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WORLD ANTHROPOLOGY CONGRESS-2023

BHUBANESWAR, INDIA | 9-14 AUGUST 2023

CTD: 24IC - INDIGENEITY, CULTURAL RIGHTS AND HERITAGES

SUB-DOMAIN: 2. CUSTOMERY LAW AND TRIBAL LIFE

PANEL TITLE:

CUSTOMARY LAWS IN CONFLICT WITH RULE OF LAW: NATURAL RESOURCE GOVERNANCE, STATE, AND INDIGENOUS COMMUNITIES

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CO-CONVENOR: PROFESSOR JOAO DANTAS

ABSTRACT

The positivist school of legal jurisprudence along with market-oriented economists argues that the rule of law having organized government and legal commands guarantees private property rights in the modern state societies. They argue that the modern societies can only function effectively within the system of well-defined and enforced private property rights. Contrary to it, the empirical/anthropological findings on cases for and against the public production of law and enforcement from the 'primitive' legal systems justifies, that they apparently represent examples of law and order, without a state government. They are also critical of the economists who assume that the state must establish and enforce private property rights. Hence, there have been several instances of conflict between customary/depoliticized laws of indigenous/tribal/advansi communities and the politicized/provincial laws of the modern state worldwide. The customary laws in relation to land governance were having the features of strong community life, socio-economic and ecological adaptability. The statutory laws, which have been consciously created by the legislation is un/consciously favourable to a particular section of the society and responsible for marginalization of the indigenous communities.

Discussion and presentations in this panel will focus on: How the global discourse of development is dismissive of local knowledge, including knowledge of the environment? How natural resource management has been a political norm, assisted by the dominant jurisprudence of the state and consequently large-scale dispossession of traditional lands and territories of the indigenous/tribal peoples all over the world? It further proposes to deliberate upon the issues of indigenous knowledge and development, land governance, inheritance, and other natural resource management among the indigenous communities worldwide.

Keywords: Customary Law, sustainable development, indigeneity

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