

## **Conflict Resolution and Customary Law in Contemporary Eritrea: Case Studies of the Saho Community**

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### *Abstract*

The Eritrean society is composed of nine ethnic groups who are heterogeneous in nature, based on a variety of languages and cultures. Each ethnic group practices different belief systems and various customary laws, which are framed and administered by elderly, religious and wise men of the concerned groups. This paper will elaborate the origins of the Saho speaking groups, their traditional rules and regulations. Although the historical trace of their customary law is not clearly known, most elders and *'uqqāls'*<sup>1</sup> of the Saho people claim that it is older than the era of the Islam. This traditional law was preserved orally among the community and was passed on from generation to generation. Only during the period of the British colonial administration, this oral traditional culture was collected, recorded and written down in 1943. The Saho as agro-pastoralists maintained their self-governance system for long periods, and this should be seen as a base of historical development of the customary law, which was respected and applied by all Saho tribes. The traditional conflict and tension mediation system continued to be practiced during the European and Ethiopian colonial administrations, especially on the local level. The paper will also discuss the relevance of this law in the modern State of Eritrea, and how the government tolerates the traditional forms of social organisation and conflict mediation systems. In addition, the paper will demonstrate the functionality of the law by presenting different case studies.

### **A. The Eritrean Customary Law: Historical and Theoretical Background**

Eritrea is a multi-ethnic society divided between Islam and Christianity and inhabited by sedentary farmers and pastoralists, but in spite of the rifts between the different groups, the society has been able to face extreme difficulties like displacement, rapid

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<sup>1</sup> 'Wise men'.

population movements, government resettlement policies, extreme scarcity of material goods without resorting to violence. There is a high level of mutual respect in everyday life, and most importantly, there are traditional institutions like religious elders and mediators<sup>2</sup> people can turn to in order to find a just solution in case of strifes and conflicts.

This article is based on the findings of a research project carried out in Eritrea from 2004 to 2006,<sup>3</sup> trying to explore how Eritrean society has kept its internal peace and to some extent harmony in spite of the severe disruptions caused by the war with Ethiopia (1998 to 2000) and the increasingly depressing political environment in the country. We suggest that Eritrean society has the capacity to resolve conflicts using a deeply rooted culture of mediation without resorting to uncontrolled violence and civil war. Throughout long periods of time, Eritrean society existed as an entity with functioning laws and regulations more or less independent of the respective ruling powers, be it the Italian and British colonial administrations or the Ethiopian regimes of Haile Selassie and Mengistu Haile Mariam.

The Eritrean customary laws have a strong communal undertone and rule both economy and social life, especially in the rural areas. Each of the nine ethnic groups has relied on its own customary law for hundreds of years, and most of them were kept in memory. Some of them are recorded in written form, but were not necessarily published. These documents are sometimes referred to as a “customary code” of the tribe, village or community concerned, in the sense that individual rights are strictly connected to those of the tribe or the village community, and rules were created and maintained by the tribe or the community elders and wise men of the concerned group itself.

However, it is important to note that the Təgrəñña customary law attracted a greater number of European colonial and missionary scholars than the Saho and Afar ones, and this is due to the fact that the church laws overshadowed the customary laws to a larger extent than in other non-Təgrəñña speaking ethnic groups, except for the Mensa and Bilen. In this respect, most of the literature available today in Italian, English and German speak about the Təgrəñña and Christian Mensa and Bilen customary laws.<sup>4</sup>

The Italian legal system did not replace the customary or religious laws, especially as far as those living in the countryside were concerned. The Italian codes were only introduced for European residents of the colony, and public order regulations were

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<sup>2</sup> Tgrn.: *šəmagəllä*, tgr. *šəmagalla*.

<sup>3</sup> The project named “Zones of peace in Eritrea and Tigray under Pressure” was based at the University of Hamburg, Germany. See: Abdulkader / Hirt / Smidt / Tetzlaff (eds.): *Friedensräume in Eritrea und Tigray unter Druck* (2008); Abdulkader / Hirt: *Zones of peace under threat in a region of conflict and crisis, Hotspot Horn of Africa Revisited*, Berlin 2008, pp. 263–279.

<sup>4</sup> Grande 1998, pp. 110–113; Guadagni 1998, p. 14; Guadagni 2001, pp. 4–8.

imposed on Eritreans in urban areas as well as when issues regarding crime, taxation and land tenure were concerned. The British Military Administration was too short (1941–1952) and too provisional in character to replace the existing customary laws as well as the Italian penal code and civil law systems with its own common law.<sup>5</sup>

These customary laws based on traditional forms of civil society, headed by religious and local elders, stayed very much alive even after independence in 1991 and were accepted by the government as a stabilising factor. The former liberation movement EPLF (Eritrean People's Liberation Front), that is now the ruling party renamed PFDJ (People's Front for Democracy and Justice), was well aware that it had to respect traditional forms of social organisation in order to be accepted by the people, whose convictions rested not so much in the revolutionary programs of the liberation fighters but in their established mode of coexistence.

## B. Empirical Observations of Contemporary Conflict Resolution in Eritrea

Levels of criminality and physical violence are remarkably low compared to other African countries like South Africa or Kenya. Property delicts are rare, as well as physical assaults motivated by criminal intentions. The low rate of deviant behaviour in the country seems to be due to a combination of traditional norms and values as well as those established by the liberation movement. The state makes use of its power of suppression combined with the promotion of traditional values to prevent criminality. In the social realm, the extended family puts considerable pressure on the young generation to behave according to traditional demands, i.e. showing respect to elders and the demands of the communal or family group they belong to. Arranged marriages are still widespread, and financial support of poorer family members is considered a natural duty. There are strong mechanisms of mutual control, and serious misbehaviour is punished by exclusion from the community. On the other hand, this traditional form of social community provides the individual with a feeling of belonging and safety quite different from the Western concept of individual liberalism which often leads to isolation and treats the less successful as outsiders, and leads to anomie.

Our empirical study showed that up to the present, people obviously trust in the traditional institutions to solve conflicts about land, housing, property, or family affairs. Conflict regulation usually is exerted in the form of customary jurisdiction by local elders and mediators (*šəmagəllä*). The elders act as representatives of the various customary laws of the ethnic groups, which differ among each other, but generally follow the objective of keeping the community stable and united by solving internal disagreements peacefully. Our study showed that people in both rural and urban

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<sup>5</sup> Guadagni 1998, pp. 14f.

surroundings respect customary jurisdiction and have more trust in traditional mediation than in the modern court system. In fact, the modern courts show little capacity, and very frequently pending cases are referred to traditional mediators by the judges of the state's judiciary – this practice is most common in cases of civil litigation, but is sometimes also practiced in cases of criminality, especially concerning the compensation of the victim and his or her family, which is one of the major concerns of customary law and more important than the individual penalty of the perpetrator, who is instead punished by social exclusion. Moreover, the government introduced so-called “community courts” in 2004, which are in charge of dealing with cases related to daily life activities, like rent, petty thefts, private contracts and the like. The lay-judges are selected by the government, but are supposed to apply customary law.

The focus of this paper is the customary law of the Saho ethnic group, which was first published in written form in 1943,<sup>6</sup> the time of the British Military Administration, but has been orally passed from generation to generation for centuries. As the Saho are Muslims, the law is partially based on regulations derived from the Šarī'a law, but contains also many passages that are rooted in traditional, probably more ancient sources of law, regulating everyday social and economic life. The law generally aims at conflict resolution and finding just solutions that can be accepted by the perpetrator who has caused harm to an individual, a group, or the community and by the victims of his actions. The Saho customary law covers cases of civil litigation, such as family and property conflicts as well as verbal assaults, but also criminal cases like injuries inflicted on somebody up to cases of murder. In order to demonstrate the way how customary law is applied and respected up to the present times, four recent case studies shall be presented,<sup>7</sup> related to divorce, inheritance, a land conflict, and non-compliance of a person released from prison on bail. In order to ease the interpretation of the case studies, we will present a short overview of the social organisation of the Saho.

## C. Historical and Social Background of the Saho People

### I. Origin

In spite of the myths and legends of the different Saho tribes concerning their origin, they are unified as one ethnic group by their common language known as Saho, by their religion and cultural traditions. This language belongs to the East Cushitic family. According to Bender,<sup>8</sup> the split of the Afar and Saho from the rest of the East Cushitic group took place about 4.000 years ago or a bit longer. The genetic

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<sup>6</sup> Abdulkader: *The Customary Law to the Akele Guzay Muslims* (the Saho) (2009).

<sup>7</sup> The events described in the case studies took place between 2005 and 2008.

<sup>8</sup> Bender 1971, pp. 174f.

classification and sub-grouping of the East Cushitic languages according to Herbert Lewis<sup>9</sup> indicate that there are at least 24 languages which can be divided into four coordinated branches: Somal, Afar/Saho, Oromo and Sidamo.<sup>10</sup>

The distribution of the Saho speaking groups in Eritrea is the result of repeated movements of the different Cushitic and Semitic groups in the Horn of Africa. The Saho were among the first to feel the effects of the South Arabian migrations, which during a long period crossed through their territory, e.g. through the Burie Peninsula, Irafale, to the highlands of Akkälä Guzay and Säraye.<sup>11</sup> Thus, the regions inhabited by the Saho became intermediate zones of international trade between the people of the Arab world, Persia, India, and the Far East. These variety of people formed commercial nets and the Saho controlled trade points which existed for centuries, like Zula, Foro, Semhar. The Saho as well as the Afar were centrally placed to become participants and players in this great socio-cultural interaction. The Arabs and other foreigners settling in the coastal areas intermingled with and were absorbed by the Saho and the Afar populations.<sup>12</sup>

However, today the majority of the Saho inhabit Eritrean territory and historically occupy the Red Sea coast (Burie Peninsula, Golf of Zula) and the Southern Region of the highlands (Akkälä Guzay and Säraye). There are also a number of Saho groups settling in the Gash-Barka Region today. Other Saho communities are found across the political borders, in Ethiopia, especially in the Tigray region, in Djibouti, and in the Eastern Sudan. The Saho there are known as Seeho, and they have their own *nāzir* (chief).

Among the Saho living in Eritrea, according to their oral traditions and legends, the Assa-bora Kabota, and Idda are the most ancient Saho tribes in the region. The Saho call these three tribes the guardians of the Saho land, and this attitude is widely shared by all Saho tribes and sub-tribes of today. There are ten semi-autonomous tribes, seven large and three smaller ones.

## II. Social Organisation

The social organisation of the Saho society are closely related to the surrounding ethnic groups which interact with them through seasonal migration. The majority of the Saho are multilingual; beside Saho they speak Təgre, Təgrəñña, Arabic, and Afar, depending on their geographical location and according to their seasonal migrations as agro-pastoral groups. Most of the Saho raise cattle but also practice rain-fed agriculture in Badda, Irafalo, Hadish and Wangabo in the Red Sea regions, and at Hazamo, Ali'gade, Adolei, Soira and Qohaito in the highlands. As most scholars admit,

<sup>9</sup> Lewis 1966, pp. 38f.

<sup>10</sup> See also: Tadesse Tamrat 1977, p. 135; Fleming 1964, p. 93.

<sup>11</sup> Pollera 1996, p. 26.

<sup>12</sup> Abdulkader Saleh 2003, pp. 1–4.

no rigid land rights exist among them, while land is collectively owned by the tribes.<sup>13</sup>

They organise themselves and their social life according to a pattern of relations in which family and kinship play significant roles. The tribes occupy a well-defined area where they graze their animals and put up their seasonal camps in order to cultivate and to pasture their animals as part of their mixed subsistence economy.<sup>14</sup> Accordingly, a number of extended families work jointly together to perform these important functions, and they chose a leader from among the family heads. Thus, the simple or extended family is the basic economic unit and it is within such family units that the basic management of resources and social life takes place, e.g. economic cooperation, specially during times of drought and famine, inheritance of land or cattle, marriage arrangements, care of elderly and orphans.<sup>15</sup> The principle of this association of families is primarily the egalitarian agnatic relationship system, and the leaders of the different sub-tribes form the bases of the entire political structure of the Saho society.

### III. Political Structure

The Saho society is egalitarian, and their political system is uncentralized. That means, the leaders of the sub-tribes are elected, and their constitution is democratic compared with their Təgrəñña and Təgre neighbours, who have a hierarchical system. Thus, the elected leader (*reezanto / reedanto*) should know the history, tradition, and customs of the Saho ethnic group in particular and of their neighbouring ethnic groups in general. The power and authority of the chief, once he is elected, is highly respected, and before independence, his name was proposed to the official political authority for confirmation. Until 1991, the chiefs of the sub-tribes were powerful leaders in their respective areas. Under him were the heads of clans called *nabara*, who represented him in their respective regions.

The power and authority of the leader (*reedanto* or *šum*) depended on the consensus of his kinsmen and not on his hereditary rights.<sup>16</sup> The main responsibility of the leader was to secure the requirements of his group, e.g. the defence of pasture, agricultural land and water resources against other groups. He also cared for the security of the caravan trade routes from the Red Sea coast to the hinterland, which passed through his area. The need for cooperation and solidarity of the groups was highly valued by the leader, and he had to receive strangers as guests and to extend hospitality. At the same time, he was collecting taxes in the name of the concerned local governments, and his most important responsibility was to settle family and clan

<sup>13</sup> Nadel 1944, p. 129.

<sup>14</sup> Abdulkader Saleh 2003, pp. 9f.; Nadel 1944, pp. 128f.

<sup>15</sup> Abdulkader Saleh 1996, p. 11.

<sup>16</sup> I.M. Lewis 1969, p. 176; Trimmingham 1974, p. 177; Longrigg 1974, p. 26.

disputes inside his group or with other groups. However, these traditional positions were undermined after independence, although the government still relies on their informal good offices in order to get support and to resolve tensions and conflicts in the rural areas.

#### D. The Saho Customary Law

The Saho society maintained its self-governance systems for long periods, and this law was highly respected by all the tribes. During the Italian colonial period, the Saho remained autonomous; and the authority did not interfere much in their tradition of mediation and their conciliation system, although the Italian administration had reservations against the structure of the Saho traditional law. It considered it a threat to their authority and domination, as it was difficult for them to bring the scattered decentralised Saho tribes under control. On the other hand, the Saho themselves were suspicious and full of mistrust against the colonial administration and their courts. Especially during the Ethiopian rule (1952–1991), the Saho boycotted the civil courts by not taking tribal or clan cases before them, because of the biased attitude and political agenda of the Ethiopian administrations against the Saho Muslims in general.<sup>17</sup>

It is important to refer to the fact that every clan leader (*reedanto*) was implementing the rules and regulations with the support of the elders and the *‘uqqāls* strictly, in order to govern their tribal affairs and activities. This legal system was passed orally from generation to generation, and the elders and wise men of the tribe were responsible of keeping these traditions in their memories as records. Only in 1943, the British Military Administration gathered the Saho leaders in ‘Addi Qäyyəḥ and asked them to assign a committee of experts in order to collect and to revise the existing oral customary laws and to write them down.

During the armed struggle (1961–1991), the clan leaders as well as the religious and village representatives of the rural areas were highly involved in resolving disputes and tensions between the different segments of the Saho society. These steps were supported by the freedom fighters in the field. After independence, the Eritrean government initiated community courts, introduced officially in 2004 in the urban areas for members of the local community to make pragmatic use of the customary laws, in order to settle or to end smaller conflicts, solve family matters, especially marriage or divorce cases, and decide about questions of inheritance, theft, and other conflicts between the different segments of society. Accordingly, most of the Saho conflicting parties in the urban areas, similar like those in the rural areas, agreed to select their own representatives (*šəmagəllä*) from their own clans, and sometimes they require the assistance of sheikhs or *‘uqqāls*. If the mediation or settlement of the

<sup>17</sup> Abdulkader Saleh 2009, pp. 5–7.

dispute gets stuck, the clan leader will bring the disputants before neutral *šəmagəllä* from outside his clan. That means the involvement of neutral elders and famous knowledgeable persons who are very well known for their ability in conflict mediation.

### E. The Practical Application of the Law

When there are complaints or quarrels between two persons, one of them should bring his grievance to the attention of the elders or *‘uqqāls* (wise men) of the clan. The elders or *‘uqqāls* in their turn should appoint *šəmagəllä* for the investigation of the claim. But before starting the hearing, each of the conflicting parties must bring or name guarantors who are known as “dish,” who are asked to accept the responsibilities in case one of them escapes or disappears during the hearing day. Not everyone can be accepted by the *šəmagəllä* as a guarantor (dish). The guarantor should be a person who is respected by his clan members, or he can be a wealthy person or a sheikh. During the hearing, the two conflicting parties have the right to speak in person or to allow other persons to advocate on their behalf according to their wishes. The mediators are helped in order to inspect the case in a proper and accepted way, including the participation of the clan members. In the case of women, under age or sick persons, his or her family or clan assign a person who can advocate and defend their case in a right way, who is experienced in defending similar cases, and who can bring logical arguments relevant to the case of his client in front of the *šəmagəllä*. It is clearly stated in the traditional consensus, that the sub-tribe or tribe cannot escape responsibility for the criminal acts committed by its members. If a blood feud continues between families or clans, the *šəmagəllä* try to settle such cases through marriage between the two conflicting parties.

In case of injuries or beatings, it is a tradition that the family whose member committed the crime should supply the affected person with 1 kg butter, 1 kg honey, 20 kg of cereals, and a goat, until the injured or beaten person has recovered. In addition, they should visit him every second week to inquire about the health condition of the injured person, and they usually bring butter, honey etc. This behaviour is seen as a sign of restoration of peace between the two families. The *šəmagəllä* consider such behaviour in their mediation and reconciliation as a sign of good will.

It is also a well-known tradition among the different Saho clans, that when cattle enters into an agricultural field of others, or smashes a pasture of other clans, the affected family captures one strong ox as assurance of the fulfilment of a compensation agreement. Then the owner of the cattle comes to negotiate with the family, but when the harmed family captures all the cattle, this means a challenge to the whole clan of the cattle-owner, which often leads to tensions and conflicts.



## F. Case Studies

### I. Conflict Mediation in Family Conflicts like Divorce

Ḥalīma<sup>18</sup> got married in 2002 at the age of 28. Her husband Ibrāhīm was related to her from the family of her mother's side. The families of the husband and the wife supported the marriage and contributed to the ceremony and everyone expected it would run smoothly. The husband was 40 years old and had been conscripted to the national service since 1998; he received a payment of 500 Naqfa per month. He was supposed to give 300 Naqfa per month to his wife. But soon after marriage it became clear that Ibrāhīm did not support his wife financially, although she was pregnant. She had to move to the house of her uncle in order to survive. After the child was born, she stayed with her uncle for another six months, as she received neither material nor moral support from her husband. Her daughter became sick due to underweight and had to spend two months at the hospital – the husband did not cover the costs for the medical treatment. When he finally came to bring his wife and daughter to his residential house in 'Addi Qäyyəḥ, the uncle warned him that he should treat his wife well and not beat her like he had done before, and his mother who lived with him was also informed that she should take care of the child. After three months, he started beating his wife again and she did not get food and clothing for her and her daughter. Finally, the neighbours called the uncle to take her back again, as Ibrāhīm used to come home drunk and aggressive. The extended families of the couple tried to keep the marriage together, but now the wife, who had returned to her uncle for fear of her husband's aggressiveness, was determined to get divorced. As the marriage was held under *šarī'a* based regulations, she turned to the *šarī'a* court to get the divorce. The court tried to appease her by claiming that her husband was under national service and could therefore not support her, and things would get better in the future. The husband was told to stop drinking and beating her. He did not accept the divorce, but the wife refused to go back to his house. So the court established a committee of five *šmagəllä* (traditional mediators), two from each family and one neutral person (*ma'käl šmagəllä*). After six months of unsuccessful negotiations, the case was taken back to the court, which did not come to a decision, following its general strategy to extend pending cases in the hope that people may calm down and the tension will gradually disappear. Finally, it called upon the relatives of the couple to find a solution. Now the *'uqqāls* (traditional leaders) of the clan both belonged to intervened and convinced the husband to accept the divorce, because his wife refused to live with him again. In case of his refusal, he was warned to be excluded from the clan, and his family would not get any support in the future, including for ceremonies like marriages and funerals. After this verdict, he accepted

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<sup>18</sup> All names mentioned in the case studies were changed in order to safeguard the privacy of the individuals involved.

the divorce after the case had been pending for one year. The husband now claimed the child for himself, but according to the respective *šarī'a* understanding, a daughter has to stay with her mother until the age of seven. Instead, he was supposed to pay 150 Naqfa per month to support the child, and the court decided that the girl should stay with her mother. He did not pay for the following three years but the uncle continued supporting his niece.

This case study shows that traditional social structures and customary law are still the most decisive patterns of everyday life. Marriages are frequently arranged with the consent and support of the extended family, which, by accepting the arrangement, also accepts a certain responsibility for the well-being of the family. In this case, the wife could always turn to her uncle when she was in trouble, and it was the extended family which guaranteed her survival when the husband failed to support her. The *šarī'a* court which formally concluded both marriage and divorce is a religious institution – but interestingly, it does not just formally practice jurisdiction as it is laid down in the *šarī'a*, but refers to traditional mediators in order to find a practical solution acceptable to all who are involved. The *šəmagəllä* as traditional mediators are those who are supposed to find a solution by discussing with the couple and with the extended family as well. The aim is, whenever possible, to save the marriage arrangement by putting pressure on the husband to change his behaviour. In this case, all endeavours towards this aim failed, and as a last resort, the tribal elders, the *'uqqāls*, had to step in and use their authority to bring the matter to an end, as the husband's behaviour was about to damage the reputation of the clan and its members. Only now the husband was ready to accept the verdict, as he was immediately threatened by social exclusion, something which could not be achieved both by the *šəmagəllä* and the *šarī'a* court. In terms of gender equality it can be stated that the wife had to fight a long struggle in order to get her freedom to lead a dignified life, and the first attempt of the traditional instances was to safeguard the family – but the example makes also clear that it is the tradition of the Saho community to punish a man's aberrant behaviour.

## II. Conflict Mediation Related to Inheritance

Yūsif had a rich brother who was married without having children. He died in Saudi Arabia at the age of 65. Before independence, he had supported the Eritrean struggle financially, and after independence he invested money in bakeries and bought land from the government worth US\$ 12.000 in Asmara and another piece of land in Massawa. Moreover, he left about 1 million Naqfa on his bank account in Eritrea. He also owned part of a villa in Asmara which belonged to his family from his mother's side. Due to his political and economic activities, he had close friends in the government administration.

When the brother of Yūsif became sick, he was transferred to Saudi Arabia for medical treatment. Meanwhile, his wife was persuaded by her own family members

and influential friends interested in taking profit from her property to make her husband sign a donation in which he passed all his property to her, even the family villa. This donation was contrary to the rules of *šari'a*, according to which the wife would inherit one third of his belongings because she had no children, while the other two thirds would be shared between his three brothers. As the villa was the property of the entire family, she would only be entitled to the share of her late husband. He, however, was manipulated to donate his complete property to the wife without consulting his brothers and without considering the *šari'a*.

Yūsif contested the deed because

1. His brother was not mentally fit when he signed it on pressure of his wife and her influential friends.
2. His donation was not confirmed by a *šari'a* court in Saudi-Arabia, but by the Eritrean Consulate in Ġidda.
3. According to the *šari'a* legal understanding he was not supposed to donate his entire property to his wife.

The case was opened at the Asmara Regional Sharia Court (Zoba Ma'käl) and dragged on for more than two years, as each side engaged in arguments and counter-arguments. The court was under a certain political pressure because the influential officials who formerly had business relations with her husband backed the wife's position. The court could not come to a decision and instead established a committee of four *šmagällä* (traditional mediators) to find a solution and to distribute the property in a way to which both parties could agree. The committee suggested dividing the property equally between the wife and the brothers, but the wife with the backing of the interest groups refused to accept. The case was re-submitted to the *šari'a* court. In the end, the court, giving way to political pressure, decided that the donation document was correct and the wife should obtain the property.

Now Yūsif appealed to the Sharia High Court in Asmara, which after long discussions with the two parties decided that the document was invalid because the man was physically and mentally sick at the time of signing and because it was not confirmed by a *šari'a* court in Saudi Arabia. It advised the two parties to turn back to the *šmagällä* in order to avoid further family conflicts.

Now the wife refused to accept the decision and appealed to the High Court once again, making use of her influential friends. The court established a special committee consisting of high court judges who were supposed to take over the role of the *šmagällä*, giving special consideration to the wife's position.

The lower *šari'a court* (Zoba Ma'käl) was supposed to implement the decision of the High Court, but meanwhile the wife had got a second judgement made by the special committee assigned by the High Court. The court was stuck between the two decisions, of which the first one was formally correct in a juridical sense, while the second one was taken by the committee which had the backing of the influential

pressure group. After three years, the case is still pending, and the court again advised the adversaries to turn back to the *šəmagəllä* to find an acceptable solution.

This case presents a conflict where powerful interest groups (generally such groups can be political, military or economic elites) are involved and try to manipulate the procedures of the traditional courts and *šəmagəllä*. However, even powerful interest groups are not always successful in pushing through the judgement they desire, as this case study shows.

### III. Conflict Mediation in a Land Conflict between Family Members

According to Saho customary law, the land belongs commonly to all members of a clan, while the single members enjoy usufruct rights, but no person is entitled to sell land, which is regarded as common property.

During the independence struggle, in a village in Zoba Däbub (Southern Region), Sub-Zoba Sän'afe, most families left their land and migrated to Sudan, while a part of the clan remained there under Ethiopian occupation. When the Därg came to power in 1974, it declared a land reform under the motto "land to the tiller," and land was distributed among new settlers which came to own the land under the new state law. After independence, the Eritrean government in its own land reform of 1994 declared that all land belongs to the state, but every citizen can claim land for lifelong usufruct. This created tensions between families when those of them who had been in exile returned, because there was a contradiction between customary law based on descent.

The kinship group of Saleh was divided between one branch which had remained in the village, while another branch had migrated to urban areas. The latter claimed land in their area of origin in order to construct a house and claim their possession rights due to descent based on traditional law. As there was a shortage of land, those who had remained in the area and cultivated the soil in the name of the kinship group refused to hand over a portion of the land to those who did not live in the village and did not cultivate the land.

However, the clan to which these families belonged established a committee of *šəmagəllä* in order to mediate between the conflicting family members by arguing that the urban branch of the family is a member of the *maḥbär* (solidarity committee) of the clan, and although they were living in the urban areas, they attended the clan ceremonies like marriages and funerals and contributed financially to the clan's welfare.<sup>19</sup> The *šəmagəllä* decided that the urban branch of the family has the right to possess land for house construction purposes to show their presence in the indigenous clan area. The rural branch of the family accepted the decision of the *šəmagəllä* because there is high respect to the elders and the decision was honoured.

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<sup>19</sup> The *maḥbär* has the function of a "social fund" to support the needy members of the clan.

This case demonstrates the functionality of traditional mediators in an environment where decisions are made without the interference of juridical state institutions. It also shows that in contradiction of the government's land reform, customary law is still respected and applied with the silent approval of the state.

#### IV. A Conflict Resulting from Non-Compliance of a Person Who Was Released on Bail

A businessman named Suleiman was arrested because he was involved in illegal hard currency transfer and his case was brought before the "special court".<sup>20</sup> After two months in prison, he was released on bail after having paid a fine of 100.000 Naqfa. The guarantor of the bail who had given his house worth two million Naqfa as a surety was obliged by the court to ensure that Suleiman would not leave the country illegally in case of further investigations. But Suleiman managed several times to get exit visas for business trips and he told the guarantor that his case was finalized.

However, after Suleiman had stayed abroad for almost one year, the special court invited the guarantor of the bail and asked him about the whereabouts of the businessman. The guarantor was not aware that the case was still pending, as Suleiman had left the country with an official exit visa. The court declared that it did not mind how he left the country but told the guarantor that he was obliged to make Suleiman return within two months and appear in front of the court; otherwise his house would be confiscated. The guarantor sent letters to inform the relatives of Suleiman and called him on the phone in Khartoum, Sudan in order to convince him to come back and face the allegations. Suleiman ignored this appeal and pretended to be sick with malaria. After two months had passed, the guarantor appeared in front of the court and asked for permission to go personally to Sudan, but his request was denied. He also asked for an official letter indicating that Suleiman is wanted by the court in order to send it to the Sudanese authorities, but this was also declined. Instead, he was given two months additional time to persuade the businessman to come back. Suleiman continued to refuse and moved from one Sudanese city to another to hide himself from the relatives of the guarantor who tried to put pressure on him and refused to receive the letters which the guarantor's brother wanted to hand over to him after having travelled to Khartoum. When the two months had passed, the special court gave another final two months of extension, after which the house would definitely be auctioned. They advised the guarantor to involve *šəmagəllä* of Suleiman's clan to oblige him to return. Finally, the *šəmagəllä* and his relatives succeeded in

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<sup>20</sup> The Special or Military Court was introduced in 1995 to deal with corruption cases within the administration, but during the past years, it extended its activities on corrupt private businessmen, criminal acts, draft dodging, and theft. It is headed by military commanders who exercise their position as a judge without professional training. There is no right to appeal and no right to be defended by a lawyer.

convincing Suleiman that it was his responsibility to come back and face his case in order to get his file closed. To avoid the consequences he confronted, namely exclusion from his clan and collective sanctions against him and his relatives in future business activities by his own and the other Saho clans, and to avoid general confrontation and tensions between the clans involved, Suleiman finally returned to Asmara. He appeared in front of the court and the guarantor was released from his responsibility.

This case study makes clear that escaping justice at another person's expense is not tolerated by the traditional network of elders and mediators who will imply their own sanctions which may be more far-reaching than the ones of the law. Another peculiarity shown by this case is that even the special court, which is a creation of the PFDJ political culture and headed by military officers, relies on the traditional mediation system as a last stance in order to enact its authority.

## G. Conclusion

In spite of the rifts between the different groups of Eritrean society, it has been able to face extreme difficulties without resorting to violence, because there are traditional institutions like religious elders and mediators capable of resolving immanent conflicts. Customary laws have been functioning in the country for centuries, and the Italian legal system and its followers did not replace the traditional legal system. Thus, it stayed alive even after independence in 1991 and was accepted by the government as a stabilising factor.

The low rate of deviant behaviour in the country seems to be due to a combination of traditional norms and values as well as to those established by the liberation movements. Even today, people trust in the traditional institutions to solve problems concerning land, housing, property or family affairs, instead of turning to the modern court system. In 2004, the government introduced the so-called "community courts" which are supposed to apply customary law in their jurisdiction.

This paper focused on the customary law of the Saho ethnic group, which was first published in 1943 under the British Military Administration. It is partially based on regulations derived from the *šari'a* and contains many passages rooted in more ancient traditional sources of law.

The Saho tribes derive their identity from their common language, which belongs to the East-Cushitic language group, and their common religion and culture. They inhabit Eritrean territory in the coastal areas of the Red Sea, the Southern Region and Gaš-Barka. Their social organisation is based on family and kinship relations, playing a significant role in their agro-pastoralist way of life, and they own land collectively. In their decentralised political system, their leaders are democratically elected from the different sub-tribes. Until 1991, the chiefs of the sub-tribes were power-

ful leaders in their respective areas, and even nowadays, the government relies on their good offices to settle family and clan disputes within their own group or between different clans.

The Saho society maintained its system of self-governance for long periods and their legal system was passed orally from generation to generation. The elders and wise men of the tribe were responsible of keeping these traditions as records in their memories, until the law was printed in 1943. During the armed struggle, the clan leaders remained involved in resolving disputes and tensions between the different segments of the society, and after independence, they continued to play the same role in rural as well as in urban areas.

The law is practically applied when people involved in conflicts bring their grievance to the attention of the elders or wise men (*‘uqqāls*) of the clan. The elders appoint *šəmagəllä* (mediators) to investigate the claim, and they ask the conflicting parties to name a guarantor in case of disappearance of the perpetrator. The aim of the process is to find a solution appeasing the conflicting groups by compensating the victim and his or her family. It is clearly stated in the traditional consensus, that the sub-tribe or tribe cannot escape responsibility for the criminal act committed by its member.

The different case studies reflect the functionality of the Saho customary law in present times, and that even modern courts rely on traditional mediation systems in order to find reasonable solution satisfying both conflicting parties.

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*Tigre abstract*

**ባልሕት አከይ-መቅርሕ ወቀዋኒን ሰብ-ዐድ፡**  
**- ፍንቱይ በሐስ ጋራት ሸዐብ ሳሆ**

መጅተመዕ ኤርትራያ እብ ህግየ ወዓዳት ለልትፈናተየ ሴዕ ቆምየት ምነን ልትከወን። ክል-ቆምየት ናይ ኖስ ፍንቱይ ዓዳት ወለመድ ወቀዋኒን ሰብ-ዐድ እቡ ትትመረሕ። ለቀዋኒን እብ ዐባዩ ዐድ፡ ዓቅላም ወማርሐት ደያናት ናይለ ምጅተመዕ ፈግር ወልትመረሕ። እለ ወረቀት እለ እሱል ናይለ ሂገ ሳሆ ለልትሃጌ ገባይል፡ ናይ ለመድ ቀዋኒኑ ወዓራፍ ትፈስል። ተአሪካይ አሱር ቀዋኒን ሰብ-ዐድ ሳሆ አክል-ሕድ እሙር ምንመ ኢገብእ ዐባዩ ወዕጋል ሸዐብ ሳሆ ምን ቀደም መደት ዲን እስላም ለአንበተ ቱ ልብሎ። እለ ቀዋኒን እለ እብ አፍ ሌጠ እንዴ ተሐፈዘ ምን ጂል ዲብ ጂል ለሐልፍ ዐለ። እት መደት መስተዕምራይ ሕክም እንግሊዝ ሌጠ ቱ እንዴ ተአከበ፡ ወትሰጀለ ከዲብ ሰነት 1943 ለትጠብዐ። ሸዐብ ሳሆ ክም ዎሮ እብ ሐርስ ወርዕዮ ለልትናበር ሸዐብ፡ ንዛም አትመቃርሐት ኖሱ መደት ረደም ሓፈዘ እቱ። እለ ክም ተአሪካይ አሳስ ናይለ ኩለን ቀባይል ሳሆ ለለሐሽማሁ ወለልትመርሓ ቡ ቃኑን ሰብ-ዐድ ሳሆ እግል ልትርኤ ቡ። ለናይ ለመድ አግቡይ ዕሬ ወባልሐት አከይ-መቅርሕ ዲብ መደት ሕክም እስትዕማር አርብዩን ምን ገብእ ወእት መደት አቶብየ እት ደረጀት ደዋይሕ አተላለ። እት ረአስ እለ፡ እለ ወረቀት እለ አትሐዘዮት ናይ እለ ቀዋኒን ሰብ-ዐድ ዲብ ናይ ዮም ሐዳስ ደውለት ኤርትራያ፡ ወሕኩመት ኤርትራያ እግል ናይ ለመድ አሸካል ማሕበራይ ተርቲብ ምጅተመዕ ወአግቡይ ዕሬ ወባልሐት አከይ-መቅርሕ እብ ከፎ ክም ትክህሉ ትሸርሕ። እምበልሁመ እለ ወረቀት እለ ክም መሰል ለገብእ ለትፈናተ ቀድያት እንዴ አምጸአት እለ ቀዋኒን እለ ሸቄ ክም ሀለ ተአመርዴ።

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