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The Courts of the Muslims in Yemen: A Case from the Community of Dhamār

By *Aharon Gaimani**

Abstract

A dispute erupted in regards to the religious authority in the community of Dhamār between the Av of the Beit-Din and one of the members of the community, resulted in the victim turning to a Muslim judge. At the trial, which occurred in the year 1930, the Muslim judge delivered his verdict, which was in opposition to the verdict reached by the members of the Beit-Din of Ḩaṣanā', who were the highest authority of the Jews in Yemen.

This sequence of events teaches us about the religious authority in two of the largest communities in Yemen: Ḩaṣanā' and Dhamār, as well about Ḩaṣanā' Beit-Din's broad authority. The appeal to the courts of the Muslims teaches, that Muslim judges dealt even with religious matters, and that Muslim Law was a judicial body with the authority to enforce its verdicts.

The importance of the debate is that it deals with the relationship of the Jews to their environment and to their trials in the courts of the Muslims, an issue which has not been researched sufficiently amongst the Jews in Yemen.

Ein Streit, zu dem über die Frage der religiösen Autorität in der Gemeinde Dhamār zwischen dem Av des Bet-Din und einem Gemeindemitglied gekommen war, hatte dazu geführt, dass sich der Unterlegene an einen muslimischen Richter wandte. Während des Verfahrens, das im Jahre 1930 stattfand, sprach der muslimische Richter ein Urteil, das im Gegensatz zu dem Urteil stand, das von den Mitgliedern des Bet-Din von Ḩaṣanā', das die höchste Autorität der Juden im Jemen war, gefällt worden war.

Der Gang der Ereignisse gibt uns ein Lehrstück über die religiöse Autorität in zwei der grössten jüdischen Gemeinden im Jemen: Ḩaṣanā' und Dhamār, sowie über die Autorität des Bet-Din in Ḩaṣanā'. Die Anrufung des muslimischen Gerichts belegt, dass muslimische Richter selbst religiöse Angelegenheiten behandelten und dass das muslimische Recht eine juristische Institution war, die ihre Urteile durchzusetzen Vollmacht hatte.

Die Bedeutung der Debatte beruht darauf, dass sie vom Verhältnis der Juden zu ihrer Umgebungsgesellschaft und den Gerichtsurteilen muslimischer Gerichte handelt, ein Thema, das im Rahmen der Geschichte der Juden im Jemen bislang nicht hinreichend untersucht worden ist.

I. Introduction

The city of Dhamār was home to the third largest Jewish community in Yemen after Ḩaṣanā' and Radā'.¹ A dispute among the Dhamār community

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¹ Dhamār is a large main city, situated about 100 km south of Ḩaṣanā'. See IBRĀ-

concerning ritual slaughter and the wedding rite was presented by one of the community members before the Qādī – a Muslim judge. At a hearing held in 1930, documents were presented relating to the authorization of the sages of the community granted by the rabbis of Ṣan‘ā’ along with their translation into Arabic. After looking through them, the Qādī rendered his decision: it countered that reached by the members of the Ṣan‘ā’ Rabbinical Court. In this article I shall look closely at the sequence of events as depicted through the ruling of the Qādī in this episode as well as from the contents of the documents submitted; moreover, I shall attempt to examine the roots of the dispute in the Jewish community in Dhamār. Jewish-Muslim relations and the jurisdiction of the non-Jewish courts are important components in the study of Yemenite Jews, and they have not yet received the attention they deserve.

II. Rabbi Shlomo Mallāhī, President of the Dhamār Rabbinical Court and His Training in Ṣan‘ā’

The main figure in the Dhamār community in the Qādī’s 1930 ruling was the *dayyan* (rabbinical judge), Rabbi Shlomo Mallāhī, who later accepted the role of president of the rabbinical court. Before him the position was held by Rabbi Yihya b. Sa‘adya Ġaraidī, who died in Tishri 1935.² To clarify this episode I contacted the family of Rabbi Shlomo Mallāhī, and received the information and documents cited here from them.³

Rabbi Shlomo ben Avraham Mallāhī was born in Dhamār in 1891. Below are biographical details as he wrote them after his immigration to

HIM AHMAD AL-MAQHAFI, *Mu‘gam al-mudun wa-’l-qabā’il al-yamaniya* (Ṣan‘ā’: Dār al-Kalima, 1985), pp. 167-168.

- 2 Some have indicated that the date of death of Rabbi Yihya is 6 Tishri 5690 (Oct. 10, 1929). See Rabbi S. GAMLIEL, *חכמי היהודים בתרנן ועוד סמור* (Jerusalem 1992), p. 77; S. ĠARAIDĪ, *ימים גידו לתקופת התנאים* (Tel Aviv 1995), p. 21; M. GAVRA, *חכמי תימן* [henceforth: *אנציקלופדיה לחכמי תימן*], Bnei Brak 1999, pp. 73-74, entry “Ġaraidī, Yihya ben Sa‘adya.” It is to be noted that the date of death should be later, because in 1935 the Syrian writer Nazīḥ Mu’ayyad al-‘Azm visited Dhamār, and he interviewed Rabbi Yihya ben Sa‘adya Ġaraidī in his home. See S. ĠARAIDĪ, *ימים גידו*, pp. 3-4. Concerning this, Uzziah Meshullam of moshav Ahiezer wrote me that Rabbi Yihya died in Tishri 5696 (1935). He wrote this down as he was told by his father-in-law Shim‘on Mallāhī who immigrated to Israel from the Dhamār community in Tishri 5710 (October 1949).
- 3 I wish to thank the lawyer Ariel Malachi of Jerusalem, grandson of Rabbi Shlomo Mallāhī, who helped me with this issue.

the Land of Israel as well as documents he received from the Ṣan‘ā’ Rabbinical Court.

Rabbi Mallāhī studied in his home town with Rabbi Shlomo ben Sa‘īd Mekaiten⁴ covering the *Yoreh De‘ah* part of the *Shulḥan ‘Arukha*, that is, the laws of ritual slaughtering, prohibitions and permissions, meat and milk, and so on, and they are the laws that every person who has to be practical decisions in this field must know. On the continuation of his educational path and his start in the rabbinate, he wrote:

After I moved to the great city of Ṣan‘ā’, capital of Yemen, and studied in the chief rabbis’ yeshiva,⁵ my master, teacher and rabbi, Yihya Isaac Halevi,⁶ and my master, teacher and rabbi, Yihya Shlomo al-Qāfiḥ,⁷ and my master, teacher and rabbi, Aharon ha-Kohen,⁸ all of whom studied Talmud in the morning and evening.⁹ And when the lesson was over, I would spend the rest of the day studying with my master, teacher, and rabbi, Ibrāhīm al-‘Amrānī,¹⁰ and my master, teacher and rabbi, Yihya Abyad,¹¹ and my master, teacher and rabbi, Yihya Ge’at,¹² all of

4 About whom he wrote in his piece: “I went to Rabbi Shlomo ben Sa‘īd Mekaiten, he was the teacher of the young children in our town. With him I studied the entire volume of *Yoreh De‘ah* from the laws of ritual slaughter to the end. Then, when I immigrated to the Land of Israel I found him slaughtering chicken in the Kerem ha-Teimanim neighbourhood of Tel Aviv on behalf of the Chief Rabbinate of Tel Aviv-Jaffa.”

5 Each of the three rabbis he enumerated had a yeshiva, so he means the plural here, yeshivas.

6 Born 5626 (1866); died 5692 (1932). He was the seventh and last ḥakham Bashi and chief rabbi from 5665 (1905) to 5692 (1932). On his activity see A. GAIMANI, “תעודות חדשות למעמדו של הרב יחיא יצחק הלוי כמניח יהדות תימן,” *Pe’amim* 76 (1998), pp. 116-26.

7 Born c. 5610 (1850); died 5692 (1932). He served as the ḥakham Bashi in 1899-1900. See Rabbi A. QORAH, *אורהות היהודים תימן*, Jerusalem 1954, pp. 60-61; GAVRA, (n. 2 above), pp. 545-46, entry “Qāfiḥ, Yihya ben Shlomo.”

8 Born c. 5601 (1841); died 5694 (1934). See Rabbi A. QORAH, (n. 7 above), pp. 77, 174; GAVRA, *חכמי תימן* (n. 2 above), pp. 250-251, entry “Kohen, Aharon ben Shalom.”

9 The curriculum in the rabbis’ yeshivot included other subjects, such as Mishnah and Jewish Law.

10 Born in 5635 (1875); he immigrated to the Land of Israel with the “On Wings of Eagles” campaign in 1949, and died in 5711 (1951). He served as a *dajyan*, and awarded certification as ritual slaughterers to many students whom he examined. See GAVRA, *חכמי תימן* (n. 2 above), pp. 458-59, entry “Amrani, Avraham ben Ya‘aqov.”

11 Born 5624 (1864), he served as chief rabbi of the Jews of Yemen from 5692 (1932) until his passing in Ḥeshvan 5695 (1934). See Rabbi A. QORAH, *סערת תימן*

blessed memory. I followed this plan for some two years, and they gave me a certificate authorizing me to slaughter cattle and poultry, and I returned to my city, Dhamār, I married ... returned to Ṣan‘ā’, [where] they knew I had no livelihood, they provided me a certificate authorizing me to deal with divorces and marriages, and they told me that I would join the two rabbis in the city of Dhamār, namely, my master, teacher and rabbi, Yihya Ġaraidī,¹³ and my master, teacher and rabbi, Yosef Sa‘id Mansūr,¹⁴ and that I should work in conjunction and congeniality to serve our city. I arrived in our city, [but] the two rabbis did not want to include me, they said the two of them alone would serve the public. The rabbis heard of the matter,¹⁵ [and] they sent a message to the three of us: Make peace among yourselves, so that we should serve the public together, and that the income accrued from the public from the fees for ritual slaughter and acting as judges¹⁶ should be shared among us, and they made contracts among us regarding this and we continued [working] for a long time.

Rabbi Shlomo Mallāhī received the certificate to deal with divorces and weddings from the sages of Ṣan‘ā’ at the beginning of Tishri 5673 (September 1912), when he was 22 years old. According to the date given in the document, I can calculate precisely the other dates listed in the Muslim judges’ ruling:

Below is the text Chief Rabbi Yihya Yitzhaq Halevi wrote to him:

חימן, (n. 7 above), pp. 75-77; GAVRA, (n. 2 above), p. 4, entry “Abyad, Yihya ben Shalom.”

- 12 Born 5632 (1872), he immigrated to the Land of Israel with the “On Wings of Eagles” campaign in 5709 (1949) and died in 5718 (1958). He was an associate of Rabbi Yihya Abyad and specialized in medicinal plants. See GAVRA, חכמי חימן (n. 2 above), p. 65, entry “Ge’at, Yihya.”
- 13 President of the Dhamār Rabbinical Court. On him, see beginning of the section.
- 14 His biographical details are unknown. The ledger of the mission of the emissary Rabbi Shlomo Naddaf included a registry of the names of contributors from throughout Yemen in the 1920s and 1930s. In the list of donators from Dhamār, the three rabbis of the city appear at the top, Rabbi Yihya Ġaraidī, Rabbi Yosef Mansūr, and Rabbi Shlomo Mallāhī, which tells us that they had received the directions from the sages of Ṣan‘ā’ in a letter to them. See איש ימני – ספר הזיכרון לרבי יהיא יצחק הלווי וצוק'ל, edited by Rabbi A. YITZHAQ HALEVI, vol. 4 [in press].
- 15 Meaning the rabbis of Ṣan‘ā’.
- 16 The judges’ recompense was simply a payment to cover time spent away from their regular work so that they could sit as judges as well as the fees paid for writing documents produced by the religious court, such as business contracts, maintenance of divorcees, and distribution of legacies. See Rabbi הליכות חימן: חי סערת חימן QORAH, (n. 7 above), p. 112; Rabbi Y. QĀFIH, שולחן היהודים בצדקה ובונותה (Jerusalem 1962), pp. 70-71; Rabbi Y. RATZHABI, הל' בית-דין, עורך המקוצר, ממנות, vol. 8, Bnei Brak 2003, par. 211, 18, p. 29.

Now, after a divorce decree was granted in the great city of Dhamār, and we have heard that it was arranged by the fitting disciple Sulaimān b. Ib[rāhīm] Mallāhī, May the Lord care for him and grant him life, and complaints were lodged against him that he is not proficient, and also did not have permission to arrange divorces and wedding, then we sent for him and he appeared before us. And he said that he is neither the one to arrange the divorce nor a witness to the no[ted] divorce but only the scribe of the divorce decree. Whatever it may be, we examined the aforementioned clever student on the substance of the laws of divorce and marriage, and on what invalidates them, and which witnesses are acceptable, and what makes them invalid whether through flaws of testimony by Torah law or flaws in testimony by rabbinic ruling, and what are the differences between them, and he was found to be proficient. Therefore, what he has already done is undoubtedly fit and proper. And should he wish to arrange from now on divorces and marriages, he is permitted, and moreover since he is expert in perfect calligraphy. The no[ted] student is of good character, modest, and extremely God-fearing. We have already given him¹⁷ permission to perform ritual slaughter of beef and cattle for himself and others. And there is no protest against him regarding the foregoing¹⁸ on the part of any person. And I am certain that the no[ted] student will be a stalwart in Torah, and that through him the Lord's purpose might prosper.¹⁹ Affirming that all the foregoing is true and proper, I affix my signature on the eve of the Day of Pardon and Forgiveness for the entire community of Israel. 2242.²⁰

[signatures]: The lowly Yihya b. Mūsā Yitzḥaq [May his Creator protect him], the mire and mud.²¹ The lowly Ib[rāhīm] Ya'aqov 'Amrani [May his Creator protect him], the lowliest of the low.

In the continuation of the document, Rabbi Yihya Qāfiḥ gave his agreement and wrote:

Since the aforementioned students was examined by the rabbis signed above and found proficient, having rabbinic ordination, and since I do not have the time,²² I shall constantly support them,²³ to give him permission to arrange divorces and marriages and to slaughter cattle and poultry for himself and others, and none shall protest against him. As stated by the master of prophets and sages, “Would

17 This means that in the past they had already given him a certificate for ritual slaughter, and this all matches with his biography as given above. We do not have this document.

18 That is, regarding divorces and marriages as well as issues of ritual slaughter.

19 Is. 53:10.

20 From the count of *shtarot* = 9 Tishri 5673 from the Creation (20 September 1912).

21 An expression of humility and self-abnegation, according to the Targum of Yonatan b. Uzziel for רָפַשׁ in Is. 57:20. Rabbi Yihya Yitzḥaq Halevi also appended his signature to the document.

22 That is, since he does not have time to test him, he is therefore relying upon the rabbis previously mentioned.

23 Following Psalm 89:22.

that all the Lord's people were prophets,"²⁴ that he may magnify and glorify [His] teaching,²⁵ verily may it be His will. This shall be to you a law for all time: to make atonement ...²⁶ 2224.²⁷

[signatures]: The lowly Yihya b. Sulai[mān] al-Qāfiḥ, May his Creator protect him.²⁸ The lo[wly] Hārūn b. Sālim al-Kohen, May his Creator protect him the youngest of the flock.

Rabbi Yihya Ge'at gave his agreement and wrote in the continuation of the document:

I, too, add my signature, since he proved to me his competence in performing marriages and arranging divorces, and was found in writing and in law to be proficient, even earlier we authorized him²⁹ to slaughter cattle and poultry for himself and others, and no person may protest this. Therefore we gave him permission for all the above, through him the Lord's purpose might prosper.

[signature:] The [lowly] Yihya b. Yosef Ge'at

Written in another document given to Rabbi Shlomo Mallāḥī bearing the same date as the previous one we find:

May your well-being abound, distinguished Rabbi Yihya son of my teacher and master Sa'īd al-Ğaraidī and distinguished Rabbi Yosef son of my teacher and master Sa'īd,³⁰ you the Lord will keep them.³¹ Toward the approaching joyous festival,³² may you have many years and joyous festivals.

Already appearing before us was Sulaimān b. Ibrāhīm Mallāḥī, May the Lord protect him and grant him life, and we have examined him in the laws of divorces and marriages and found him proficient, and the divorce he arranged proper and valid. And what is the benefit in continuing the dispute, and it is worthwhile that the abovementioned person should be accepted by you as he is well-versed in learning. And Moshe Rabbenu said to Joshua, "Would that all."³³ And the sages have said, "Of everyone a man is jealous, except his son and disciple."³⁴ And that

24 Num. 11:29. He wrote thus about the rabbis of Dhamār, Rabbi Yihya Ğaraidī and Rabbi Yosef Mansūr, who did not agree to have this authorized person join them as a rabbi.

25 Is. 42:21.

26 Lev. 16:34. The verse is from the Torah reading on the Day of Atonement, which is not the weekly portion.

27 From the count of *shtarot* = 5673 from the Creation (September 1912).

28 Rabbi Yihya Qāfiḥ also appended his stamp to the document.

29 This shows us that also Rabbi Yihya Ge'at had given him in the past authorization for ritual slaughter. We do not have this document in hand.

30 He is Rabbi Yosef Sa'īd Mansūr mentioned above.

31 From Psalms 12:8.

32 The reference is to the Sukkot festival.

33 The verse continues: "the Lord's people were prophets."

34 bSanh 105b.

is sufficient in the manner of instructing a wise man and he shall grow wiser.³⁵ And peace be with you. Tishri 2242,³⁶ as it is written “For on this day atonement shall be made for you to cleanse you.”³⁷

[signatures]: the lowly Yihya b. Mūsā Yitzhaq, May his Creator protect him, the lowliest of the low.³⁸ The צער Hārūn b. Sālim al-Kohen, May his Creator protect him, the youngest of the flock. The lowly Yihya ben Sulai[mān] al-Qāfiḥ, May his Creator protect him.

As part of his function Rabbi Shlomo Mallāhī dealt, at great personal risk, also with leading the community in smuggling orphans, and he was even put in prison for this activity.³⁹ He immigrated to Israel with “On Wings of Eagles” campaign in 5709 (1949); and in the Land of Israel he served as the rabbi of the Hatikvah neighbourhood in Tel Aviv, until his death on 6 Nisan 5728 (13.4.1978).⁴⁰

III. The Officials and Documents Presented to the Qādī

Of great importance is a published document concerning the relations of the Jews with their surroundings and with non-Jewish courts. Prof. Yehudah Ratzhabi wrote on this topic: “Jewish-Muslim relations in Yemen and the trials of Jews in Muslim courts are a kind of missing link in the history of the Jews of Yemen. Therefore, these documents, which shed light on this shadowed corner, are highly significant.”⁴¹

35 Prov. 9:9.

36 From the count of *shtarot* = 5773 from the Creation (September 1912).

37 Lev. 16:30. The verse is part of the Torah reading for the Day of Atonement, which shows us that this document was written before the Day of Atonement.

38 R. Yihya Yitzhaq Halevi also affixed his stamp to the document.

39 *היתומים מתימן ועליהם לארכץ*, “*ארחות תימן* in,” *ישראל בתקופת המנדט הבריטי – אנטומיה של פעלות הצלה* M. KASPI-MASURI and S. AVIZEMER, Jerusalem 1984, pp. 85-111; Y. HAB-SHUSH, Tel Aviv 1996; B.-Z. ERAQI-KLORMAN, “*השמד – בתימן – תגوبת היהודים ודףו הtantant של מוסלמים* אסלום בכוח של יתומים,” *Pe’amim* 62 (1995), pp. 82-110; B.-Z. ERAQI-KLORMAN, “The Forced Conversion of Jewish Orphans in Yemen,” *Middle Eastern Studies* 33 (2001), pp. 23-47; T. PARFITT, *The Road to Redemption: The Jews of Yemen 1900-1950*, Leiden 1996, pp. 66-76; A. GAIMANI, “The Orphans Decree in Yemen: Two New Episodes,” *Middle Eastern Studies* 40 (2004), pp. 171-84.

40 GAVRA, (n. 2 above), p. 322, entry “*Mallāhī -Mal’khi* Shlomo ben Avraham.” During a visit to his family in Tel Aviv, I saw an autograph copy of his Torah work, “*חשך שלמה*.”

41 Y. RATZHABI, “*משפט אישות בתימן בפני ערכאה מוסלמית*,” *Pe’amim* 63 (1995), p. 42.

In the period under discussion, the main officials of the Jewish community in San'a, who also served as members of the Rabbinical Court, were Rabbi Yihya Yitzhaq Halevi, who also held the role of president of the court and chief rabbi; Rabbi Yihya Qafih, and Rabbi Aharon ha-Kohen. The main community officials in Dhamār were the *dayyanim* Rabbi Yihya Ġaraidī, Rabbi Yosef Saīd Mansūr, and Rabbi Shlomo Mallāhī.

Given here are the dates of the documents cited in the decision of the Muslim judge, in chronological order, noting their topic and content. The date of the Muslim judge's document as registered in the decision is the year 5690 (1930), and in the document on the court discussion the Hebrew date listed is one year later, and written 2242 in *minyan shtarot* which is 5691 (1931). As we saw in the previous section, the certificate for officiating at wedding ceremonies was given to Rabbi Shlomo Mallāhī by the sages of Ṣan'a' in Tishri 5673 (September 1912), and not as registered in the document – 5674 (1914). Undoubtedly the Muslim date is the correct one, meaning that one must move back by one year the Hebrew year notations given below; they appear in square brackets.

[Tishri 5673] (1912) – authorization that was given to Rabbi Shlomo Mallāhī for ritual slaughtering and officiating at weddings. The authorization awarded him was signed by the three members of the Ṣan'a' Rabbinical Court.

[5678] (1918) – order signed by the three members of the Ṣan'a' Rabbinical Court, and which was given to Rabbi Shlomo Mallāhī. The content relates that the public ritual slaughterers will be the permanent rabbis; as for the heads of families, each one should choose for himself one of the slaughterers who has certification from Ṣan'a'. Similarly, whoever wishes to deal with ritual slaughter for the Dhamār community and does not have certification must go to Ṣan'a', be examined there, and receive certification from the Ṣan'a' rabbis. And anyone who will deal with ritual slaughter in opposition to this order, is then excommunicated. The order was translated in Arabic by Sulaimān Saīd Ġaraidī and his brother Mūsā.

5678 (1918) – A letter in which Sheikh 'Alī Muḥammad al-Naġġāmī came to an agreement with the three rabbis of the Dhamār community, Shlomo Mallāhī, Yihya Ġaraidī, and Yosef Saīd Mansūr, that they should go to the *dayyanim* of Ṣan'a' for a definition of their authority as well as a letter of response by the Chief Rabbi, Rabbi Yihya Yitzhaq Halevi, that he authorized the three rabbis to function in the religious life of the Dhamār community.

[5678] (1918) – An order given to Rabbi Shlomo Mallāhī, apparently by the members of the Ṣan'a' Religion Court, to have [him] include [in conducting] the religious affairs of the Dhamār community the rabbis Yihya Ġaraidī and Yosef Saīd Mansūr regarding ritual slaughter, arranging mar-

riages and divorces, and judgeship. The instruction covers the division of the profits among the three rabbis mentioned to be disbursed as follows: half of the profits should go to Rabbi Yihya Ġaraidī, and the remaining half should be divided equally between Rabbi Yosef Saīd Mansur and Rabbi Shlomo Mallāhī.⁴²

5690 (1930) – Authorization for ritual slaughter received by Mūsā b. Sālim Rai‘ānī⁴³ from Rabbi Yihya Saīd Kohen.⁴⁴ By request of the Muslim judge, the authorization was translated into Arabic by Sulaimān Ġaraidī and his brother Mūsā.

5690 (1930) – The proclamation that Rabbi Shlomo Mallāhī wrote: the proclamation, which was disseminated among the synagogues in Dhamār, was directed against Mūsā Rai‘ānī because he had begun to engage in ritual slaughter and in officiating at weddings in the Dhamār community in defiance of the order of the Chief Rabbi of Ṣan‘ā’, Rabbi Yihya Yitzḥaq Halevi that one should not engage in these activities until after receiving authorization from the Ṣan‘ā’ Rabbinic Court. In the proclamation, which had the effect of excommunication, Mūsā Rai‘ānī was vilified and was declared as banned. At the request of the Muslim judge the proclamation was translated into Arabic by Mūsā Saīd Ġaraidī and Sālim b. Nissim Waṣdī.

IV. The Sequence of Events in the Dispute

The decision rendered by the Muslim judge was given in 5790 (1930), and it was submitted for execution to the governor ‘Abdallāh al-Wazīr. Below is the sequence of events as learned from what the judge wrote.

The president of the Religious Court, Rabbi Shlomo Mallāhī, forbade Mūsā Rai‘ānī to engage in ritual slaughter and to officiate at weddings until he would receive authorization from the Chief Rabbi, who was located in Ṣan‘ā’, even though he had received certification from a local rabbi. This order, which made it obligatory to receive authorization from Ṣan‘ā’ as

42 Regarding the division of the payment to the *dayyanim*, Rabbi ‘AMRAM QORAH wrote: “Every day, when they are ready to go home, they see how much was collected in fees from the activity in the Rabbinical Court, business contracts, allocation of maintenance, the division of legacies and so on, and the sum, they divide. The president of the court takes half with him, and the other half by his two colleagues in equal part.” See his book, *סערת חימן* (n. 7 above), p. 112.

43 He immigrated to Israel with the “On the Wings of Eagles” campaign in 5709 (1949) and lived in the Hatikva neighbourhood of Tel Aviv, where Rabbi Shlomo Mallāhī lived. Relations between Rabbi Mallāhī and Mūsā Rai‘ānī were good, except for the episode in which Rabbi Mallāhī acted as required by virtue of his rabbinical duties.

44 His biographical details are unknown.

well, he received from the Chief Rabbi, Rabbi Yihya Yitzhaq Halevi. Mūsā Rai‘ānī did not obey Rabbi Shlomo Mallāhī, so he wrote a proclamation against Rai‘ānī that was distributed in the synagogues, declaring that one should not eat from his ritual slaughtering and that weddings he officiated at were not valid; moreover, he protested that owing to Mūsā Rai‘ānī’s lack of expertise he could not continue to deal with these matters.

This proclamation led to Mūsā Rai‘ānī turning to a Muslim judge to handle the issue. At the trial, Rabbi Shlomo Mallāhī argued in his defense that the action had derived from the instruction that he had received from the Chief Rabbi, Rabbi Yihya Yitzhaq Halevi, that he had to prevent any Jew who wished to perform ritual slaughter and conduct weddings until that person had receive a certificate from the Ḫan‘ā’ Religious Court, and Rabbi Mallāhī presented the authorization as requested. The authorization, which had been written in 5679 (1919) was translated by Sulaimān Ġaraidī and his brother Mūsā; it stated that any of the Dhamār Jews could have ritual slaughter performed by any ritual slaughterer he chose but that the ritual slaughterer had to receive authorization from the *dayyanim* of Ḫan‘ā’, and if anyone would perform ritual slaughter without having such certification at hand, then he would be ousted from the Jewish religion, that is, excommunicated, and the food provided by his slaughtering would be banned just as he. Likewise, also presented was the authorization that Rabbi Mallāhī had received in 5674 (1912) from the three members of the Ḫan‘ā’ Religious Court stating that he could deal with ritual slaughter as well as arrange weddings and divorces. Moreover, an additional document from that year was exhibited, noting that Rabbi Mallāhī had to work in conjunction with Rabbi Yihya Ġaraidī and Rabbi Yosef Sa‘īd Mañṣūr in ritual slaughter, in officiating at weddings and arranging divorces, and in judgeship; this document, too, was signed by the *dayyanim* of Ḫan‘ā’.⁴⁵ The document mentions the division of the profits resulting from their roles as *dayyanim* in Dhamār, as follows: half of the profits were for Rabbi Yihya Ġaraidī, and the other half were to be shared equally by Rabbi Yosef Mañṣūr and Rabbi Shlomo Mallāhī. And should any of the laity wish to have ritual slaughter performed privately, he can choose whomever he wishes from among the ritual slaughterers of the city. An additional document from 5678 (1918), by Sheikh ‘Alī Muḥammad al-Naḡgāmī, containing the arrangement that the three rabbis of Dhamār noted would proceed to the *dayyanim* of Ḫan‘ā’ for the definition of their authorities; and the

45 On these two documents, see section II above.

response of the Chief Rabbi, Rabbi Yihya Yitzhaq Halevi was that he approved of what was agreed upon among them.

In contrast to all the foregoing, the claimant Mūsā Rai'ānī presented the authorization for ritual slaughter that he had been given in 5690 (1930) by Rabbi Yihya Sa'īd ha-Kohen, and it was translated into Arabic by Sulaimān Ġaraidī and his brother Mūsā. In response Rabbi Mallāhī noted that this very authorization, which had been given by a rabbi who was not from Ḫan'ā', constitutes agreement with what he had done in the proclamation, for such certification was insufficient since one had to have authorization from the Ḫan'ā' Religious Court. In rebuttal against this, Mūsā Rai'ānī argued that according to the well-known custom among Yemenite Jews, there is no need to request approval from the Ḫan'ā' Religious Court in order to deal with ritual slaughter. Apparently this was an ancient custom, but so as to avoid violations the Ḫan'ā' Religious Court had issued a new order that made it obligatory to receive authorization from its rabbis.⁴⁶

After reading all six documents, all of which were apparently translated into Arabic, the Muslim judge presented the issues under adjudication and upon which he had to decide, namely: Did Rabbi Mallāhī have permission to write the proclamation he gave? Is the prohibition against Rabbi Mūsā Rai'ānī obligatory? What is the meaning of the orders given by the Ḫan'ā' Religious Court?

As for the first question, he determined that Rabbi Mallāhī has no authority to write such a proclamation as he did, not from Ḫan'ā' nor from anywhere else. As to the order given from Ḫan'ā', that only senior rabbis should slaughter for the public, this still does not give Rabbi Mallāhī the authority to supervise this.

Thus the decision according to Shari'a laws is that Rabbi Mallāhī attacked Mūsā Rai'ānī, and if he should do so again or if the claimant will not forgive him – he will be punished. As to the order he has from the Ḫan'ā' rabbis, this still does not give him the right to enforce this issue, and even the Muslim law does not allow it. Similarly, Mūsā Rai'ānī should not be prevented from ritual slaughter for someone else nor from performing marriage ceremonies and no rabbi should be preferred over another.

46 On 28 Shevat 5690 (26.2.1930), the ritual slaughterer's certificate had been given to Mūsā Rai'ānī noted, and it was signed by Rabbi Avraham 'Amrani. Chief Rabbi Yihya Yitzhaq Halevi appended at the bottom of the document words of agreement, but the date and signature are torn. For the text of the document and a photo of it, see *איש ימני – ספר הזיכרון* (n. 14 above), pp. 332-33.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

V. The Document – The Sequence of Events and the Qādī's Ruling⁴⁷

Translation of the Document⁴⁸

In the name of God, most Gracious, most Compassionate

Summary of the litigation brought before me by the dhimmī Mūsā b. Sālim Rai‘ānī and the dhimmī Sulaimān Ibrāhīm Mallāḥī, in the case of the claim by the dhimmī Mūsā b. Sālim against the dhimmī Sulaimān Ibrāhīm, who wrote and distributed a proclamation to all the synagogues of the Jewish neighbourhood Dhamār, and he mentioned him by name and slandered him and humiliated him, and he declared him as one who has been ousted from the religion of the Jews,⁴⁹ and that he is fit for nothing. And since he is protected by God most high, and protected by the Imam, may God protect him, and he is under the protection of God most high and under the protection of his emissary,⁵⁰ he is seeking what is required by law.

And when the dhimmī Sulaimān heard this, he denied the statements of the claimant about curses and vilification, but did admit that he had written the proclamation that was directed to the dhimmīs, which states that that he (Rai‘ānī) is not authorized to perform ritual slaughter or to officiate at wedding ceremonies, since he is not proficient in them and in what is required by the stipulations and laws according to their religion, and that no one should be involved in them unless he has received authorization from the Jewish sages of Ḫanā‘. And the dhimmī was required to present the proclamation, and he indeed showed it as written in Hebrew. And when it was presented, the dhimmīs Mūsā Sa‘īd Ḥarādī and the dhimmī Sālim ben Nissim Waṣdī were chosen to translate (into Arabic) the aforementioned proclamation; and its translation did match its content, and it is an appeal to all the dhimmīs noting that there are some Jews who pretend to be rabbis in the community of Israel, and this is just like a silver coin in a pitcher that rings out when it is empty,⁵¹ and the destruction is greater than the construction itself.⁵² And

47 Jerusalem, National Library of Israel, Department of Manuscripts and Archives ARC. 40 1487/A.

48 I wish to thank Mr. Nissim Binyamin Gamlieli of Ramla and Dr. Naama Ben Ami of Petah Tikva for their important comments on reading the document.

49 Meaning excommunication.

50 Referring to Muhammad.

51 Parallel to the Aramaic proverb (bBM 85b), “One stone in a pitcher cries out ‘rattle, rattle’,” which is a metaphor for an empty person. One may reasonably assume that in the proclamation it was given in the Aramaic and in the document, in Arabic translation.

52 Perhaps the version in the proclamation read “the standing [wall] is longer

similar to this, Mūsā Sālim Rai‘ānī makes himself out to be one of the rabbis of the Jews for ritual slaughter of cattle, and sheep, and fowl, and performing weddings, when he has not completed his studies nor returned to them, and does not know the ways of the Lord, may He be praised and elevated, and he is incapable of slaughtering a fish nor a locust,⁵³ nor of performing a wedding ceremony. And he especially did not receive authorization from Rabbi Yihya Yitzḥaq,⁵⁴ as required and customary in all cities of Jews in all Yemen. Therefore his slaughter is forbidden,⁵⁵ and a marriage ceremony he officiated at is invalid, until he will go up to Ṣan‘ā’ and receive authorization from the rabbi chosen by the imam, may God most high support him. And that he wrote this on the basis of his being the rabbi obligated to inform people. This is the essence of the proclamation, and it contains others phrases that need not be copied since they are not related to the main issue.

After the reading of the proclamation, the dhimmī Sulaimān Ibrāhīm Mallāhī continued to argue that he was in possession of an order from the rabbi of the Jews of Ṣan‘ā’⁵⁶ urging him to be on the alert and to prevent anyone wishing to deal with ritual slaughter and officiate at marriages to do so before he receives authorization from Ṣan‘ā’. And then he was requested to present it. He did show it, written in Hebrew, and it was translated by the dhimmī Sulaimān Sa‘īd Ġaraidī and his brother, the dhimmī Mūsā. Its essence, after a long introduction that need not be copied, is that the official ritual slaughterers should be designated rabbis. As for the heads of households, each of them will choose for himself one of the ritual slaughterers who has authorization from Ṣan‘ā’. As for anyone who does not have such recognition, he should go up to Ṣan‘ā’ to receive authorization from the rabbis of Ṣan‘ā’. And whoever will perform ritual slaughter without having received certification from the rabbis of Ṣan‘ā’, for an individual or the public (literally: in homes or elsewhere), is then banished from the Jewish religion.⁵⁷ And whosever eats from his slaughtered meat, then he has the same fate.⁵⁸ It is dated to the year 2230,⁵⁹ while today’s

than the gap,” which is a familiar phrase in Rabbinic Hebrew. See, for example, bEruvin 10a; bHullin 70a.

53 This is a sarcastic phrase, that he is incapable of slaughtering even a fish or locust – which do not require ritual slaughter.

54 Referring to Rabbi Yihya Yitzḥaq Halevi, the Chief Rabbi located in Ṣan‘ā’.

55 Meaning that it is prohibited to eat the meat of the fowl and cattle he slaughtered.

56 Referring to the Chief Rabbi, Rabbi Yihya Yitzḥaq Halevi mentioned above.

57 Meaning excommunication.

58 That is, excommunication like him.

59 2230 *shtarot* = 5669 from the creation (1919).

date is 2242,⁶⁰ in the handwriting of the dhimmī Yihya Mūsā Yitzhaq and Yihya Sulaimān al-Qāfiḥ and Hārūn b. Sālim ha-Kohen.⁶¹

And a document [was presented],⁶² whose content is authorization of the dhimmī Sulaimān Ibrāhīm Mallāhī, to perform ritual slaughter and conduct marriages and arrange divorces, from the aforementioned rabbis. It is dated 2225,⁶³ prior to today's date by 17 years.

And a document [was presented],⁶⁴ to the dhimmī Sulaimān Mallāhī instructing him to include the dhimmīs Yihya Ġaraidī and Yosef Saīd Manṣūr as rabbis authorized for ritual slaughter, marriages, divorces, and judgeship. And as for the income from activities, half will be for the dhimmī Yihya Ġaraidī and the other half for the dhimmī Yosef Saīd Manṣūr and the dhimmī Sulaimān Ibrāhīm Mallāhī. And as for ritual slaughter in homes, the head of the household will select the ritual slaughterer he wishes. Its time preceding today's date – 12 years.⁶⁵

Another document,⁶⁶ from Sheikh 'Alī Muḥammad al-Naġġāmī, that contains an agreement between the dhimmī Yihya Ġaraidī and the dhimmī Sulaimān Mallāhī and the dhimmī Yosef Saīd Manṣūr, [that the three of them] will be sent to the rabbis of Ṣan'a', and it is dated the month of Rağab in the year 36,⁶⁷ and a reply from the dhimmī Yihya Yitzhaq, who approves of what was agreed among them, for the benefit of all of them.

After having read all of the documents, the dhimmī Mūsā Rai'ānī presented a document in Hebrew – in the handwriting of the dhimmī Yihya Saīd ha-Kohen – which was translated by the dhimmīs Sulaimān Ġaraidī and his brother Mūsā, stating that the dhimmī Mūsā al-Rai'ānī had presented himself to him and that he had been examined in the laws of ritual slaughter, and

60 2242 *shtarot* = 5691 from the creation (1931).

61 The latter two rabbis were members of the Religious Court and added their signatures to the order cited above, which was written by the Chief Rabbi.

62 That is, Rabbi Mallāhī presented another document.

63 Under discussion is authorization for ritual slaughter and recognition as a rabbi that was given to Rabbi Sulaimān Mallāhī from the three rabbis noted on the date cited 2225 *minyan shtarot* = 5674 from the Creation (1914). According to the text of the document cited above in section two, the date should be Tishri 2224 = 5773 from the Creation (September 1912).

64 That is, Rabbi Mallāhī presented an additional document.

65 Meaning 5679 (1919).

66 That is, Rabbi Mallāhī presented an additional document.

67 Referring to 5678 (1918). One may reasonably assume that this date is not erroneous because a Muslim would not err in indicating an Islamic date. This date is parallel to those in the abovementioned documents, and instead of 5679 the year 5678 (1918) should be written.

what is permitted in it and what is forbidden. And he had examined the knife and whetted it in his presence, and he had sensed a slight flaw. And he performed in his presence clean, proper ritual slaughter. And on the basis of this, he gave him authorization to slaughter cattle, sheep, and poultry, for himself and for others, and no one is able to protest against this. And he obliged him to repeatedly review the laws of ritual slaughter, as their prophets had commanded them. And its date preceded [today's] date by a year.⁶⁸

When the dhimmī Sulaimān Mallāhī heard this, he noted that the authorization written by the dhimmī ha-Kohen⁶⁹ confirms what he [Mallāhī] had done.⁷⁰ And that the custom and obligation is to not deal with ritual slaughter and other issues without authorization from Ṣan'ā'. And the dhimmī Mūsā denied this and argued that the practice was that it was sufficient to receive permission from an ordained rabbi and that's all.

This is the essence of the documents and the end of what they all submitted, and I shall base myself upon them.

After closely reviewing and studying I say, and the Lord is my guide, I ask him to guide me on the proper path.

As for the writing of the proclamation, the object of the dispute – which was translated by the person chosen to translate it – which was written by the dhimmī Sulaimān Ibrāhīm Mallāhī, the issue is clear. This is true also for the statements in it against the dhimmī Mūsā Sālim Rai'ānī, and what they make obligatory, whether its author has the authority to write it or not. And as for the prohibition levied against the dhimmī Mūsā Rai'ānī to not perform ritual slaughter or wedding, is this prohibition obligatory or not. And regarding what was argued concerning the orders he has in hand from Ṣan'ā', and what do they show us.

As for vilifying the dhimmī Mūsā Sālim Rai'ānī, and slandering him, and demeaning him from dealing with ritual slaughter and performing marriages, and the prohibition against his ritual slaughtering, and that whosoever would eat from his slaughtering would be just like him – all of this was done by the dhimmī Sulaimān Ibrāhīm Mallāhī. In reality, he does not have permission to do so, and he has no authorization to do so, not from Ṣan'ā' nor from anywhere else. And the order which states that only the permanent rabbis should be authorized while others should be barred, permits him to include only his name, but not to be the appointee to do so. And the document of agreement

68 The authorization for ritual slaughter had been given to Mūsā Rai'ānī by Rabbi Yihya Sa'īd ha-Kohen about a year before the noted litigation, meaning, 5690 (1930).

69 That is, Rabbi Yihya Sa'īd ha-Kohen, who had given the authorization to Mūsā Rai'ānī.

70 Meaning that the proclamation he had written was in accordance with the law.

between him and the dhimmī Yihya Ḡaraidī that was written in Ṣan‘ā’ is not helpful in this matter, if he has understood it.

Now, the petition to us requires that we adjudicate between them according to our religious law, and there is no need to discuss this according to what they rely on in their law. And we say that the dhimmī Sulaimān Ibrāhīm Mallāhī attacked and thwarted the dhimmī Mūsā Sālim Rai‘ānī, and he deserves punishment should he act again in a similar manner, or if he will not forgive the dhimmī Mūsā Rai‘ānī. And as for the obligation he has concerning the order from the Ṣan‘ā’ rabbis, he has no right to carry it out according to our religious law.

And as for the issue of ritual slaughter and all matters connected to it, there is no prohibition against the dhimmī Mūsā or anyone else to perform it, even if the dhimmīs, in principle, are not in agreement about its laws. Moreover, with the changing of times and generations, and from a lack of denial against them in it, whenever any one of them turns to ritual slaughter, then it is a question of what is permitted that is not prohibited, what can this be likened to, with the benefit to the performer of the act. Likewise conducting marriage in fulfilment of their conditions [will be valid], even only by the acknowledgement [of both parties], without needing recourse to an order from the rabbis of Ṣan‘ā’ and no others. And this does not mean to specify one of them for ritual slaughter and to prefer him over another, for permission or prohibition. For the Israelites have followed in the ways of their rabbis to consider fit and proper what they deem fit and proper and to prohibit what they prohibit, without acting in accordance to their religion law, and without considering its aptness, as the great Qur’ān has proven.

This is what I find necessary to register, and what the Lord has graced me to write, and God is my guide and we rely upon him, and there is no better than He upon whom we rely.

Addressed to the scholarly brother, the governor, the glory of Islam, the wazīr [minister] Muḥammad, and may honour and peace be on Muḥammad.

Written in the month of Ramaḍān in the year 1348.⁷¹

On the back of the document – written confirmation by the governor, ‘Abdallāh al-Wazīr

Number 1318

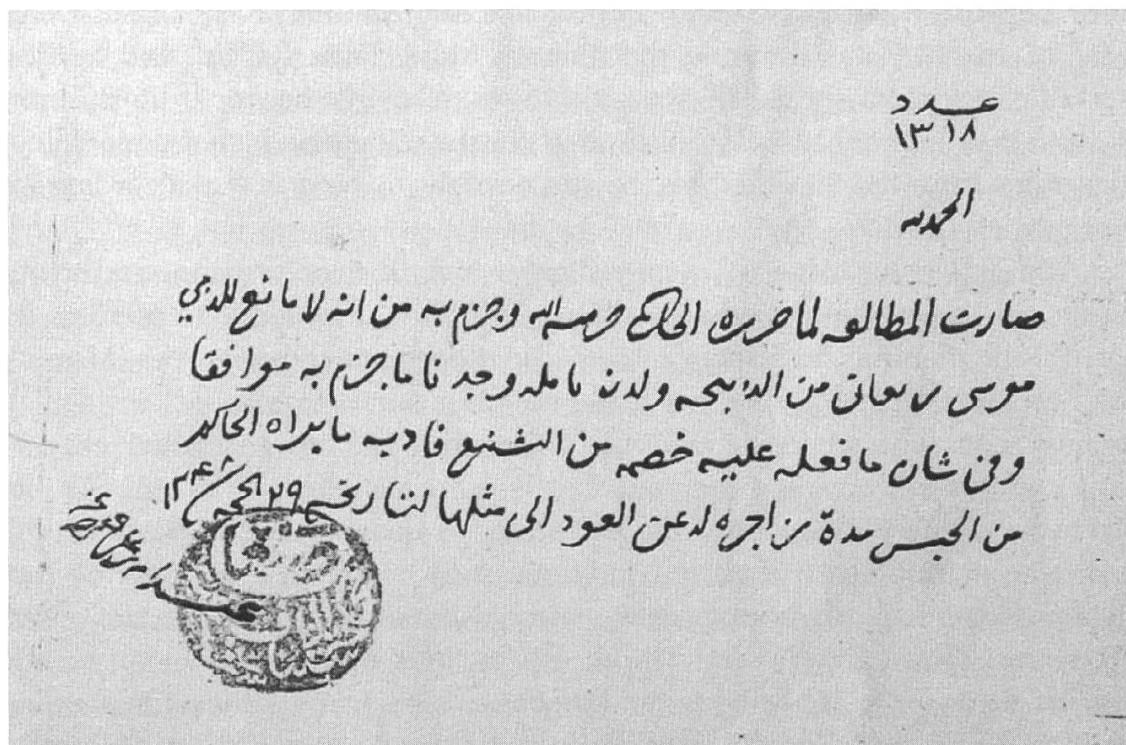
Praise be [to God]

We have read what the judge has written, may God protect him, rendering the decision that there is no prohibition against the dhimmī Mūsā Rai‘ānī from performing ritual slaughter. And after he has considered his matter, we have

71 Shevat 5690/February 1930.

found that what was decided is apt. And as for what his opponent did in vilifying him, his punishment is according to the purview of the judge in imprisoning him for a deterrent period so that he not repeat what he did.

On the date of 29 Dhū 'l-Higga 1348.⁷²



VI. Summary

The sequence of events informs us of the spiritual authorities in the two large Jewish communities of Ṣan‘ā’ and Dhamār as well as the authority of the Religious Court in Ṣan‘ā’ not only over the villages throughout Yemen but also over the large communities. This authority was expressed in the granting of certificates of ordination to deal with the religious matters of the community as well as to intervene in matters of the religious administration of the community. The turning to non-Jewish courts by one of the large communities teaches us that the Muslim qādīs also dealt with religious issues, although not decidedly specific ones such as the laws of marriage and divorce, in which they had no expertise; one can also see from this the reliability of the Muslim legal system as an authoritative body with power of enforcement. It further shows that even the large communities sometimes turned to the non-Jewish courts, although this phenomenon was more common in the villages.

72 30 Nissan 5690/28 April 1930.