

WLUML-IWE: Women Reclaiming and Redefining Cultures (WRRC) Program

End of Project Narrative Report

Date:

Project Reference Number: (As indicated in grant agreement)

Project Name	Compiling a database of progressive cultural resources on women's land rights: interpretations, experts, media products
Project Location	Jakarta, West Sumatera, Nusa Tenggara Barat
Start and End date of Project (original schedule)	15/03/2010 - 15/11/2010
Start and End date of Project (revised schedule requested)	Mid February 2011 (the letter of request submitted on November 24, 2010)
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1. Deliverables as stated in grant agreement:

Deliverable Description	Date Submitted
1) Midterm progress report	
2) Financial report	
3) Final narrative report	
4) Final financial report	

2. Summary of the project

6 activities have been done during project are:

- 1) Literature on women's rights to inheritance and land ownership, consisting of books, articles, research report, legislation, International convention which ratified has been identified.
- 2) Literature review, entitled 'Inheritance Rights and Ownership of Land in Indonesia under Customary Laws, Muslim Laws, and State Laws: Where Menyusun literature review, berjudul "Hak Waris dan Kepemilikan Tanah di Indonesia berdasarkan Hukum Adat, Hukum Islam dan Hukum Negara: Where to put the women's rights?";
- 3) Expertise of Muslim Laws, Customary Laws (West Sumatera and West Nusa Tenggara) at community, provincial and National level have been identified. They are: 5 Persons of state law expert, 6 Persons of customary law expert, and 9 Persons of Muslim law expert.
- 4) List of interview question for each expert has been arranged, the core question of interview is to explore knowledge and their view of 3 law system relating to women's rights to inheritance and land ownership and other property;
- 5) In-depth interview of experts followed by writing the results of interviews;
- 6) Writes a Mid term report and final report

3. Achievement of each objective

The 5 of project objectives are: (1) Developing of database of progressive culture resources derived from multiple sources, including religious interpretations, national policies, civil laws, customary laws, local beliefs and practices, UN convention to which the country is signatory; (2) Analysis and evaluation of the different progressive culture resources, indicating what options are available, with what advantages and disadvantages; (3) Building a directory of progressive experts on the different progressive cultural resources; (4) Production and dissemination of user friendly media products on progressive cultural resources and the views of progressive experts, as well as dissemination through the mass media.

- 1) **Developing of database of progressive culture resources derived from multiple sources, including religious interpretations, national policies, civil laws,**

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customary laws, local beliefs and practices, UN convention to which the country is signatory

Progressive cultural resources database from various sources (interpretation of Muslim law, state legislation, customary law, etc) was created. Database derived from reading materials: books, articles, research reports, legislation, and international convention which has ratified. The following description of options database:

(1) Progressive Interpretation of Muslim Law

The rules of inheritance which according to Muslim law contained in the text of the Quran, surah 4: 7,11,12,33,1776. The verses set about: (1) women and men have same rights to inheritance; (2) the heir of daughter is half of the boys; (3) Procedure of dividing the heir of husbands, wives, mother's sisters and brothers, parents, and others siblings.

The most people undertood that men got twice to women in the term of heritance. The understanding is not associated with the context of text falling in the past and in the present contexts. According to Husen Muhammad and Nur Rofiah's suggestion, in the texts it self, actually contains a different interpretations or progressive interpretations.¹

Here below are some progressive interpretations of women's rights to inheritance, land ownership, and other property views of Muslim law:

- a. Although all the scholars in the Muslim world stated that women rights to inheritance is a half of men based on text of social quran was *qath'I* (couldn't be interrupted), **but in fact many Muslim communities took another path to fulfill a sense of justice**. For example, some of people divided their family property before died through by gift or grant to inheritor for the same amount either femail and male; and partly through by deliberation and approval among family and inheritor.² These another way taken is absed on belief that God is the Supreme of Justice, and justice of Lord should be provided or evidenced in real life on this earth, not in the sky or just a utopian;
- b. **Recontruction of women's rights to economic property**. Essensially, Islam is being realistic on women conditions at the time (periode when the verses about the division on inheritance declined) are discriminated because of social system which is male oriented, called jaahiliyyah. But, actually, in every sacred of text containing progressive interpretations that benefits both of women and men, including sacred of text which governing rights to inheritance and property rights. As examples, grouping of heirs according to the verses of inheritance (Surah Al-Nisa 4:11,12,33,176), women (as daughter, widow or mothers) are

¹ Husen Muhammad dan Nur Rofiah are expertise on Muslim law, Interviewed on October 2010.

² Practices of HIBAH also done by project participants at West Sumatera and West Nusa Tenggara

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included in the group who getting the virtue of inheritance.³ All statements in these verses is a maximum compromise formula that can be achieved of the Prophet at the time as dialectical process and negotiations between the vision of Islam and local culture;

- c. **Recognition of women's personal belongings** when she was single, as well as wife or parents in Surah Al-Ahqaf Verse 19. These kinds of women's belongings are not claimed as marital property by her husband. Furthermore, other private property of women or wives are mahr, inheritance, gift, and income;
- d. **The shift functions of men as head of household who breadwinner and meet all children and wives needs.** This understanding is a biased interpretation of Surah 4:34. In fact, at present, many women (wife or daughter) are working to have own income, even though the wife's earning extended to husband's income, or daughter's income was extended to her brother's. Although, the wife has no obligation to provide for the family, but, in reality the wife puts a significant contribution to provide all family needs. Therefore, the reason which states the heirs of boys must be twice of daughter because he would provide all family needs wasn't correct in this context;
- e. **Upholding justice that instructed by Quran is a fundamental law (*law ushuliyah*) that is absolute, but, the portion of inheritance of boys and girl is 2:1 is applied law (*furu'iyah law*) as the branches is relative.** Therefore, the application of 2:1 was carried out when justice so demands, and may have the same division between boys and girls 1:1 if justice wants so.

(2) **Progressive interpretations of sources of customary law in West Sumatera**

Relation to inheritance, Minangkabau customary law has specificity, called the division of property of 'Pusako' and 'Sako'. Pusako is in the form of material wealth, while Sako is a treasure in form of an honorary. The system of inheritance was different; Sako is a tittle that will be passed from generation to a man in the group of which selected as head of tribe, while Pusako is property will be inherited from generation to woman in the group.

This project final report only discusses women's rights to inheritance of Pusako in term of ancestral land, not about inheritance of Sako. For information, the case of land that appears throughout by the project is ancestral land disputes. So, the progressive interpretation that will be explained of this section is customary law of Minangkabau in West Sumatera related on women's rights to inheritance of ancestral land.

³ There are 4 groups of virtue in getting inherit: (1) sons, daughters, parents, widows, widower; (2) sisters, brothers, parents, widows, widower; (3) parents, widows, wdower; and (4) widow, widower, mawali of mothers either mawali for father.

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Here below is the identification of progressive interpretation of women's right to inheritance of ancestral land:

- a. Typical of Matrilineal system in West Sumatera created specifically form or principle of inheritance. 3 principles of inheritance in West Sumatera are:
 - (i) The principle of unilateral – the rights of inheritance that only applied in a single line of kinship. It is maternal kinship lines. Inheritance of ancestral property received from ancestors through the maternal line, and then only passed down to grandchildren from the daughters. There is absolutely wasn't from male line.
 - (ii) The principle of collective – who has the rights to inheritance wasn't individually, but together a group or all member in maternal lineage.
 - (iii) The principle of primacy, there are many levels of rights caused one parties is more entitled than others in term of acceptance or receipt to manage of ancestral land. During the most entitled was there, and then the other will not accept it. Who is most entitle to be determined by meeting of all member groups.
- b. Heir in Minangkabau adat is the person who entitled to continue of the processing of property and ownership as a right of use. Practically, property of ancestral land is women because the maternal kinship centered in her hands.
- c. The law of Minangkabau adat explicitly states that the owners of ancestral land will be women or maternal lineages within a tribe, but still in the framework of communal ownership, so obviously, the biggest opportunities for women in struggle to inheritance including heritage was possible in realm of Minangkabau customary law. But, should be noted, that the existence of legacy not only the value of wealth but also the identity of the tribe/family in Minangkabau become a 'tool' to preserve life of the tribe in the future, therefore, the elders, unequivocally states that the ancestral wealth not be pawned, let alone be traded.
- d. The way of inheritance in Minangkabau customary law is the process of transition of property to heir. In term of Minangkabau tradition, process of transition more meaningful of control to ancestral asset. The ways of transition depends on the kind of wealth that will be continued (inheritance, dowry, income, marital property, etc) and heirs who will continue (member of lineage, wife, children, etc). From the various types of property and inheritance in Minangkabau, it is clear that women have an important role and position; women are bonding, maintainer, and storage, called '*amban paruik*'. The entire of ancestral asset to be owned by women, while men only manage and maintain it.

Based on progressive interpretation of inheritance system, control of ancestral land by a member of lineage is based on '*ganggam bauntuak*'. All ancestral land that owned by member of lineage distributed and cultivated to 'paruik' (small part of lineage member who collected from the maternal lineage) by kinship of mother, and based on agreement of lineage members, under the leadership of mamak kepala

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waris (mkw). It should be emphasized that mkw only act as a facilitator not be controlled of ancestral land.

(3) Progressive interpretations of sources of customary law in West Nusa Tenggara Barat

Related to the issue of women's rights to inheritance, land ownership and other property, Sasak people in West Nusa Tenggara have their own custom; parents gives all their land property to their children either boys and girls during life. The lands in entrusted to the eldest son to be managed, and then the benefit were distributed to all relatives in fairness. Generally, the ownership of land certified in the name of the eldest son immediately, *why?* Because he was given the responsibility to take care and meet all family members needs (sisters, brothers, parents). Then, usually, the problem arises when parent has died, for the example:⁴

- (1) The certified has not been replaced into the name of each relative (daughters, sisters). If the eldest brothers have bad tempers and greedy, he will take and control the lands regardless of other sisters and brothers. He has legitimized as an owner the land in law. Moreover, if he has family, usually his children and wife will claim that the lands was owned their father or husband;
- (2) Then, the land is considered as land inheritance not as land gift. As a result, women lost her rights to land ownership because according to Sasak tribe in West Nusa Tenggara, in term of inheritance, women only get the household tools and jewelry. At least, there are 3 reasons why daughters has not rights to land inheritance: 1) Women would live with her husband's family after married, so that, women were considered not require the land; 2) Women are considered be sufficient to bring the household tools and jewelry in preparation to take a new life with her husbands's family; and 3) Women will get a legacy of land or other property fromtheir husband

Then what progressive interpretations and the initiatives that have been done by people in West Nusa Tenggara, including the project participants regarding with the phenomenon above (?)

To expect eldest brother to be nice all the time is impossible. He could be nice and be fair when the parent still alive, but after parents dies, his attitude may change. To address these issues, the initiatives that have been done by Sasak communities, including traditional and religious leaders are:

- To recommend that in distributing the land should be used Hibah rules with applicable laws, both state law and Muslim law;
- To remaind people that always anticipate if the eldest brother couldn't be fairness in managing the land with legalized. As well as men, women have equal rights to put her name in certificate of her own land.

(4) Progressive Interpretations of State Law

⁴ Resume by result of discussion in WIPR workshop at Lombok, W.NT on Juny, August and November 2010.

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In general, women rights to land ownership and other property through various sources, such as inheritance, gifts, grants, mahr, wills, and other sources are protected by regulation or state laws. Even, in some areas, customary laws is recognizes as a legitimate source of state law, as happened in West Sumatera.⁵ The state recognizes Minangkabau customary laws that stated rights to ownership of communal land (ulayat land).

Here are some of regulations and decription of protection through the articles it contains:

1. Constitution (UUD 1945, amendment IV), provided protection to property that owned by each citizen. To confirm this matter, there is a provision that any legislation should refer to and must not conflict with the constitution;
2. Act No.39 of 1999 on Human Rights. Generally, all articles in this Act to protect the human rights, including women's rights. Specifically, the articles that regulate women's rights to inheritance, land ownership an other property are:
 - State guarantees the protection of customary law practices that needed by adat peoples, including rights to communal land. This customary law must be adapted to the times and still be valid as long as not contrary to the constitution;
 - The state guaranteed protection to any property rights of all citizens;
 - State guarantees that each person have rights to property, whether individual owned or jointly with others and no one was allowed to seize of property by arbitrary.
 - Women (wives) have equal rights with men (husbands) in term of ownership and manage of marital property.
3. Act No.5 of 1960 on Basic Regulation of Agrarian Affairs, contains the principles of state recognition of land tenure under customary land. Additionally, protection to all citizens, both men and womenequal oppoportubity to acquire a right to land and benefit, both for themselves and their families.
4. International convention on rights to economic, social, and cultural that have been ratified through Act No.11 of 2005. In principle, this covenant asked to ensure guarantee equal rights both women and men to enjoy the economic, social, and cultural rights. But, there are no specific provisions regarding women's rights to inheritance, land ownership, and other property.

⁵ There are differences understanding between system and mechanism of 'ownership' of communal land in state laws and customary laws. Act No.5 of 1960 on Rules of Agrarian and other regulations stated that there is no term of 'ownership' on communal land, but only 'the rights to manage of communal land'. Whereas of Adat Minang stated term of 'ownership of communal land' was existing, for examples, communal land of suku, communal land of kaum, communal land of nagari, etc.

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5. International convention on civil and politic rights that have been ratified through Act No.12 of 2005. In principle, state must guarantee the equal rights of women and men on civil and political rights, including protection of religious freedom and run the customary law, as long as no impact on the ignorance and violation of civil and politic rights of others.
6. Act No.7 of 1984 on ratification of the convention on the elimination of all forms of discrimination against women. This convention encourages the government to remove cultural practices and rules that discriminate against women, including discrimination in WIPR issue. In addition, this convention also encourages the countries to ensure women have equal opportunities to manage property.
7. Compilation of Islamic Law (*In bahasa, Kompilasi Hukum Islam/KHI*) passed through the Presidential Instruction No.1/1991 book II, applied to citizens who are Muslim. In general, KHI recognizes equal rights of women and men to inheritance and others personal property ownership:
 - Regulation on inheritance law is cleared, detailed, easier, and accordance to bilateral system of Indonesian society. However, it is possible to take another way of distribution of inheritance;
 - To ensure protection of personal property both wife and husband; i.e. the existence of marital property didn't rule out the existence of individual property of each spouse; basically there is no mixing of individual property in marriage, wife's property remains the rights of wives and fully controlled by herself, as well as husband's property.
8. Other specific regulation on conversion and registration of communal land which refers to the rules/laws related to Minang custom issue by local government of West Sumatera:
 - Government regulation No.24 of 1997 on land registration and provisions of implementation No.3 of 1997. The regulation has cut off the process only reached land official at Distric level, so that the maintenance of land registration is easier.
 - If the registration process has refutated from other side, the solution refers to the circular letter (SE, Surat Edaran) of Governor of West Sumatera regarding to request for confirmation of existing rights to customary property which in the lawsuit process.

2) Analysis and evaluation of the different progressive culture resources, indicating what options are available, with what advantages and disadvantages

Indonesia embraced the pluralism of laws system which allowed of 3 of law systems; i.e. customary laws, Muslim laws and state laws. The practices of system of pluralism laws are deference in each area which caused differences impact to women of WIPR issues,

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for example: In West Sumatera, the customary laws allowed women's rights to inheritance, land ownership, and property rights, but the state laws and Muslim laws caused women no access to these rights.⁶ In West Nusa Tenggara, the Muslim laws and state laws allowed women's rights to own land from inheritance and other property, but the customary laws caused women no access to this rights.⁷

So that, doing strategy of progressive interpretation of 3 of laws system (customary laws, Muslim laws, and state laws) which mean progressive interpretations used to legitimize women's rights to inheritance, land ownership and others property are important. This strategy created community awareness that alternatives are possible, that interpretations of 3 laws system are not the only ones.

3) Building a directory of progressive experts on the different progressive cultural resources

Directory of progressive experts on the different progressive cultural resources have been arranged. Overall 20 expertises; composed of 9 expertises on Muslim laws, 6 experties on customary laws, and 5 expertises on state laws.⁸ Generally, here below progressive interpretations was compiled from the 20 experts.

Directory of progressive of Experties on Muslim Laws:

- (1) Implementation of faraidh law must be based on historical contexts of decline verse of that day. If it is irrelevant to the current contexts, the division of inheritance may use other means;
- (2) The provisions of concerning on inheritance and property ownership according to Muslim law is contained in the verses of Quran 4:7,11,12,33,176; 2:178, 2:228, 4:45, 4:92-93, 3:195, 9:71, 33:35-36, 49:13, 66:19-21. All these verses contains of ijtihad space t for the scholars to undertand more critical
- (3) In Quran, protection is a spirit of concept of women rghts to inheritance, land ownership and other property indeed;
- (4) No ambiguous in understanding between the commands in the Quran as basic law which is absolute and applicable law as branches which is relative. The basic law which is absolute must be taken as precedence over the applicable law which is relative. For example, enforcing of justice is a fundamental law, it must be taken as

⁶ Even thought matrilineal system which only women are entitle to inheritance of ancestral land, but, in fact most of women no rights to land ownership, men already take over the rights; That situation was supported by Local Regulation No.16/2008 on utilization of communal land. "*The owner of the communal ancestral land is Ninik mamak KAN/penghulu/mamak the head of inherit*", which is all Man (Article 5)

⁷ The enmity (by using the adat term) between customary law and Islamic law in the context of inheritance : (1) Daughter do not have rights to own land from inheritance, she only get 'jewelry' and household items when she was married and live in husband's family (some part of Central Lombok and West lombok, W.NT); and (2) On the other hand, some other region of W.NT. The inheritance divided by using adat term (Sepelembah Sepersonan), but the rule is using the Islamic law, mean 1:2 for doughter: son (West Lombok, W.NT)

⁸ See Appendix 2. Directory of Pgressive Interpretation

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- precedence in the context of division of inheritance; the applicable law (in this case is faraidh law) can be changed in order to realize the rule of justice
- (5) 'Justice' mean equality for each heirs or it is truly felt by heirs themselves (not based on other's)
 - (6) To achieve 'the real justice', there are some important things must be fulfilled in term of division of inheritance:
 - i. Putting consensus between both family and heirs based on principles of peace and justice, at least by looking 2 aspects: responsibilities and situation/condition of each heirs
 - ii. Not only consider of quantity (number or extent) but also value of inheritance will be distributed. The value is usually converted to the money or benefit that would be got.
 - (7) If it worried be unfair to the daughters at the time of division of inheritance, there is another alternative way, the parents able to distribute of their wealth (land or other forms of property) fairly to each of children (boys and girls) by a grant or hibah.

Directory of progressive of Experties on Customary Laws:

West Sumatera

- (8) In West Sumatera is known 7 systems of land ownership: ulayat nagari, ulayat rajo, ulayat suku, ulayat kaum, personal property, owned by faraidh, and waqf property. Each of these has owned rules. Therefore, knowledge about the system of land ownership ideally should be possessed by people of West Sumatera
- (9) In principles, all communal land can be utilized by all lineage members of relevant community. Even management is handling by head of inheritor (mamak kepala waris or mkw), he is only managing no controlling.
- (10) But, at this moment, head of inheritor (mkw) tendency to be 'controlling' not 'managing' in both political and economical reasons. So that, the opportunities of women to have and enjoy communal land is diminishing. Therefore, it would need to revive customary rules of Minang correctly where a men head of inheritor serves as managing and women as heirs of communal land is communal land owners.
- (11) Obstacle no (9) can be anticipated by women involvement to Minangkabau tradition institution or 'adat institution' (lembaga adat Minang) at villages, district, even province level. Adat institution is accounted for determining of government policy, ranging from village, district to provincial levels. Before 2009, each adat institution consist of 3 groups (*3 Tungku Sajarangan*), they are *Ninik Mamak* group, scholars group, and intellectual group. Now in periode 2009-2014 Minangkabau Adat Institution consisting of 5 groups, adding 2 groups, Bundo Kandung group and Youth group.⁹ So that, women can occupy in 4 representative groups of 5.

⁹ Terdapat 2 pendapat mengenai keanggotaan dari setiap Tungku Sajarangan ini: Pendapat pertama menyatakan bahwa Ninik Mamak, Alim Ulama, Cerdik Pandai dan Pemuda diwakilkan oleh laki-laki. Hanya kelompok Bundo kandung yang beranggotakan perempuan. Pendapat kedua menyatakan bahwa perempuan juga dapat mewakili kelompok alim ulama, cerdik pandai dan pemuda selain bundo kandung. Argumentasi yang mendukung pendapat ini adalah bahwa saat ini telah banyak ditemui perempuan yang ahli dan pintar di bidang agama sehingga ia bisa saja menjadi golongan alim ulama, selain itu tidak sedikit ditemui perempuan yang berpendidikan tinggi sehingga ia bisa

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- (12) Actually, the practices of custom are flexible in accordance with present situation and communities needs;

West Nusa Tenggara

- (13) Generally, most of parents in West Tenggara gave their land to their children either boys or daughters. The eldest son was given responsibility to manage the land. The key point of this custom practice, this kind of land is gift (or Hibah) wasn't legacy land;
- (14) According to the existing of Sasak tribe in Lombok Island West Nusa Tenggara Barat daughter didn't received inheritance of land (rice field, garden, etc) and the house. The daughter only received a legacy of household tools and jewelry. The practices of customary law is existing at least based on 2 reasons; first, men as a son have responsibilities to take care of all family members; and second, women were considered not require land and homes, because he will go out and stay at husband's family home when she was married. However, if the current contexts are not relevant, it is possible to change these customary practices;
- (15) Related on number (12) and (13), in practices, 2 of practices were confused, granting the land on number (12) were considered as legacy land which is used practices on number (13). Such practices harm to women.
- (16) Customary practices change based on progressive interpretation of Muslim Laws which stated that both women and men have equal rights to inheritance, land ownership and other property;
- (17) Generally, customary of Sasak tribe in West Nusa Tenggara promotes concensus in solving of inheritance and land disputes that occurred. This consensus is done starting from the family level, the village, then up to an even greater level;

Directory of progressive of Experties on State Laws:

- (18) Setiap warga negara baik perempuan maupun laki-laki sama kedudukan dan haknya dimata hukum
- (19) Secara umum hak perempuan atas waris dan kepemilikan tanah serta harta benda lainnya telah diakomodir oleh peraturan perundang-undangan yang berlaku di Indonesia
- (20) Bukti kepemilikan tanah adalah sertifikat, perempuan sebagai warga negara berhak mencantumkan namanya dalam sertifikat bukti kepemilikan tanah miliknya;
- (21) Dalam hukum keluarga di Indonesia tidak ada ketentuan hukum yang mewajibkan ahli waris anak laki-laki menanggung biaya penghidupan bagi ahli waris anak perempuan sehingga tidak ada alasan kuat memberikan bagian yang lebih besar kepada ahli waris anak laki-laki dari pada ahli waris anak perempuan;
- (22) Regarding with handling inheritance and land ownership cases in court. As a judge, in determining of decision based on the following provision: the case of inheritance estuary in the division, so that the court should have a sense of fairness; Judge have freedom in determining which law will be used, Muslim laws, customary

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laws, or state laws, and also can refer to the combination of all three; Judge's decision should be associated with condition of the actors who litigants, local community background, religion, and family. Although the judge is knock on 3 of inheritance law, but, judge has full rights and discretion to formulate the law in decision by considering the sense of justice.

4) Production and dissemination of user friendly media products on progressive cultural resources and the views of progressive experts, as well as dissemination through the mass media

More details about products on progressive cultural resources and the views of progressive experts can be seen in SCN CREST WIPR product (currently, in the process of finalized, web: www.scn-crest.org).

4. The project participants

The project participants are 20 experts on Muslim laws, customary laws, and state laws. (See objective 3).

5. The potential long impact

The expert or figure on customary and religious leader, either state laws expert who involved in this project are competent, well known, and respected in their own social environment. The project was encouraging them to concern the issues of women's rights to inheritance, land ownership and other property, at least. In long term, they are potential to spread WIPR issues to the wider community and support women to re-claim their rights to inheritance and land ownership by using progressive interpretation from multiple sources, including religious interpretations, customary laws, local beliefs, and state laws.