Review of
ABDULKADER SALEH MOHAMMAD (ed.), *The Customary Law of the Akele Guzai Muslims [the Sabo]. Issued by the British Military Administration in 1943. Re-issued by the permission of the High Commissioner of the Eritrea National Police, Department of Criminal Research. Translated and edited by Abdulkader Saleh Mohammad*

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Scholars have been taking a growing interest in researching on the customary law of the Eritrean peoples. This increasing attention is motivated by the crucial role that traditional law systems play in shaping and preserving the social structures of the local communities. However, the study of Eritrean customary law is not a new field of research at all.

During the Italian colonial period, several valuable and still today essential studies were carried out and, more relevantly, many customary law corpora were written down and published for the first time. The passage to the written form, which had apparently already started in pre-colonial time, practically paved the way to the formal codification of many customary legal traditions under the technical and political supervision of the colonial administration. The consequences and changes which this externally guided passage to the written form caused to the structure and content of the corpora of customary law are still only partially investigated.


Also the British Military Administration in Eritrea contributed to this process of change. In 1943 S.F. Nadel fostered the collection and the official issue of the "Customary Law of the Muslims of Akkâl Guzay". Under the name “Muslims of the Akkala Guzay” the code implies the Muslim Saho tribes Asawerta, Minifari, Hadu, Daframila Aldas5.

The text was published in Asmara in 1953 and since then it remained practically unnoticed by the scholars. Now it has been reedited with an English annotated translation and an introductory essay by the Eritrean anthropologist Abdulkader Saleh Muhammad.

The book under review is made up of a preface (pp. 5–6), a glossary (pp. 7–9) and two main parts: an introduction (pp. 11–31) and the translation of the document (pp. 33–70). The Arabic original is retyped and paged from right to left (pp. 1–34).

In his introduction, beside a general description of the history and society of Saho people (pp. 11–20)6 and some cursory observations on the Cus-
tomary Law in Eritrea (pp. 20–21), the editor immediately proceeds giving a
sketchy and quite inconsequent set of data on the Saho customary law
(pp. 22–25) and its practice (pp. 25–28).

A general lack of a consistent transcription of the many Arabic, Saho and
Tigrinya words and technical terms annoys and confuses the reader
throughout the book. Even the glossary (pp. 7–9), where the most relevant
of these words should be explained, is full of shortcomings. In particular,
the editor fails to clearly identify all the loanwords and their origin. Nine
out of 18 words and terms listed in the glossary are of non-Saho origin (ei-
ther Arabic or Tigrinya) and the editor did not even envisage the question
to what extent this foreign vocabulary is the evidence for a heavy external
influence on the Saho traditional law.

The text of the code is prima facie a very complex conglomerate, as it is
the outcome of the merging of three different legal traditions: 1) the pre-
Islamic Saho custom; 2) the Islamic šari’ā, which provides also the linguistic
form of the text with the use of the common Arabic Islamic terminology;
and 3) the modern Law code which framed the legal provisions within the
typical European structure of a series of numbered articles.

In particular, the text of Customary Law of the Muslim
Saho is composed by
a preface (dībatā) and 191 articles (māddā), grouped in 8 sections (bāb). The
first bāb comprehends the “criminal/penal code” and is divided in 6 subsections
(fasḥ). The bāb-s 2–4 deal with the organization of villages and households, their
agriculture, animals and wells. Bāb-s 5–6 dictate the rules for marriage and
punishments for adultery and defamations. Bāb 7 describes the procedures to
be followed in different legal cases and fixes the rights and duties of the judges.
The last bāb is miscellaneous and deals mainly with moral and social issues.

The Arabic text basically reproduces the 1953 edition. The editor pre-

tents his work as a revision (tanqīḥ) of the original. In fact, only some mi-

7 It is frankly hard to understand the literal and scientific sense of such statements as
“The customary law of the Tigrinya speaking ethnic group of Eritrea differs from
those of the other ethnic groups in the country, because it is written in Ge’ez alphabet
which was used in Church affairs and dates back to old times” (p. 21; italics are mine)
or “However it is important to note that the Tigrinya customary laws have attracted a
greater number of European colonial and missionary scholars … and this is due to the
fact that the Church laws dominated the customary laws to a greater extent than in the
other non-Tigrinya speaking ethnic groups, except for the Mensa and Bilen ethnic
groups” (ibid., italics are mine).

8 The fundamental question to what extent the customary Law of the Saho was influ-
enced by the šari’ā (and vice versa) is barely mentioned in these two sections (p. 22
and p. 24; see also another short hint p. 6). However, the Saho learned men who wrote
the text of the code were fully aware of the crucial importance of this question and
dealt with it in the preface to the code.
The intricate and nuanced nature of the text apparently escaped the editor who failed to give an appropriate critical analysis of its facets. The explanatory footnotes to the translation are scanty and pose more questions than they answer (e.g., note 14, p. 57, on article 131 dealing with the practise of the escape [or kidnapping?] of the bride; note 15, p. 58, on article 135 prohibiting excessive entertainment, jokes and drumming at weddings; note 21, p. 67, on article 181 limiting the expenses for the name giving ceremony; note 22, p. 68, on article 187 on the milking women).

The English translation has a few serious misinterpretations that mirror an only partial command of the Arabic language and sometimes demonstrate an even more inaccurate knowledge of some basic concepts and institutions of the Islamic law. A couple of flagrant cases will suffice to prove this ignorance.

Article 1 reads now "when a death was caused deliberately, or in a similar case." The Arabic original has actually: "If the murder was intentional, committed with a sharp weapon, or something of the same legal status (bi-mubahadda an mā fi bukmih). In fact, according to the Ḥanafi school, the use of a sharp weapon or something similar (e.g., a pointed stone), is a sufficient proof of the intent to kill. The killer is thus subject to retaliation.

In articles 3, 15, 17, 20 the Arabic word translated as "family" is ʿāqila (word that should have been listed in the glossary), which term actually denotes a "solidarity group", a section of the lineage responsible for the paying of the diya (blood money) on behalf of its members. The editor has moreover changed the text of the Arabic original in articles 17 and 20 substituting ʿāila to ʿāqila to make the text correspond to his translation.

Summing up, the publication under review demonstrates that customary law texts are fascinating but complicated cultural items. They have to be approached only by researchers with a multidisciplinary training and knowledgeable in the fields of linguistics, jurisprudence and traditional law systems. Otherwise, no scientifically relevant result can be achieved.

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9 The text was printed in Asmara in August 1953 by the famous Tipografia Fioretti (on its founder Maria Fioretti, 1871–1945, see GIUSEPPE PUGLISI, Chi è? dell’Eritrea, Asmara: Agenzia Regina, 1952, p. 130). Oddly enough, the name of this Italian printing press became “Fitārāt” (!) in the reading of the editor (p. 1 of the Arabic section).