

Customary Law of the Beni-Amer

(Main Source: Bhardwaj 1979: 227-238)

ERITREAN ASSEMBLY

Ref: EA/HM/3
Date: 1st June, 1960

P.O. Box 206
ASMARA

Attorney-General
Government of Eritrea,
Asmara

Subject: New Customary Law of the Beni-Amer Tribes

I attach herewith a copy of the New Customary Law to govern the necessities of the whole of the Beni-Amer wherever they might be in disputes arising out from the fundamental principles of the Customary Law.

2. This new codification has been arrived at as a result of numerous meetings of the elected representatives of the tribes, and the result of each meeting was communicated to the people concerned.

3. Whilst I have to inform you that I have been, in turn, delegated to reduce into writing the above Law I wish to state that I am doing this work for my people only in my capacity as a member thereof and not in any other status which I may be holding officially in the Government.

(Sgd.) (Hamid Farej Hamid)
(Delegate of the Beni-Amer Tribes)

Copy to: The President Supreme Court
“ “ Secretary Law & Justice
“ “ The President High Court

“ “ All S.D.O.s
Source: Courtesy of Tribal Chiefs.

In the name of Almighty God on whom we depend on
worldly affairs and for the judgement day.

We: the undersigned Nazirs, Omades, Sheiks and notables of the Beni-Amer Tribes, do hereby delegate Sheik Hamid Feroj Hamid, to prepare the following Customary Law. This request of ours has been kindly accepted by him. Having taken a great deal of time, he has finally presented us with the following Customary Law we have carefully studied and also hereby officially adopt it unanimously and also seize this chance to convey our inmost gratitude to Sheik Hamid Feroj Hamid, praying Almighty God will guide us to anything that brings happiness to ourselves and our people.

This Customary Law has been so adopted on the 12th February, 1958.

| Signature of the Nazirs | Representing tribes |
|--------------------------------|----------------------------|
| 1. Nazir Osman Abeeirahman | Nazir Almada tribe |
| 2. Nazir Daud Idris | Nazir Asfada tribe |
| 3. Nazir Hamid Noray | Net Awad |
| 4. Nazir Adum Suleman | Bet Maala A. Yacob |
| 5. Nazir Saleh Ali Tacosh | Bet Maala Hamasien |
| 6. Nazir Abdalla Adum | Aflanda |
| 7. Nazir Moh. Taher Diglel | Nabtab |
| 8. Mohammed Mustaffa | Ashraf |
| 9. Hamid Ali Mohmoud | Wuludnoho |
| 10. Nazir Ferej Idris | Abhashela |
| 11. Mohamed Ali Idris | Algobdab |
| 12. Moh. Ibrahim Karrar | Rigbat Brca |
| 13. Nazir Mohamed Drar | Krab Knab |
| 14. Nazir Alhussein Saleh | Bet Mala A. Mahoud |
| 15. Nazir Idris Kabarb | Nazir Labat |

| Signature of the Nazirs | Representing tribes |
|--|----------------------------|
| 16. Abubaker Hamid Ali | Nazir Algheden |
| 17. Hamid Mohamed Ismail Wakil Nazirs | Nazir of Unaffiliated |
| 18. Omar Adum Idris | Wakil Nazir Aflanda |
| 19. Hassan Ali Ismail | “ “ Almada |
| 20. Omar Ahmed | “ “ Bet Malla Ham |
| 21. Adam Abdalla Sheitel | “ “ Asfada |
| 22. Hassan Mohd. Taher | “ “ Asfada |
| 23. Mohd. Idris Damba | “ “ Abhashela |
| 24. Karrar Idris | “ “ Bet Awad |
| 25. Ibrahim Ali Sul | “ “ Bet Maala Yacob |
| 26. Moh. Karrar | “ “ Algodab |
| 27. Moh. Ali Hamid | “ “ B/Mala Mah. |
| 28. Abdalla Sdai | “ “ Rigbat |
| 29. Omda Mohd. Ab. | “ “ Asfada |
| 30. Omda Osman Kheir | “ “ Asfada |
| 31. Humed Aushak | “ “ Asfada |
| 32. Omda Moh. Ali Habash | “ “ Bet Maala |
| 33. Ibrahim Ali Batri | “ “ Melhit Kinab |
| 34. Ali Idris Hummed | “ “ Almada |
| 35. Saleh Shinkhai | “ “ Almada |
| 36. Adem Ghebir | “ “ B/Mala Yacob |
| 37. Mohamed Afatuay | “ “ Wuldnoho |
| 38. Mohd. Omar Irta | “ “ Almada |
| 39. Ahmed Osman Togik | “ “ Abhbaha |

In the name of Almighty God on whom we depend on our worldly affairs and for the judgement day.

We Nazirs, Omdas, Sheiks and Notables of the Beni-Amer Tribes, have unanimously agreed to codify our Customary Laws which govern our traditions and regulate our communities life.

We, therefore hereby adopt the following codified Customary Law of the Beni-Amer and should there be any omission or gap therein, these shall, after due consideration, be added to this Customary Law of ours.

- Blood Money** 1. Whoever causes the death of a human being intentionally or unintentionally, he shall be bound to pay blood money amounting to Eth.\$2610.00 according to the provisions of the Mohammedan Sharaitic law which is in force in the country.
- Loss of eye** 2. Whoever causes the loss of an eye to a human being shall be bound half lldyall amounting to Eth.\$1305.00.
- Loss of tooth** 3. Whoever causes the loss of a tooth to a human being shall be bound to pay compensation to the victim at the rate of one tenth of a lldyall mentioned in Article 1 above.
- Affray** 4. (a) Whoever takes part in an affray and causes fractures of an organ of a human being whether intentionally or unintentionally, whether with the use of a stick or stone, or by using any other means, provided that the victim is incapacitated; the offender shall pay a compensation of Eth.\$300.00 to the victim. He shall also give the victim a goat, two litres of butter and 12 measures of dhura (according to the measures of the Agordat size). This last procedure is known as "Saur".
- (b) If a joint of the victim's body gets twisted as a result of the injuries caused by the offender and is not incapacitated because of this, the offender shall pay a compensation amounting to one quarter of the "dya" mentioned in Article 1 above. He shall also be bound to bring the victim one goat, 2 litres of butter and 12 measures of dhura (according to the measures of the Agordat size) This procedure is known as "Saur".

(c) If the victim gets incapacitated, as a result of a fracture of his bones, or loses use of an organ, with permanent incapability, the offender shall pay the victim a compensation amounting to half of the lldyall mentioned in Article 1 above. He shall also bring the victim a goat, 2 litres of butter and 12 measures of dhura (according to the size of measures used in Agordat).

Skull Fracture 5. Whoever causes fracture of a skull of a human being, with use of a stick or stone, intentionally or not, shall pay the victim a goat, 2 litres of butter and 6 measures of dhura (according to the size of measures used in Agordat) and E.\$50.

Injuries 6. Whoever causes injuries with a stick, stone or hand, shall pay compensation of Eth.\$10.00 to the victim, but if he only threatened and did succeed in hitting the victim, he shall in this instance, pay the victim a compensation amounting to Eth.\$100.00.

Neck Injuries 7. Whoever hits another with a stick, stone or hand on the neck causing the victim to faint, but revives normally, he shall pay a compensation to the victim amounting to Eth.\$100.00.

Assault with White weapon 8. whoever assaults another with white weapons causing wounds with penetration, intentionally or not, shall pay compensation to the victim of Eth.\$150.00 also a goat, 2 litres of butter and 12 measures of dhura (according to the size of measures used in Agordat).

Threatened Stubbing 9. Whoever threatens to stab another with white weapon with no success causing, no bodily harm, shall pay compensation to the victim amounting to Eth.\$75.00 which is half of the compensation which he would have had to pay had he caused bodily harm.

Assault during sleep

10. Whoever assaults another whilst sleeping shall pay compensation amounting to a quarter of the “dya”.

This is applied when such assault takes place with the use of a stock or stone, but if done with white weapon, the offender shall pay a compensation amounting to half lldyall in addition to other legal punishment.

Biting

11. Whoever bites another with his teeth thereby causing him bruises shall be punished as if he had committed the offence provided in Article 5 above.

Collective

12. Whoever takes part in an affray and gets the assistance

Affray

of others, the latter shall each be fined with Eth.\$50.00 in addition to any other punishment for any other offence.

13. If two persons have been conciliated after an affray but one of them comes later on to revenge, he shall be bound to pay Eth.\$100.00 in addition to the other compensation for his second offence.

Marriage Processions

14.(a) No Women with their drums shall contribute in a marriage procession from one village to another. If they do so the party partaking in this shall be fined Eth.\$100.00 to be spent in the village to which such party belong.

- (b) Men and women with drums shall not play together whether in the village or outside. If they do so either party shall be fined Eth.\$100.00 or the party concerned.

- (c) If the people of the village in which the marriage is held throw stones on the coming procession, such village shall severally (if the offender was not recognised) be fined Eth.\$50.00 which amount shall be paid by the offender if found, to the offended village. This money shall be spent in the collective interests of the offended village. But the individual offences proved shall be tried separately.

Boasting with 15. Boasting with cattle, whether camels or cows, happens to cause shedding of blood, or otherwise exchange of insulting words as it was the custom before, such cattle boasted of shall be exposed for public auction and the proceedings shall be deposited with the tribe. **Cattle**

Insult 16. (a) If the insult touches the whole tribe or forefathers, the insulting party shall be fined Eth.\$500.00 to be spent on the tribe insulted.

(b) If the insult was directed to an individual and was defamatory, the insulting party shall be fined Eth.\$100.00 together with providing the Mosque of the place of sitting with straw mats.

(c) If women quarrel with, one another and pull the hair of one another, each piece of hair shall be valued with Eth.\$5.00 considered as fine to be paid by the offender. The fine shall be estimated according to the damage. If such hair was pulled from the middle half, the said fine shall be applied. In this manner shall fine be decreased. If the position of the pulled hair has swollen, the offence shall be regarded as under Article 5 of this law.

(d) If a person insulted another saying "BE CURSED YOUR FATHER OR GRANDFATHER OR YOUR DESCENDANTS" such insulting party shall be fined Eth.\$100.00 to be paid to the offended person.

Rape 17. If a mature young man seized a virgin young girl who is not one of his relatives:

(1) without her goodwill he shall be fined Eth.\$100.00 provided that he did not throw her on the ground or commit any prohibited sexual activity;

(2) if he threw her on the ground but did not commit sexual intercourse with her, he shall be fined Eth.\$300.00 to be paid to the girl.

- (3) if he threw her on the ground and committed sexual intercourse with her and she did not get pregnant thereafter he shall compensate her Eth.\$750.00 provided that she related the incident at the time of its commission so that evidence to confirm this is found. On the other hand, if she did not relate the incident within 30 days, and the rape was not proved, she shall not be entitled to anything;
- (4) if the girl gets pregnant as a result of the sexual intercourse, the offender shall be bound to pay a lldyall of a person.
- (5) if the sexual intercourse happened with her consent whether in the house of somewhere else and she gets pregnant thereafter,' the offender shall bare the expenses of the conception and the maintenance of the child until it reaches sharistic majority. This will be enforced if the offender confesses, or otherwise she proved the event.

Slaughtering

18. Such slaughtering shall be confined to one head of cattle:
 - (a) one head of camels to those who have camels and one of the cows to those who have cows;
 - (b) whoever slays more than this shall be fined Eth.\$100.00. The *Maatam* shall not continue more than 3 days, if it continues more than 3 days without an excuse or justification,' a fine of Eth.\$100.00 shall be inflicted to be spent in public interests;
 - (c) women shall not partake in the *Maatam* except those having close relationship with the dead person. Every women who violated this shall be fined Eth.\$20 to be paid by her or by one responsible for her.

Marriage

19. (a) According to the Sharis, the dowry whether more or little belongs to the woman who is to be

married. Therefore, the husband shall have no share in this dowry.

- (b) The population of every village or tribe according to tradition have got their own internal customs in matters of marriage "*Dukran*" and "*Fitihii*". These customs shall be enforced following the agreement of every village. However, compromise on this will be made by the wise-men.
- (c) Marriage shall not be complete unless the husband brings all the things wanted by the wife including the house. This is provided for fear that the husband will procrastinate in completing the necessary things according to the tradition. The time of the husband to meet his wife shall be not later than 7 days from the completion of the marriage contract. Whoever violates this Article shall be fined with Eth.\$30.00 at first and thereafter this fine shall be doubled unless he follows the provisions heretofore stated.
- (d) If the wife cries upon entering the house of her spouse, as it was the custom previously, the person responsible for her shall be fined Eth.\$30.00. The same fine shall be inflicted if the wife runs away from her spouse.
- (e) If the wife bitterly hated her husband and refused to return back to him, and divorce takes place between them, the wife shall be bound to give back all the cattle which was their property including the gold, but the money shall be paid back in double. All this shall be carried by the consent of the spouse.

Wells for drinking

20. (a) As is the custom, the wells shall belong to those who had precedence on its digging and drinking from it with their cattle. If other people from another village who are not their co-inhabitants came and asked for the share in using the well,

these shall be regarded as offenders unless the village having precedence allows them to do so

(b) In rainy seasons these wells are buried and the people set out to other places. In such time if other people come, who are not of those having precedence to these wells, they shall be fined Eth.\$100.00 and bound to leave the well which is the subject matter of the dispute.

(c) Any village is not allowed to dig a well near enough to an already dug well. The distance between a well and another shall not be less than 500 metres.

Concerning Quartering 21. (a) No tribe is allowed to come for settling among another tribe who has precedence in that place and if such happens the intruders shall be bound to pay a fine of Eth.\$100.00 and to quit the place immediately so that security may prevail and tribal disputes avoided.

(b) No tribe is allowed to settle in the grazing field of another tribe who has precedence of settlement and in case of contravention the intruding tribe shall be bound to pay a fine of Eth.\$100.00 and to leave the place on the spur of the moment to avoid dispute.

Concerning cattle owners

22. (a) Any Shepherd shall follow the instructions of the owner of the cattle and shall not drive such cattle in places of which the owner has warned him against and if such shepherd failed to act up to the instructions given to him and that the cattle are harmed as a result, he shall be bound to pay all the damages unless the owner pardons him.

(b) If a shepherd loses some of the cattle in his care and has proved to be negligent he shall be held responsible for the loss unless it was proved that he has done his best but failed.

(c) If a shepherd climbs on a tree to pull down leaves for the cattle in his care and that a branch has fallen to cause the death or the break of one of the cattle, in this case he will not be responsible for he had no ill will.

(d) If a shepherd has hired another shepherd and the second has lost some of the whole of cattle, the first shall directly be responsible for the loss before the owner.

Animals attack on human being

23. (a) If a furious camel attacks a person and causes his or injury the owner shall not be responsible for any compensation unless he had previous knowledge of his camel's state and he neither tied it nor informed the people; in this case then he shall be bound to pay for the damage.

(b) If a dog's owner knew that it was rabid much to harm people or animal and he did not kill it, he shall be responsible for the damage caused by his dog.

(c) If a dog's owner knew that it was rabid or is found among rabid dogs and he was duly informed by the authorities that such a dog must be killed but he took no care of that, he is held responsible for any harm caused to people or animals by his dog.

Death

24 (a) If a dead person or animal was found out of the village, the nearest or the village that is situated within five kilometres from the place of the accident shall be responsible for the crime or to bring up the killer.

(b) If cattle were stolen from a village, it will follow the tracks to the nearest village which shall be responsible for the theft unless it proves that the tracks go further out of such village.

Damage to cultivation 25. (a) If cattle were driven deliberately to a cultivation and destroy it, the shepherd shall be

responsible for compensation to the owner of the cultivation plus any other legal fines.

- (b) If a herd of wandering cattle destroy a cultivation the responsibility for such shall lay on the shepherd, if any, and the compensation shall be paid by the owner in the absence of s shepherd.
- (c) It is customary that there are no fences or boundaries between the cultivation of a village and another, but during harvest time some of them maybe late in cutting down the crops due to their being late in spreading seeds while the others are in time to cut down,' and in this case the first ones shall never allow their cattle to feed on the remains of the cultivation for they may destroy the non-pulled crops and, in this case, they have to compensate the owners. The feeding of cattle on the remains of the collective cultivation shall begin together.
- (d) Whoever contravenes the preceding last paragraph shall be bound to pay a fine of Eth.\$30.00 to be spent in the general interests.
- (e) A fine of Eth.\$30.00 shall be paid by any shepherd who contravenes and takes his cattle to any cultivation and such fine shall be spent in the general interests. This is in addition to a compensation to the owner of the destroyed cultivation.
- (f) No person is allowed to beat cattle which he might find in his cultivation but he shall deliver it to its owners and ask them for compensation in a peaceful manner, if he contrarily causes harm to the cattle by beating; he shall be hold responsible for that before the wise-men of the village.

Source Bhardwaj, R.G. (1979). *The Dilemma of the Horn of Africa*. Sterling, New Delhi, Bangalore, Jullundur.