductive task which means a long term perspective: treating the communal land as an nonexchangeable reserve to be used in times of contingency. Thus, for women, it is the temporal dimension of the socio-economic security aspect of communal land affecting their reproductive task which is at stake in the process of land appropriation.

The theoretical tendency of several scholars to differentiate only between the (competing) authorities of the state and local community has neglected the fact that there are differences in external and internal land relationships within the local communities. The Toba-Batak is exemplary in illustrating that the local community is differentiated in their relationships to land: there are the ruling clan and the indwelling clans consisting of different kinds of marga boru. Likewise, the tendency to work with mutually exclusive categories (individual or communal land) leads to
exaggerating the communal elements in traditional land tenure systems, while undermining the various individual rights to the communal land. It is in this respect that, in the case of communal land appropriation, the access rights to land of women as well as in-dwelling *marga* are often ignored. In most cases, the state law's interpretation of customary land-holding is often reduced to a more private land-holding. This interpretation is agreeably shared by private companies who need the land. Often, the village communal land is treated by private companies as fully owned by certain local individuals who are mainly men of the ruling clan. While the interpretations of both the state law and customary law often deny women's access rights to communal land, Toba-Batak women benefit from the different arrangements to accessing rights to the communal land as well as from the availability of a reserve of land that can fulfil their economic-security needs in a longer time perspective. It is precisely over this communal land that women's collective interests which simultaneously serve both the "practical and strategic gender needs" (Molyneux 1985; Moser 1989), are satisfactorily shared.

6.4. THEORETICAL IMPLICATIONS

The study on Toba-Batak peasant women's access rights to land has touched on the important theoretical and conceptual points of discussion mentioned in the introductory chapter. Therefore, I shall reiterate these points in light of their usefulness for the description and analysis of the empirical data on Toba-Batak society in North Sumatra.

Feminist theories have long been confronted by cross-cultural aspects of power and gender relation problems in less differentiated societies. In matters regarding women and access to land, feminist theories tend to unquestionably treat kinship as a broader system of inequality in which gender is a key dimension (Collier and Rosaldo 1981; Ortner and Whitehead 1981). Thus, many feminist anthropologists blame the command of culture as a hindrance to gender equality (e.g., Schrijvers 1988), while others (e.g., Rogers 1975; Leacock 1978; Dwyer 1978; Moore 1988) question the cultural bias of (mostly western) feminist anthropologists in challenging the cultural aspect of gender oppression. I do not find it useful to look at kinship as a clear-cut and self-evident factor of either hindering gender equality or enabling it. Rather, the empirical study on Toba-Batak society has suggested that kinship simultaneously functions as both an enabling and hindering factor for women's access rights to land under different circumstances. The study has shown that not all Toba-Batak peasant women (or men) are (dis)advantaged in the same way although they may hold similar positions in the kinship system. Therefore, the valid question to be asked is how and under what circumstances does kinship play the role of an enabling or hindering factor for women's access rights to land?

This leads to further issues regarding women's gender identity and solidarity among women. Many feminist studies are of the argument that women's solidarity should take its ultimate form in collective action to challenge identified gender
oppression so that women's solidarity forms a class action. Yet, Millett (1970) argues that women's class affiliation is basically impermanent. Delphy (1977) recognizes the limitations of defining women by class because they do not own the means of production and are economically vulnerable when marriage breaks up even when married to men from the capitalist class. Thus, Delphy situates the material basis of women's oppression in patriarchal oppression that cuts across classes. Agarwal (1994) has talked about the relationship between gender and property in terms of the ambiguous character of women's class position in South Asian countries. She acknowledges the difficulties of identifying women as a class when saying (1994:15):

Class differences among women, derived through men, can be and often are divisive in terms of relative economic privilege or deprivation, the associated ability (or lack of ability) to dominate women's groups, perceptions about which aspects of gender relations need challenging, willingness to engage in collective struggle, and so on.

Applied to the situation of the Toba-Batak women in rural North Sumatra, gender identity does not necessarily propagate the solidarity among women which would lead to their acquiring and defending their access rights to land against men as a gender. As a result, Toba-Batak women's struggle over land, whether individual or collective and on whatever scale and form it may take, is never seen by themselves as a gender struggle of women against men. Moreover, because the situation in which women do not bear children or do not have brothers is seen as an exceptional rather than common occurrence, the striving for land rights of such women is left to the individuals. Thus, despite the great courage demonstrated by many Toba-Batak women in their struggle especially over communal land, there is no such thing as gender solidarity among Toba-Batak women because their identity is shaped more by their kinship affiliation and position of seniority within kinship ranks rather than simply by gender.

This study has indicated the challenges confronting contemporary Toba-Batak peasant women. The rapid pace of development and the consequently large-scale external pressures challenge the existing complex system of economic, social and cultural relations, in which peasant production and social relations are closely interrelated. Under the pressure of land scarcity, Toba-Batak peasant women do not question the adat principle of the gender-based arrangement for access rights to land in inter-familial relations. Rather, they strategize their access rights to land parallel to this adat principle by, for instance, augmenting their lesser but rather permanent rights to land through borrowing, share-cropping and renting from their male relatives. In cases where peasant women do not have any sons, it is the same adat principle that influences peasant women to opt for not investing in land. Thus, a gender-based ideology in Toba-Batak peasant society is still deep-seated in inter-familial relations. In my study, Scott's (1985) concept of "everyday forms of peasant resistance" may be a useful way of approaching the various forms of
protest and resistance which are embedded in gender relations as well as those which are an integral part of class relations. However, as Agarwal (1994) has pointed out, Scott's "everyday forms of peasant resistance" should simultaneously ask how gender might interact with class (or other forms of social hierarchy) in specific ways, and how gender determines the forms of resistance to such hierarchy. Although there are internal differences among women within Toba-Batak peasant society, it is usually the women rather than the men who would first resist the idea of expropriating the communal land for private companies or public purposes. Toba-Batak peasant women's resistance has emerged out of their urge to perform their ultimately traditionally-defined reproductive task. Thus, as the Toba-Batak case has suggested, it is the resistance of peasant women against any outside intervention that makes the struggle over communal land into a basic struggle over both resources and meanings as well as a struggle that shapes the borderline between the local groups' interests and that of the private investors vis-à-vis the state.

The empirical research on the Toba-Batak confirms that legal pluralism is a fact while the claim that state law is the only law is rather mythical. Following the arrival of the German Protestant missionaries and Dutch colonialists, and later the formation of an independent state, the Toba-Batak have been confronted by a situation of legal pluralism in which complex interrelations among parallel, conflicting and overlapping normative orders deriving from adat, religious norms and (colonial and post-colonial) state law prevail. The essence of legal pluralism is that within a society different groups develop their own normative frameworks and the state law forms only one of these. The different legal systems can be understood by comparing laws and mapping where the different systems refer to different scales and forms of projection (Sousa Santos 1987). The concept of legal pluralism enables one to empirically and analytically separate the different normative frameworks (c.f., Brouwer 1995). Yet in its operation, it is the fragments of various normative frameworks which interact with each other in different social settings, although the fragments of one normative framework may overshadow the others (c.f., Fisiy 1992). In the relatively normal situation of Toba-Batak inter-familial relations, including the relations to land, the adat normative frameworks still overshadow both the religious and state normative frameworks. Toba-Batak peasant women opt not to use the so-called more gender-neutral state normative framework for accessing rights to land in inter-familial relations. It is in the process of accessing rights to land by both the state and private companies that state normative frameworks have become dominantly projected in a matter which used to be the sole realm of the adat normative framework.

The findings in the case of the contemporary Toba-Batak have challenged the tendency of most western feminist legal scholars (MacKinnon 1987 and 1989) to resort to the positivistic and utilitarian conception of law where gender equality of opportunity can be achieved through state legal rights. Likewise, Agarwal (1994b), when talking about the issue of women's access rights to land, tends to promote individual private property and control over land under the state legal framework
as the ultimate way to secure the well being and empowerment of women. It is only recently that feminists have begun to criticize the very tools of the legal method which had been presumed to be neutral (Smart 1989:21). As mentioned earlier in the introductory chapter, state intervention in land matters does not necessarily benefit women in many developing countries. The land reform program and registration of land title as a paramount symbol of a modern property system in many developing countries prove to be detrimental to the continuity of women's secondary rights to land as recognized by customary law (Coldham 1978; Davison 1988a and 1988b; Jacobs 1996; Mackenzie 1989 and 1990; Meer 1997; Pala Okeyo 1980).

Similarly, the empirical study on Toba-Batak society shows a rather bleak picture of the gender-equality claim that state legal structures and norms directly cause and determine action. Indonesian state law and legal principle guarantee gender equality while the state court has issued jurisprudence in favour of gender equality in matters related to inter-familial relations. However, the struggle for gender equality remains ideological at the level of state law and institutions which may only benefit the very few who happen to be able to make use of the state judiciary system. The introduction of state law into matters related to land tends to detach land rights from wider social relationships, therefore neutralizing the restriction to endow land to women as well as the alienation of land to outsiders. As a result, in the effort to strategize and maintain access rights to land in internal familial relations, Toba-Batak peasant women do not see the importance of the state law and judiciary system. Rather, these are seen in principal as opposing their Toba-Batak adat of patrilineality. Moreover, in the cases relating to the expropriation of communal land, the state law and judiciary system are seen as threatening rather than defending the interests of peasant women and the local community against the interests of private investors.

The study has shown that peasant women's access rights to land should be analyzed in the context of the growing legal complexity in which state law and customary law coexist. Again, the layered structure of property regimes in the context of legal complexity should be examined in order to understand the issue of peasant women's access rights to land in developing countries. This study has attempted to do so.
**GLOSSARY**

Most terms are Toba-Batak. Indonesian terms are indicated by (I) and Dutch terms are indicated by (D).

<table>
<thead>
<tr>
<th>Term</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>adat</td>
<td>customs, customary law</td>
</tr>
<tr>
<td>Agrarische Besluit (D)</td>
<td>agrarian decision</td>
</tr>
<tr>
<td>Agrarische Wet (D)</td>
<td>agrarian law</td>
</tr>
<tr>
<td>asisten demang</td>
<td>deputy to sub-district head in colonial time</td>
</tr>
<tr>
<td>asisten residen</td>
<td>deputy to district head in colonial time</td>
</tr>
<tr>
<td>balik bungki</td>
<td>one period of rice-farming</td>
</tr>
<tr>
<td>Bangso Batak</td>
<td>lit. Batak nation</td>
</tr>
<tr>
<td>bangunan</td>
<td>a customary land gift to an unmarried woman</td>
</tr>
<tr>
<td>BAPEDAL (I)</td>
<td>Environmental Impact Management Agency</td>
</tr>
<tr>
<td>Batara Guru</td>
<td>Batak God that performs creative function</td>
</tr>
<tr>
<td>batu ni sulangsulang</td>
<td>money as a token or a gift to the chief in a land transaction</td>
</tr>
<tr>
<td>begu</td>
<td>the spirit of the ancestor</td>
</tr>
<tr>
<td>beschikkingsrecht (D)</td>
<td>the communal right of disposal</td>
</tr>
<tr>
<td>bijbelvrouw (D)</td>
<td>Bible woman</td>
</tr>
<tr>
<td>Bijblad (D)</td>
<td>addendum to government official gazette</td>
</tr>
<tr>
<td>bius</td>
<td>the highest lineage territorial unit</td>
</tr>
<tr>
<td>bius na bolon</td>
<td>the superior lineage territorial unit</td>
</tr>
<tr>
<td>bius na metmet</td>
<td>the inferior lineage territorial unit</td>
</tr>
<tr>
<td>bola pinang</td>
<td>share-cropping</td>
</tr>
<tr>
<td>bona ni ari</td>
<td>lit. the beginning of the day;</td>
</tr>
<tr>
<td>bona ni pinasa</td>
<td>lit. jackfruit tree; the ancestral area</td>
</tr>
<tr>
<td>bonapasogit</td>
<td>ancestral area</td>
</tr>
<tr>
<td>Boraspati ni Tano</td>
<td>Batak nature deity, the source of land fertility</td>
</tr>
<tr>
<td>boru</td>
<td>lit. woman, daughter; the family of a married daughter; wife-giving clan</td>
</tr>
<tr>
<td>boru gomgoman</td>
<td>an in-dwelling family unrelated to the ruling clan who lives under the care of the fellow villagers</td>
</tr>
<tr>
<td>boru na gojong</td>
<td>a fourth or five generation of an in-dwelling clan who has many sided relationships with the ruling clan</td>
</tr>
<tr>
<td>boru na hinela</td>
<td>an in-dwelling family in which the wife belongs to the ruling clan</td>
</tr>
<tr>
<td>boru ni boru</td>
<td>the (family of the) daughter’s daughter</td>
</tr>
<tr>
<td>Boru Saniang Naga</td>
<td>Batak goddess, the deity of water and spring who brings fertility to the soil</td>
</tr>
</tbody>
</table>
boru sihabolonan: see boru na gojong
bulung motung: a leaf which is green on one side and white on the other; a name of a hamlet in Hutagalung
controleur (D): inspector
cultuurstelsel (D): cultivation system in colonial time
Dairilanden (D): the land of Dairi
dalihan na tolu: lit. three stones to hold a cooking vessel over the fire; a metaphor for the triad adat relationship between boru, hulahula and dongan sabutuha
daon sihol: an customary land gift to a daughter when her father dies
Debata idup: the deity of human fertility
demang: sub-district head in colonial time
desa: village
domein verklaring (D): declaration of state domain
dondon: pledge
dondon pate: permanent sale of land which is done at once or ensuing a pledge
dongan parripe: a family of a ruling clan but living in different lineage spatial area
dongan sabutuha: male ego’s clan
dongan sagoar: the first grandson from the eldest son of a man who shares the same name with the man
dongan samarga: fellow clan members
ephorus: the supreme leadership of the Batak Church
gasgas: a cleared land that is abandoned
golat: lineage land
hak ulayat (I): communal right of disposal
halal (I): uncontaminated according to Islam
harangan: aged forest
hariar: stirring spoon
hasangkotan ni saong: a land gift to a man from his maternal family
hata nauli: speech delivered during a ceremony
hamoraon, hagabeon, hasangapon: wealthy, blessed with descendants and honoured
harajaon: territorial power
hauma: wet rice field
hauma harajaon: a reserve for setting up a rice field the yields of which are used to cover the cost of the offering ceremonies of the bius or horja level
hauma panjaean: rice field given to a newly married son to start an independent household
hauma tur: dry rice field
HKBP: Christian Batak Protestant Church
horja: a community that performs the ritual function of a portalian
hudon: cooking pan
hulahula: wife-giving clan
hundulan: a sitting place
hundulan ni boru: a land gift from a father to an unmarried daughter
huta: hamlet, village
Huta Dame: lit. peaceful village; the name of the first Christian village developed by a German missionary, Nommensen, in 1864
huta na tarulang: abandoned village
itak gurgur: rice-flour cake
jaman pidari: the period where the Islamic Bonjol troop from West Sumatra raided the Toba-Batak area
indahan arian: a rice field granted to a newly-born grandchild
jalangan: a grassland for grazing unattended cattle
jaluran (l): harvested tobacco field
jampalan: a grassland for grazing tethered cow, goat or horse
jual beli (l): lit. sell and buy
kabupaten (l): district under a province
kaleng (l): tin can; a measure of a 12 kilogram rice
kampung (l): village
Kampung Melayu (l): the name of a village in Hutagalung where there is a small concentration of Batak moslems
kantor camat (l): sub-district office
kantor kepala desa (l): village head office
kecamatan (l): sub-district
kelurahan (l): the lowest administrative area alongside village
kepala kampung (l): village head in colonial time
kepala negeri (l): district head in colonial time
kepala rodi (l): supervisor for corvee labour in colonial time
Landraad (D): low court in colonial time
Lontung: one of the Batak moieties beside Sumba
luat: region
maisolat: borrowing a house
mamburburi: preparing a rice field
maminjam: borrowing
mamungka huta: clear an area to start a living compound
Mangala Bulan: Toba-Batak God whose function is to bring good and bad luck and perform judicial activity
mangalua: elope; marrying without going through a proper adat ceremony
mangarimba: clearing a forest
manjae: starting an independent household
marga: clan
<table>
<thead>
<tr>
<th>Term</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>marga boru</td>
<td>in-dwelling clan</td>
</tr>
<tr>
<td>marga raja</td>
<td>ruling clan</td>
</tr>
<tr>
<td>marsali</td>
<td>borrowing daily necessities from <em>huta</em> fellows</td>
</tr>
<tr>
<td>martarombo</td>
<td>to determine kin positions; see also <em>martutur</em></td>
</tr>
<tr>
<td>mata mual</td>
<td>spring; water reserve</td>
</tr>
<tr>
<td>mangaramoti</td>
<td>custody</td>
</tr>
<tr>
<td>mangongkos</td>
<td>renting</td>
</tr>
<tr>
<td>mangonjar</td>
<td>lit. to push; expanding the land by own effort</td>
</tr>
<tr>
<td>mangupahon</td>
<td>to pour upon a daughter a magical blessing</td>
</tr>
<tr>
<td>mangupaupa</td>
<td>a visit paid by a woman’s natal family to bless her</td>
</tr>
<tr>
<td>manuhor pate</td>
<td>land bought permanently where the original owner has lost the right to redeem it</td>
</tr>
<tr>
<td>manuruknuruk</td>
<td>the first visit to a woman’s natal family after her elopement</td>
</tr>
<tr>
<td>martarombo</td>
<td>inquiring the family tree</td>
</tr>
<tr>
<td>martobus</td>
<td>to redeem pledged land</td>
</tr>
<tr>
<td>martutur</td>
<td>exploring each other’s possible kinship relationship</td>
</tr>
<tr>
<td>monjo</td>
<td>Batak term for “Bonjol”, referring to the Bonjol troop who raided Toba-Batak area before colonial time; now the term is used to refer to the state authorities and Batak elites who disrupted the leadership of the Batak Church, HKBP</td>
</tr>
<tr>
<td>Mulajadi na Bolon</td>
<td>lit. the great beginning of existence; the name of the Toba-Batak High God</td>
</tr>
<tr>
<td>namboru</td>
<td>father’s (fictive)sister</td>
</tr>
<tr>
<td>napuran</td>
<td>a mixture of <em>sirih</em> leaf, areca nut, calcium paste and sliced tobacco dry leaf to be chewed and served to guests as a gesture of honour</td>
</tr>
<tr>
<td>onan</td>
<td>traditional market</td>
</tr>
<tr>
<td>onderafdeling(en) (D)</td>
<td>a district in colonial time</td>
</tr>
<tr>
<td>onkosten (D)</td>
<td>cost; rent</td>
</tr>
<tr>
<td>na marsaompu</td>
<td>originating from once ancestor</td>
</tr>
<tr>
<td>negeri</td>
<td>a sub-district in colonial time</td>
</tr>
<tr>
<td>onderafdelingen (D)</td>
<td>sub-districts</td>
</tr>
<tr>
<td>paebathon</td>
<td>introducing a new-born baby to its maternal family</td>
</tr>
<tr>
<td>pagopago</td>
<td>a sealing money paid to the witness of a transaction</td>
</tr>
<tr>
<td>paisolat</td>
<td>a borrower of a house</td>
</tr>
<tr>
<td>pajak bumi dan bangunan (I)</td>
<td>tax paid for land and building</td>
</tr>
<tr>
<td>panean</td>
<td>collateral inheritance</td>
</tr>
<tr>
<td>pangeahan</td>
<td>a tract of land reserved for expanding the hamlet</td>
</tr>
<tr>
<td>panjaean</td>
<td>a piece of land endowed to a newly-wed couple to start an independent household</td>
</tr>
<tr>
<td>panjongjojonghon jabu</td>
<td>building a house</td>
</tr>
<tr>
<td>parbandaan</td>
<td>a graveyard; see also <em>partangisan, udean</em></td>
</tr>
<tr>
<td>parbaringin</td>
<td>spiritual leader in a <em>bius</em></td>
</tr>
</tbody>
</table>
parbalokan: boundaries between rice fields
parbeguan: sacred area, the vicinity of the ancestor's spirit; see parsombaonan, solobean and saba parhombanan
parhutaan: housing compound, a hamlet
parik bulu duri: walls that form the border of a hamlet
parik bulu suraton: see parik bulu duri
parjambaran: a share in an adat ceremony
parlanglangan: a tract of land used for performing prayer to heal the sick; see also tano langlang
parlapelapean: a simple hut
parripe: in-dwelling clan
parsombaonan: sacred area, the vicinity of the spirit of the ancestors; see also solobean, parbeguan and saba parhombanan
partangisan: a graveyard, see also parbandaan and udean
partangisan hatopan: communal graveyard
partangisan pangompulan: individual graveyard
partano: ruling clan, those who control land
pasituak na tonggi: money distributed in an adat ceremony
pasupasu: blessing
pate: permanent sale; see also dondon pate
pauseang: an adat land gift to a woman
Pearaja: a village in Tarutung which has become the headquarter of the Batak Protestant Christian Church
PENDETA (I): priest
PENDETA PEMBANTU (I): priest's assistant
PENDETA RESORT (I): church minister
PENGADILAN LAND REFORM: land reform court
PINUS MERKUSI: pine trees
PORLAK: garden
PORTALIAN: lineage territorial unit under a bius
PRAESES: church minister at higher administrative level
PUNSU TALI: a land reserved for new-comers or newly-weds
PUTUSAN RAPAT (I): decision of an adat court in colonial time
RAAD VAN JUSTITIE (D): Colonial high court
RAGIRAGI NI SINAMOT: a counter-gift to the bride-price
RAJA: chief
RAJA BONDAR: water manager
RAJA HUTA: hamlet chief
RAJA-RAJA PARBARINGIN: the spiritual leadership at bius level
RAPAT ADAT KURIA: adat court in colonial time
RAPAT HADAT NEGERI HOETAGALOENG: adat court in Hutagalung during colonial time
RAPAT NA BOLON: higher adat court in colonial time
RAPAT KECIL (I): lower adat court in colonial time
Repelita (I)
ripe
saba
saba parhombanan
sabutuha
sahorja
Sibaso nabolon
silehonlehon
sinamot
sintua
sipungka huta
Siraja Batak
solobean
Sombaon
Soripada
sosor
suhanparik
sulangsulang
Sumba
sumbang
sumangot ni Ompu
talun
tambatamba ni huta
tano dipaombal
tano langlang
tano na niulang
tano na so hea niula
tano rimba
tano tarulang
tano tinaban
tarombo
teanteanan
toktok ripe
tombak
tombak riperipe
tuan kadi (I)

: The Five Year’s Development Plan
: household, family
: rice field
: sacred area, the vicinity of the ancestor’s spirit; see also parsombaonan, solobean and parbeguan
: lit. one stomach; marga fellows
: a larger ceremonial and sacrificial community which includes more lineages or a larger clan
: the spirit of the common father of the human beings
: grant
: bride price
: church elder
: the one who founded a hamlet
: the mythical figure of the first human being
: sacred area, the vicinity of ancestor’s spirit; see also parsombaonan, parbeguan, saba parhombanan
: elevated spirit of the ancestor
: Toba-Batak God who functions as the protector and guardian of the fields and human beings
: a huta originated from another (adjacent) huta
: co-founder of a huta
: food offering in a ceremonial meal
: one of the Toba-Batak moieties beside Lontung
: forbidden sexual court between members of one clan, or between members of several clans that are bound by adat
: the revered spirit of the ancestor
: land that is left fallow for a very long period
: a tract of land reserved for expanding a hamlet; see also pangeahan
: land that is left fallow for a short period of time intended for crop rotation
: a tract of land used to perform a prayer to heal the sick; see also parlanglangan
: land that left fallow; see also gasgas
: uncleared land
: aged forest; see also harangan
: abandoned land
: land that is acquired by conquest
: family tree
: the property involved in collateral inheritance
: contribution paid by each household to the church
: young forest; see also rabi
: reserved forest for firewood
: islamic leader
<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>tulang</td>
<td>mother’s brother</td>
</tr>
<tr>
<td>turiturian</td>
<td>oral history</td>
</tr>
<tr>
<td>udean</td>
<td>a graveyard; see also <em>partangisan, parbandaan</em></td>
</tr>
<tr>
<td>ulos na so ra buruk</td>
<td>lit. the cloth that is never worn-out; a land gift to a woman from her father</td>
</tr>
<tr>
<td>ulos tondi</td>
<td>a cloth given to a pregnant woman to protect the soul of the fetus</td>
</tr>
<tr>
<td>ulubalang</td>
<td>warrior</td>
</tr>
<tr>
<td>upa mangaramoti</td>
<td>a compensation received by a custodian</td>
</tr>
<tr>
<td>upa ompu</td>
<td>a land gift to grandchildren</td>
</tr>
<tr>
<td>waris</td>
<td>inheritor</td>
</tr>
</tbody>
</table>
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Suara Pembaruan 28 April 1990
Suara Pembaruan, 13 October 1990
Suara Pembaruan, 13 December 1990
Waspada, 6 December 1995

Letters:


Others:

SAMENVATTING

PEASANT WOMEN AND ACCESS TO LAND
Customary Law, State Law and Gender-based Ideology
The Case of the Toba-Batak (North Sumatra)

Deze studie gaat over de mogelijkheden, beperkingen en strategieën van Toba-Batak vrouwen op het platteland van Noord Sumatra om toegang tot land te verkrijgen. De vrouwen leven in een veranderende patrilineaire gemeenschap. Hun toegang tot land wordt geplaatst binnen een bredere context van toenemende druk op land ten gevolge van individualisering, verstatelijking (statization) en privatisering van communale gronden. De studie betwist de juistheid van gangbaar onderzoek naar toegangsrechten tot land van vrouwen in ontwikkelingslanden. Ze vecht ten eerste de wijze aan waarop feministische theorieën de interculturele aspecten van machts- en genderverhoudingen behandelen; ten tweede wordt de juistheid van de wijze waarop in theorieën over peasants omgegaan wordt met boerinnen betwist; en ten derde, wordt de geschiktheid van rechtstheorieën om de complexiteit van pluralistische normatieve ordeningen te begrijpen betwijfeld. Al met al betwist de studie de aannemer dat - als het om het veilig stellen van het welzijn van vrouwen en de versterking van hun positie (empowerment) gaat - individueel privé-eigendom en controle van land op basis van het wettelijke kader van de staat daartoe de ultieme middelen zijn. De doelstellingen van de studie zijn drieledig. Ten eerste, aan te geven hoe verschillende normatieve en institutionele kaders de toewijzing van land ordenen. Ten tweede, te begrijpen hoe koloniale, religieuze, staats-, economische en politieke kaders vrouwen treffen door lokale patronen van ongelijkheid te versterken. Ten derde, de verschillende mogelijkheden voor toegang tot land voor mannen en vrouwen te beoordelen.

De studie probeert deze doelstellingen te realiseren door een antwoord te vinden op twee sets van vragen. De eerste set van vragen houdt verband met veranderende verhoudingen tot land in families en tussen afstammingsgroepen en de invloed daarvan op de positie van vrouwen. Hoe hebben de Toba-Batak toegangsrechten tot land door de tijd heen geconceptueeliseerd? Welke veranderingen zijn teweeg gebracht door Duitse zendelingen, het Nederlands koloniaal bestuur en de postkoloniale staat? Hebben vrouwen in het verkrijgen van toegangsrechten tot land baat bij de pluralistische normatieve ordeningen? De tweede set van vragen heeft betrekking op de druk op communale gronden en de doorwerking daarvan op de positie van vrouwen. Wat is de betekenis en functie van communale gronden in de Toba-Batak samenleving? Hoe verschuift de controle van communale gronden naar de staat en particuliere investeerders? Wat zijn de gevolgen van de afname van gemeenschappelijke gronden voor de plaatselijke dorpelingen? Op welke openbare of verborgen wijzen verzetten zij zich? Welke strategieën hanteren zij, in verband met de toenemende controle van de staat over land, om toegang tot land te verkrijgen?
Nadat in het eerste hoofdstuk algemene achtergrondinformatie is verschaft, introduceert hoofdstuk twee de situatie waarin een beginnend rechtspluralisme ontstond: de veranderende samenleving van de Toba-Batak gedurende de koloniale tijd. De eerste westere invloed, het protestantse christendom, introduceerde "een proces van individualisering en secularisatie" in de Toba-Batak samenleving (Schreiner 1994:3). Door de kerstening van de Toba-Batak was, tot op grote hoogte, het pad voor de Nederlanders geëffend om een sterke positie in te nemen. Op verschillende wijzen introduceerden zowel de Nederlanders als de Duitsers nieuwe gezagsverhoudingen. Waar traditioneel gezag was gebaseerd op de afstammingsgroep en het territorium waarover deze beschikte, introduceerden de Duitsers en Nederlanders principes van gezag die dit traditionele domein incorporeerden en overstegen. Deze nieuwe principes van gezag waren gebaseerd op een starre hiërarchische machtsstructuur. De macht van de staat (in dit geval van het koloniale bewind) werd steeds belangrijker in het proces van verandering, ondanks het feit dat deze macht voortdurend onder vuur werd genomen door de (Duitse) zendelingen en de Toba-Batak zelf.

De westelijke koloniale invloed strekte zich uit naar alle domeinen van het leven, waaronder ook die domeinen die betrekking hebben op land en op de positie van vrouwen. De banden tussen grondenrecht en adat werden selectief losgekoppeld. Het betrof een loskoppeling van de sacrale aard van de adat en van de essentie van de adat gemeenschap als "een godsdienstig genootschap wier leden van tijd tot tijd de onderlinge band en de band met de voorouders versterkten door vieringen" (Schreiner 1979:119-122). De pogingen om land ideologisch los te koppelen van de sacrale aard van de adat schiep ruimte om verhoudingen tot land, zowel binnen de afstammingsgroep als met actoren van buiten, opnieuw uit te onderhandelen. Interne verhoudingen in families en afstammingsgroepen veranderden ook op het terrein van gender, onder meer door de scholing van vrouwelijke studenten en als gevolg van de meer genderneutrale koloniale jurisprudentie. De bevordering van het principe van gendergelijkheid in de rigide patrilineaire Toba-Batak samenleving kan daarom gezien worden als deel van een meeromvattend proces van "desacralisering van adat". Evenzo hebben de veranderende landverhoudingen te maken met de opkomst van (nieuwe) actoren van buiten in de toegang tot lokaal land en het beheer en de allocatie ervan. In dit proces komen de (koloniale) staat, individuele Bataks en niet-Bataks en private ondernemingen in beeld.

Hoofdstuk drie laat zien hoe de toenemende macht van de (postkoloniale) staat, vooral gedurende de tijd van de Nieuwe Orde, inwerkt op de tegenwoordige Toba-Batak samenleving. Toba-Batak is een deel geworden van de grotere Indonesische staat die zijn nationale economie probeert te ontwikkelen. Een belangrijk element in de poging van de staat om tot unificatie en centralisatie te komen is de uitbreiding van een moderne staatsburokratie en -administratie tot op het dorpsniveau. Dit gebeurt onder de gelijktijdige neutralisering van adat principes en adat gezag, welke vaak gezien worden als inconsistent met (universele) nationale idealen van rechtvaardigheid (Cf., Wignjosoebroto 1994 en 1997). In tegenstelling tot de patrilineaire en zeer patriarchale Toba-Batak adat, is in de Indonesische Constitutie het principe vervat van gelijkheid voor alle burgers, ongeacht sekse. Met de toegenomen staatsmacht zijn er concurrerende rechten en regels met betrekking tot land, ontleend aan verschillende bronnen van
gezag: staat en adat. Deze veelheid van rechten en regels waarmee het land beheerd wordt bestaat niet in een vacuüm, maar in een context waarin dynamische processen van concentratie van land staan tegenover processen van toenemende schaarste aan land. Staatsinterventie in de processen van verstatelijking en privatisering wordt gedreven door de tegenstrijdige krachten van enerzijds nationaal-economische ambities en anderzijds de noodzaak om tot een duurzamer lokaal beheer van natuurlijke hulpbronnen te komen.

De hoofdstukken vier en vijf komen voort uit het veldwerk in Noord Sumatra. Hoofdstuk vier is gebaseerd op een in Siraja Hutagalung gehouden dorpsstudie en handelt over toegangsrechten tot land in een situatie van relatief alledaags bestaan. Het gaat hierbij om interne dorps- en lineage verhoudingen. De traditionele praktijk om toegang tot land te verwerven was door een stuk land of bos te ontginnen. Vanwege de druk op het land, is land schaars geworden en komt deze praktijk niet meer voor. Op twee wijzen kan nu nog toegang tot land verkregen worden. De eerste categorie betreft de "transacties tussen generaties en aanverwanten" die een sterke gender-bias hebben. De andere is de categorie van "wederkerige en economische transacties" die gericht is op het vervullen van de functie van een billijke verdeling van een bestaansbasis, de vermeerdering van economische baten, en het bevestigen van elkanders positie binnen de eenheid van verwanten en binnen de wooneenheid. Een op gender gebaseerde wijze om toegang tot rechten op land te verwerven is de belangrijkste en de enige traditionele wijze om land binnen de nauwe grenzen van de patrilinie te behouden.


In hoofdstuk zes trek ik conclusies met betrekking tot de verschillende factoren van verandering onder de Toba-Batak die de "gelaagde structuur van eigendomsregimes" (Benda-Beckmann, nog niet gepubliceerd) beïnvloeden. De meervoudige functie die toegekend wordt aan land blijkt de belangrijkste verklarende factor te zijn voor de houding van Toba-Batak vrouwen met betrekking tot de regel van patrilineariteit in het toegang verkrijgen tot land binnen de verbanden van afstammingsgroep en familie. De huidige verschuiving in de toewijzing van rechten op communale gronden van de adat gemeenschap naar de staat heeft merkbaar de aanwezige lokale bevolking en de adat gemeenschap gemarginaliseerd, zowel in het proces van overdracht van land, als in het daarop volgende proces van besluitvorming.
over gebruik en exploitatie van land. De bevindingen van deze studie ondersteunen de stelling dat de ontwikkelingspolitiek en ontwikkelingspraktijk vaak vooral nadruk leggen op de economische functies van land, terwijl mogelijke andere functies die communale gronden voor de lokale bevolking hebben verwaarloosd worden. Voor vrouwen is de tijdsdimensie van sociaal-economische zekerheid via communale gronden van belang. Deze beïnvloedt hun reproductieve taak, die in het geding komt in het proces van landonteigening.

Ik bespreek vervolgens enkele van de theoretische implicaties van de studie. In plaats van naar verwantschap te kijken als een eenduidige en vanzelfsprekende factor die gendergelijkheid ofwel belemmert ofwel bevordert, suggereert de empirische studie van de Toba-Batak samenleving dat verwantschap, onder wisselende omstandigheden, gelijktijdig als een belemmerende én als een bevorderende factor functioneert voor de toegangsrechten van vrouwen tot land. Ik ben van mening dat er niet iets als gendersolidariteit bestaat tussen Toba-Batak vrouwen, omdat hun identiteit meer wordt gevormd door hun verwantschapsbanden en hun positie van anciënniteit binnen de verwantschapsrangen, dan eenvoudigweg door gender. Aan de andere kant maakt het verzet van vrouwen tegen elke interventie van buiten, dat de strijd van de Toba-Batak om communale gronden zowel een fundamentele strijd wordt over hulpbronnen en over de sociaal-culturele en politieke betekenis van deze gronden, als ook een strijd die de scheidingslijn bepaalt tussen de belangen van lokale groepen tegenover die van private investeerders en de staat. De studie geeft ook aan dat er feitelijke rechtspolarisme heerst, terwijl de claim dat het staatsrecht het enige recht is eerder mythisch is. Hierop gebaseerd trekt de studie de conclusie dat de claim dat wettelijke structuren en normen van de staat direct tot gendergelijkheid leiden en tot actie die de positie van vrouwen verbetert hoogst twijfelachtig is. De introductie van statelijk grondenrecht neigt er toe rechten op grond te scheiden van meer omvattende sociale verbanden. Daarmee worden ook de beperkingen die die verbanden oplegden aan de schenking van land aan vrouwen en de vervreemding van land aan buitenstaanders geneutraliseerd. Deze transacties worden ook tegenwoordig gezien als in principe in strijd met de adat van patrilineaariteit van de Toba-Batak. Aan de andere kant worden, in de gevallen waar het gaat om de onteigening van communale gronden, het recht van de staat en het juridisch systeem meer gezien als bedreigend voor de belangen van vrouwen en die van de lokale gemeenschap dan als beschermend tegenover de belangen van private investeerders.

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