6.2 Trees and nature in the Shari’a (Quran and Hadith).

Quran and hadith have been systematically screened for any hint on forests and environment. It is easy to understand that there are no verses of direct use in forestry, as: Each tree you plant brings you one step nearer to paradise. Trees have not been of much concern that time and the quran is a metaphysical concept, not a forestry law. But, it is a general guideline on how to see the world and how to organise life on it.

Trees and Wood.

The following Quranic verses mention trees:


Verses marked with (1) concern the tree in paradise, (2) are parables, as 24:36 the light producing, allegorical olive tree in "the niche of the light", (3) the tree maria has to bend to get the dates, (4) Trees as god's creation or cut by his order (as 59:6 or 66:71:

"Did you regard the fire you lit? Is it you that created the tree for it, or are we the creator?"

(5) is about the dreadful, hellish tree saqum. As an example see 56:71:

Verses mentioning wood and wood products:


Verses marked with (1) comment on the staff of Moses, that turns into a snake when thrown on the floor. (2) are those on the ark of Noa, the wooden box of Moses or boats, (3) mentions a door, (4) again the tree saqum and (5) the carrying of (or being) fuelwood for the hellfire.

The heavenly paradise and paradise on earth: water, gardens, fruits.


Paradise (spineless lotus: Ziziphus) as 2:34 or comparing the thornless lotus (Ziziphus) of heaven with the throny one of earth and hell as in 34:17. Mostly trees are metikonend in combination with rain and water:

2:23, 6:100/142, 7:58, 10:26

Submission of the earth and the heavens in man's favour:

14.37: "God it is who created the heavens and the earth; and sent down from the sky water, and brought forth therewith fruits as a provision for you; and subjected to you the ships, to float therein upon the sea at His bidding; and subjected for you the rivers; and subjected for you the sun and the moon, constant both; and subjected for you the night and the day; and brought you of everything ye asked Him: but if ye try to number God's favours, ye cannot count them; - verily, man is very unjust and ungrateful."


While from above quoted verse the priority of mankind, the dominance of man over the earth, in short the homocentrical view, is absolutely clear, the following two groups of quotes make it clear as well that man has also the responsibility to keep and maintain the established order:

**Balance and equality:**

15:20: "And the earth we have stretched out and have thrown on it firm mountains, and have caused to grow upon it of every thing a measured quantity. And we have made for your means of livelihood therein, and for those for whom ye have not to provide."

15:21, 41:11

53:39: "... that no burdened soul shall bear the burden of another? and that man shall have only that for which he strives; and that his striving shall at length be seen?"

55:2-9: "The merciful taught the Qur'an; he created man, taught him plain speech. The sun and the moon have their appointed time; the herbs and the trees adore; and the heavens, he raised them and set the balance, that ye should not be outrageous in the balance; But weigh ye aright, and stint not the balance. And the earth he has set it for living creatures; therein are fruits and palms, with sheaths; and grain with chaff and frequent shoots; then which of your Lord's bounties will ye twain deny?"

**Diversity:**
16.14: "And what he has produced for you in the earth varying in hue, verily, in that its a sign for a people who are mindful."

20:56, 35:26, 50:8,

The last group shows, that God has created everything but that the actions of men count, that they have to demonstrate their intentions actively:

**Care for the balance: action**

The following verse clearly shows that action, care is reque sted to maintain the beauty and multitude of creation on earth:

18.6: "Verily, we have made what is on the earth an ornament thereof, to try them, which of them is best in works, but, verily, we are going to make what is thereon bare soil."

19.25-26: "Grieve not, for thy lord has placed a stream beneath thy feet; and shake towards thee the trunk of the palm tree, it will drop upon thee fresh dates fit to gather;"

The search in the enormous documentation of hadith that Bukhari had established did not produce much clearer insight into the relation of mankind to nature. Only two quotes could be found with some relation to the subject, one on the unpredictable occurrence of rain (god's gift), the other on the protection of the "haram".

1. selon Ibn-'Omar, le Prophete a dit:

"Il-y-a cinq choses dont la clé du secret n'est connue que de Dieu seul: Personne ne sait ce qui aura lieu demain; nul ne saura jamais d'avance ce qui est dans les matrices; personne ne saura ce qu'il fera demain; aucun être ne sait dans quel pays il mourra; enfin, nul ne sait quand la pluie viendra."

"On ne doit pas couper les arbres du territoire sacré."

The most impressive hadith has been reported by al Bayhaqi:

"When doomsday comes if someone has a palm shoot in his hand he should plant it."

It is intensely used for extension in Tunisia. In fact it is is quite astonishing that in this situation, the end of the world, someone is asked to care for plants!

**6.3 Islam - Social Organisation - Politics: Centralisme versus Federalism**

Islamic tradition and law, as well as islamic science, focus on the improvement of the situation for the whole community. Common wellfare is more important than individual wishes. As § 10 of the guidelines on environmental protection claim, the most important duty of the rulers is, to improve the situation of the community and of individuals. In
spite of the quranic verse 53:39, establishing equality between all muslim, the go
ervernment of Saudi Arabia has a much more dictatorial approach than the government of
Yemen. On reason might be the different attitudes of shia and sunna towards "unjust"
governments. The shafi i school (schia) permits violent disposal of an unjust or
unqualified chief, the sunni schools order the submission under any chief as a god given
examination. A good reason why a ruler in Yemen has to be much more sensitive to
about the acceptance of his orders. Especially as the violent disposal of the old imam by
the new one was a compulsory tradition!

What concerns the qualities of leaders after el Mawerdy (1058) ) there are physical
requirements, they have to be able to see, hear and speak (remember the sheikhs!). There
are moral requirements: They have to be just, wise, valiant and courageous for the
protection of islamic lands. And there are intellectual requirements: They have to master
the sciences sufficiently to be able to interpret shari'a, to practice ijtihad. Ibn Taimiya
(1328) ads competence and loyalty to those requirements. Competence (qawa) as
combining technical mastering with moral force. Loyalty consists after him in the
defence of public functions against personal whims and those of the family. Kalif Omar
reminded his son: "Every man invested with authority over the muslim who assigns
functionaries for friendship or familiar relations is cheating god, his prophet and the
muslim."

Now what concerns the guiding regulations and administration of water, range and
forests, the basic sentence is the common right on common use:

"People share three things: water, pasture and fire." )

In the desert areas access to drinking water is an undeniable human right. Under slightly
better conditions as well the right on access to water for the ablutions. Water rights in
matters of irrigation are guided by two principles:

a) Priority: the higher fields are first irrigated

b) Equality: nobody should profit at the expense of others, surplus water has to be
distributed.

c) Moderation: Ankle deep flooding is in most cases considered as sufficient irrigation.

The legal opinions do not differ much on the issue as such, but on the assignment of
responsibility: Who is in charge to apply the rules. While Ba Kader bases his
interpretation on experience and situation in Saudi Arabia and puts the power into the
hands of the government, Zabara in Yemen knows that the government is not able to
manage the large areas by itself, that it needs to put the responsibility into the hands of
different smaller scale organisations that are either present on the spot, have the technical
knowledge and/or the power to convince the users.
6.3.1 Ba Kader ) Legislative Rules of Islamic Law wich Govern all Procedures and Measures for the Protection and Conser vation of the Environment.

1. Protection, conservation and development of the environment and natural resources is a mandatory religious duty to which every Muslim should be comitted ..... 

2. Religious awareness and guidance in this field is necessary so that each individual may take part in the protection and development of the environment and natural resources. ... 

3. Religious awareness and islamic guidance includes a call to all individuals, at all levels and by all possible means, to commit themselves to Islamic morals and manners in dealing with nature, the environment and the natural resurces for their sustainable use and development. ... 

4. Ownership of all environmental elements is the common and shared right of all members of the Islamic community. ... 

5. Islamic law stipulates the interference of the ruling autho rities for the good and interest of all people and to eli minate common mischief and corruption. ..."The leader's actions are determined and dictated by the comon good." ... 

6. The interest of the nation and the community should be pre ferred to the interest of individuals in the case of con flict. ... 

7. ... Preference and priority should be given to fundamental interest if these conflict with needed interests or luxury interests. ... 

8. ... Priority should be given to actual or urgent interests ... 

9. ... Avoidance of mischief should be given preference and should come before the achievement of interests", ... 

10. The primary duty of the ruler and his assistants, whether they are administrative, municipal or judicial authorities, is to do their best to realize the interest of individuals for the betterment of life and society as a whole." ... 

11. The state has the right to take all measures and actions to avoid, prevent or minimize damage before it occurs ... 

- The State has the right to forbid any action ... that may lead to or result in damage or mischief. No one is entitled to stop or even spoil the community's sustainable use of any of the basic elements of resources of the environment." 

- The State has the right to limit the scope of action, its place, time and kind and quality ...
- The State has the right to impose certain measures or technical standards to prevent the occurrence of damage ...

12. The State has the right to take all necessary measures and actions associated with elimination of actual damage, repair of its effects and provision of indemnity for it ...

- The State, for instance, has the right to hold individuals, organisations, establishments and companies responsible for the elimination and removal of damage resulting from their activities, enterprises and or projects which are needed for the welfare of the whole community ......

- The State has the right to impose moratoria on certain projects or enterprises if it realizes that such objects or enterprises will lead to, or result in, real damage to the environment that is in excess of the benefits thereof. ...  

- The State has the right to hold individuals, organisations, establishments and companies responsible for the cost of eliminating the damage ...

- The State has the right to claim damages or indemnity from individuals, organisations, establishments and companies for avoidable damage to the physical or natural environment, resulting from unlawful activities which cannot be eliminated or recovered.

- The State has the right to censure or blame individuals, other owners of organisations and establishments or their designees, should they infringe or violate the terms of license, charters, permits or contracts in intentionally or deliberately or through evident negligence or violation of the general policies and instructions set forth by the State for the conservation of the natural environment, its element and its resources.

**6.3.2 Zabara**

here Fatwa. 1,2 und 3 -zab

Q1: Is it the duty of mosque's preachers to raise public awareness and make them familiar with the importance of tree conservation?

A1: In the name of God.

Tree conservation is the duty of the government, scientists, preachers and all classes of people, because the tree is of God creation, so he entrusted us with its conservation. It is of great use to moisture and one of rains causes and living necessities. The government celebrates the Tree week every year at the beginning of spring and on this occasion many fruitful and fruitless plants are brought and this contributed to the spreading of trees planting. The senior persons in charge take part in tree week for planting of trees.

Mufti of Yemen Republic
Q2: There is a sacred tradition (by the Prophet Mohamad) Peace be upon him, namely, "you (muslims, authors rem.) should participate in three things: Water, Fire ("fire-wood". transl.) and Forage."

Does this tradition mean that Bura’ Mountain Forest, which is considered as endowment ("waqf", the transl.) land, should be treated as dedicated land and common property to all people and the government or any other authority has no right to protect the forest or supervise the process of fire-wood and tree cutting from the forest?

A2: In the name of God

People should participate in the common forage which is not owned or due to particular persons. The mortmained estate of Bura' Mountain Forest should be subject to the provisions of the endower ("waqf creator". transl.). Its protection is necessary and must be preserved by the guardians ("mutawalleen") and with government help. Its trees mustn't be cut at random manner, because this forest is of Yemeni glorious heritage. It is the task of government and persons in charge to prevent its extinction by stopping trees cutting so that its benefit to continue for the coming generation. ...

Q3: Hundreds years ago the Bajli Family endowed a land of vast area at Bura' and it is now a natural forest known at present as Bura' Mountain Forest. It is the most important forest on the Arabian Peninsula and the last one that remains of Arabia Felix forests.

As a result of endowment document stipulation that all persons have the right to obtain their livelihood from the forest, it is now exposed to the process of fire-wood and trees cutting at random way and the forest may disappear if this process continues.

Then, is it the right of the Ministry of Agriculture,

represented by the Directorate General of Forests, to work for protecting the forest and regulating this cutting process? Let us know, please!

What is the Islamic Law point of view if the Ministry of Agriculture protects the rare trees from the extinction operation, bearing in mind that these trees don't exist in the whole world except in Bura' Mountain?

A3: In the name of God
The Ministry of Agriculture should help the special guardian from Bajili Hous in protecting the forest from extinction particularly it contains trees not exist in the whole world, therefore, such trees must be preserved and developed. ....

Q4: If the Ministry of Agriculture makes Bura' Forest a national park and becomes of economic return, what is the proportion of this return that will be given to Bajli family, bearing in mind that there is an office (diwan) in endowment (waqf) name and the endowment document (waqfiyah) doesn't refer to the percentage to be paid by the beneficiary of the endowments?

A4: In the name of God

If the forest becomes a public national park with economic return, the Bajli Family will have a tithe (one tenth) or a quarter of tithe or as the competent persons decide.

Q5: Scientifically speaking, there are some privately owned rare trees belonging to some tribes who don't know their scientific value and important rarity. Now, has the government the right to protect these trees and how the process of protection will be done according to Islamic point of view?

A5: In the name of God

The government should guide the owners of rare trees to preserve, make them familiar with their value and assist them in conserving such trees.

Q6: There is a forest which is owned by some tribe. Has this proprietor tribe to protect the forest from fire-wood and tree cutting that is done by some persons and groups of other tribes were in the past and even now are cutting fire-wood and trees from this Forest?

Is it rightful for this tribe, the forest owner, to oblige such groups and tribes planting and afforesting the forest in return for their continued fire-wood and cutting from the forest? What the Islamic Law view point concerning this point?

A6: In the name of God

The tribe who owns the forest may oblige such groups and tribes to plant and afforest the forest in return for their continued fire-wood and cutting from the forest. A new planting must be done in return for cutting from the forest.

Mufti of the Republic of Yemen

(signature and stamp)
Summary: The users have to take care, the government has to guide and assist in protection. It as the tribes have the right and duty to limit excessive use. The scientists have to deliver necessary information and the preachers have to inform the people and to keep a watchful eye on God's creation.

Comments:

Zabara (Z1) as well as Ba Kader (BK1-BK3) put at the top the obligation for every muslim to participate actively in conservation. Ba Kader grounds this obligation in the commitment towards islamic morals and manners. Environmental protection can clearly be baased on Religious awareness and islamic guidance.

BK4 just quotes the fact of common ownership while Z2 confirms that for waqf property there is a priority of the will formula ted in the endowment, but that the forest should be protected by common efforts, in favour of future generations, with governmental assistance! - Not under governmental pressure! To oblige the population is the right and duty of the local leadership Z6, as the central government is mainly concerned with itself and lacks the lustre of "being determined by the common good" (BK5). Government should assist not ordain. This quest from Z2 is repeated in Z3 and Z5.

The idea of responsibility (Z2) for future generations is related to the ideas of prevention and responsibility for actions, formulated in rule BK9, BK11 and BK12. In both cases the priority of the common over the individual good is clear (BK5, BK6, BK10), but the ways to reach it are different. Ba Kader, starting with individual, personal duty, can and does assign the right for regulatory measures and actions to the government. His terms are (BK12) "forbid, limit, impose". Zabara, for the case of Yemen, calls for the government to raise the awareness and to assist the population! His terms are (Z2, Z3, Z5) "help, assist, guide". Where obligation comes in it has to be done through the local social leadership (Z6).

6.3.3 Water Laws


Ministry of Agriculture: Draft Water and Irrigation Law. 1992

Both proposals, both most probably based on World Bank or other assistance, are technically sound documents - but both do to tally lack applicability under Yemeni conditions. Countrywide technical measurements of water use, well depth, water quality and the like are just not feasible. The situation is the same as for the meteorological stations. Moreover is the assumption of the High Water Council, that water is a common good (state property, Art (3)), very much based on quranic truth - but not on reality. The approach of the Ministry of Agriculture, assuming that the owner of the land owns the water is not really islamic, but realistic. Moreover it contains certain restrictions in favour of the community, especially that "Use of water for drinking purposes of humans
and animals has the priority over any other uses from each of the water resources." (Art 6) and "dispensing with water as a commercial commodity is strictly prohibited. (Art. 8)),

The main problem is the competition between institutions. Both want the "responsibility" and "authority", especially as it embraces financial planning and credits, permits and licenses, studies and projects, expropriations - short jobs and money!

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