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0521859255 - The Role of Customary Law in Sustainable Development

Peter Orebech, Fred Bosselman, Jes Bjarup, David Callies, Martin Chanock and Hanne Petersen

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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

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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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Our gratitude goes to Rockefeller Foundation for support and offering great localities at Bellagio and The Norwegian Research Council for travels funding. Thanks also to the Norwegian College of Fisheries Science and University of Tromsø for sponsoring the 2002 event and to Chicago Kent College of Law for excellent working conditions. David Callies thanks his research assistant Emily Henderson, then a Ph.D. candidate, for her tireless research in the stacks of the Squire Law Library; Dr. Malcolm Grant, CBE, President and Provost of University College London but then Head of Department, Land Economy, for encouragement, advice and office space; David Wills, Director, and Peter Zawada, Deputy Director, of the Squire Law Library for faculty privileges and research space; Professor John Baker, Fellow of St. Catharine's College for counsel and advice, and Clare Hall for meals, accommodation and fellowship, all during the two terms spent at Cambridge University in 1999 as a Visiting Fellow, preparing my contribution on customary law, and to Peter Ørebech for organizing the seminar at Villa Serbolini in Bellagio in early 1999 where our project commenced. Thank you all!

Peter Ørebech & Fred Bosselman

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- Agreement on the Application of Sanitary and Phytosanitary Measures, Annex 1A to the Agreement Establishing the World Trade Organization (SPS Agreement)

B

- Bamako Convention on the Ban of the Import into Africa and the control of Transboundary Movement and Management of Hazardous Wastes within Africa 1990

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- Cartagena Protocol on Biosafety to the Convention on Biological Diversity
- Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169)
- Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft
- 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 Reduction of Sulphur Emissions 1979, 1994 Protocol thereto
- 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)

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