Law, Religion and the Environment in Africa

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9 AN ISLAMIC LEGAL FRAMEWORK FOR THE PROTECTION OF THE ENVIRONMENT

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INTRODUCTION

Cape Town, of which I am a resident, recently experienced one of its worst droughts in decades.² This resulted in severe water restrictions, which saw many people standing in long queues at natural water springs to fill up on water supplies and residents trying their best to save water, by whatever means available to them. The Muslim community of Cape Town joined both of these initiatives. The local imams (Muslim clerics) prayed for rain at their mosques³ and preached from their *minbars* (pulpits) about water conservation by encouraging their congregational members to adopt water-saving measures.⁴ As water plays a vital role in mandatory ritual ablution in Islam,⁵ different imams issued *fatwas*⁶ on alternatives to using water⁷ or excessive water in ritual ablutions.⁸ It was fascinating to observe how a community who generally did not give much priority to the protection and preservation of the environment, out of necessity was now actively advocating for more ecofriendly behaviour from its members towards water as a resource. It occurred to me that we had a dearth of trained *fuqaha* (specialists in Islamic law) and *ulama* (jurists) who were trained in disciplines related to the environmental sciences and who could provide the Muslim community with comprehensive Islamic law rulings pertaining

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 - 2 "Worst Drought in Decades", *Eyewitness News*. Online at: <https://ewn.co.za/Topic/Worst-drought-in-decades>; GroundUpStaff. 2018. "Facts and Myths about Cape Town's Water Crisis", GroundUp, 18 January.
 - 3 Prayers for rain (*salat al-istisqa*) is a ritual prayer utilised by Muslim communities in times of drought.
 - 4 Petersen T. 2018. "Muslims Urged to Use as Little Water as Possible for Ablutions before Prayer", *News24*, 29 January.
 - 5 Muslims are required to pray five times a day and are obliged to be in a state of ritual purity. Before the ritual prayer a Muslim is required to engage in an act of ablution or ritual cleansing with water (*wudu*). Water is considered a main source of purity and life.
 - 6 A *fatwa* is a non-binding legal ruling issued by a qualified Islamic authority usually in response to a specific query. *Fatwas*, or *fatawa*, are plural forms of *fatwa*.
 - 7 According to some imams, Muslims could resort to *tayammum* (dry ablution) for mandatory ablution because of the water crisis. The dry ritual ablution is performed by rubbing one's hands on clean earth and wiping the face and arms. It is a legal dispensation in the event of no water being available for the ritual ablution.
 - 8 Petersen, "Muslims Urged to Use as Little Water as Possible".

to the preservation and protection of the environment and its natural resources.⁹ Some scholars, such as Tariq Ramadan, have criticised religious authorities, namely, *ulama* and *fuqaha*, for their lack of engagement and contribution to the ecological discourse.¹⁰

This dearth in scholarly engagement and contribution is not mirrored in other areas of Islamic law. For instance, there is an extensive literature and many legal theses written on other areas of Islamic law. Substantive Islamic law (*fiqh*)¹¹ is divided into the *fiqh* of *'ibadat* (laws pertaining to worship) and a *fiqh* of *mu'amalat* (laws pertaining to human relations). Both classical jurists and contemporary scholars have written extensively on the laws of worship, including extensive *fiqh* manuals pertaining to laws on ritual ablution, obligatory prayers, fasting, charity and pilgrimage, many of which have been translated into English.¹² Similarly, in the area of *fiqh* of *mu'amalat*, much has been written on the laws of marriage, divorce, inheritance, contracts, property, commercial transactions and other issues, but when it comes to substantive positive laws and rulings on the protection of the environment, Islamic scholars have not produced prolific legal theses or manuals.¹³ Although Islamic environmental activism has been on the rise in the past few

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- 9 Ali Ahmad claims that the lack of awareness of the Islamic discourse on the environment is problematic in redressing environmental damage in Muslim communities. He correctly states that apart from a few Muslim intellectuals, the majority of people including the Islamic jurists (the *ulama*), are not attentive about relating the basic issues in environmental problems to Islam. Ali A. 2005. "Nigeria", in Foltz RC (ed). *Environmentalism in the Muslim World*. New York: Nova Science, 79.
 - 10 Ramadan T. 2009. *Radical Reform, Islamic Ethics and Liberation*. New York: Oxford University Press, 233-258 [<https://doi.org/10.1093/acprof:oso/9780195331714.003.0015>]. This criticism has been echoed by other scholars too. See the discussion on "Absent Voices: Where are the Scholars?", in Schwencke AM. 2012. *Globalized Eco-Islam: A Survey of Global Islamic Environmentalism*. Leiden: Leiden Institute for Religious Studies, Leiden University, 57.
 - 11 The literal translation for *fiqh* is "understanding", but legally it refers to the substantive body of legal rulings that classical jurists derived from the primary and secondary sources after a process of *ijtihad* (legal reasoning).
 - 12 The literature on these areas of law is prolific and too extensive to list, but see, for instance, the comprehensive *fiqh* manual of Ibn Rushd MA. 1996. *The Distinguished Jurist's Primer*, vols I and II [12th century]. Nyazee IAK (transl.). Reading: Garnet; or Al-Jazari A. (2009). *Islamic Jurisprudence According to the Four Sunni Schools – Vol. 1: Modes of Islamic Worship*. Roberts N (transl.). Louisville, KY: Fons Vitae.
 - 13 Some of the limited works on substantive Islamic environmental laws include: Llewellyn OA. 2003. "The Basis for a Discipline of Islamic Environmental Law", in Foltz RC, Denny FM and Baharuddin A (eds). *Islam and Ecology: A Bestowed Trust*. Cambridge, MA: Centre for World Religions, Harvard Divinity School, 185-247; Izzi Dien M. 2000. *The Environmental Dimensions of Islam*. Cambridge: Lutherworth. Renowned global Islamic scholars like Yusuf al Qaradawi and Ali Gomaa have contributed to the discussion on Islam and the environment in Gomaa A. 2009. *Environmentalism and Islamic Perspective*. Cairo: Al-Wabel Al-Sayyeb' and Qaradawi YE. 2001. *Ri'yatt al-bi'a fi shari'at al-islam* [Environmental Protection in Islam]. Cairo: Dar al-Shuruq. See also Johnston DL. 2012. "Intra-Muslim Debates on Ecology: Is Shari'a Still Relevant?", *Worldview* 16:218-238 [<https://doi.org/10.1163/15685357-01603003>].

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decades this has not necessarily translated into a comprehensive corpus of Islamic law rulings pertaining to the protection and preservation of the environment.¹⁴ However, this is not surprising if one considers that international environmental law, as we know it today, has only developed over the last fifty years.¹⁵ The United Nations Charter itself does not lay the foundation for international cooperation in addressing the potential threat of global environmental degradation.¹⁶ The 1972 UN Conference on the Human Environment in Stockholm was the first major conference on international environmental issues and was the turning point in the development of international environmental governance.¹⁷ As awareness and knowledge increased on the effects of global environmental degradation, so has the need for increased environmental regulation on both national and international levels. In this context, it is important that Islamic law keeps abreast of the global regulatory initiatives for the protection and preservation of a sustainable environment. There is a need to develop a comprehensive legislative framework that will serve as a foundation for Islamic environmental laws.

This chapter sets out three dimensions of the *sharia*,¹⁸ with the aim of showing how they can form the foundations for developing a legislative framework for the protection and preservation of the environment. These dimensions are the religious, ethical and legal principles of the *sharia*, which can be found in the Quran¹⁹ and the *sunnah*²⁰ (the prophetic traditions) of Muhammad (PBUH).²¹ Firstly, the chapter discusses the foundational religious beliefs that underpin Islam, and if Muslims adhere to these correctly, it should result in them having an inherent respect for all of creation, including the natural environment. Secondly, it looks at the various ethical considerations that the *sharia* stipulates human beings must uphold in their role as vicegerents on earth. Having briefly discussed religious beliefs and ethics, it then proceeds to discuss the legal dimension of the *sharia*. The legal dimension is furthermore subdivided into two categories, namely, methodology of law and the substantive law (*fiqh*). Under the category of the methodology of

14 For an overview of Islamic environmentalism from the 1970s to about 2010, see Schwencke, *Globalized Eco-Islam*.

15 King N, Strydom H and Retief F (eds). 2018. *Environmental Management in South Africa*. Third Edition. Cape Town: Juta, 57.

16 The focus of the UN Charter is to create international cooperation in solving problems of a social, economic, cultural and humanitarian character.

17 King, Strydom and Retief, *Environmental Management in South Africa*, 59.

18 The term *sharia* literally refers to a path to a watering hole, whilst its metaphorical meaning refers to the path to felicity or salvation. Legally, it refers to the religious, ethical and legal principles Muslims adhere to in their daily lives.

19 The Quran being the Divine unspoken word of God revealed to the Prophet Muhammad (PBUH) by the angel Gabriel in the Arabic language over a period of 23 years.

20 The *sunnah* is everything Muhammad (PBUH) said, did or approved of implicitly and has been captured in written traditions (*hadith*) that have been compiled and handed down by jurists through the ages.

21 Whenever the name Muhammad or the term the Prophet is used, they will be followed with the letters (PBUH), meaning "Peace be upon him".

law, the science of *usul al-fiqh* (jurisprudence of Islamic law), *al-qawaid al-fiqhiyyah* (the Islamic legal maxims) and the *maqasid al-sharia* (objectives of Islamic laws) are discussed. I provide examples of substantive *fiqh* rulings under each of these legal methodology subcategories. I conclude that it is against the backdrop of Islamic beliefs and ethics that *usul al-fiqh*, *al-qawaid al-fiqhiyyah* and *maqasid al-sharia* should be utilised to form the legislative framework for developing a substantive body of Islamic environmental laws, namely, *fiqh al-bi'ah* (*fiqh* of the environment).²²

ISLAMIC BELIEFS AND THE ENVIRONMENT

There are certain fundamental religious beliefs to which Muslims adhere and which impact the way they conduct their lives on earth. Key beliefs include the principles of monotheism, servanthood, the belief that human beings are vicegerents on earth and that they are accountable to God for their actions in this world. These key beliefs are gleaned from both the Quran and the *sunnah* and will only briefly be discussed hereunder, since they have been discussed extensively by other environmental scholars who have highlighted them as key Islamic environmental principles.²³ These Islamic principles of the environment are also elaborated upon in the Assisi Declaration, which includes statements by various religious leaders on how their faith inspired them to care for nature.²⁴

Monotheism (tawhid)

Tawhid as the foundation of monotheism in Islam is premised on the belief in the oneness and unity of God and is the principal pillar of the Islamic faith. It obliges a belief in God as the Creator, owner and sustainer of all of creation and a belief that everything in creation is dependent on God for its continued existence, which

22 The term *al-bi'ah* literally refers to "habitation" and leading twentieth-century Muslim scholar, Yusuf Qaradawi, defines the term as being "the area in which humans live". See Qaradawi, *Environmental Protection in Islam. Fiqh al-bi'ah* is the common term used to describe Islamic environmental law.

23 See discussions on these fundamental beliefs in the context of environmentalism in Gade AM. 2019. *Muslim Environmentalisms – Religious and Social Foundations*. New York: Columbia University Press, 83 [<https://doi.org/10.7312/gade19104>]; Mohamed N. 2014. "Islamic Education, Eco-Ethics and Community", *Studies in Philosophy and Education* 33(3):315-328 [<https://doi.org/10.1007/s11217-013-9387-y>]; Izzi Dien M. 2013. "Islam and the Environment: Towards an 'Islamic' Ecumenical View", *Quranica – International Journal of Quranic Research* 5(2):33-52; Saniotis A. 2012. "Muslims and Ecology: Fostering Islamic Environmental Ethics", *Contemporary Islam* 6:155-171 [<https://doi.org/10.1007/s11562-011-0173-8>]; Shah Haneef S. 2002. "Principles of Environmental Law in Islam", *Arab Law Quarterly* 17(3):241-254 [<https://doi.org/10.1163/026805502125827557>]; Llewellyn, "Basis for a discipline", 185-247.

24 See Naseef AO. 1986. "The Muslim Declaration of Nature", in *The Assisi Declarations: Messages on Humanity and Nature from Buddhism, Christianity, Hinduism, Islam, & Judaism*, 29 September. Online at: <http://www.arcworld.org/downloads/THE%20ASSISI%20DECLARATIONS.pdf>

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speaks to the interconnectedness and interrelatedness of all of creation.²⁵ This belief should instil in the believer a sense of humility and respect for all of creation and, ideally, it should result in human beings living in complete harmony with the natural environment. Australian medical researcher and writer on Muslims and ecology Arthur Saniotis aptly describes the unifying principle of *tawhid* such that “the universe is governed and regulated by the principles of unity, balance and harmony that characterise the interactive unifying principle – *tawhid*”.²⁶

Existence is considered the greatest blessing, and every form of creation is a manifestation of the divine and a sign (*ayat*)²⁷ of God’s greatness. The Quran constantly encourages human beings to contemplate the signs of creation both within themselves and externally,²⁸ as these signs serve as instructions to human beings on how to be creatures amongst other forms of creation.²⁹ With references to signs in nature, the Quran refers to weather patterns as well as natural phenomena like the rivers, oceans, mountains, stars, trees and plants, with the constant refrain that human beings need to contemplate these blessings and show gratitude for them. Islam affirms that the natural world is an integrated whole, where human beings are inextricably linked to the rest of creation, with the explicit understanding that “nature is not to be exploited but responded to with contemplation, appreciation, and protection”.³⁰

Servanthood to God (‘ubudiyyah)

A direct consequence of *tawhid*, would be the concept of servanthood. In Islam, attaining servanthood through submitting to and serving an omnipotent God is one of the highest and most praiseworthy stations a believer can reach. A believer is supposed to undertake every action as a means to pleasing God. The belief that everything belongs to God and that one is but a servant in this world doing His beckoning lends itself to a conscious respect for all that one has been entrusted with, including the natural environment. It also ensures that the servant is constantly engaged in acts of obedience that will please God and will ensure that the servant preserves and protects the property that God has entrusted to him or her.

25 The concept of *tawhid* implies that “all cosmic forces [are] to be seen as one force acting in one direction, applying the Divine order”. See Izzi Dien, *Environmental Dimensions of Islam*.

26 Saniotis, “Muslims and Ecology”, 155-171.

27 *Ayat* refers to signs or proofs of the Divine. The Quran also speaks of signs within the self: “Soon will We show them our Signs in the (furthest) regions (of the earth), and in their own souls, until it becomes manifest to them that this is the Truth ...” Quran 41:53. Online at: <http://corpus.quran.com/translation.jsp>. For citations to the Quran in this chapter, I have used the translations by Yusuf Ali from the online Corpus Quran, which forms part of JQuranTree, a set of Java APIs for accessing and analysing the Quran.

28 “... and contemplate the (wonders of) creation in the heavens and the earth”. Quran 3:191.

29 Gade, *Muslim Environmentalisms*, 103.

30 Barnhill D and Gottlieb R (eds). 2001. *Deep Ecology and World Religions: New Essays on Sacred Ground*. New York: State University of New York, 13.

A further fundamental aspect of servanthood is trying one's best to serve God's creation in various ways, by caring for and protecting all of creation, including the natural environment in which we find ourselves. The renowned thirteenth-century Muslim scholar, Ibn Qayyim al-Jawziyyah said of '*ubudiyyah*: "Every Muslim has to uphold '*ubudiyyah* in his pursuit of life ... A scholar's '*ubudiyyah* to God is to disseminate the teachings of Islam and expand the frontier of other useful sciences. A ruler's '*ubudiyyah* to God is to implement justice in society. And an affluent person's '*ubudiyyah* to God is to fulfill the financial obligations that are attached to his wealth."³¹ Closely linked to the notion of servanthood is the belief that we have been placed on earth as vicegerents of God.

Human beings as vicegerent (khalifa)

The belief that human beings are vicegerents on earth has received significant attention in writings on Islam and the environment.³² This belief is based on various Quranic verses that highlight humanity's stewardship on earth, including the following verse: "It is He who hath made you (His) agents, inheritors of the earth: He hath raised you in ranks, some above others: that He may try you in the gifts He hath given you."³³ The Arabic term *khalifa* has been translated as vicegerent or trustee. Human beings have therefore been placed on earth as trustees, who are required to fulfil their responsibilities towards the created environment with due diligence and care.

The planet has been granted to human beings as a means for their livelihood and as a trust (*amanah*).³⁴ As with any founder/trustee relationship, the trustees have a fiduciary duty to fulfil their responsibilities fairly and justly and to ensure that whatever they have been entrusted with is managed and cared for in the best interest of the beneficiaries. In this context, human beings are both the trustees as well as the

31 Shah Haneef S. 2002. "Principles of Environmental Law in Islam", *Arab Law Quarterly* 17(3):242-254, citing Ibn Qayyim al-Jawziyyah, n.d., *I'lam al-Muwaqqi' in 'n Rab al-'Alamin*, [Information for those who write on behalf of the Lord of the worlds], 2:176. Found in the the Al-Azhra library in Al-Azhar University, Cairo. This work of Ibn Qayyim constitutes an in-depth discussion of the subject of *taqlid* or legal imitation and is one of the most comprehensive treatments of Islamic legal theory, which has served as a manual for Islamic scholars and jurists over the centuries.

32 See Gade AM. 2019. *Muslim Environmentalisms – Religious and Social Foundations*. New York: Columbia University Press, 83 [<https://doi.org/10.7312/gade19104>]; Mohamed N. 2014. "Islamic Education, Eco-Ethics and Community", *Studies in Philosophy and Education* 33(3):315-328 [<https://doi.org/10.1007/s11217-013-9387-y>]; Izzi Dien M. 2013. "Islam and the Environment: Towards an 'Islamic' Ecumenical View", *Quranica – International Journal of Quranic Research* 5(2):33-52; Saniotis, "Muslims and Ecology: Fostering Islamic Environmental Ethics"; Shah Haneef S. 2002. "Principles of Environmental Law in Islam", *Arab Law Quarterly* 17(3):241-254 [<https://doi.org/10.1163/026805502125827557>]; Llewellyn, "Basis for a discipline", 185-247.

33 Quran, 6:165.

34 Lexically the term *amanah* refers to being honest and sincere in doing things. Technically it refers to fulfilling one's responsibilities in all spheres of life.

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beneficiaries of the entrusted property. They are required to balance their roles, as trustees, who have the responsibility to preserve the entrusted property, with their roles as beneficiaries, which entitles them to utilise the entrusted property without exploiting or harming it. By properly fulfilling their dual roles of trustee and beneficiary, human beings should inherently gravitate towards creating sustainable environmental practices.

Accountability before God

Belief in the hereafter is one of the fundamental beliefs in Islam, which includes the belief that human beings will be held accountable before God for how they fulfilled the trust that were bestowed on them as vicegerents on this earth. In the context of fulfilling their trust, the Quran instructs believers to uphold justice and to render back the trust to whom it is due. "Allah doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice."³⁵ As vicegerents, we are therefore obliged to return the earth and our natural environment in the best condition possible. This requires actively engaging measures to protect the earth's resources and refraining from any actions that can lead to the exploitation and degradation of the environment. Islamic beliefs dictate that human beings will be held accountable should they fail to fulfil this trust and should they contribute to the destruction of the natural environment entrusted to them.

ISLAMIC ETHICS AND THE ENVIRONMENT

Law and ethics are fundamentally connected in Islamic jurisprudence, with the former regulating the external conduct, whilst the latter influences the minds and souls of the individual.³⁶ Unlike positivist legal theories that advocate for the separation of law and morality, in the *sharia*, law and morality are deeply intertwined. It is therefore important that any legal ruling should incorporate the moral dimension of its subject matter in order to inspire public confidence and to ensure willing compliance. Sound Islamic ethical principles are therefore essential to serve as a foundation for developing an Islamic legal framework for the protection of the environment and to guide human beings in their role as vicegerents. Both ethics and legal rulings are necessary to bring about social change. I have identified four ethical principles that are especially relevant to the protection of the environment, namely, mercy, justice, maintaining the balance and resource efficiency.³⁷ These ethical principles all find their roots in the Quran and the *sunnah* and have been

³⁵ Quran, 4:58.

³⁶ Kamali H. 2009. "Law, Commerce and Ethics: A Comparison Between Sharī'ah and Common Law", in Marcinkowski C (ed). *The Islamic World and the West*. Zurich: Lit, 244.

³⁷ For a more detailed discussion on Islamic environmental ethics, see Khalid F. 2010. "Islam and the Environment – Ethics and Practice: An Assessment", *Religious Compass* 4(11), 707-716 [<https://doi.org/10.1111/j.1749-8171.2010.00249.x>].

discussed by various authors in the context of environmentalism.³⁸ The principles of mercy and justice are especially relevant when developing *sharia* rulings pertaining to the environment. The importance of these two values is encapsulated in the following quote by fourteenth-century Islamic jurists Ibn al-Qayyim: “*Sharī’ah* is based on wisdom and achieving people’s welfare in this life and the afterlife. *Sharī’ah* is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the *Sharī’ah*, even if it is claimed to be so according to some interpretation.”³⁹

Mercy

The Quran characterises itself as a “healing for the (diseases) in your hearts and for those who believe, a guidance and a mercy”.⁴⁰ Every chapter in the Quran, except one, starts with the verse “In the name of Allah, the Most Compassionate the Most Merciful”, thereby reinforcing God’s attributes of mercy and compassion.⁴¹ God’s mercy and compassion to His creation is a recurring theme in the Quran and as His vicegerents, human beings are required to manifest these attributes in our dealings with all of creation. The Quran furthermore singles out the most important purpose of the Prophet (PBUH) as: “We sent you not but as a mercy to all creatures.”⁴² There are numerous prophetic traditions that illustrate how merciful the Prophet (PBUH) was to humans, animals and especially to vulnerable members of society, like slaves, orphans, the elderly and young children. There is the oft repeated prophetic tradition that the Prophet (PBUH) said, “While a dog was going round a well and was about to die of thirst, a prostitute saw it and took off her shoe and watered it. So Allah forgave her because of that good deed.”⁴³ This tradition, amongst others, is cited to illustrate the importance of showing mercy and compassion to animals. Human beings are encouraged to show mercy and compassion to all of God’s creation and these principles have to underpin any laws developed for the protection of the environment.

38 For a summary on how environmentalists utilise these principles in their discourse on Islam and the environment see Gade, *Muslim Environmentalisms*, 83-95.

39 Quote of Shams al-Dīn ibn al-Qayyim (cited in Auda J. 2008. *Maqāsid al-Sharī’ah as Philosophy of Islamic Law – A Systems Approach*. London: International Institute of Islamic Thought, 1).

40 Quran, 10:57.

41 Chapter 9 of the Quran is the only chapter not starting with: “In the name of Allah, the Most Compassionate the Most Merciful”.

42 Quran, 21:107.

43 *Sahih al-Bukhari* 3467, bk 60, hadith 134. Online at: sunnah.com

Justice

The Quran also emphasises the importance of upholding the principle of justice. In the chapter titled “The Bee” the following is stated: “Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.”⁴⁴ Upholding justice is a central theme in the Quran, and human beings are constantly commanded to uphold justice. The principle of justice includes the obligation to promote good and prevent evil (*al-amr bi'l ma'ruf 'wa 'lnahy 'an munkar*). As vicegerents, we are required to enjoin good and forbid evil in our dealings on this earth as can be gleaned from the following Quranic verse: “Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong.”⁴⁵ There are numerous verses in the Quran which advocate for justice and which prohibit oppression and corruption on the earth.⁴⁶ These verses and the principles they embody clearly lay the foundation for introducing laws that seek to protect the environment and prevent exploitation of earth’s resources.

Maintaining the balance

Maintaining the balance is often cited as an Islamic environmental principle and is derived from the verse of the Quran, which stipulates that, “The sun and the moon follow courses (exactly) computed; And the herbs and the trees – both (alike) prostrate in adoration. And the firmament has He raised high, and He has set up the Balance (of Justice), in order that ye may not transgress (due) balance. So establish weight with justice and fall not short in the balance.”⁴⁷ This verse cautions human beings against transgressing the balance and requires them, as vicegerents, to maintain the ecological balance between themselves, all living organisms and the environment. Through this ecological balance we need to ensure that no particular species is exploited or overused. We must balance the need for development versus the need to preserve natural resources and a stable ecosystem. In order to maintain balance in nature, we are encouraged to engage in moderate behaviour. Moderation is closely related to justice, as justice implies balancing rights and duties and setting everything in its rightful place. The moderate, just and correct action in any given situation often involves balancing various concerns and seeking the middle ground between them. As vicegerents, human beings are required to balance competing interests and needs of various species coexisting with us on this planet.

⁴⁴ Quran, 16:90.

⁴⁵ Quran, 3:104.

⁴⁶ See Gade, *Muslim Environmentalisms*, 92, for a discussion of these verses. The following verse, “Do not cause corruption on the earth after it has been set in order”, Quran, 7:56 (referring to corruption as going against the natural order of the earth).

⁴⁷ Quran, 55:5-9.

Resource efficiency

The final principle of resource efficiency relates to the prohibition against waste and the overconsumption of natural resources beyond our actual needs. The Quran makes reference to the environment when it discourages wastefulness in the following beautifully descriptive verse on natural produce: "It is He who produces gardens, with trellises and without, and dates, and tilth with produce of all kinds, and olives and pomegranates, similar (in kind) and different (in variety): eat of their fruit in their season, but render the dues that are proper on the day that the harvest is gathered. *But waste not by excess: for Allah loveth not the wasters.*"⁴⁸ To be wasteful is therefore regarded by some scholars as morally reprehensible, whilst by others it is forbidden. In their roles as vicegerents, human beings have a responsibility to ensure that the earth's resources are not wasted and overutilised. As a corollary to not wasting, they should curb all forms of greed that lead to utilisation of more than what is needed, as there are numerous prophetic traditions that discourage wastefulness and modern Muslim environmental thinkers have aptly correlated these traditions to environmentalist thoughts on overconsumption and unsustainable environmental conduct.⁴⁹

ISLAMIC LAW AND THE ENVIRONMENT

The religious beliefs and ethical principles discussed in the section above serve as a foundation for developing environmental laws and rulings. Substantive rulings are derived from primary and secondary sources through various methodologies of Islam. Islamic law, like any legal system, entails an intricate combination of legal sources and methodologies, legal maxims, objectives and substantive laws. In this section, I provide a brief account, first of all, of the jurisprudence of Islamic law, which deals with the primary and secondary sources of Islamic law and how jurists derive rulings from them. Secondly, I discuss Islamic legal maxims, and specifically the maxim "There shall be no harm caused or received",⁵⁰ and thirdly, I discuss what jurists understand to be the objectives behind all Islamic laws. When discussing these various methodologies, maxims and objectives, I also illustrate how they can be utilised to derive substantive *fiqh* rulings for the environment.

48 Quran, 6:141 (emphasis added). These verses from the primary source of Islamic laws serve as clear evidence against overconsumption.

49 See Gade, *Muslim Environmentalisms*, 93.

50 These are general legislative principles or presumptions which have been developed by Islamic jurists as guidelines to solving legal problems. For a thorough exposition of the Islamic legal maxims, see Nyazee IAK. 2016. *Islamic Legal Maxims (Qawa'id Fiqhiyyah)*. Islamabad: Center for Excellence in Research.

Islamic jurisprudence (usul al-fiqh)

Usul al-fiqh, often referred to as Islamic jurisprudence, is essentially the science that is dedicated to the methodologies and processes used to derive substantive rulings of Islamic law. As a legal science it is concerned “with the sources of Islamic law, their order of priority, and the methods by which legal rules may be deduced from the source materials of the Shari’ah. It is also concerned with regulating the exercise of *ijtihad*”.⁵¹ *Ijtihad* has been described as “the maximum effort expended by the jurists to master and apply the principles and rules of *usul-al fiqh* (legal theory) for the purpose of discovering God’s law”.⁵² *Ijtihad* is therefore a form of legal reasoning where jurists engage with the primary sources of law in order to derive substantive legal rulings. The sources of Islamic law are generally categorised into two types, namely, those that are revealed or transmitted and those that are non-revealed or rational.⁵³ The transmitted or revealed sources are the Quran and the *sunnah*⁵⁴ and they provide basic evidence and indications from which detailed substantive legal rules may be derived.⁵⁵ The non-revealed sources, include analogical reasoning (*qiyas*), consensus of opinion (*ijma*), equity in Islamic law (*istihsan*), consideration of public interest (*maslahah mursalah*) and custom (*urf*), which are all guidelines to ensure the correct utilisation of the evidentiary sources. The non-revealed sources are mainly methodological tools or rationales, which are used to derive substantive legal rulings in Islamic law. However, in certain instances substantive rulings are also derived from these non-revealed sources; so, for instance, *urf*, or the customary practices of a community, can eventually take the force of substantive law.⁵⁶ Both revealed and non-revealed sources have been used by Islamic jurists and scholars through the centuries to develop comprehensive *sharia* rulings that impact various aspects of a Muslim’s life. Whilst the common law system is based on a system of binding judicial precedent, the Islamic law system places great emphasis on the writings of classical jurists and relies heavily on the four major schools of law (*madhahib*).⁵⁷

Usul al-fiqh is furthermore concerned with regulating the exercise of *ijtihad* (judicial reasoning), which Hisham Kamali, a leading scholar in *usul al-fiqh*, contends is the most important source of Islamic law next to the Quran and *sunnah*.⁵⁸ Legally,

51 Kamali MH. 2003. *Principles of Islamic Jurisprudence*. Third Edition. Cambridge: Islamic Texts Society, 1.

52 Kamali, *Principles of Islamic Jurisprudence*. *Ijtihad* literally means “effort” and legally it refers to independent reasoning.

53 Khan Nyazee IAK. 2003. *Islamic Jurisprudence (Usul al Fiqh)*. Islamabad: The Other Press.

54 The *sunnah* being everything the Prophet (SAW) did, said or approved of tacitly.

55 Kamali, *Principles of Islamic Jurisprudence*, 1.

56 With the proviso that it in no way contradicts rulings derived from the primary sources.

57 The four major Sunni legal schools of thought are the *Māliki*, *Ganafi*, *Shāfi’i* and *Hamabali*, which are named after the founding jurists.

58 Kamali, *Principles of Islamic Jurisprudence*, 468.

ijtihad entails the intellectual exertion made by the Muslim jurists (*mujtahid*) to infer, with a degree of probability, the rules of *sharia* from their detailed evidence in the sources.⁵⁹ Kamali correctly contends that the various non-revealed sources of Islamic law that figure into the Quran and *sunnah* are all manifestations of *ijtihad*, with largely procedural differences.⁶⁰ Hence, consensus of opinion, analogy, juristic preference, considerations of public interest and custom are all features under the main heading of *ijtihad*. *Ijtihad* and creatively engaging with the revealed and non-revealed sources are therefore crucial in obtaining dynamic new *sharia* rulings in the area of environmental preservation and protection.

The five sharia rulings (al-ahkham al khamisa)

Sharia rulings refer to the legality or desirability of a particular thing or action. *Sharia* rulings are classified according to the following five categories: obligatory, praiseworthy, permissible, reprehensible and forbidden.⁶¹ Obligatory (*fard/wajib*) are compulsory acts, such as obligatory charity (*zakat*), and omitting such an act is considered sinful. Very importantly, this particular category is divided into individual or personal obligations (*fard al-'ayn*) and communal or collective obligations (*fard al-kifayah*). Individual obligations are self-explanatory, as they refer to those obligations that the individual must fulfil him- or herself, such as the obligation to pray or fast. However, collective responsibility refers to an obligation that must be fulfilled by enough members of society in order to lift the obligation from individual members of that society. Collective obligations are particularly important when considering our obligations as communities and members of society to advocate and work towards measures that will protect and preserve the environment. Secondly, recommended or praiseworthy acts (*mandub*) are rewarded when done, but not punished when omitted, for instance, the act of tree-planting. Thirdly, permissible acts (*ja'iz*) are neither encouraged nor discouraged and have no legal consequences. Most matters fall into this category. Fourthly, reprehensible acts (*makruh*) are tolerated but disliked, and they result in a reward if omitted but will not be punished if committed, such as growing tobacco crops. Fifthly, forbidden acts (*haram*) are sinful if committed and include cruelty to animals, wastefulness and deliberately causing harm to the environment. In Islamic law, priority is given to the category of *fard* and *haram*, as they entail a sin by omission or commission respectively and can be subject to legal consequences. The other three categories fall within the sphere of moral teachings and are not justiciable, but still have a persuasive moral influence on the believer.

59 Kamali, *Principles of Islamic Jurisprudence*, 468.

60 Kamali, *Principles of Islamic Jurisprudence*, 468.

61 Kamali, *Principles of Islamic Jurisprudence*, 468.

Rulings from the primary sources and analogy (qiyas)

There is an urgent need for Islamic jurists and scholars, in consultation with scientists, environmentalists, economists and world leaders, specifically those in countries who claim to uphold Islamic law, to develop comprehensive legal rulings pertaining to the environmental challenges we face today, whether it be global warming, climate change, excessive carbon emissions, deforestation or plastic pollution. In some instances, environmental legal rulings can be derived directly from the ethical principles we outlined above and from primary sources. For instance, the well-known prophetic tradition in which Muhammad (PBUH) said, "A woman was tormented because of a cat she had confined until it died and [for this] she entered Hellfire. She did not provide it with food or drink as it was confined, nor did she free it so that it might eat the vermin of the earth", clearly serves as a *dhalil* (proof) against the ill treatment of animals and the prohibition against starving and confining animals. There are numerous prophetic traditions in which the Prophet (PBUH) forbade the harming of animals.⁶² The Prophet (PBUH) also forbade the killing of dogs due to their being a community.⁶³ The Quran stipulates that, "There is not an animal (that lives) on the earth, nor a being that flies on its wings, but (forms part of) communities like you. Nothing have we omitted from the Book, and they (all) shall be gathered to their Lord in the end."⁶⁴ By analogy, as vicegerents who have been entrusted with the numerous species on this planet and are required to undertake concerted measures, legislative and otherwise, to ensure their continued existence. We have to balance the interests of these various communities and species to ensure the survival of all.

These proofs from the primary sources can be used to introduce laws on the prohibition against cruel and exploitative farming practices, especially of poultry and livestock, which are common in modern-day farming,⁶⁵ in an attempt to meet increased consumer demands for food. At the same time, they could also be used to introduce *sharia* rulings prohibiting the hunting and harming of listed endangered species.⁶⁶ This could occur at multiple levels where Muslim states ratify existing treaties, such as the Convention on International Trade in Endangered Species of

62 A list of some of these traditions are listed in the *fatwa* of the Indonesian Council of Ulama: "Protection of endangered species to maintain the balanced ecosystems", hereinafter referred to as "the Indonesian Fatwa". See Fatwa – The Indonesian Council of Ulama. 2014. "Protection of Endangered Species to Maintain the Balanced Ecosystems". Online at: <http://www.arcworld.org/downloads/Fatwa-MUI-English-Jun-2014.pdf>. See also Furber M. 2015. *Rights and Duties Pertaining to Kept Animals*, No 9. Abu Dhabi: Tabah Foundation.

63 See *Sunan Abu Dawud* 2845, bk 17, hadith 2. Online at: sunnah.com.

64 Quran, 6:38, at <http://corpus.quran.com/translation.jsp?chapter=6&verse=38>

65 See the link below for cruel farming practices. Geer A. 2017. "10 Cruel Things Done to Farm Animals That No Sane Person Would Do to a Cat or Dog". Online at: <https://www.onegreenplanet.org/animalsandnature/cruel-things-done-to-farm-animals/>

66 See discussion below on the Indonesian Council *ulama fatwa* on the "Protection of endangered species to maintain the balanced ecosystem".

Wild Fauna and Flora (CITES),⁶⁷ which ensures that international trade in plants and animals does not threaten their survival in the wild, whilst at the same time jurists could develop very specific rulings and regulation on the managing of species specific to their regions.

Water laws and water conservation are another area of Islamic law that has a firm foundation in the primary sources and has been fairly well developed by Muslim jurists. One of the most often quoted prophetic traditions is when the Prophet (PBUH) rebuked one of his companions for using too much water for his ritual ablution (wudu). "Do not waste [water]", he told his companions, even if you happen to be by a stream.⁶⁸ This tradition is cited to reinforce the importance of water conservation. Historically, protected zones (*harim*) were designated around wells, springs, trees and riverbanks. These zones were considered public areas producing public goods, which had to be protected from misuse by people, pollution and congestion.⁶⁹ It was fascinating to observe how, albeit unknowingly, these established Islamic legal principles were applied by the local municipality around various fresh water springs during the Cape Town drought.⁷⁰ Regulating public water access was evident in city planning in various Muslim communities throughout the centuries, and during the Ottoman empire, the construction of reservoirs and water collection points around mosques were key elements of state architecture.⁷¹ Regard should be had to both these primary and historical sources when developing contemporary Islamic laws around water conservation.

Considering public interest (maslahah al-murslah) and customs (urf)

Where there are no clear proof in the primary sources to develop substantive rulings pertaining to the protection and preservation of our natural environment, jurists and scholars have to use *ijtihad* to derive rulings from the secondary revealed sources, such as consideration of the public interest (*maslahah al-murslah*). *Maslahah al-murslah* entails securing a benefit in the public interest or preventing a harm to the public interest, which is also harmonious with the objectives of the *sharia*. Hence the Khalifah Umar, during his rule of the Islamic state, suspended the punishment for theft in the year of the famine, as he believed this punishment was not in the public interest in those circumstances. Considerations in the public interest should be genuine, essential, rational and should remove a hardship.

67 Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, 993 UNTS 243.

68 *Sunan Ibn Majah*, vol 1, bk 1, hadith 425. Online at: sunnah.com. It is also discussed in Johnston, "Intra-Muslim Debates on Ecology", 226.

69 Izzi Dien, *Environmental Dimensions of Islam*, 35-36.

70 Farber T. 2017. "Cape Town Gets its First Bitter Taste of Water Wars", *TimesLive*, 16 December.

71 Gade, *Muslim Environmentalisms*, 134.

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An often quoted prophetic tradition, “If a Muslim plants a tree or sows seeds, and then a bird, or a person or an animal eats from it, it is regarded as a charitable gift (*sadaqah*) for him”,⁷² could be used in our contemporary context to encourage communities and governments to plant trees to counter the effects of deforestation.⁷³ Environmental studies scholar Anna Gade, in her comprehensive work on Muslim environmentalism, correctly infers from these and other similar prophetic traditions that “the best way to a religious goal (reward of Allah) is through the proper and compassionate care and management of natural resources”.⁷⁴ Although planting trees is considered a recommended act in the *sharia*, an argument could be made that public interest considerations now require such an act to be obligatory upon communities and governments. In fact, in Pakistan, which is one of the countries most affected by deforestation, the existing government in partnership with non-governmental organisations and local communities have initiated a ten billion tree-planting project in order to counter the harmful effects of deforestation on Pakistan’s ecosystem.⁷⁵ Similarly, in Indonesia, a majority-Muslim country, there is an increase in tree planting initiatives by Islamic environmental activists, and as part of Javanese wedding traditions, newlywed couples have to gift five seedlings to whoever officiates over their marriage ceremony in order to combat deforestation and global warming.⁷⁶

Custom (*urf*) is another secondary source of law that can be resorted to in order to develop contemporary *sharia* rulings on the protection of the environment. Where a practice occurs repeatedly and is received with acceptance by the community, it can take the effect of a *sharia* ruling, provided that it is not contrary to any *sharia* ruling or ethical principle contained in the primary sources. The notion of community can be extended to the community of nations and customary practices insofar as it relates to environmental laws. An argument can be made that customary international law rulings, treaties or declarations that seek to protect and preserve the environment, natural resources or a threatened species should be accepted and be incorporated into the national laws and policies of a country. Hence, the 2009 Istanbul Declaration, which endorsed a “Muslim 7 Year Action Plan (M7YAP)”⁷⁷

72 *Sahih al-Bukhari* 2320, bk 41, hadith 1. Online at: sunnah.com

73 See Derouin S. 2019. “Deforestation: Facts, Causes and Effects”. Online at: <https://www.livescience.com/27692-deforestation.html> for the detrimental effects of deforestation.

74 Gade, *Muslim Environmentalisms*, 99.

75 Global Environment Facility. 2019. “10 Billion Trees: Reversing Deforestation, Tackling Climate Change and Managing Forests Sustainably in Pakistan”. Online at: <https://bit.ly/2YQs3Is>. See also Hutt R. 2018. “Pakistan has Planted Over a Billion Trees”. Online at: <https://bit.ly/2zmmvL4>

76 Henkel M. 2015. “21st Century Homestead:Sustainable Agriculture III: Agricultural Practices”. Online at: <https://bit.ly/2Ad1ym1>

77 The Muslim 7 Year Action Plan (M7YAP) to deal with climate change includes proposals to promote ecofriendly mosque, green Islamic business andro green Mecca and the annual haj (pilgrimage). Earth-Mates Dialogue Center. n.d. “Draft of the Muslim 7 Year Action Plan (M7YAP) to Deal with Globla Climate Change”. Online at: <https://bit.ly/2WjMsnB>

on climate change should be adopted and enacted as part of national legislation in Islamic states as they are consistent with the ultimate objectives of the *sharia*. When exercising *ijtihad* to arrive at contemporary legal rulings for the protection of the environment, regard should also be had to Islamic legal maxims that can be used to develop substantive environmental laws.

Legal maxims of Islamic law (al-qawa'id al-fiqhiyah)

In Islamic law, as in other legal systems, there are legal maxims, which are essentially principles that are used to derive legal rulings. One of the primary Islamic legal maxims stipulates, as noted above, that "There shall be no harm caused or received".⁷⁸ This maxim discourages reciprocating harm with another harm, but its basis is the *sharia* principle to prevent all forms of harm. The maxim can be utilised to develop comprehensive *sharia* laws to prevent all forms of harm to the natural environment.

This maxim has four further submaxims, namely, that harm must not be removed with the like of it, that harm that is more severe must be removed by the harm that is less severe, that the lesser of two harms should be chosen and, lastly, that the repelling of harm is more superior to the accrual of benefit. These maxims are extremely useful in the context of developing laws for the protection of the environment and natural resources. They can serve as the foundation for developing laws that prohibit the destruction of a particular species or the depletion of a natural resource. An example of how this maxim has been utilised to develop environmental law rulings can be found in the Indonesian Council of Ulama *fatwa* on the "Protection of endangered species to maintain the balanced ecosystem".⁷⁹ The *fatwa* is an excellent example of how Islamic primary sources, as well as Islamic legal maxims on preventing harm, are used to derive a legal ruling to protect an endangered species and to maintain a balanced ecosystem. Reference is made to Quranic proofs, prophetic traditions and the writings of classical scholars, as well as all four submaxims on preventing harm.⁸⁰ The *fatwa* then proceeds to make the protection and conserving of endangered species obligatory.

The submaxim that repelling of harm is superior to accruing a benefit can find expression in various Islamic law rulings that facilitate the protection of the environment. For instance, where a particular fishing species is being depleted

78 For a detailed discussion of Islamic legal maxims, see Nyazee, *Islamic Legal Maxims*.

79 The fatwa of the Indonesian Council of Ulama, Number 04/2014, titled "Protection of endangered species to maintain the balanced ecosystems". Online at: <http://www.arcworld.org/downloads/Fatwa-MUI-English-Jun-2014.pdf>. It was published in 2014 in partnership with various stakeholders including, the World Wide Fund for Nature (WWF) Indonesia and Conservation International (CI) Indonesia.

80 See pages 12-14, para 3, of the Indonesian Council of Ulama fatwa, Number 04/2014, "Protection of endangered species to maintain the balanced ecosystems" for the use of Islamic legal submaxims on "There shall be no harm caused or received".

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owing to overfishing, and borders on potential extinction, does one allow the commercial fishing industry to continue benefiting from fishing the species, or does one rather suspend or reduce the total allowable catch (TAC) in that particular area in order to prevent the harm of rendering a specific species extinct? This particular submaxim can be used to advocate for the latter scenario.

Similarly, the maxims can be used to introduce a ruling in Islamic finance that prohibits investing in companies that engage in activities that are detrimental to the environment or unfair trade practices, even if it is at the expense of deriving profitable financial returns on such an investment. In the aftermath of the 2008 financial crisis, there has been a concerted move globally towards ethical banking and socially responsible investments that are guided by “ethical” social and environmental criteria. Islamic financial products like the green *sukuk* (environmentally friendly Islamic bonds) are *sharia* compliant investment vehicles that fund environmentally friendly projects like solar parks and wind farms.⁸¹ The prime objective behind the establishment of green *sukuk* is to address *sharia* concerns for the protection of the environment, whilst at the same time promoting corporate social responsibility.

As illustrated the legal maxims could be a useful tool in developing Islamic legal rulings in balancing competing social, economic and environmental interests. In addition to using these legal maxims when developing substantive legal rulings, it is also essential to bear in mind that most substantive *fiqh* rulings seek to achieve a particular objective or purpose (*maqasid*). It is these objectives of Islamic law that are discussed below.

Objectives of Islamic law (maqasid al-sharia)

Maqasid al-sharia is the science in Islamic jurisprudence that combines the elements of *usul al-fiqh* and *qawwa'id al-fiqhiyah*.⁸² It is concerned with the philosophy of the law and its outlook and objectives, rather than the specific literal formulations of its text. *Maqasid* of the Islamic law highlights rationales, purposes and common good in Islamic rulings and stresses their importance, whilst at the same time remaining true to the primary Islamic sources and observing the Islamic faith.

The *ulama* (scholars/jurists) have classified the entire range of *maqasid* into three categories in a descending order of importance, namely, the essentials or necessities (*daruriyyat*), followed by the complimentary benefits or needs (*hajiyyat*), and lastly

81 Alam N, Duygun M and Ariss RT. 2016. “Green Sukūk: An Innovation in Islamic Capital Markets”, in Dorsman A, Arslan-Ayaydin O and Baha Khan M (eds). *Energy and Finance: Sustainability in the Energy Industry*. Cham: Springer International [https://doi.org/10.1007/978-3-319-32268-1_10].

82 Abdul Aziz MR and Mohd Noh MS. 2014. “The Role of Five Major Shari'ah Legal Maxims (Al-Qawaid Al-Kubra) in the Establishment of Maqasid Al-Shariah in Islamic Financial Products: A Discussion on Some Cases”, *European Journal of Business and Management* 6(10).

the embellishments or luxuries (*tahsiniyyat*).⁸³ The essential interests are enumerated as five, namely, religion (faith), life, lineage, intellect and property, which by definition are regarded as essential to the normal order of society and the spiritual well-being of the individual. Needs or complimentary benefits are less essential for human life, whilst interests at the level of luxuries are considered “beautifying purposes”. Each of the different levels are interrelated, with each level seeking to serve and protect the level below it.⁸⁴

The *sharia*, through different legal rulings, seeks to protect and promote the five essentials and it validates measures for their preservation and advancement. The *sharia* also takes affirmative or punitive measures to protect and promote these essentials. Hence, alcohol is prohibited because it impairs the intellect; theft is prohibited because it deprives another of ownership; and homicide is prohibited because it negates life and so forth. The *sharia* therefore seeks to protect and promote these values and interests in order to ensure the preservation and advancement of the community at large. There is general agreement that the preservation of these essentials is the “objective behind any revealed law”.⁸⁵

Modern scholars have introduced new conceptions and classifications of *maqasid* by giving consideration to new dimensions. Hence, the notion of *maqasid* has been expanded to include a wider scope of people, including the community, nations and humanity in general as opposed to focusing primarily on the individual.⁸⁶ Al-Tahir Ibn Ashur, one of the leading scholars on *maqasid al-sharia*, gave *maqasid* that is concerned with the nation (*ummah*) priority over *maqasid* that is concerned with the individual, and suggested that the universal *maqasid* of Islamic law is to ensure “ordeliness, equality, freedom, facilitation and the preservation of pure natural disposition (*fitrah*)”.⁸⁷ Basically anything that supports the five essential objectives of the law enumerated above, has to be regarded as a foundational objective and has to be upheld as well. Thus environmentalist and legal scholars have recognised that “for each one of these *maqasid* the healthy biosphere is an even more essential condition on which they are all contingent”.⁸⁸

The shortage of water resources, for instance, has direct consequences for the five essential objectives of the *sharia*. Nowhere was this better illustrated than in the recent drought in the Western Cape, or internationally, in the growing water scarcity in the Arab region. In a recent interview with *Al Jazeera*, Hazim el-Naser of the Middle East Water Forum highlighted the fact that “prosperity, poverty and employment rates are directly related to the average share of water an Arab citizen

83 El-Tahir El-Mesawi M. 2006. *Ibn Ashur – Treatise on Maqāsid al-Shari’ah*. London: International Institute of Islamic Thought (IIIT), 2.

84 Auda, *Maqāsid al-Shari’ah*, 3.

85 Auda, *Maqāsid al-Shari’ah*.

86 Auda, *Maqāsid al-Shari’ah*.

87 Auda, *Maqāsid al-Shari’ah*, 6.

88 Gade, *Muslim Environmentalisms*.

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gets a year", which he described as one of the world's lowest.⁸⁹ He emphasised that if water allocated for drinking and economic activities in a country is limited, then the country will face destabilisation, which is currently one of the main causes of economic instability in Iraq. Similarly, in Cape Town the drought contributed to social and economic instability, with the lower strata of society suffering disproportionately more than the middle class or upper class.⁹⁰ The said lower classes did not have the resources to purchase drinkable water, nor did they have transport to natural springs that were based in leafy, affluent suburbs and neither did they have the resources to install boreholes, which were the privilege of an elite few who could afford this huge expense.⁹¹ It becomes clear from these examples that the lack of water as a natural resource has dire consequences for every aspect of our lives.

The protection and preservation of the environment and its natural resources should therefore be considered an essential objective of the *sharia*, which is why scholars like Yousuf al-Qaradawi have issued a *fatwa* that the protection of the environment falls under the five main objectives of Islamic law.⁹² Qaradawi correctly places conservation of the environment within the core part of Islamic doctrine, namely, the safeguarding of religion or faith, because it is consistent with the Islamic injunction to uphold justice and the obligation to promote good and prevent evil. Having established that the protection and conservation of the environment is one of the essential objectives of the *sharia* should serve as a catalyst to Islamic jurists and scholars to develop and expand on the body of environmental *fiqh* rulings.

CONCLUSION

In this chapter, I have illustrated that the *sharia*, through its system of beliefs, ethics and legal principles can constitute a legislative framework for the development of a *fiqh* of environmental laws. I have sketched some examples of environmental *fiqh* rulings that have been derived from primary sources, public interest considerations, legal maxims or through consideration of the objectives underpinning Islamic laws. It is apparent that there are numerous Islamic environmental initiatives around the world, whether it be tree planting in Pakistan to counter deforestation, wildlife conservation in Indonesia, green *sukuk* in the Middle East or the highly ambitious

89 Younes A. 2019. "Arab Countries must Address Water Security or Risk Instability", 4 October. Online at: <https://bit.ly/2WmdYRn>

90 "Arab Countries must Address Water Security or Risk Instability".

91 Kalaba M. 2019. "How Droughts will Affect South Africa's Broader Economy", 6 March. Online at: <https://theconversation.com/how-droughts-will-affect-south-africas-broader-economy-111378>; Juneja P. n.d. "The Economic Impact of Cape Town's Water Crisis". Online at: <https://www.managementstudyguide.com/economic-impact-of-cape-town-water-crisis.htm>; Watts J. 2018. "Cape Town Faces Day Zero: What Happens when the City Turns off the Taps?", *The Guardian*, 3 February.

92 Izzi Dien, "Islam and the Environment", 42, citing from Qaradawi, *Environmental Protection in Islam*, 49-50.

Istanbul Declaration, which endorsed the Muslim seven-year action plan on climate change. All these initiatives rely on different elements of the legislative framework proposed in this chapter, with some finding their inspiration in Islamic ethics, whilst others rely directly on primary sources of the *sharia*. What is needed, however, is coherent, systematic and comprehensive theological and juridical works on Islamic environment laws. Like in other areas of *fiqh*, Muslims require guidance on what the Islamic law position is, on the various contemporary environmental issues that we face today. It is therefore imperative that Islamic jurists and scholars trained in the classical Islamic legal sciences, in consultation with scientists, environmentalists, policymakers, activists and communities utilise the legislative framework proposed above, to clearly identify the ethical and legal foundations for Islamic sustainability concepts, as well as to develop a comprehensive corpus of Islamic environmental laws.