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Informal Justice Systems, Traditional Values and Human Rights

Human rights, though avowedly individual centred and binding irrespective of means, rely on state structures that may lack the capacity and popular legitimacy needed to translate legal obligations into practical realities. Modern and postcolonial Africa faces governance challenges where public authority is shared between state and other structures (Mamdani, 1996).

The lack of an adequate conceptual apparatus in law and human rights to address diverse forms of public authority leaves a gulf between normative standards on the one hand and political life and service delivery on

the other. An undue policy focus on the central state may leave ordinary people marginalized as objects of state building and development rather than empowered subjects. The Danida Development Strategy, the Human Rights Based Approach (HRBA) and practitioners (e.g. World Bank, 2009) point beyond this divide, emphasizing engagement with and empowerment through both informal and formal structures.

The paper will examine engagement between rule of law based central states and less formal mechanisms of authority in various settings, analysing practices and opportunities for empowerment, participation and accountability offered by synergies between these actors. Conceptually, human rights law and doctrine will

be interrogated, aiming at a more inclusive view of the state and its obligations.

Informal justice and governance systems may in some contexts perform better than formal ones in yielding structures, processes and outcomes that respect human rights. The same is true of the value bases of informal justice and governance structures. The paper will argue that instead of seeing “traditional values” only as a threat to human rights and modern, liberal values, activists and development workers in the areas of human rights, gender equality and social justice ought to do more to find humanistic values within customary and religious systems.