

## **Codification of Agricultural Customary Law in Lahj**

This document contains the translation of the spate management practices in Wadi Tuban in Yemen. They were drawn up in 1950, when the Sultan of Lahj held sway in the area. Central to the management of the system was the Agricultural Council. Later the rules were changed and new local bodies came in place. Till today the Irrigation Council is active in Wadi Tuban. This document gives a detailed account of local water governance in spate system at the time and may be used to reflect on local institutional arrangements in other spate systems as well.

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AN ENACTMENT FOR THE AGRICULTURAL COUNCIL  
AND THE AGRICULTURAL COURT

### **SECTION ONE**

#### **A. The Composition**

1. The Agricultural Council shall consist of a chairman who is the Director of Agriculture, and a deputy chairman who is the Permanent Secretary of the Department of Agriculture, and seventeen members. The number of members may be increased up to twenty-five, who shall represent the landlords and cultivators. [The Council] may invite the Mashayikh al-A'bar (supervisors of channels) from the two wadis to attend meetings but their opinions shall be advisory in nature.
2. The Director of Agriculture shall submit to His Highness the Sultan a list of the names of those whom he nominates for the membership of the Agricultural Council, and H.H. the Sultan shall select from among them the required number. The Director of Agriculture shall then submit a [final] list of the members to H.H. the Sultan for assent.
3. The term of membership of the Council shall be for two years as from the date of appointment.

#### **B. The Functions of the Council**

1. Rationalization of the irrigation problems
2. Protection of the aqna (the right proportions of water established by custom for the irrigation of individual parcels of land), and the raddyi' (the sequence of allotting irrigation water to channels and parcels of land established by custom), and the allotting to each channel, barrage, sub-channel and 'marginal' channel, the amount of water to which it is entitled according to the established system (i.e. the custom).
3. Rationalizing [the rules of] ijdrah (tenancy) and sharak/shirk (share-cropping).
4. Distribution of lands among small, and large cultivators.
5. Division [of water] between the wadis.
6. Maintenance of channels and barrages.
7. Devising of a system for dealing with the irrigation of lands which are forced to pay furuq (contributions for the maintenance of channels) and masarih, (contributions for the building of barrages in the wadi) each year notwithstanding that they remain unwatered (as in the common proverb, 'he who pays is the laughing-stock of the man who has the right to water first'), because

when the [flood] water approaches them the channels have their barrages demolished [it thus being impossible to provide water to the marginal lands].

8. Regulation of maintenance charges on channels and wadis, and assigning a special fund for them.

9. Introduction of a special system for the irrigation of lands which must be Planted with sorghum of the ghirbah variety, and provision for their second watering so that the community may be guaranteed its bread.

10. Scrutiny of agricultural sales and purchases in which people follow the practices of customary law.

11. [To review] the penalties applied to offenders and transgressors.

12. The Council is responsible for issuing an annual report of its revenues and expenditure and the Director of Agriculture shall submit it to H.H. the Sultan, and then it shall be published for the information of the public.

13. The Council shall issue laws (by-laws) and put them into execution after obtaining the assent of H.H. the Sultan.

### **C. The Conduct of Transactions in the Council**

1. The Council shall be convened twice each month, and during the season [of irrigation] twice weekly, the days of convening the Council to be Monday at Thursday and perhaps more if need demand this [sic].

2. H.H. the Sultan may order the Council to be convened at any time he wishes

3. If a member fails to attend four consecutive sessions without permission or adequate excuse, such a member shall be regarded as having resigned and H.H. the Sultan shall appoint a member in his place.

4. The Chairman shall preside over the meetings, and the Permanent Secretary shall deputize for him in his absence. If both are absent a Chairman shall be elected for the Council from among those present.

5. All decisions of the Council shall be taken by simple majority vote but when the votes are equal the Chairman shall have a casting vote; and a quorum shall be considered to be established only when more than half the number of Council members are assembled.

## **SECTION TWO**

### **PART I**

Al-aqna' bi-'l-'iwad

(Compensatory Allotments of Irrigation Water)

1. (a) Lands which are irrigated by [the methods of] compensatory allotments, whether it be in accordance with practice (custom), or because [through usage] of three or four years, or on account of damage to the head of a channel which cannot be [immediately] made good or sudden damage during the [flood] season, these lands shall have full right to take off water, in which case those in the vicinity [i.e. having rights in the channel] of the channel shall not be permitted to withhold water from them. 'Iwad (compensation) is of two kinds: (i) compensation established by custom; (ii) compensation for the common interest.

(b) When compensatory allotment established by custom is applied, it shall be applied in accordance with custom and [the land] shall be irrigated from the compensating channel according to the customary practice.

(c) When compensatory allotment in the common interest is applied, such as in the case where a channel in the middle of the season is damaged beyond repair until the close of the season and where it is possible to compensate [the land it serves] from another channel, the water shall not be withheld from that other channel after the lands assigned to it in that season have been irrigated.

2. (a) Committees shall be formed to survey all the channels (counting the dimds), and shall enter the [water] rights of channels and sub-channels and so forth [sic] in individual records for each channel. After the completion of this task, [the records] shall be displayed in the Department of Agriculture for a period of one month for those who wish to comment and object. After this period, when decisions on the objections have been settled, each channel [with the rights pertaining to it] shall be registered in a special record, but the present sequence of rad'ah (priority or order of watering) shall be recognized.

(b) When the land has been surveyed (counting the dimds), the Sultanate shall announce that it has surveyed the lands and recorded the aqna' (allotments of water), and that whosoever has any objection or wishes inspection must present himself at the Department of Agriculture and submit his objection within a month from the date of the announcement. If no one objects [within that period], no later objection shall be entertained, except in the case of a person who was absent outside the boundary of the Sultanate of Lahj; but this shall not include his absence in Aden or in the territories within the Western Aden Protectorate. Announcement shall be made by tatrub (public proclamation by a man who carries a drum and shouts the announcement in towns, villages and farms).

3. Where ighaf/ijhaf (unfairness) takes place in the division [of water] between the wadis, the Council shall resolve it and undertake the task of the division [of the water] between the wadis.

4. When extensive major repairs to the channels are required, the Council shall dispatch someone to estimate what the repairs demand [by way of costs], and the individual contributions shall be allocated according to custom, which contributions shall be handed over to the Mashayikh al-a'bdr (supervisors of channels) and to two other persons appointed by the Council, in consultation with the holders of land attached to each channel, to supervise the expenditure and work, and to submit accounts of the same to the cashier of the Agricultural Council.

5. In the event of partial damage to the channels, the supervisors of channels shall be given an authorization, subject to joint supervision of the two persons selected, to call upon those whose land is attached to a channel (ahl al-ubar) to effect immediate repairs, but when the ra'iyah (cultivators) are unable to attend in time, and if there be an emergency, a supervisor of a channel may then spend up to one hundred rupees, which amount is chargeable to those who were unable to attend.

6. Channels are not to be blocked until their allotted share of water is completed, by which we mean [sic] the lands assigned to the cultivation of gkirbah (sorghum).

7. (a) Zahi (second watering) must be granted for the lands Planted with ghirbah (sorghum) but there shall not be more than one Zahwah (second watering). As for Saif (another variety of sorghum), it may not be watered a second time unless it is to stay until it forms head of grain.

(b) Any plot of land irrigated in order to grow ghirbah, although it has not been assigned for the cultivation of ghirbah, must not be given a second watering.

## **PART II**

### The Funds of the Council

1. The revenues of the Council [shall derive]:
  - (a) From furuq (i.e. contributions) and dues for the maintenance of channels and wadis.
  - (b) From punishments (fines).
  - (c) From grants, governmental or public.
2. Receipt vouchers must be issued to any person who pays any sum into funds of the Council.
3. A weekly statement shall be submitted to the [State] Treasury Department accounting for revenues, and the money shall be delivered weekly to the Treasury.
4. The financial procedure of the Agricultural Council shall follow the established procedure of the Treasury Department.
5. The Treasurer shall not be permitted to spend any funds (mal) without a transfer note signed by the chairman, or by his Deputy in the event of his absence.
6. The Chairman may order a sum of money to be spent in cases of emergency, without referring to the Council, provided that this sum be specified by the Council.
7. Two- accountants shall be appointed once every six months to audit the accounts of the agricultural funds. The two accountants shall not be members of the Council.
8. All members shall have the right to inspect the accounts and to audit them.

## **SECTION THREE**

### **THE AGRICULTURAL COURT**

#### **PART I**

#### The Composition of the Agricultural Court and its Jurisdiction

A. Organization of the Court, the cases, which come within its purview, and the law upon which its decisions shall rest

1. An Agricultural Court shall be formed in Lahj to hear those cases which the 'shariah Court considers-itself not competent to decide according to 'urf (custom), although the country continues to accept the regulation of its business according to custom.
2. The functioning of the Court shall be temporary in nature until the issue of a law resolving that the shariah Courts shall take account of 'urf in respect of agricultural questions; it being desired to preserve the unity of the courts and to recognize Islamic law as the sole law of the country.
3. The Agricultural Court shall consist of three persons. Regard will be paid in the appointment of them to knowledge of agriculture and experience in 'adah (practice) and 'urf (custom), as well as wisdom in handling affairs.
4. The decisions shall be by majority where unanimity of view cannot be reached by all three.
5. Decisions shall be in accordance with the articles of Part II, Part III, and Part IV in Section Three of this Enactment; and in the absence of provisions in the text of the aforementioned articles, decisions shall be in accordance with the prevailing 'urf (custom) and 'adah (practice).
6. This Court shall hear all agricultural cases mentioned in Article 1 [section 3A], it being laid down that its decisions shall be final whether or not the plaintiff asks for a decision, provided that the

decision of the Court does not exceed twenty days of imprisonment, or a fine of more than two hundred rupees. As for decisions, which exceed this, they shall be regarded as provisional and open to appeal.

## **B. Procedure for - Filling a Case**

7. The plaintiff shall submit his plaint to the appropriate Clerk of the Court in duplicate, and the Clerk shall, after consultation with the President of the Court and with the concurrence of the plaintiff, appoint a date for the hearing of the case; taking into consideration [that hearing shall take place] after the shortest possible interval.

8. The Clerk of the Court concerned shall be responsible for informing the defendant, through the intermediary of the staff of the Department, of the plaint. And he shall require the defendant to sign the original copy of the plaint and he shall be given the other copy of the plaint, and the representative of the Department who delivers the plaint to the defendant shall return the original to the Court at least twenty-four hours before the session appointed.

9. The Clerk concerned shall thereupon enter the case in the Register of Agricultural Cases, wherein he shall register the names of the plaintiff and the defendant, their places of residence, their professions, the subject of the case, the date of submission of the case and the fees paid.

10. The plaintiff at the time of submitting his plaint shall be required to pay a specified fee, and a receipt in duplicate shall be issued to him, one copy of which shall be attached to the plaint and another shall remain in his possession. The receipt shall have recorded on it the amount of the fee, the name of the payer, the subject of the plaint and the date of payment. This receipt shall be considered a document in the hands of the plaintiff and a proof that his plaint has been submitted on the date specified.

11. The plaint shall be heard on the date specified and regard shall be paid to giving speedy decisions on agricultural disputes particularly during the agricultural seasons.

## **C. Higher Appeal in Agricultural Cases**

12. Cases where the plaintiff does not specify his claim, and cases where the judgment claimed or actually given exceeds twenty days imprisonment or two hundred rupees fine, shall be open to higher appeal either on the part of the plaintiff or of the defendant.

13. Higher appeal shall affect by a signed petition submitted to the legal advisor to H.H. the Sultan, in which the occasion for the appeal, the previous decision with its date, and the grounds upon which the demand for the reversal of a judgment is based, must be stated.

14. The petition for the appeal shall be presented to the clerk concerned in the Agricultural Court, who shall register it. A copy of the petition shall be sent to the defendant in the appeal, in order that he may state his rebuttal, provided that it be sent on the second day after the submission of the appeal, and it shall be demanded of him that he make the rebuttal within a period of three days from the date of his-receiving the copy of the petition. The clerk concerned shall then present the petition and the rebuttal together with the original (particulars) of the case to legal advisor.

15. The legal advisor shall refer the [appeal] case to the two agricultural experts who shall be appointed to examine appeal cases, whose judgment, if they concur, shall be final, and they shall then present it to the legal advisor for endorsement. In the event of their disagreement, the legal advisor shall himself examine the case and shall add his weight to the opinion of one of the two parties [i.e. one of the experts].

16. When the decision is given back by [the Court] of Higher Appeal, confirming, quashing or amending [the decision first given], the appeal judgment shall become final and binding upon the staff of the Department who must execute it immediately without delay or further reference.
17. [Appeal] judgments shall be entered in a register special to that purpose.

## **PART II**

### **CONCERNING AGRICULTURAL TRANSACTIONS**

1. In agricultural transactions such as ([dealing] in dhurah cane, water melon and the like), the settling of disputes [arising in such circumstances between vendor and purchaser] shall be the concern of the Agricultural Court.
2. As frequently there is disagreement between vendor and purchaser concerning the purchaser's failure to make payment of what he owes on the pretext of loss [on the part of the purchaser], hatat (depreciation in price) shall be estimated in principle at the rate of five per cent; if however the Court is satisfied as to the loss sustained by the purchaser, hatat at the rate of ten per cent [may be imposed by the Court], but the vendor shall not be compelled to agree to a hatat greater than that without his own consent.

## **PART III**

### **LEASE OF LAND**

1. (a) The lease of land shall be for a term of not less than five years.
- (b) A tenant shall not be evicted from his land during this period except when he shows shortcomings or neglects or misuses the land. Shortcoming shall mean the non-payment of the rent and furuq (contributions) for channels. Neglect shall mean indifference to the maintenance of the land, lack of care for it, and failure to protect the bunds (the boundary of the land). As for misuse of the land, it shall consist, for example, of theft and allowing access to the land, for his flock of sheep and goats (bawsh), and it shall include loss of water rights and rada'ah (order in sequence of watering), in which case however [i.e. in the case of eviction] the tenant shall be entitled to the equivalent of whatever amount of work he put into the land.
- (c) If the landlord renews the lease of the land for the tenant, the period of five years shall apply [i.e. the period stipulated by the enactment].
- (d) If the tenant, in the middle of the agricultural year, returns the land to the landlord in a state of disrepair, the landlord shall have the right to raise a corn-plaint and claim suitable compensation.
- (e) Land leased under share-cropping contract shall be subject to the same [law] as lease holdings. As for barayit (land which, though owned or assumed to have an owner, remains uncultivated) which in the course of time becomes suitable for cultivation and turns into perfectly good land, all transactions in respect of it shall be by agreement with the tenant, and after the termination of the period (of lease) the landlord shall retain the right to dispose of his property [i.e. to lease it] to the same tenant or to another.
- (f) If a tenant does more work [by way of improvement to the land] than is required by the terms of the taqrir (a kind of contract) for the benefit of the land, such as tanzul (the leveling of land and channels) or additional repair, which shall be by a written authorization from the landlord, in such event, if the term [of lease] comes to an end, the landlord shall be obliged either to renew the lease of the land to him or to refund him his expenses in return for his outgoings.

## **PART IV**

### **PENALTIES**

#### **A. Flood Penalties ('uqubat al-sail)**

1. (a) A person who intentionally draws off water for the second time shall pay a fine of forty rupees for each dimd (acre of land) [which he irrigated in this manner] and shall be sentenced to ten days' imprisonment or pay one hundred rupees in lieu of imprisonment.

(b) A person who for the second time unintentionally draws off water by neglecting to dose the afqar (cuts in the bund of the land) and to reconstruct his bunds and so forth [sic] shall pay on each dimd a fine amounting to twenty rupees.

2. (a) Any person proved to have transgressed by breaking down a lug'ah (small barrage), a ma'qam (large barrage), or a sa'id (a bank of a channel) in such a way as to deprive an entitled person of his share of water, becomes liable to a fine payable to the government, ranging between fifty and one hundred rupees, according to the gravity of the offence, or in the event of failure to pay the fine he shall be sentenced to a term of imprisonment ranging between ten and twenty days. [In addition] he shall pay to the injured party the equivalent of the crop and shall reconstruct for him the barrage or bank in respect of which he committed the offence. If, in that event, the land, which he caused to be deprived of water, was nevertheless watered, its crop shall be estimated and the aggressor shall pay the difference [i.e. shall be liable for the equivalent of the crop of the land which was lost because of the decrease in the volume of water caused by the offender's action].

(b) Any person proved to have transgressed by breaking down a bank of a channel, a barrage, or tearing down the head of a channel or cutting an outlet in it, shall be liable for payment of the equivalent of the crops of the land which could have been irrigated but for his transgression. [In addition] he shall pay to the government a fine of ten rupees on each dimd, or be sentenced to an imprisonment for a period ranging from two months to three years. On the occurrence of such an event, however, H.H. the Sultan shall select four other men as arbitrators, who shall be commissioned to judge the case together with the three judges of the Agricultural Court.

(c) Any person proved to have transgressed against a fanhah (plot of land) holding water is liable to make good any decrease in its yield of crop. [In addition] he shall pay the government a fine of fifty rupees on each dimd, or, in the event of failure to pay the fine; he shall be sentenced to two months' imprisonment.

3. (a) Every Shaikh 'Ubar (supervisor of a main channel), saqiyah (sub-channel) or mash'abah (barrage), in whose area of responsibility the authorized watering has been completed, and who has been ordered to seal [openings in the channels] for any reason and does not execute the order at the appointed time, thus causing by his neglect unauthorized plots of land to receive water during that season, though they were not entitled to such water, shall be liable to a fine of ten rupees on each dimd so watered. If he repeats such an act, he shall be punished by fine and imprisonment for a period of two months and shall be dismissed from employment.

(b) Every supervisor of a channel or barrage, who does not maintain strict honesty in the division of water and the protection of the people's entitlements, and if such entitlement is lost as a result of neglect or carelessness in the performance of his duty, shall be liable to a fine of ten rupees on each dimd. If he repeats this act, he shall be liable to a fine of ten rupees on each dimd, and shall be sentenced to two months' imprisonment or be dismissed from his employment. If however it is

proved that he intended to deprive people of their rights in the division of water, he is liable to the aforementioned fine and dismissal from employment.

4. In the event of dividing water between two sub-channels, whether in equal quantities or in thirds, or in some other [proportion], if it is found that one of the two sides took water in excess of its share, and if such excess is the result of an intentional transgression and refusal to obey the instruction of the supervisor of the channel to give to each person entitled his share, or if [it is considered to be] overriding government regulations, the transgressor shall be liable to return the equivalent of the yield of the crop in proportion to the [water] taken in excess of what was authorized to him. [In addition] he shall pay the government a fine of twenty rupees on each dimd in excess of those to which water was allotted; or if he fails to pay he shall be sentenced to one month's imprisonment.

5. In the case of any tenant who has not paid his stipulated farq (contribution for the repair and maintenance of channels) at the appointed time, after the government's announcement, his landlord shall pay on his behalf and shall be entitled to hold the sum paid as a debt against him (the tenant) or alternatively he shall take back the land.

## **B. Ghail (Spring) Water Penalties**

1. Any person proved to have obstructed the flow of ghail water by the construction of a mash'abah (medium size barrage), or erection of a lug'ah (small barrage), so that a piece of land not entitled to this water was irrigated, is liable to pay the equivalent of the crop of that land. [In addition] he shall pay a fine of one hundred rupees, or he shall be sentenced to one month's imprisonment. This shall apply where the transgressor is the landlord or the tenant of the land. If the transgressor is a laborer or a person whose action was by way of a favor to the tenant or the landlord, or if he is a person incited by either of these two, and if his inability to pay [the fine] is proven, the Court shall sentence him to a period of imprisonment as a deterrent to him and those like him; in which case the instigator, if incitement be proven against him, shall share in the penalty. Furthermore if the transgressor has irrigated a plot of land in the aforesaid manner and the water overflowed onto other plots of land, themselves not entitled to a share in the water and belonging to other persons, the purpose being to implicate them [the owners or tenants of these plots of land] in the transgression, or in order to mislead, and if that is proven against him and the innocence of the others proved, he shall become responsible for payment to the government the equivalent of the crop of all the plots of land which were so irrigated, whether they are his own or rented to him [as a tenant], or belonging to other persons. If the transgressor in this case is a poor tenant and is unable to pay this fine, he shall be liable to a sentence of imprisonment ranging from one month to six months.

2. Whosoever is proved to have pulled down a bank of a channel, or sub-channel, and to have caused ghail water to run into another channel, so that plots of land not entitled to water are irrigated, shall, as a transgressor, pay the equivalent of the produce of those plots of land whether they are his own property or rented to him [as a tenant]. Moreover he shall be responsible for repairing any damage he has caused, [in addition] to a fine of one hundred rupees along with fifteen days' imprisonment, or alternatively [a fine] of one hundred and fifty rupees in lieu of imprisonment. If, however, the transgressor is poor and unable to pay the fine, the provision in the previous article [i.e. (1) above] shall be applied in his case.

3. If the Agricultural Council orders that ghail water be directed to particular plots of land, and if there be a lug'ab (small barrage), or a ma'qam (large barrage), the removal of which is deemed

necessary for the passage of water to those plots of land, and in such a case if the owner or tenant of the lug'ah or ma'qam refuses to execute the order, the government shall be entitled to pull down the lug'ab or ma'qam etc.

#### **M A L H U Z A H (ADDENDUM)**

By transgressor is meant the person or persons who committed the transgression. As for the instigator, he shall be considered a transgressor if he has a direct material interest in committing the offence, and he shall share with the transgressor the responsibility and suffer the penalty. If however the instigator has no direct material interest, the court shall decide how he shall be admonished.