



The Role of Customary Law in Sustainable Development

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THE ROLE OF CUSTOMARY LAW IN SUSTAINABLE DEVELOPMENT

For many nations, a key challenge is how to achieve sustainable development without a return to centralized planning. Using case studies from Greenland, Hawaii and Northern Norway, this book examines whether 'bottom-up' systems such as customary law can play a critical role in achieving viable systems for managing natural resources. Customary law consists of underlying social norms that may become the acknowledged law of the land. The key to determining whether a custom constitutes customary law is whether the public acts as if the observance of the custom is legally obligated. While the use of customary law does not always produce sustainability, the study of customary methods of resource management can produce valuable insights into methods of managing resources in a sustainable way.

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To Vincent Ostrom

PREFACE

Duncan A. French, in his book on the role of the state and sustainable development (2002), wrote: "For many developed States a key challenge is how to achieve sustainable development without a return to centralized planning, an anathema to most States with developed market economies." In this volume we propose that "bottom-up systems" like customary law play a role in the achievement of viable social systems.

This book is a compilation of contributions that was first debated during the Working Group meeting at Rockefeller Foundation Study and Conference Center in Bellagio (1999) on "The role of customary Law in a local self-governing sustainable development model." The group met in 2000 at Richardson School of Law, Honolulu and in 2002 at University of Tromsø, Norway for discussions on the prospects of customary law establishing sustainable societies.

Most of the chapters are the sole responsibility of one or two contributors. Jes Bjarup undertook the studies presented in Chapter 3; Fred Bosselman has written Chapters 1, 6, 11, and Section 10.1 as well as the introduction and the conclusion. David Callies is the author of Section 2.1 and Chapter 4; Martin Chanock the author of Chapter 8 and Section 9.8; Hanne Petersen of Sections 2.3 and 10.3; and Peter Ørebech of Chapters 1, 5, 7 and Sections 2.2, 9.1–9.7, 9.9, 10.2, and the introduction and conclusion.

Despite the many authors and their sole responsibility for their contributions, the chapters are in many ways linked together. Hopefully the reader will find at least one "red thread"!

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Peter Ørebech & Fred Bosselman

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Agreement on the Application of Sanitary and Phytosanitary Measures,
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B

- Bamako Convention on the Ban of the Import into Africa and the
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Wastes within Africa 1990

C

- Cartagena Protocol on Biosafety to the Convention on Biological
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Convention Concerning Indigenous and Tribal Peoples in Independent
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Convention for the Prevention of Marine Pollution by Dumping from
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Convention for the Protection of Human Rights and Fundamental
Freedoms (European Convention on Human Rights)
Convention on Civil Liability for Oil Pollution Damage
Convention on Long-Range Transboundary Air Pollution on Further
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Convention on the Protection and Use of Transboundary Watercourses
and International Lakes (Helsinki Water Convention)
Copenhagen Declaration on Social Development
Convention on the Conservation and Management of Fisheries
Resources in the South-East Atlantic Ocean 2000 (CC AMFR)

Convention on Conservation & Management of Highly Migratory Fish Stock in the Western & Central Pacific (MHCC)

D

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G

General Agreement on Tariffs and Trade 1994 (GATT)

I

ILA New Delhi Declaration on Principles of International Law Relating to Sustainable Development

International Convention for the Prevention of Pollution from Ships 1973

International Covenant on Civil and Political Rights 1966

J

Johannesburg Summit 2002

K

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N

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R

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