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**ACCESS TO JUSTICE AND HUMAN RIGHTS: THE RECOGNITION OF
CUSTOMARY JUSTICE SYSTEMS**

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ABSTRACT

There is an increasing development and institutionalization of customary justice systems in the legal order of several countries in the world. These justice mechanisms are recognized for providing an affordable and culturally relevant remedy to the population, in a more simplified and accessible way. Hence they are considered as useful tools to enhance the access to justice. Bearing in mind some of the human rights challenges associated with the use of customary justice systems, it is essential to ascertain if the main human rights that comprise the access to justice can be respected. In the General Comment No.32, concerning the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee acknowledged that the customary courts recognised in the State legal order fall under the human rights provisions of article 14 of the ICCPR. This thesis examines the human rights obligations and the normative orders of States that have recognised customary justice systems and concludes that there are still numerous difficulties in complying with the established human rights provisions. Furthermore, it considers that, in the current circumstances, the human rights obligations of the States should be additionally defined and promoted.

“Baad is an ancient tradition in Afghanistan, dating back to the days when no central legal authority existed, and conflicts were settled through the tribal system (...) When a man kills, rapes, or has sexual relations with someone other than his wife, a local council can step in to mediate. Lesser offences can usually be settled by the exchange of money, perhaps a few sheep or a cow. But the standard penalty for a serious crime is for the offender's family to part with a girl, who is given to the victim's family.”

Institute for War and Peace Reporting, *Afghan Girls Suffer for Sins of Male Relatives*, 26 March 2009

TABLE OF CONTENT

1. INTRODUCTION

1.1 Overview of the problem

1.2 Methodology and sources

2. CUSTOMARY JUSTICE SYSTEMS

2.1 Definition and historical background

2.2 Relevant features: advantages and disadvantages

2.3 Relations between the State and the customary justice systems

3. CCUSTOMARY JUSTICE SYSTEMS IN THE HUMAN RIGHTS FRAMEWORK

3.1 Customary justice systems as an indigenous human right

3.2 Customary justice systems in the core human rights treaties

3.3 Access to justice and customary justice systems: the right to access to court and to fair trial.

3.3.1 Access to justice and customary justice systems

3.3.2 Access to justice: the right to access to court and to fair trial.

3.3.3 Human Rights Committee General Comment No.32: the courts based on customary law

3.4 The human rights obligations of the State

3.4.1 Customary justice systems not recognized by the State

3.4.2 Customary justice systems formally recognized by the State

4. CUSTOMARY JUSTICE SYSTEMS FORMALLY RECOGNISED BY THE STATE: COUNTRY CASE STUDIES WITHIN THE FRAMEWORK OF ARTICLE 14 OF THE ICCPR

4.1 Preliminary remarks

4.2. Customary justice systems with a limited formal recognition of the exercise of their jurisdiction: the case of Samoa

4.3 Customary justice systems formally recognized with an exclusive jurisdiction in a defined area

4.3.1 Customary justice systems formally recognized within a defined territorial jurisdiction: the case of Aceh, Indonesia

4.3.2 Customary justice systems formally recognized within a defined branch of law: the case of Ethiopia

4.3.3 Customary justice systems formally recognized within in a defined personal jurisdiction: the case of Bolivia

4.4 Customary justice systems formally recognized with coercive powers: the case of Rwanda

4.5 Customary justice systems fully incorporated in the State justice system: the case of Botswana

4.6 Final remarks

5. CONCLUSIONS

BIBLIOGRAPHY