

READING MATERIAL (excerpts)

1. **The Instruction of Merikare** (royal instruction and testament attributed to Khety III, given to his son Merikare who ruled during the tenth dynasty of the first intermediate period (2130-2040 BCE).
2. **The Great Edict of Horemheb** (Horemheb was the last Pharaoh of Ancient Egypt's 18th Dynasty from 1319 BC to late 1292 BC).
3. **Diodorus Siculus on the Egyptian Judicial System** (Diodorus Siculus was a Greek historian who was born in Sicily in the 1st century BC. Diodorus' *Bibliotheca historica* ("Historical Library"), consisted of forty books. The first book describe the history and culture of Ancient Egypt (book I),
4. **Herodotus History, Book II** (a Greek historian who lived in the 5th century BC (c. 484 BC–c. 425 BC) and is regarded as the "*Father of History*" in Western culture).
5. **The Charter of Kurukan Fuga** (constitution of the Mali Empire – it covered a portion of West Africa that is equal to the size of Western Europe (1235-1645). *Mansa* (Emperor) Sundiata Keita presented the document at a plain called Kurukan Fuga, current circle of Kangaba in the Republic of Mali. It has survived through oral tradition passed down by generations of *djeli* or *griots*).
6. **Ibn Battuta Travels to Kingdom of Mali** (Ibn Battuta traveled in Mali in 1352 and described the kingdom and its inhabitants)
7. **Corporal Punishment in Seereer Customary Law** (Lecture of Issa laye THIAW, FSJP/UCAD, September 2007, author of *La femme seereer*, L'Harmattan, Paris, 2005, 250p.; Seereer is a Senegalese linguistic community).
8. **"Women, Love and Family Life in Ancient Egypt"**, Swarupsinh V. Chavda and Ahmes L. Pahor,

OBJECTIVE

**Identify common traits in the concepts of law and justice and in the cultural values of the people of Ancient Egypt, Middle Age Mali and contemporary Senegal. Identify what could have been the influence of Islam, colonialism and Christian missionaries in current customary laws.**

1.

**THE INSTRUCTION OF MERIKARE**

The Leningrad Papyrus, which is translated here, was written by a scribe called Khamwese during the Middle Kingdom.

Translation by R. O. Faulkner

Footnotes: William Kelly Simpson (ed.), *The Literature of Ancient Egypt*, New Haven and London, 1973, pp. 180-192.

[http://nefertiti.iwebland.com/merikare\\_papyrus.htm](http://nefertiti.iwebland.com/merikare_papyrus.htm)

Copy your forefathers, for [work] is carried out through knowledge; see, their words endure in writing. Open, that you may read and copy knowledge; (even) the expert will become one who is instructed.

(...)

Respect the great; keep your people safe; consolidate your frontier and your patrolled are for it is good to work for the future.

(...)

Do justice, that you may live long upon earth. Calm the weeper, do not oppress the widow, do not oust a man from his father's property, do not degrade magnates from their seats<sup>1</sup>. Beware of punishing wrongfully; do not kill, for it will not profit you, but punish with beatings and with imprisonment<sup>2</sup>, for thus the land will be set in order, excepting only the rebel who has conspired, for God knows those who are disaffected, and God will smite down his evil doing with blood. It is the lenient man who [///] lifetime; so do not kill a man of whose ability you are aware, and with whom you once recited writings, but read in the account [///] because of God, and stride forward freely in a difficult place<sup>3</sup>. The soul comes to the place which it knows, and it will not overstep the ways of the past; no magic can oppose it, and it will reach those who will give it water<sup>4</sup>.

(...) Do not distinguish the son of a man of rank from a commoner, but take a man to yourself because of his actions, so that every craft may be carried on [///] for the possessor of strength.

(...) The kingship is a goodly office; it has no son and it has no brother who shall make its monuments endure, yet it is the one person who ennobles the other<sup>5</sup>; a man works for his predecessor, through the desire that what he has done may be embellished by another who shall come after him.

## 2.

### THE GREAT EDICT OF HOREMHEB<sup>6</sup>

[http://nefertiti.iwebland.com/texts/edict\\_of\\_horemheb.htm](http://nefertiti.iwebland.com/texts/edict_of_horemheb.htm)

His majesty took counsel with his heart [how he might] //// [exp]el evil and suppress lying. The plans of his majesty were an excellent refuge, repelling violence behind ///// [and delivering the Egyptians from the oppressions] which were among them. Behold, his majesty spent the whole time seeking the welfare of Egypt and searching out instances [of oppression in the land]. /// [came the scribe] of his majesty. Then he seized palette and roll; he put it into writing according to all that his majesty, the king himself said. He spoke as follows: "[My majesty] commands /// [concerning all] instances of oppression in the land.

If the poor man made for himself a craft<sup>7</sup> with its sail, in order to be able to serve the Pharaoh, L.P.H., [loading it with the dues<sup>8</sup> for the breweries and the kitchens of the Pharaoh,

<sup>1</sup> *degrade magnates from their seats*: Lichtheim: *reduce the nobles in their possessions*.

<sup>2</sup> *with imprisonment*: *m zA.w[tj (?)]* lit. with a guardian. Lichtheim: *with detention*. It is generally thought today that imprisonment as a punishment was not the norm.

<sup>3</sup> *but read ... a difficult place*: Lichtheim: *Who was brought up . . . --- before god, who strode freely in the secret place*.

<sup>4</sup> *it will reach those who will give it water*: Libations were of crucial importance to the deceased..

<sup>5</sup> *yet it is the one person who ennobles the other*: Lichtheim: *But one man provides for the other*;

<sup>6</sup> Footnotes: [1] Barry J. Kemp, *Ancient Egypt: Anatomy of a Civilization*, Routledge 2005, ISBN 0415235499, p.25

<sup>7</sup> *craft*: this would generally have been a papyrus raft

<sup>8</sup> *dues*: taxes.

and he was robbed of the craft and] the dues, the poor man stood reft of his goods and stripped of his many labors. This is wrong, and the Pharaoh will suppress it by his excellent measures. If there be a [poor man] who pays the dues of the breweries and kitchens of the Pharaoh, L.P.H.<sup>9</sup>, to the two deputies, [and he be robbed of his goods and his craft, my majesty commands: that every officer who seizes the dues] and taketh the craft of any citizen of the army or of any person who is in the whole land, the law shall be executed against him, in that his nose shall be cut off, and he shall be sent to Tha[ru].

### 3.

#### DIODORUS SICULUS

##### *Historic Library Vol 1, Chap. 75ff, after a translation by Julius Friedrich Wurm*

[http://nefertiti.iwebland.com/law\\_and\\_order/diodorus.htm](http://nefertiti.iwebland.com/law_and_order/diodorus.htm)

##### Chapter 60 - Amasis. Aktisanes of Ethiopia. The city Rhinocolura

..... Aktisanes treated robbers in a special way, not wanting to kill them nor letting them go unpunished. He had the accused led before him from everywhere in the country and investigated their affairs most conscientiously. Those found to be guilty had their noses cut off and were exiled to the most distant place in the desert. The city he had founded for them was called Rhinocolura in memory of the punishment of their inhabitants.....

##### Chapter 65 - Bocchoris, Sabaco (Shabaka) of Ethiopia

..... Sabaco, a born Ethiopian, who was much more pious and just than former kings, became King of Egypt. As proof of his mercy may count the fact that he abolished the harshest of punishments ordained by law, the death sentence. Instead of taking the lives of the condemned, he put them in irons and ordered them to do forced labour for the cities. With the help of such people he had many dams raised and many canals excavated in the right places.....

##### Chapter 75 – The Administration of the Law

The Egyptians applied special diligence to the administration of justice. They were convinced that the decisions of the courts had a most important influence on the public well-being. They seemingly thought that errors were best corrected, when one punished the trespasser and gave succour to the injured, and that where the trespasser's fear of the courts was allayed by money or artifice the state would decay. Therefore they appointed the noblest men from the capitals as judges for the whole country; and in such a way they achieved their purpose. Judges were selected from Heliopolis, Thebes and Memphis, ten from each city. This Court of Justice could be compared to the Areopage in Athens or the senate of Lakedaimon. When the thirty convened, they elected the noblest one from their midst as Chief Justice, and his city sent another judge in his place.

What the judges needed for their living, was supplied plentifully by the king. The Chief Justice received a greatly increased pay. He carried a golden chain around his neck, from which hung a picture made of precious stones, which was called Truth.

---

<sup>9</sup> L.P.H.: short for Life, prosperity, health (*anx wDA snb*)

The court was in session, as soon as the Chief Justice put on the depiction of Truth.

#### Chapter 77 - The Administration of the Law

Having considered the administration of the laws, we believe it would not be inappropriate to the purposes of our historical work to describe those among the laws of the Egyptians, which are either particularly old or unique, or the knowledge of which would be of use to the attentive reader.

- If someone saw a human being on the highway being murdered or done violence to, and if he were in a condition to save him and did not do so, then he had to die. If it had however been impossible for him to render help, then he was at least bound to denounce the crime and to sue the robbers in court. If he omitted to do so, then he received a certain number of lashes according to the law and was not given anything to eat for three days.
- (...)
- Whoever committed an intentional murder, be it of a free citizen or a of slave, had to die. This regulation was made law firstly because humans should not be prevented to commit wicked deeds by external conditions, but by their own internal free will, and secondly because by caring for the slaves all crimes against the free citizens would be prevented with greater certainty.
- (...)

#### Chapter 78 - Laws

Concerning the other laws, the martial law intended for desertion and disobedience towards ones superiors not the punishment of death, but deepest disgrace. If they later expunged the dishonor by courageous acts, then they were reinstated to their lost rights of honour. The legislator placed intentionally infamy above the death penalty, so that one got accustomed to regard dishonor as the greatest evil. It was also thought that those who had been executed could not be useful to the state anymore. The dishonoured would cause much good, because they strove to save their honour.

(...)

The laws concerning the female sex were also strict. Whoever raped a freeborn woman was castrated. Thus the threefold crime was punished, which the criminal had committed by a single deed: the act of violence, the dishonour, and the confusion of child descent. However, if the woman let herself be enticed into committing adultery, then the man received a thousand strokes of the stick, and the woman's nose was cut off. They thought one had to remove the greatest ornament of a beautiful face from a woman, who decorated herself, in order to arouse forbidden desire.

#### Chapter 79 - Laws

The laws concerning monetary transactions are said to have been enacted by Bocchoris. They decree that a debtor who borrowed without signature, can deny on oath a debt he does not want to acknowledge. The first purpose of the law was to bolster the conscientious sanctification of the oath. As one would obviously lose all credit by repeatedly denying on oath, it was to be expected it would be in the debtor's interest to prevent having to swear the oath, so that borrowing would not be made more difficult for him. The legislator believed that by making credit dependent on proper behaviour alone, all would endeavor to act honestly in

order not to fall into ill repute as people undeserving of trust. Moreover he held it inequitable that a debtor, to whom one had entrusted money without oath should not be considered trustworthy when swearing an oath precisely because of this debt.

Creditors, who had in their possession IOU's were forbidden to increase the principal debt by interest in excess of double the original amount. When recovering the debts, the property only of the debtor was forfeit, he himself was not subject to bondage under any circumstances. Chattels were regarded as property of the citizens, acquired or received from other owners, they themselves however were bondsmen of the state, because they had to fulfill required duties in war and in peacetime. One thought it unreasonable that a soldier fighting for his native country should not be certain that he would not be arrested by a creditor because of debts, and that because of a few citizens' usury the welfare of the whole people should be in jeopardy.

This law too Solon seems to have adapted for Athens: the regulation which he called Seisachtheia (shaking off) decreed that any pledge including the bondage of the debtor was invalid. Rightly it is criticised that while in most Greek states the law forbids the creditor to take as pledge the weapons, the plow, and other strict necessities, it permits him to seize the debtor who requires these things.

#### Chapter 80 - Laws

Concerning theft the Egyptians had a completely unique law. It was decreed that those, who wanted to pursue this trade should have their name listed with the captain of thieves, and should present their loot immediately after stealing it, admitting to their deed. He who had lost something had to put in writing a list of all missing articles, indicating the place, day and hour of their disappearing. In this way everything was easily found; and now the robbed person had to pay the fourth part of the value for his own property to be returned. As it was impossible to prevent theft completely the legislator invented this means to retribute all stolen property for a small ransom.

In Egypt priests take only one wife, everyone else however, as many as he wants. Parents are obligated to raise all their children according to the principle that a numerous population contributes more than anything else to the prosperity of the country and the cities. No child is considered to be illegitimate, not even if it is born of an acquired slave..

#### 4.

#### **HERODOTUS, *HISTORY*, Book II**

[http://ancienthistory.about.com/library/bl/bl\\_text\\_herodotus\\_2.htm](http://ancienthistory.about.com/library/bl/bl_text_herodotus_2.htm)

164. Now of the Egyptians there are seven classes, and of these one class is called that of the priests, and another that of the warriors, while the others are the cowherds, swineherds, shopkeepers, interpreters, and boatmen. This is the number of the classes of the Egyptians, and their names are given them from the occupations which they follow. Of them the warriors are called Calasirians and Hermotybians, and they are of the following districts,[142]--for all Egypt is divided into districts. 165. (...) nor is it lawful for these, any more than for the others, to practise any craft; but they practise that which has to do with war only, handing down the tradition from father to son. 167. Now whether the Hellenes have learnt this also from the Egyptians, I am not able to say for certain, since I see that the Thracians also and Scythians and Persians and Lydians and almost all the Barbarians esteem those of their citizens who learn the arts, and the descendants of them, as less honourable than the rest; while those who have got free from all practice of manual arts are accounted noble, and especially those who are devoted to war: however that may be, the Hellenes have all learnt

this, and especially the Lacedemonians; but the Corinthians least of all cast slight upon those who practise handicrafts.

## 5.

### THE CHARTER OF KURUKAN FUGA

The Mali Imperial constitution was a landmark achievement in the history of Africa and the world for several reasons. As far as global significance, the document is one of the earliest declarations of human rights. Its importance to Africa is demonstrated in three main achievements. First, it established uniform laws and regulations over a significant portion of West Africa (equal to the size of Western Europe) for the first time in recorded history. Second, it afforded uniform rights for all citizens including women and slaves, unheard of in many parts of the world. Third, it is uniquely African in that it does not directly borrow from any existing law documents as opposed to the Ethiopian *Fetha Negest*. The prominence of the Mandinka in West Africa allowed the ideas and values within the Kurukan Fougua to spread far beyond the borders of the Mali Empire. Many peoples related to the Mande still abide by its traditions. [http://en.wikipedia.org/wiki/Manden\\_Charter](http://en.wikipedia.org/wiki/Manden_Charter)

The Kurukan Fuga divided the new empire into ruling clans (lineages) that were represented at a great assembly called the *Gbara*. There were 16 clans known as the *Djon-Tan-Nor-Woro* (carriers of quiver) responsible for leading and defending the empire. There were also 4 clans known as the *Mori-Kanda-Lolou* (guardians of the faith) that guided the ruling clans in matters of Islamic law. There were 4 *nyamakala* clans (men of the caste) who had the monopoly on certain trades (smelting, woodworking, tanners, etc). Lastly there were 4 clans of *djeli* (masters of speech) who recorded the history of the empire through song. Combined these would make up the 29 seat *Gbara* at the plain of Kouroukan Fougan (named after the event where Sundiata "divided the world"). The 30th seat was likely occupied by the mansa's *djeli* called the *belen-tigui* (master of ceremonies). Or it may have been reserved for a female monitor since the constitution states women are to be represented at all levels of government (edict 16). [http://en.wikipedia.org/wiki/Manden\\_Charter](http://en.wikipedia.org/wiki/Manden_Charter)

#### I. SOCIAL ORGANIZATION

Article 1<sup>st</sup>: The society of the great Mande is divided into sixteen (16) quiver carriers, five (5) classes of Marabouts<sup>10</sup>, four (4) classes of *Nyamakalas*<sup>11</sup>. Each of these groups have an activity and a specific role.

Article 2: The *Nyamakakas* have a duty to tell leaders the truth, be their advisers and defend with the verb the rules laid down, and law and order on the whole territory.

Article 3: The *Morikanda Lolu* (five classes of Marabouts) are our masters and our teachers in Islam. Everyone owes them respect and consideration.

Article 4: The society is divided into age groups. At the head of each age group there will be an elected leader. The people (men and women), born within the course of three consecutive years belong to the same age group.

---

<sup>10</sup> Muslim scholars

<sup>11</sup> *Nyamakalas* form the caste of the honoured and revered dyelis (traditional jurists/archivists, called "Master of the Speech") and the following class of artisans: weavers, blacksmiths, shoemakers.

The *Kangbes*, the intermediate class between the young people and the old men must be invited to take part in the important decisions making processes concerning the society.

Article 5: Each one is entitled to life and safeguard of their physical integrity. Consequently, any attempt to remove the life of a human being will be punished with the death penalty.

Article 6: To win the battle of prosperity, *Kön gben Wolo* (a mode of monitoring) is instituted to fight laziness and idleness.

Article 7: The *sanankunya*<sup>12</sup> and the *tanamanyöya* (form of totemism) are instituted between the Mandenkas. Consequently, a dispute arising between these groups should not degenerate, respect of the other being the rule.

Between brothers-in-law and sisters-in-law, between grand-parents and grandchildren, tolerance and jokes are the rule.

Article 8: The Keita Family is designated as the reigning family of the empire.

Article 9: Education of the children falls on the entire society. Consequently, parental rights belong to all.

Article 10: Let us address condolences mutually.

Article 11: When your wife or your child flees, do not pursue them into your neighbor's house (where they have taken refuge).

Article 12: The succession being patrilineal, never give the power to a son while his fathers (the father and his brothers) are not all dead.

Never give power to a minor because he has bonds.

Article 13: Never offend the *Nyaras*.

Article 14: Never offend the women, our mothers.

Article 15: Never lay a hand on a married woman before you have asked unsuccessfully for the mediation of her husband.

Article 16: The women, in addition to their daily occupations, must be associated to all our governments.

Article 17: Lies which have lived 40 years must be regarded as truths.

Article 18: Let us respect the rights of seniority.

Article 19: Any man has two parents-in-law: the parents of the girl one did not get and the words that were delivered without constraint. Both deserve respect and consideration.

Article 20: Do not mistreat slaves, grant them one day of rest a week, and make sure they cease work at reasonable hours. One is master of the slave not of the bag the slave carries.

Article 21: Do not pursue with your assiduities the wives of the chief, of a neighbor, of a marabout, of an animist priest, of a friend and of an associate.

Article 22: Vanity is the sign of weakness and humility the sign of greatness.

Article 23: Let there not be any betrayals among yourselves. Respect your word of honor.

Article 24: Never do foreigners any wrong.

Article 25: The emissary does not run any risk in Mande.

Article 26: The bull that has been given in care should not lead the herd.

Article 27: The young girl can be given in marriage once she is pubescent, there is no predetermined age. Her parents' choice must be followed regardless of the number of suitors.

Article 28: The young man can marry once he has reached the age of 20 years old.

Article 29: The dowry is fixed at 3 bovines, one for the girl and two for her father and mother.

---

<sup>12</sup> Institutionalized solidarity and mandatory joking between ethnic groups and between clans.

Article 30: Let us come to the assistance of those who need it.

## II. GOODS

Article 31: There are five ways of acquiring property: purchase, donation, exchange, work and inheritance. Any other form without convincing testimony is dubious.

Article 32: Any object found without a known owner will not become a collective property before the end of four years.

Article 33: The fourth calf of a heifer given in care is the property of the person in charge of the heifer.

Article 34: One bovine should be worth four sheep or four goats.

Article 35: One egg on four is the property of the person in charge of the hen.

Article 36: To appease one's hunger is not theft if nothing is carried away in a bag or in one's pocket.

## III. SAFEGUARD OF NATURE

Article 37: Fakombé is designated Chief of the hunters. He is given the task of protecting the bush and its inhabitants for the happiness of all.

Article 38: Before fire is put to the bush, do not look at the ground, raise your head in direction of the summit of the trees.

Article 39: Domestic animals must be bound during cultivation and released after harvest. Dog, cats, ducks and poultry are not subjected to this measure.

## IV. FINAL PROVISIONS

Article 40: Respect family relationships, marriage and neighbor's relationship.

Article 41: kill your enemy, do not humiliate him.

Article 42: In the large assemblies, be satisfied with your own legitimate representatives and tolerate each other.

Article 43: Balla Fasséké Kouyaté is designated great master of ceremonies and principal mediator of the Mandé. He is allowed to joke with all the tribes and in priority with the royal family.

Article 44: All those who transgress these rules will be punished. Everyone bears the task of seeing to their application.

## 6.

### **IBN BATTUTA**

*Voyages, III. India, the Far East, Spain and Sudan*, La Découverte/Poche, Paris 1997 (pp. 403- 426, my translation from the French; the sentences in brackets are my comments)

My stay in Iouâlâten was of approximately seven weeks, during which the inhabitants honored me and gave feasts for me.

\*\*\*

I saw in Cârskhoû, in this place of the Nile or Niger, and close to the shore, a crocodile resembling a small boat. One day, having gone towards the Nile to satisfy a need, here comes a Negro who stands right between me and the river. I was surprised of his bad education, of the lack of decency which he showed. And someone I told that story to said to me: "He behaved thus only out of fear that the crocodile would attack you; he thus placed himself between you and the amphibious animal. »

\*\*\*

It happened, during my stay in Mâlli, that the sultan was annoyed with his first wife, Kâçâ, the daughter of his paternal uncle, among the Negroes, the meaning of “Kaça” is queen. She happens to be, in the government, the partner of the sovereign, according to the laws of these people, and her name is pronounced on the pulpit (i.e. the *khutba*, the sermon of Friday – Editor’s note), jointly with that of the king.

\*\*\*

The condition of these people is astonishing, and its manners are odd. As for the men, they are by no means jealous of their wives; none of them is named after his father; but each one attaches its genealogy to his maternal uncle. The heritage is collected by the sons of the sister of the deceased, to the exclusion of the deceased’s own children. I saw this last practice in no other country of the world, but with the heathen Indians of Malabar.

However, these Messoûfites are Moslem; they make with exactitude the prayers prescribed by the religious law, study jurisprudence, theology, and learn the Qurân by heart.

The women of Messoûfites do not show any feeling of prudishness in the presence of men and they do not veil their face; in spite of that, they do not fail to perform punctually their prayers.

\*\*\*

I was one day at one of the sultan’s audiences, when a jurist of this country presented himself there, and he was coming from a distant province. He rose in front of the sovereign, and made a long speech; (...). There was beside me a white man who asked me: “Do you know what they said? - No. - The jurist said that, the locusts have come down on their region, one of their holy men visited the spot, he was horrified by the sheer quantity of these insects, and he said: “These locusts are in quite great number! ». One of them answered him: “God sends us to destroy the sowing of the country where injustice prevails.” The jurist and the sultan approved the speech of the legist. »

On this occasion, the sovereign told the commandants: “I am innocent of any kind of injustice, and I punished those among you who made themselves guilty of injustice. Whoever has known of an oppressor without denouncing him to me, let him bear responsibility for the crimes that this delinquent committed. God will draw from him revenge and will ask him account of it. ”

Upon hearing these words, the commandants removed their turban of the top of their heads, and declared that they did not have anything to reproach themselves with, neither an act of oppression, nor an injustice.

\*\*\*

Another time, I attended the prayer of Friday, when a merchant messoûfite, called Aboû Hafs, and who was also a student or a well-read man, rose and said: “O you who are present in this mosque, be my witnesses that I am specifically addressing Mensa Soleïman (the sultan) and that I call him to the court of the envoy of God, or Mahomet.” Then several people left the railed in platform of the sovereign. They went towards the plaintiff and asked him: “Who made you suffer an injustice? Who took something from you? ” He answered: “Menchâ Djou of Iouâtâten, i.e. the governor of that city, he took from me goods of a value of six hundred ducats, and he offered to me, for compensation, one hundred ducats only.” The sultan immediately sent orders requesting the presence of this civil servant. He arrived a few days afterwards. Henceforth, the sultan sent the two parties to a judge. The magistrate ruled in favor of the merchant, who recovered his goods, and that governor was dismissed from his office by the sovereign.

\*\*\*

Among the beautiful qualities of this population, we will cite the following ones:

The small number of acts of injustice that one observes there; because the Negroes are, of all people, those who detest it the most. Their sultan does not forgive whoever makes himself guilty of injustice.

The complete and general safety which one enjoys in all the country. The traveler, and the sedentary man alike, do not have to be in fear of brigands, robbers, or kidnappers.

Blacks do not confiscate the goods of the white men who die on their land, even if they amount to great treasures. On the contrary, they put them in the care of a trustworthy man among the Whites, until the lawful heirs come and take possession of it.

## 7.

### CORPORAL PUNISHMENT IN SEEREER CUSTOMARY LAW

Lecture of Issa laye THIAW

It seems to me that the informants who claim that the husband had the right to kill his wife and her lover caught *flagrante delicto* are wrong. Myself I was misled when I mentioned in my book entitled "La Femme seereer" (*The Seereer woman*) that: "The husband had the right to kill the lover of his wife, when he was caught in the act in the conjugal home." (p. 163). In reality, we must understand that there was no public executions as happen in other parts of the world. Caught up in feelings of excessive anger and humiliation, the husband could act under the impetus of a sense of revenge. But once the case is brought to the hands of village elders, they easily resolve the issue amicably. They asked the guilty of adultery to pay the fine set by the wise men. The death sentence of which speak European observers is without doubt a recent judgement. In this connection to this Louis Aujas pointed out the following facts: "Adultery was severely repressed by custom in cases of *flagrante delicto*, the husband had the right to kill the unfaithful wife and her lover. He would then report it immediately to *Bour* (the king), to whom he would pay the blood money by offering a mare, a horse or a sheep. If the adulterous woman was not put to death, *Bour* would impose a fine. "(« *Les Sérères du Sénégal, mœurs et coutumes de droit privé*» - The Serer of Senegal, manners and customs of private law, Bull. Com. AOF and Sc, 3 jui.sept. 1925, p. 115).

According to the oldest reports, the adulteress would only get a blame or a severe upbraiding by her maternal family. Before the implementation of a kingdom in Siin<sup>13</sup> (1350-1375), Seereer farmers did not deliver the judgements mentioned by L. Aujas. They settled adultery cases in accordance with the legal rule known as *dak a tiit*.

#### MBAAX DAK A TIIT or THE RULE OF COMPENSATION

*Dak a tiit*, or rule of repair of serious misconduct, is a Seereer term composed of the words "dak", meaning "to trample", "to stifle", "to repair", and "diit" plural "tiid" "tiit" which means "to panic", "to be afraid", "to be worried". The legal meaning of the term would be the amicable settlement of a lewd case.

When a man caught his wife in *flagrante delicto* with a lover, the offended husband had the right to kill neither his wife nor her partner. He had the option to take the pants (*mbap*) of the lover and attached them to a stick, he would then suspend at the top of the village palavers' tree<sup>14</sup>. Passers by who saw a pair of trousers floating on top of the tree would immediately realize that a man had been taken that night. Then, they would look at the pants closely to find

<sup>13</sup> Siin is the name of a Seereer territory in Senegal.

<sup>14</sup> The palaver tree marks the place of the village public meeting place.

out the owner's identity. Once the identification has been made to everyone's satisfaction the *laman* (the head of the village) would call the village elders to convene in order to examine the complaint for adultery lodged by the husband. The *laman* would inform the village elders of the reason why he had summoned them to a meeting. The man charged of adultery or his guardian must accept the criticisms addressed to him and ask forgiveness to the offended husband, and solemnly undertake to pay the fine imposed to him. The custom was that the members of both the offender's maternal and paternal clans would help him pay the fine. The friends also had to bring their material support to the guilty so that he could pay the fine.

The contributions of parents were divided into four parts: two shares were handed over to the offended husband, one share was given to the village head, and the rest was shared among the members of the council of elders who had attended the trial for adultery.

Before leaving the palavers tree, the offender or his guardian would presented his apologies to the audience and to the husband of the unfaithful wife (informant Jaga Fay of the village of Ñaaxar).

The exposition of the pants of the guilty man in a public square was seen as more painful than a beating. That is why those who were thus exposed preferred to end their life rather than continue to live among their own. They could also leave the village to an unknown destination.

The *Daak a tiit* or the indulgent judgement of adultery makes us think about the Indigenous-African jurists' view reported by S. Kandji in a book entitled *Des droits de la femme africaine d'hier à demain* (The rights of African women from yesterday to tomorrow) where he cites Amadou Hampate Ba:

"We apply the law in effect eye for an eye and all corporal punishments prescribed by Islamic law. However, the woman was respected in practice peule (..) a free woman would never received blows. When a woman was convinced offence punishable by corporal punishment, beatings were applied on the roof of his case or on an object belonging to him closely." (*L'Empire Peul du Macina - 1818, 1853*, Amadou Hampaté Bâ and J. Daget, NEA, Abidjan 1984, p. 50)<sup>15</sup>

Joseph Ki-Zerbo, asserts that in that Muslim kingdom it was forbidden to beat women. When women were condemned to be whipped, the punishment was performed not on their body but upon the roof of their homes. That everyone could witness it was considered shameful enough for the condemned woman (*Histoire de l'Afrique Noire*, Paris-Hatier 1972, p. 140 ).

Thus, verse 24 of chapter 4 of the Qurân, which gives the husband the right to beat his wife, and the verse which punishes fornication with beating were not applied to the black African woman in the theocratic Fulani empire, because they went against the dignity and the consideration the African woman enjoyed, even when Islamized (Kandji, pp. 35-36).

---

<sup>15</sup> Amadou Hampate Ba also reported the following anecdote: "It is told that an Ardo (a nobleman in the Peul ethnic group) one day found himself in the presence of a Peul woman who was about to receive a few whacks with a rope. He asked who had decided to mistreat a noble woman so. He was answered that it was according to Qurân law. The Ardo pointed his spear towards the executioner and said : "if you raise your hand on this woman, I'll send you to sleep at the "village of the small flat-roofs" (the cemetery). Then he ordered his men to deliver the convict and he declared to the marabouts (Muslim religious leaders) who were attending the scene: "Avoid from now on to cross my path and tell your Qurân that I won't obey him as long as it doesn't give noble women the respect that is their due."

The fact that the adulteress loincloth was not exposed alongside his partner's trousers, may be explained by the dignity and respect due to the black woman. As a matter of fact, our informant did not say a word about the fate of the woman. But we can guess that she was simply upbraided by her relatives.

Even in homicide cases the culprit was not executed. The verdict of homicide gave two options: forgiveness or revenge. The implementation of the latter option was rare.

#### THE JUDGEMENT OF HOMICIDE CASES

*Masnoox boom* or *masduk boom* is a Seereer term composed of two words. *Boom* comes from the verb *a booma*, "he has murdered", "he killed someone involuntarily". *Mass!* Is an interjection which expresses compassion for someone who is hurt and even for oneself. It is a term of excuse when one has inadvertently struck or upset someone. It is also a term of condolence when we say "*mas*" or "*a mboyale mas!*".

This term can not put an end to evil nor prevent it, but it can ease the suffering of the bereaved. The following Seereer proverb says: "Saying 'mas!' Can not heal a wound, but it is pleasant for the injured."

Seereer customary law has two verdicts concerning the convicted murderer: the victim's family can forgive, it can also take revenge. An illustration is given by the following ancestral story:

"When there was a murder, the two families and their respective allies gathered outside the village, where the murder had taken place; towards reconciliation and the purification of the earth. This practice is known as "*mas duk boom*" in Seereer saafi-saafi, or "*mas noox boom*" in Seereer seh. This term means to express one's compassion and present one's apologies to the victim's family. As customary law instructs: "When a person kills another, the murderer will go to the victim's parents to express his regret and ask forgiveness." Once that is done, the murderer's family should sacrifice a bull at the crime scene and prepare a lot of couscous<sup>16</sup> for the assistance, to apologize to the bereaved family. The bull's liver is grilled on the set and put on the tip of a pointed spear (called *salma*).

The victim's family will then chose a strong healthy man, and entrust him with the role of avenger. Meanwhile the murderer is waiting with his mouth open, and with his parents gathered around him anxiously waiting for the verdict of fate. With his pointed spear, the avenger moves slowly toward the murderer. If the grilled piece of liver is delicately put in the mouth of the latter, it means that he is saved and that the victim's family has forgiven him. The crowd would utter a cry of joy and reconciliation, and eat the meal. The two families seal a pact of blood that makes them become relatives. But if the avenger firmly thrusts his spear into the mouth of the murderer and kills him, the crowd disperses without eating the couscous. That means a definite break of relations and mutual distrust between the two families."

This story has been communicated by Ablaay Gaan Seen, who has received it from his grandfather, the late Demba Njoon Aali, of the village of Duuka-Saange.

### 8.

#### WOMEN, LOVE AND FAMILY LIFE IN ANCIENT EGYPT

---

<sup>16</sup> Local dish made of millet flour.

[http://www.ishm2006.hu/abstracts/files/ishmpaper\\_255.doc](http://www.ishm2006.hu/abstracts/files/ishmpaper_255.doc)  
Swarupsinh V. Chavda<sup>17</sup> and Ahmes L. Pahor<sup>18</sup>

### **Women in Ancient Egypt:**

The position of women and the respect they attained stems from the religious belief of the ancient Egyptians. There are two main myths of creation, one emanating from Heliopolis (Egyptian Iunu, Biblical On, now Ain-Shams meaning the eye of the sun in Arabic, a suburb of Cairo) and the other from Ashmunein (Hermopolis) in Upper Egypt (Manley, 1996, map p. 25). In the first the great god Aton created his own self, and then created two gods whom he married to create two children who in turn married to produce four more children making four marriages and the eight gods (Kareem, 1994). In the second myth there are four pairs of gods and these eight were the origin of all creation (Noblecourt, 1995). Thus in these two myths the primordial god created eight gods with equal numbers of male and female whom in turn created all things thereafter. In the larger system of gods, there were also equal numbers of male and female gods. Thus the equality in sexes was ingrained in the religious belief (Kareem, 1994).

In the book of the dead one of the sins that tilt the scales against the deceased soul in eternity is fornication (Zaki, 1996). The ancient Egyptians believed in the after-life. The soul would enter into a court room presided by Osiris (Figure 1). The heart of the deceased is put on a scale and the feather of justice on the other scale. The deceased is judged by what good and evil he did. If the good is more than evil then he would enter paradise. If the opposite, hell would be his abode.

The first Queen Regent of Egypt was Nitocris (c. 2180 BCE) of the 6<sup>th</sup> Dynasty at the end of the Old Kingdom. Then was Sobekneferu (c. 1790 BCE) 12<sup>th</sup> Dynasty at the end of the Middle Kingdom (Watterson, 1991). The third was Queen Hatshepsut in the 18<sup>th</sup> Dynasty, from 1490 BCE who reigned for 22 years. Some authors hypothesised that she was the princess who adopted Moses, but this is unlikely though the Jews were in Egypt during her reign (Ratie, 1998).

The last of this line of queens was Cleopatra VII (51-30 BCE) who ascended the throne when she was 17 years old and was the last of the Greek ruling Ptolemies. She was charming and intelligent and, as Plutarch stated, knew eight languages including Egyptian, beside her own native Greek (Samson, 1985). She captivated Julius Caesar and Mark Anthony and her affairs ended with Egypt as a Roman colony in 30 BCE.

There are other queens who ruled beside their kings and/or were very powerful. Hetepheres the wife of Snefru the founder of the 4<sup>th</sup> Dynasty and the mother of Cheops the builder of the great pyramid (Shaw, 2000) was an early example. Cheops had her sarcophagus made of silver as silver then was more precious than gold being less available. This sarcophagus can be seen in the Egyptian Museum in Cairo (Natheer, 1965).

Three queens played a role in the struggle to overthrow the first known invaders of the Kingdom of Egypt, the Hyksos. These were the wives of Tao I, Tao II and Ahmes I the founder of the 18th Dynasty (Watterson, 1991). It is of note that the Royal lineage, and hence the legitimacy of the ascendancy to the throne, was through the female line (Murray, 1998).

---

<sup>17</sup> Consultant Neuroradiology, University Hospital, Birmingham, England,

<sup>18</sup> Consultant Oto-Rhino-Laryngology, Birmingham, England.

Other positions held by women included the divine wife of Amun in Thebes. Nitocris the Daughter of Psamtek I is the most remarkable of those that held such a position (see above in Late Period). Nitocris was followed by her great niece Ankhnesnefibre daughter of Psamtek II and she in turn was in this position for over 60 years. She was the last to hold such a position as Egypt fell to the Persians at her time in 525 BCE.

Women doctors were known in ancient Egypt. Peseshet was referred to in the Old Kingdom section above. She was overseer of other female doctors in the palace. Another female doctor, Tawe, was referred to in a papyrus from the Ptolemaic period (Fayad, 1996).

Girls and women were involved in sports like swimming, jumping, gymnastics, acrobatics, playing with balls and fishing. Ample examples of these activities can be seen painted on walls of tombs (Natheer, 1965). When boys and girls are portrayed in sporting activities usually they are depicted separately but on occasions together (Janssen and Janssen, 1990). Women looked after their beauty, they had make-up, applied kohl to their eyes, dyed their hair, dressed well, used perfume and jewelry (Fayad and Adeeb, 2000).

Art displayed the affection the pharaohs had for their consorts, and also among the nobles, an intimacy seen nowhere else in the art of the ancient Near East before the first millennium BC (Roberts, 2002).

Women had civil rights. In the late period they could initiate divorce and had legal protection regarding the division of property. A prenuptial agreement was sometimes negotiated in which a woman could list her own possessions on entering a marriage. She could retain these possessions in case of a divorce (Manley, 1996).

Ramses III (1184-1153 BCE) was a defender of women's rights and he used to urge his officials to respect and protect women (Zaki, 1996).

There were severe laws against sexual crimes and prostitution (Zaki, 1996). Diodorus Siculus recounted that rapists would have their male members removed. For fornication the man would receive 1000 whips and the woman would have her nose cut (Zaki, 1996). In earlier periods the punishment for adultery was death (Houssni, 1986). The judgment for false accusation was equal to the judgment of the offence allegedly committed (Houssni, 1986).

## DISCUSSION

1. What is the concept of Justice as depicted in each document?
2. Is there a common concept of human right in the laws of Ancient Egypt Middle Age Mali and contemporary Seereer linguistic community?
3. How does capital punishment come across in the various documents? Is it a favoured punishment?
4. What punishment is seen as worse than death or corporal punishment?
5. What is the origin of the people who cast slight upon those who practise handicrafts?
6. What are the common traits in the legal status of women?
7. In what ways do you think Islam, Christian missionaries, the slave trade and colonialism have influenced, if at all, current customary laws?