98564 - She took a sample of plants in Makkah for scientific research; does she have to offer expiation?

the question

I have done a research on plants about four years ago, when I was a university student. I took a sample of Mecca’s plants, about 3 to 5 leaves of trees located inside the haram. I did not cut a branch or anything like that. Although I know this place is sacred, I justified this by saying it is for the sake of knowledge, so it is permissible!
Please tell me if I have to expiate. How much is it and how shall it be distributed?.

Detailed answer

Praise be to Allah.

There are many ahaadeeth in al-Saheehayn and elsewhere which speak of the sanctity of the plants of the Makkan sanctuary, for example the words of the Prophet (peace and blessings of Allaah be upon him) about Makkah: “It was not permissible for anyone before me and it is not permissible for anyone after me; it was only permitted to me for part of a day. Now, at this very hour, it is sacred; its thorns are not to be cut, its trees are not to be cut down and its lost property is not to be picked up except by the one who announces it.” Narrated by al-Bukhaari (112) and Muslim (1355).

Imam Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (3/161): The scholars are unanimously agreed that it is haraam to cut the trees of the Haram, but it is permissible to take idhkhir [a kind of grass] and what people plant of vegetables, crops and herbs. This was narrated by Ibn al-Mundhir. End quote.

So they were unanimously agreed that it is haraam to cut the trees of the Haram, but they differed concerning some issues, such as:

Is it haraam to cut everything in the Haram, or does the prohibition apply only to that which grows

by itself? Most of the scholars say that what is haraam is that which grows by itself; that which is planted by people is not haraam.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said in al-Sharh al-Mumti’ (7/218): What is haraam is the plants of the Haram, not the onats of human beings. Based on this, whatever has been planted by man or by his broadcasting seeds is not forbidden, because it is his possession and is not attributed to the Haram, rather it is attributed to its owner. End quote.

Also: is it haraam to take leaves from the trees of the Haram or not? The Hanbalis do not regard it as permissible to take the leaves, unlike the majority of scholars who say that it is permissible to take them, because it does not harm the tree. This is the view of the three other madhhabs. Ibn Qudaamah said in al-Mughni (3/170): He does not have the right to take the leaves of the trees. Al-Shaafa’i said: He may take them, because (the tree) is not harmed by that. ‘Ata’ used to grant a concession allowing people to take the leaves of the senna plant [a plant that is used for medicinal purposes] which is used as a laxative [i.e., the water in which its leaves are steeped is drunk as a laxative, as it says in Taaj al-‘Aroos], but it should not be uprooted. ‘Amr ibn Dinar also granted a concession concerning this.

But the Prophet (peace and blessings of Allaah be upon him) said: “Its thorns are not to be cut and its trees are not to be cut down.” Narrated by Muslim. And if it is haraam to take something, every part of it is haraam, like the feathers of a bird.

Their saying that it does not harm the tree is not correct because it weakens it, and it may lead to its destruction. End quote.

Based on this, if the leaves that the sister took came from a tree that was not planted by humans, then taking them is something concerning which there is a difference of scholarly opinion, but the majority say that it is permissible whereas the Hanbalis disallow it. If there was no public need for taking them, then if she took them although she could have used some other leaves instead from outside the Haram, then she should pray for forgiveness and repent to Allaah. If there was an educational need that would benefit the people, and a tree outside the Haram would not do

instead, then there is no blame in sha Allaah.

Whatever the case, there is no liability and she does not have to offer expiation, because the fuqaha' who do not allow taking leaves are the Hanbalis, and they do not impose liability for the trees of the Haram. This was stated in a fatwa by the Scholars of the Standing Committee in which it says:

If he destroys any of the trees or plants of the Haram that belong to someone, then he must pay its value to its owner, but if it does not belong to anyone, then he does not have to do anything, but he should not do that deliberately, because the Prophet (peace and blessings of Allaah be upon him) forbade it.

Fataawa al-Lajnah al-Daa'imah (13/209).

But if this tree belonged to someone, there is nothing wrong with taking these leaves in sha Allaah, because this is something that is usually tolerated.

And Allaah knows best.