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Review of

ABDULKADER SALEH MOHAMMAD (ed.), *The Customary Law of the Akele Guzai Muslims [the Saho]. 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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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 = Recht und Politik in Afrika – Law and Politics in Africa, Band/Volume 9, Münster: LIT Verlag, 2009, pp. 74 + p. 34 Arabic text [three plates are not separately numbered]. Price: € 19,90. ISBN: 978-3-8258-1980-4.*

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 studies¹ were carried out and, more relevantly, many customary law corpora were written down and published for the first time². 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 administration³. 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 investigated⁴.

¹ E.g., the masterpiece of CARLO CONTI ROSSINI, *Principi di diritto consuetudinario dell'Eritrea* = Manuali coloniali pubblicati a cura del Ministero delle colonie, Roma: Tipografia dell'Unione editrice, 1916 [English translation by JOAN COLLEMACINE PARENTI, *Principles of the Customary Laws of Eritrea. With an Introduction to the English Translation by Tekle Abraham Wande*, Lawrenceville, N.J.: Red Sea Press, 1999]. The title is absent in the bibliography of the book under review.

² See a list in Part E of the article “Law and Judiciary”: WOLBERT SMIDT, “Traditional law books”, in SIEGBERT UHLIG (ed.), *Encyclopaedia Aethiopica*, Vol. 3: *He-N*, Wiesbaden: Harrassowitz Verlag, 2007, pp. 516–18.

³ One of the collections was “Diritto consuetudinario. Raccolta di massime giurisprudenziali di diritto consuetudinario delle popolazioni dell'Eritrea”, in: *Bullettino Ufficiale della Colonia Eritrea*, 18 (Asmara: Tipografia coloniale De Angeli, 1909).

⁴ See e.g. THOMAS WILLIAM BENNET – T. VERMEULEN, “Codification of Customary Law”, *Journal of African Law* 24, 2, 1980, pp. 206–19; TASLIM OLAWALE ELIAS, “The Problem of Reducing Customary Laws to Written”, in: ALISON DUNDES RENTELN – ALAN DUNDES (eds.), *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*, Volume I, New York: Garland, 1994, pp. 319–30; OBEID HAG ALI, “The Conversion of Customary Law to Written Law”, *ibid.*, pp. 351–66; ISABELLA ROSONI, “L'inven-

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 Akkälä Guzay”. Under the name “Muslims of the Akkala Guzay” the code implies the Muslim Saho tribes Asawerta, Minifari, Hadu, Dabrimilah 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-

zione del diritto consuetudinario”, *Acta Histriae* 16, 2008, pp. 577–90. For Eritrea, see: DENNIS J. DUNCANSON, “Sir‘at Adkeme Milga³ – A Native Law Code of Eritrea”, *Africa* 19, 1949, pp. 142–43, LYDA FAVALI – ROY PATEMAN (eds.), *Blood, Land, and Sex: Legal and Political Pluralism in Eritrea*, Bloomington, IN: Indiana University Press, 2003, pp. 18–19. None of these titles (except for FAVALI – PATEMAN 2003) is mentioned in the book’s bibliography and the thorny problems of the passage of customary laws to a written form seem to be unknown to the editor.

⁵ The Debrimela Lāb-hale-‘Are (spelling of the editor) are not included because they are Christian. In this respect, the editor affirms that “the Christian Saho customary laws ... were written in the Tigrinya language”: no reference is made to a written edition of these laws. Other Muslim Saho lineages (e.g., Idda, Iddefer, Tīro‘a, Malḥina Me‘embara, Ḥassabat-‘Are and Baradotta, to follow the editor’s classification of the Saho lineages) apparently were not involved in the compilation of the text (see p. 34 for the list of the Saho authorities who collected, wrote and signed the law code; interesting enough, many of them carry high rank Ethiopian titles). It is not clear whether the code was nevertheless in force also among them.

⁶ The editor’s naming and description of the internal sub-groups and lineages of the Saho people is at great variance with the one given by MUḤAMMAD ‘UṬMĀN ABŪ BAKR, *Ta’rīḥ Irītriyā al-mu‘aṣir ardan wa-ša‘ban*, Cairo, 1994, pp. 220–31 and especially with the one of DIDIER MORIN, “Hazo”, in SIEGBERT UHLIG (ed.), *Encyclopaedia Aethiopia*, Vol. 2: *D–Ha*, Wiesbaden: Harrassowitz Verlag, 2005, p. 1078, and “Minifire”, *ibid.*, pp. 974–75. Also the seven holy tribes (malḥina me‘embara) are differently named and described in the book under review and in DIDIER MORIN, *Le texte légittime. Pratiques littéraires orales traditionnelles en Afrique du nord-est*, Louvain - Paris: Peeters, 1999, p. 24. The editor does not make any comparative effort nor mentions the sources of his information: his depiction of the Saho tribes, sub tribes and clans remains thus without any solid basis.

tomary Law in Eritrea (pp. 20–21)⁷, 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)⁸.

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 (either 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‘a*, 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 (*dibāġa*) and 191 articles (*mādda*), grouped in 8 sections (*bāb*). The first *bāb* comprehends the “criminal/penal code” and is divided in 6 subsections (*faṣl*). 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.⁹ The editor presents 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 influenced by the *šari‘a* (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.

nor changes were introduced: the index of the content was moved to the front (p. 1 of the Arabic: the title page is not considered in the numbering), the indication “it was printed by the British Military Administration in 1943” was added and everywhere the Western Arabic numerals were substituted with the Eastern Arabic Oriental ones.

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-muḥaddad aw mā fi hukmih*). In fact, according to the Ḥanafī 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 *‘āqila* (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 *diyya* (blood money) on behalf of its members. The editor has moreover changed the text of the Arabic original in articles 17 and 20 substituting *‘āila* to *‘āqila* 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 “Fītāwrārī” (!) in the reading of the editor (p. 1 of the Arabic section).