



# AWQAF

Refereed Biannual Journal Specialized in Waqf & Charitable Activities

No. 18 - Year 10 - Jamada I 1431 H, May 2010

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

# AWQAF

Refereed Biannual Journal Specialized in Waqf and Charitable activities

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AWQAF is based on a conviction that waqf -as a concept and an experience- has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Umma. Waqf also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps finding solutions for emerging problems. During the decline of the Umma, Waqf maintained a major part of the heritage of the Islamic civilization and caused it to continue and pass from one generation to another. Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, AWQAF comes up with a keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development. Waqf is originally known to be a voluntary activity which requires AWQAF journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society-state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's.

### **Objectives of AWQAF:**

- ❖ Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
- ❖ Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
- ❖ Investing the current waqf projects and transforming them into an intellectual product in order to be exposed to specialists. This is hopefully expected to induce dynamism among researches and establish a link between theory and practice.
- ❖ Promoting reliance on the repertoire of Islamic civilization in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individual's and nation's levels.
- ❖ Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other.
- ❖ Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
- ❖ Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

## **Publication Regulations**

AWQAF journal publishes original Waqf-related researches in Arabic, English and French. It also accepts summaries of approved M.A's and Ph.D's and reports on conferences, symposia, and seminars dealing with the field of Waqf.

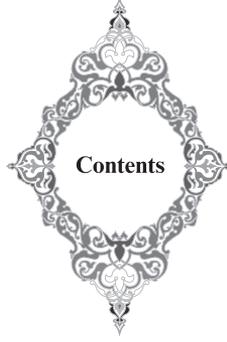
Contributions are accepted in Arabic, English or French, provided they abide by the following regulations:

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- ❖ They should abide by the academic conventions related to the attestation of references, along with the academic processing.
- ❖ An article must be 4000-10,000 words in length, to which a 150-word abstract is attached.
- ❖ Articles should be typed on A4 paper, preferably accompanied by a disc (word software).
- ❖ Material meant for publication should undergo a confidential refereeing.
- ❖ Coverage of seminars and conferences is acceptable.
- ❖ Material once sent for publication, whether published or not, is unreturnable.
- ❖ Awqaf is entitled to re-publish any material separately without checking with the relevant author.
- ❖ Awqaf allocates material remuneration for publishable researches and studies as set forth in the relevant rules and regulations, in addition to 20 offprints to the respective researcher.
- ❖ All submissions should be sent to:

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## **"Waqf on Minorities"**

### **Towards the Empowerment of Moslem Minorities Worldwide in Modern World**

Moslem minorities worldwide are estimated at a half billion, with numerous economic, educational and cultural needs in the light of their specific conditions or their responsibility for propagating the mission of Islam among Islam-ignorant people. The attacks of September 11, 2001 against the United States made an originally tenuous situation for Moslems even more volatile, especially those countries falling under the brunt of poverty and illiteracy. As a result, those minorities found themselves face to face with serious challenges despite the availability of effective human resources and experiences.

Those minorities, irrespective of their actual numbers, lack an effective economic, social and cultural basis which keeps them away from waiting for aid to reach them even from other Islamic countries. We should mention here that in India, for example, there are 140 million Moslems and in Poland there are twenty thousand Moslems. The question which yields itself here is how waqf can act as a partner within the strategies of those minorities in order to leverage the social and economic status on the one hand and establish a real connection between societies in those countries and the religion embraced by those minorities.

Going deep into those minorities worldwide, we find that modern studies confirm the role played by them so much so that waqf and donations have been present as early as the early immigration coupled with a parallel political leverage exemplified in defending their interests and cultural and religious particularities. Considering these experiences in behalf of supporting Moslem minorities bring us nearer to strike the answer to the question raised above. It also provides us with a set of perspectives which contribute to the empowerment of those

minorities, maintain their particularities and guard them against loss or vanishing.

- The first dimension for integrating waqf into the interests of Moslem minorities is related to a self and sustainable development away from the failing past experiences of extending financial assistance to such minorities. Counting on such assistance could be affected by the fluctuating political or economic conditions laid by the granting countries. Any assistance should be taken from a strategic perspective which enhances self-reliance and highlights the experiences of the Moslem minorities in the countries they live in. In this way, waqf, through its intrinsic merits of self-support and the sustainability of its projects, becomes an integral part of a process targeting the interests of Moslem minorities so that it helps them acquire the economic and social standing which copes with the economic problems, in addition to playing an important role in the political and social life in their second home.
- The second dimension respects the support of the institutional side for the Islamic minorities, along with averting individual work in behalf of the group. Among the lessons we learnt from the awqaf experience is the specific development of charity which calls for collective work within an institutional context which prolongs its age and connects it with the needs of the group. It also protects it from the individual whims. The prosperity of the Islamic waqf system brought with it an institutional trend which changed it into an integrated collective system protected by sharia, advocating collective work, observing transparency and respecting the intents of the waqifs (dedicators).
- The third dimension is connected with the cultural and psychological impact resulting from the feeling towards having a waqf institution for those minorities and their feeling of belonging to the Umma and having an access to other Moslem brothers Worldwide. Creating such institutions with temporal and spiritual dimensions could play a cultural role par excellence because awqaf represent a distinctive indicator of the Islamic civilization. Consequently, the presence of Islam will remain tangible and ever growing with the successive generations, reminding them of their roots, regardless of their different residence.
- The fourth dimension is related to the types of support extended by such minorities to the social projects in their countries. Moslems in those countries are in need of cooperation and solidarity so that they would not become a public charge on other institutions. Moreover, Islamic minorities should develop their potentials in order to be able to extend help to people of other religions. This will help introduce Islam as a tolerant religion which respects other fellow citizens living next to them.

With the growing Islamic population all over the world, we find that there are cities in which Moslems are likely to outnumber the population of other religions; we notice that the activities and potentials of such minorities lack a clear vision to build their capacities in the light of their basic principles. They also shun the legal and epistemological domains made available in those environments for reasons not to be mentioned here. We do believe that Moslem minorities, wherever they exist, need to build strong economic and social institutions which enable them to solve their economic and social problems, taking into consideration that their existence in those countries is no longer temporary or limited. In respect of the cooperation between Moslems and their brothers in religion, waqf and philanthropic organizations, governmental and non-governmental, must establish minorities-oriented awqaf in the interest of building a true and everlasting relation.

Successful models demonstrating the core role of waqf can be spotted in different parts of the world. In South Africa, for example, the Moslems' activities cannot be overlooked. The Moslem population in this country is about 2 million (2% of the whole population) but the waqf activities occupy a leading position through the 'Awqaf Foundation of S. Africa' and some other organizations which introduce a chain of social and economic services within a waqf-based vision. The capabilities of Moslems in S. Africa, though limited, managed to diversify their social and cultural activities and benefit from the transformations which came with the disappearance of the apartheid. They also managed to extend bridges to the various components of the society and fight poverty away from any religious or racial considerations. It is not strange therefore to see Moslems in those countries enjoy a very good reputation, not to mention the steady efforts to achieve more success. This case of S. Africa deserves to be thoroughly studied and assimilated.

May Allah the Almighty guide the people there in the way of righteousness. Parallel to its institutional activities, Awqaf Foundation of S. Africa strives to circulate awareness not only among Moslems inside S. Africa but also inside the neighbouring countries through seminars and workshops. To encourage this trend, Awqaf Journal allocates a special part for those researches submitted during the workshop meant for 'Developing the Management Skills of Waqf Cadres in South Africa' which was held during the period from 4-6 December, 2009 organized by KAPF in collaboration with the Islamic Bank of Development, with the participation of 8 African countries. The researches introduced during the workshop gives us an idea about the interest of the researchers from S. Africa, Kenya and Malaysia and the role waqf can

play in building a powerful society.

**Dr. Adi Setia in ' Waqf: Civil Society and Civil Economy'** introduces a brave attitude to connect waqf with the philosophy of economy as implemented by the Moslem societies through two major characteristics. The first is related to the connection between waqf and the actual needs of the people and the means of remedying the problems resulting therefrom. The second characteristic is its belongingness to the non-governmental sector which reflected that real partnership between waqf and the society, whether this is in connection with its management or development.

**Dr. Ismail Munshi**, in his research ' the Role of Awqaf in Alleviating Poverty' lays emphasis on an approach from human rights perspective which calls for re-considering the strategies of waqf institutions in order to become one of the major tools for maintaining the social equilibrium through combating poverty and stressing social justice.

In his research ' State and the capabilities of Waqf Institutions in the Kenyan Coast' **Dr. Abdul Qader Hashem traces** the history of awqaf management in Kenya and the challenges which encountered, and still encounter, waqf. He believes in the possibility of improving the situation of waqf through benefiting from the contemporary experiences in the areas of management and investment.

Issue 18 of Awqaf Journal includes also the other recurring parts such as the refereed researches, articles, book overview and others.

The refereed researches in this issue approach two major questions: 1. means of protecting waqf; 2. creating new investment opportunities to promote the efficiency of the waqf institutions and diversify their resources. To protect waqf, Dr. Abdul Qader bin Azzouz in his article 'Civil Liability of Nazara on Waqf' submits a crucial case related to the protection of waqf through the legal and sharia steps to validate the responsibility of the nazir for any loss resulting from his ignorance or negligence and the compensations incurring from such a behaviour.

**Dr. Abdul Razzaq Al Asbahi**, in his research 'Moroccan Judiciary Resulting from Adopting Various Attitudes to substantiate the Rights of Awqaf' approaches the paradoxical judicial attitudes and the resulting legislative void which had a negative impact on awqaf, taking into consideration the complicated legal system and the multiplicity of disputes. The researcher advocates the method of *legal disposition* through the enactment of laws and regulations to protect the awqaf.

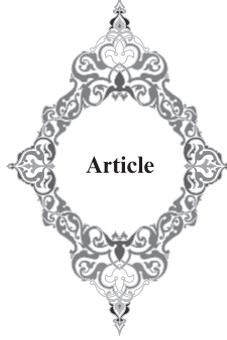
In his article ' Challenging Waqf' - a Tool for Financing Inventions', Dr.

**Sahrawi Miqlati** introduces one of the investment means advocated by those aiming to develop voluntary work known as the Challenging Waqf. The study aims to study the adaptability of this tool in the domain of Islamic waqf and to specify its sharia restrictions so that it could develop into an Islamic tool which is likely to enrich the tools of waqf investment. It is known that this sector stands in need of specific shifts in the areas of management, investment and spending.

**Dr. Randi Deguilhem** writes about 'On the Nature of Waqf - Pious Foundations in Contemporary Syria - A Break in the Tradition' which is translated into Arabic and includes a deep analysis of the transformations which came with the development of awqaf in Syria, specifically those which came with establishment of governmental waqf management. The researcher indicates those major changes which can be known as 'waqf equations' and their major components (waqifs and beneficiaries). The researcher also stresses the fact that such a trend had started before the year 1949, i.e., during the French mandate and the tendency of the French administration to dominate the waqf sector to marginalize its role.

**Dr. Mohammad M. Al Arnaut** in his article 'A Unique Waqf in Bosnia and Herzegovina for Teaching *Mathnawi* by Jalal Uddin Al Roumi' gives us an idea about the deep cultural trend which characterizes the Islamic awqaf and the interest of Moslems in learning and culture, besides introducing them to the public. The uniqueness of waqf here is reflected in teaching some of the best verses of Jalal Uddin Al Roumi. The current issue of *Awqaf* includes also a book review in which Kamal Mohammed Mansouri goes through the 'Principles of Charitable Work in Islam in the Light of the Texts and Shari'a Intents' by Sheikh Yousef Al Qaradawi. This issue includes also coverage of the latest international developments in awqaf.





## ***Waqf, Civil Society & Civil Economy: Preliminary Reflections***

**By: Dr. Adi Setia<sup>(\*)</sup>**

### **Introduction: The Importance of History**

The Qur'an commands us to take lessons from the (hi)stories of people who have gone before us: "Verily in their stories is a lesson (*'ibrah*) for a people who have hearts." The great historian and socio-economist, Ibn Khaldun, entitled his magnum opus *Kitab al-'Ibar = The Book of Lessons*. In academia, we all know that knowing the text is not enough, for we must also know the context in which the text is embedded.

In the specific occasion of this Waqf Training Course, it is simply not enough to know the formal, technical fiqh and legal rules governing waqf but we must also know both the concrete historical contexts in which those rules arose and were implemented and also the present contemporary contexts in which those rules are to be creatively implemented again. A study of the history of waqf will show that there was a "constant dialogue between the letter of waqf law and socio-economic requirements."<sup>(1)</sup> As Dr. Ahmad al-Qasimi, a former mudir al-awqaf in Damascus, puts it, "the waqf was never the dead, unchangeable property described by the Orientalists as 'mainmorte'. Rather, waqf was a vital, central institution in Islamic society which adapted to the needs of the

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(1) Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Haramayn in Ottoman Algiers* (Leiden: Brill, 1998), 141.

community in each epoch.”<sup>(2)</sup> The extent to which the ongoing revival of waqf is to be a creative, anticipative, proactive and systemic one will largely depend on the extent of our critical understanding of waqf history, and the way that history is embedded in the larger socioeconomic history of Muslim societies.

### **(1) *Waqf* & Civil Society in Islam: Reflections on Some Historical Case Studies**

#### **1- What is 'Civil Society'?**

By highlighting some historical case-studies, this paper shows that waqf was the operative economic dimension of civil society in Islam; waqf was how civil society was actually practiced in Islam. But what is meant by 'civil society'?

The word 'civil' and its various cognates, city, citizen, civilizations, civic, etc., which are all derived from Latin 'civitas', originally connote a settled community of a significance size facilitative of complex political and socio-economic life. This is an essentially secular connotation without religious or transcendent undertones, since the basic underlying idea is that human beings are rational and sensible enough to eventually come together and agree on some common good for mutual prosperity in the life of this world. Thus the term 'civil society' simply means people coming together on their own accord and sense of mutual responsibility and shared values without or even despite the coercive power of the state or the seductive power of the market. In contrast, the corresponding term in Arabic, *al-mujtama' al-madani*, connotes also a religious, transcendent meaning, for the adjective *madani* comes from the noun *madinah* which literally means "the place where the religion is practiced."<sup>(3)</sup> Thus civil society must also mean for Muslims as a society whose members organize its private and public life according to Islamic religious norms.

If, according to the working definition given by the Center for Civil Society at the London School of Economics, "civil society refers to the arena of uncoerced collective action around shared interests, purposes and values," involving institutional forms distinct from the state, then the institution of waqf has been and shall continue to be the cornerstone for establishing vibrant communities largely socioeconomically autonomous, even aloof, from the centralised political apparatus of the state. In other words, waqf allows creative space for communities to micro-manage their own socioeconomic affairs

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(2) Ibid., 141n127.

(3) Syed Muhammad Naqib al-Attas, "Islam: The Concept of Religion and the Foundation of Ethics and Morality," in his *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: ISTAC, 2001), 43n3.

according to divinely sanctioned ethical norms, instead of surrendering their communal creative rights to the state, which should instead, by virtue of its central power, focus on establishing the macro-framework for such communal creativity to be possible, encouraged, and facilitated.<sup>(4)</sup> Civil society as operationalised in Islamic civilizational history allows for the fruitful integration of the mosque and the market, of the private and the public, of the spiritual and the material and of the individual and the communal.

## 2- Some Historical Case Studies

Many scholars, both Muslims & non-Muslims, have lately done some detailed studies on the waqf institution as it was practiced in history. Apart from monographic studies, there are also many learned papers published in scholarly journals and conference proceedings as well as papers presented in conferences but have not so far been published. I believe that it should be a part of the duty of everyone involved seriously in waqf work to be familiar with the main contours of the results of all these historical researches into the waqf institution. Apart from studies on the waqf per se, one should also take note of critical comparative studies that show the link between Islamic waqf and western trust laws.

One way to make the results of all these valuable scholarly researches available in accessible language to the busy waqf professionals and to the lay public in general is for, say, the IDB to commission a three volume historical and contemporary reader on the waqf institution as it was operationalized in Islamic history from the earliest times until the end of the colonial period (circa 1950s) and through the post-colonial period (circa 1950s-2010). The first volume may focus on the precolonial period, the second on the colonial period and the third on the post-colonial period up to the present time. This historical reader will provide a synoptic and yet sufficiently detailed and informative survey of the most important and salient historical studies done on the waqf institution so far as well as presenting summarized case studies of successful and perhaps also not-so-successful waqf initiatives. Such a reader will be a good complement to the remarkable historical survey of Professor Dr. Murat Cacakca entitled *A History of Philanthropic Foundations: The Islamic World From the Seventh Century to the Present* (Istanbul: Bogazici University Press, 2000).

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(4) On the idea of the civil and civic in the Islamic context, see the excellent analysis by Mohammed A. Bamyeh, "Civil Society and the Islamic Experience," in *ISIM Review*, no. 15 (Spring 2005), 40-41.

What follows is a brief synoptic survey of a number of remarkable scholarly studies on waqf history and my brief reflections on them.

**3- Professor Dr. Murat Cicakca, *A History of Philanthropic Foundations: The Islamic World From the Seventh Century to the Present (Istanbul: Bogazici University Press, 2000).***

This work is a comprehensive survey of the waqf institution as it was practiced in history throughout Muslim lands from Morocco to Malaysia. It also looks at the reasons for the rise and decline of the waqf system in these lands and what lessons we can learn from them in our present endeavor to revive waqf in our contemporary contexts. It is indispensable as a sourcebook for a comprehensive, global historical perspective on the Islamic waqf system. Professor Murat says:

Indeed, economists looking at the waqf system would be perplexed by the fact that a myriad of essential services such as health, education, municipal, etc., have historically been provided at no cost whatsoever to the government. Therefore, *ceteris paribus*, the waqf system can contribute significantly towards that ultimate goal of so many modern economists: massive reduction in government expenditure, which leads to a smaller budget deficit, which in turn lowers the need for government borrowing thus curbing the “crowding-out effect” and leads to a reduction in the rate of interest, consequently reining in a basic impediment to private investment and growth.

In general, Professor Murat says that both property and cash waqfs became the norm in all these Muslim countries. Initially there had been some fiqh controversies over the validity of cash waqf. However this issue was resolved when it became clear that cash or money can be just as permanent and perpetual as property waqf, depending on how it was managed and the macroeconomic context of the time. In his studies, he focused a lot on cash waqfs, perhaps because generating income from cash capital without depleting it can be more challenging and require more creative mechanisms, and risk-benefit analysis.

The corpus of the cash waqfs were supposed to be invested through *mudarabah* (venture capital) mechanisms according to the opinion of the Hanafi jurist Imam Zufer. But the reality was that these cash waqfs lent out money from the corpus against collateral at a nearly constant return of between 9-12%. This

seems to smack of *riba* but it was called *istighlal*, in which money was lent out for gain against collateral, and so in essence not different from modern banking interest, except that the capital cost of the endowment was zero, thus the entire rate of return was profit to be used for charitable purposes.

It would have been better according to Professor Murat if a number of cash waqfs could have pooled their resources, the so-called “supply side capital accumulation,” which in turn could facilitate capital pooling on the “demand side” by entrepreneurs, thus spreading the risks and optimizing the potential benefits, thus facilitating *mudarabah* (venture capitalism) and *musharakah* (business partnerships), leading to an overall productive rather than consumptive communal economy.

*Reflections:* When talking about cash waqfs, one has to very carefully differentiate between the classical Islamic understanding of money and the modern, secular, post-Bretton Woods understanding of it. Without going too much into the historical and technical minutiae of the subject, it suffices here to say that Islamic money or currency (*al-Nuqud al-Islamiyyah*) has always been specie money having intrinsic value, specifically, gold dinar and silver dirham, while modern neoliberal capitalist money, like the global reserve currency, the US dollar, is now purely debt-backed, without any intrinsic value and even without any asset backing. What is worse, the value of the US dollar has been continuously debased through expansionary monetary policy, especially since 1973 when President Nixon unilaterally unpegged the dollar from gold, so much so that the dollar today has lost more than 90% of its value in 1973.

So on the one hand we have the classical Islamic monetary system in which the specie-based money supply was thoroughly embedded in the real, substantial economy due to it having intrinsic value, while on the other hand, we have the modern free floating largely speculative monetary system in which the money supply is to a large extent disembedded from the real economy. In the first case, the value of the currency, because it is intrinsic to the specie itself, is largely independent of its provenance or issuer and hence stable as a store of value, whereas in the second case the value of the currency rises and falls according to the national monetary policies of the issuer and the manipulation of global financial and currency markets by speculators, and hence thoroughly unreliable as a store of value, at least over the medium and long term.

Now, since the corpus of the cash waqf, and hence its intrinsic value, has to be preserved over the long term in order for it to generate perpetual income for charitable purposes, then the contemporary revival of cash waqfs can only be truly waqfs if the cash is in the form of truly “hard” currency having intrinsic value that does not fluctuate according to the arbitrary fiscal policies of the issuer, and hence,

for all practical purposes, that cash must be 'ayn not dayn, and 'ayn means gold and silver, specifically, gold dinars and silver dirhams, and gold and silver coins and bullion in general. So the best way and yet liquid way to preserve the long term economic value of the cash or paper or fiat money endowed for waqf is to convert it immediately to dinars and dirhams or bullion, and especially so today in the ongoing wake of the current global financial and economic meltdown due to the runaway expansionist fiscal policy of the US government, made worse by irresponsible Wall Street speculation in derivatives and forex.

Another way to preserve the value of the cash waqf as a hedge against inflation is to convert it into various forms of income generating real estate (not stocks definitely) especially farm lands, business premises (e.g., bazaars) and productive capital in the form of say, small and medium scale community based industries that provide for the real economic needs of the community.

Anyhow the point here is that if we want to systematically revive cash waqf as an institution we have to revive the gold dinar and silver dirham monetary system, the one entails the other, they both come in a total package, we take one, we take the whole package with it. One way to do this is to, say, invest cash waqfs monies into setting up waqf Islamic mints to mint gold dinars and silver dirhams to be sold to the public who will pay for them in fiat money (at a reasonable mark up over the bullion market price to cover production expenses) which will be recycled into buying more gold and silver bullion to mint more gold dinars and dirhams to be sold to the general public. In this way we can wean the people away from unstable fiat money to stable specie money and slowly build an indigenous monetary system to revive the local economy as well as to provide a communal economic buffer against the negative effects of global economic and fiscal uncertainties.

This point will be further argued and elaborated in a forthcoming paper, "Cash Waqfs, Communal Well-Being & the Case for the Return of the Dinar & Dirham," insha Allah.

Also the idea of Professor Murat on the cash waqfs as a systemic mechanism for both supply and demand side capital accumulation for productive business enterprises to further the economic well-being of the community should be taken into serious consideration and further explored and realised by waqf professionals. I envisioned a network of communal cash waqfs pooling resources into intercommunal Cash Awqaf Investment Trust Fund for Entrepreneurship or Awqaf Venture Capital (AWCAP). The idea here is to slowly build over time our own autonomous Islamic parallel economy on a communal, regional and then global scale, without having to piggy-back for a meagre living on the mainstream neoliberal capitalist ribawi dollar-infested speculative economic system. Anyhow we all know that the paper dollar system is now heading fast forward to the hard

rocks sooner than later, and so we better act now and get off that sinking Titanic while we still have our wits about us!

#### 4- The Waqf al-Haramayn of Ottoman Algiers

This discussion is drawn from the excellent, meticulous study by Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Haramayn in Ottoman Algiers* (Leiden: Brill, 1998).

The Waqf al-Haramayn of Ottoman Algiers was so named because, like the imperial *evkaf-i harameyn* in Istanbul upon which it was modeled, it was originally meant to provide for the poor and needy of the holy cities of Makkah and Madinah, but over the long years of its existence, the Waqf included “in its patrimony of endowments purposes other than the poor of the two holy cities of Islam.” It eventually became responsible also for the maintenance of four of the town’s mosques, salaries of some local functionaries, and for the “alleviation of the misery of the local poor,” including the redemption of Muslim captives, students of religion and Qur’an readers, mosque functionaries, and even the feeding of Christian captives.<sup>(5)</sup> So basically a single-purpose waqf it systematically expanded over time into a “multipurpose” waqf—a kind of umbrella waqf supervising smaller waqfs entrusted to its care and management. In my view, the most interesting lesson drawn from this study of the history of the Waqf al-Haramayn of Ottoman Algiers is that a waqf can be endowed in one place to benefit poor people living in another faraway place.

Endowment for the poor of the Haramayn can be traced back to the time of the Prophet sallallahu ‘alayhi wa sallam. The origins of the Waqf al-Haramayn of Algiers itself can be traced back to the early 17<sup>th</sup> century if not earlier, and it became the major foundation in Algiers in the course of the 18<sup>th</sup> century. According to Hoexter:

The people who endowed their properties to the poor of the two holy cities of Islam belonged to all strata of the Algiers’ population. Among them were women, men, couples, two or more family members, and partners. Some belonged or were associated with the Ottoman ruling caste of Algiers: the rulers themselves, senior members of the military and administrative elite, soldiers of the Algerian janissary corps and members of their families. Others belonged to the

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(5) Miriam Hoexter, *Endowments*, 23ff.

local indigenous population. Among them were men of religion, artisans, Andalusians (descendents of Muslims, who as a result of the *reconquista* were forced to leave Spain and settled in Algiers), *barraniyya* (people originating in other parts of Algeria, who came to Algiers in search of work), freed slaves, both male and female. In fact, no Islamic group in Algiers remained unrepresented in the population of founders of endowments for the benefit of the poor of Mecca and Medina.<sup>(6)</sup>

Other sources of income include rental income from assets endowed in other Algerian cities for the poor of the Haramayn (*awqaf al-qura*), charitable donations (*nawafil al-khayrat* or *sadaqat*), war booty of Algerian corsairs (*al-futuhat al-rabbaniyya* or *al-dakhil min al-bahr min al-marakib* or *ghanima*), purchases of assets, and testamentary endowments.

Since the Waqf al-Haramayn was a large public foundation with direct and indirect involvement from all strata of the society, it was in the political interest of the ruling Islamic authorities to see to its proper, transparent administration. The administrative model of this waqf eventually worked out into a formalised combination of direct and indirect state control. Apart from the normal

...clerks and assistants, charged with the many technical details of running the institution, a group of four people were entrusted with the supervision (*nazar*, *tawliya*) of the affairs of the [Waqf al-] Haramayn. This governing board was invariably composed of two officers of the Algerian [janissary] *ocak*, usually referred to *al-aghawat al-akhyar* (the benevolent officers) and two indigenous Algerians, described in the registers as *al-wukala' al-abrar* (the righteous administrators). The two major status groups in the town—the governing elite and the governed—were thus represented in equal numbers on the body responsible for the management of the [Waqf al-] Haramayn.<sup>(7)</sup>

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(6) Hoexter, *Endowments*, 10-11.

(7) *Ibid.*, 33.

So basically what we have here is kind of collective management board consisting of representatives from the state and from civil society. Civil societal board members were normally those who came from a trade or commercial background, thus ensuring financial astuteness and creativity in preserving and enhancing the economic value of the waqf assets. In current South African parlance, this can be called the PPP (Public Private Partnership) system of management of public foundations (i.e., *khayri* as opposed to *ahli* or *dhurri* = private, family foundations). This management set-up is understandable given the fact that the success or failure of a large public charitable foundation can have positive or negative effects on society as a whole and hence have repercussions for the political stability of the state and not merely the institutional stability of the foundation per se.

*Reflection #1:* Just as large for private profit mega-corporations can be too large to fail, so large mega-waqfs can also be too big to fail, which in turn beg the question of “what is the optimal size for a waqf given the nature of its charitable purpose?”

*Reflection # 2:* The historical example of the Waqf Haramayn of Algiers show waqfs can be set up in a place to benefit the poor of another, far away place. Although the normal situation is for a waqf to benefit the community in which it is set up, there are today many cases in which (i) a community is too poor as a whole for any of its members to be well off enough to set up waqfs; and (ii) a community is so affluent that setting a waqf to benefit its members can be redundant to a large extent. Hence I believe it is quite possible for affluent Muslim countries and communities (like Brunei, for example) to set up richly endowed and well-managed waqfs for the benefit of poor Muslim communities in neighboring countries (like in Indonesia, the Phillipines, Cambodia, Myanmar and Bangladesh). In this case, the waqf management board should also comprise, apart from representatives of the host country, well-respected civil societal members of the recipient countries, because the latter is much more conversant with the local situation and hence can ensure that the benefits are conveyed direct to their recipients. In any case, this arrangement is way much better than the current systemic wasting of the economic surpluses of rich Muslim countries into the innumerable castles-in-the- sand construction projects of Dubai, which also exploit workers from poor Muslim countries to boot!

*Reflection # 3:* The authorities of the town had awqaf registry of the whole town compiled, called the Waqfiyyah of Algiers, to “ensure that assets endowed for the benefit of these foundations did not get lost, thereby endangering the very

existence of the institutions depending on them for their funds.’’<sup>(8)</sup> So I think it is a good idea to initiate and maintain a continuously updated awqaf registry at the communal and state level of governance to promote transparency and safeguard the interest of all stakeholders, especially the immediate beneficiaries. Also such a registry is a useful reference to redundancies (i.e., too many waqfs serving the same charitable purpose) and to identify areas of communal need yet to be served by a waqf. This will ensure a more efficient and distributive allocation of potential waqf resources for various charitable purposes and socio-economic projects in the communal interest.

### 5 - The Waqfiyyah of Ahmed Pasha

This discussion is based on Muhammed Ahmed Simsar, *The Waqfiyyah of Ahmed Pasha* (Philadelphia: Universiti of Pennsylvania Press, 1940).

Ahmed Pasha (d. 1517) was a Bosnian convert to Islam of noble lineage who was inducted into Ottoman imperial government and rose to become commander-in-chief of the imperial army and grand vizier.<sup>(9)</sup> As a member of the ruling elite, his estate was substantial, and accordingly the properties he endowed for charitable purposes were of substantial value too.

His is a good example of how, through the institution of waqf, the immense wealth accumulated by the ruling elite was recirculated and hence reinvested into the general economy of the community, preempting to a large extent a lop-sided cumulation of accumulation prevalent in modern times, in which the accumulated wealth of the ruling and commercial class is systematically siphoned out of the local, communal economy altogether.

His waqfiyyah, written in Ottoman Turkish, gives us a detailed look both into the formal structure of the waqfiyyah as a legal-fiqh document and into the nature of the waqf corpus described therein. It may be divided in five parts: (i) the legal certification of the qadi, (ii) a prologue giving the religious rationale for making a waqf, (iii) naming and dedication of the various properties and the foundations to be supported by them, (iv) donor’s stipulations with regard to administrative and financial supervision, (v) date of the document and names of witnesses and the copyist.<sup>(10)</sup>

The foundations listed in the waqfiyyah included two mosques, one in Rus in Rumelia and the other in Dil in Anatolia, and a soup kitchen in Dil. For the

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(8) Ibid., 22-23.

(9) Simsar, *Waqfiyyah*, 176ff.

(10) Ibid., 182ff.

support of these foundations and the personnel staffing them, the income “of a number of villages, lands and other properties in Rumelia and Anatolia were assigned as mawqafat or trusted properties. The administrative and financial part of the waqfiyyah indicates the wages payable to the different staff categories, including the mutawalli (administrator), the nazir (inspector), revenue collector, imam, Qur’an reciters, khatib, janitor, cook, baker, dishwasher, and so on. This part of the waqfiyyah also stipulated that surplus income should be put into a special account devoted to repairs. There is also a provision that stipulates the preparation of an annual statement of accounts to be presented to the Chief Judge of Rumelia, who shall in turn submit to the sultan himself for his personal inspection. This provides public government oversight of the foundation to ensure that the founder’s stipulations were followed by the mutawalli and nazir.<sup>(11)</sup>

## 6 - Waqfs and Urban Structures of Ottoman Damascus

This discussion is based on Richard van Leeuwen, *Waqfs and Urban Structures: The Case of Ottoman Damascus* (Leiden: Brill, 1999); and Stefan Heiderman, “The Transformation of Middle Eastern Cities in the 12<sup>th</sup> Century: Financing Urban Renewal,” in Miriam Frenkel and Yaacov Lev, eds., *Charity in the Late Antiquity and Medieval Islam* (Wiesbaden).

This interesting historical and conceptual study highlights what the author calls the “integrative” function of the institution of waqf in the urban life of Damascus through long centuries of its Islamic history with special reference to the Ottoman period.

Way before the Ottoman period, waqf was already a major urban phenomena in Damascus as noted by the greatest of world travellers, Ibn Battutah:

The variety and expenditure of the religious endowments at Damascus are beyond computation. There are endowments in aid of persons who cannot undertake the pilgrimage to Mecca, out of which are paid the expenses of those who go in their stead. There are other endowments for supplying wedding outfits to girls whose families are unable to provide them, and others for the freeing of prisoners. There are endowments for travellers, out of the revenues of

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(11) *Ibid.*, 182ff.

which they are given food, clothing, and the expenses of conveyance to their countries. Then there are endowments for the improvement and paving of the streets, because all the lanes in Damascus have pavements on either side, on which the foot passengers walk, while those who ride use the roadway in the centre....Besides these there are endowments for other charitable purposes. One day as I went along a lane in Damascus I saw a small slave who had dropped a Chinese porcelain dish, which was broken to bits. A number of people collected round him and one of them said to him, "Gather up the pieces and take them to the custodian of the endowments for utensils." He did so, and the man went with him to the custodian, where the slave showed the broken pieces and received a sum sufficient to buy a similar dish. This is an excellent institution, for the master of the slave would undoubtedly have beaten him, or at least scolded him, for breaking the dish, and the slave would have been heartbroken and upset at the accident. This benefaction is indeed a mender of hearts—may God richly reward him whose zeal for good works rose to such heights.

His account of Damascus's many waqfs also "stresses a combination of moral and material 'facilities' provided by Damascus for the travelling scholar."

The people of Damascus vie with each other in the building and endowment of mosques, religious houses, colleges, and sanctuaries....Every man who comes to the end of his resources in any district of Damascus finds without exception some means of livelihood opened to him. Either as imam in a mosque, or as a reciter in a college, or by occupation of [a cell in] a mosque, where his daily requirements are supplied to him, or by recitation of the Qur'an, or by employment as a keeper at one of the blessed sanctuaries, or else he may be included in the company of Sufis who live in the convents, in receipt of a regular allowance of upkeep-money and clothing.

Anyone who is a stranger there living on charity is always protected from [having to earn it at] the expense of his self-respect, and carefully sheltered from anything that might injure his dignity. Those who are manual workers or in domestic service find other means [of livelihood], for example as guardian of an orchard or intendant of a mill, or in charge of children, going with them in the morning to their lessons and coming back [with them] in the evening, and anyone who wishes to pursue a course of studies or devote himself to the religious life receives every aid to the execution of his purpose.<sup>(12)</sup>

According to Stefan Heidermann, it was during the Seljuq and Zangid period (1087-1174) that the institution of waqf became the chief means to finance the provision of these public goods and services. A major motivation was the government's concern for upholding the Shari'ah which motivated them to abolish various illegitimate intra-urban taxes and dues such as *rusum* and *huquq al-bay'*. This reduced the tax base for public spending on urban renewal and so waqf mechanisms were widely adopted to finance public works and services for the welfare of Muslims (*masalih al-Muslimin*). These awqafs enabled the rulers to redirect the private surplus of urban economic activity to public purposes "without reverting to direct taxes, and even abolishing them,"<sup>(13)</sup> thus demonstrating that a "minimal state" is possible without compromising on public services. As noted by Ibn al-Athir, these awqaf-financed public works included *madaris*, mosques, hospitals, *zawiyahs* and *khanqahs* (sufi retreats), pilgrims' guesthouses and so on.

The endowed property—the new waqf assets, shops, khans and workshops in the *suq*, tenements and other buildings—increased urban economic activities and allowed a far larger group of people to find housing and employment in the cities. The impacts of that economic growth are still visible in the cityscapes in the Middle East.<sup>(14)</sup>

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(12) van Leeuwen, *Waqfs*, 73.

(13) Heidermann, *Transformation*, 13.

(14) Heidermann, *Transformation*, 14.

Van Leeuwen concludes from his historical study that Damascene awqafs served to promote religious, economic, social and administrative integration in community relations and urban life in general:

Waqfs were an institutional form which facilitated the coordination of investment and urban expansion between individuals and the community, between private and public interests, since initiatives to improve and transform the urban infrastructure and to construct new urban extensions were always linked to the common good by using waqfs as their core.<sup>(15)</sup>

*Reflection:* It may also be noted that the waqf institution also served as a mechanism of coordination between rural and urban economies, especially in cases in which a waqf owned agricultural lands in the countryside, on the one hand, and shophouses and marketplaces in the city, on the other. Thus agricultural surpluses easily found a ready urban market which generated profits that were recycled into the rural economy. This principle of what is now called “vertical integration” resulted in a dynamic coordination and symbiosis between the urban and rural sectors of the economy, in which no one sector became parasitical on the other. This also meant that the rural population could largely remain on the land make a living without migrating to the cities and creating what we now experience as the modern, perennial bane of mass unemployment. In other words, waqfs ensured that both the rural and urban “commons” remained to a large extent “unenclosed,” thus avoiding the bleak scenario of the systemic “enclosure of the commons” leading up to the co-called industrial revolution in England whose extreme socioeconomic inequity was so vividly captured by Charles Dickens in memorable novels such as *Hard Times* and *Bleak House*.

## **7 - Women and Waqfs in the Historical Records**

Here I would like to restrict myself to quoting Miriam Hoexter’s overview which is based on her survey of the latest research on women’s involvement in waqf through Islamic socioeconomic history:

One of the fields in which waqf studies have made a major contribution is gender studies. The idea that women did not own property was challenged and discarded by studies of the endower population. Since

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(15) Van Leeuwen, 202.

only property which belonged in full ownership to the founder could be endowed, the presence of women in the population of endowers is an undeniable proof of the ownership of property by women. These studies revealed not only that women did possess property, but that ownership of property by women was not an exceptional phenomenon limited to a small number of elite women. Studying the general endower population and coming up with quantitative results, helped characterize the findings and point to the relative share of women. Studies from various regions and periods found that women constituted between 20 and 50% of the endower population (depending on the specific study). Moreover, women endowers came from all walks of life-rich and poor, women of notable families, of rulers' households, as well as women of simple origin. That they endowed their property, and very frequently also administered it, offered a picture of women freely disposing of their property and actively engaged in economic and financial matters. Furthermore, questions like the kind and size of assets endowed by women as compared to men, women's preferences concerning the beneficiaries of their endowments, their stipulations as to the division of rights between male and female beneficiaries, the patterns of devolution in subsequent generations, the administrators designated by women as compared to men-all these questions occupied some scholars and again differences were found between regions and periods. Certainly much more can and should be done in this field, which holds out the promise of enriching gender studies in a very significant way.<sup>(16)</sup>

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(16) Miriam Hoexter, "Waqf Studies in the Twentieth Century: The State of the Art," in *Journal of the Economic & Social History of the Orient*, 41: 4 (1998), 481-482. See also, Siraj Sait and Hilary Lim, *Land, Law & Islam: Property & Human Rights in the Muslim World* (London: Zed Books, 2006), especially Chapter 6 on "Muslim Women & Property," 129-146.

## ***(II) Waqf in Relation to Civil Society & the Civil Economy***

### ***1 - Waqf and the Revival of Civil Societal Initiatives in Contemporary Muslim Communities: Some Actual Case Studies and the Creative Path Ahead***

There has been much talk lately both in popular and academic discourse about civil society and what it means in theory and in contemporary practice. Much detailed, useful research has also been done on various manifestations of civil society in the historical (and even prehistorically) experience of diverse civilizations and cultures. In the modern context, discussions about civil society have also led to considerations of alternative socioeconomic frameworks to the presently dominant neoliberal capitalistic set-up in which market forces and commercial exchange geared toward overly individualistic private gain are given undue preference over communal, non-market mechanisms of socioeconomic exchange.

Waqf studies have consistently demonstrated that the Islamic economic system is inherently and self-consciously civil societal in nature, geared to socioeconomic equity for the common good whereby private interest (*maslahah nafsiyyah*) is seamlessly integrated into the larger public interest (*maslahah 'ammah*) leading to what may be called an economy of the common good. Given that the dominant neoliberal capitalist system now aggressively promoted throughout the world behind the slogan of globalization is systemically anti civil societal in nature, current waqf discourse amongst Muslim intellectuals and activists dovetails very well with the growing discourse in the West on alternative economic paradigms that put people and the community back into the center of socioeconomic thinking and planning. I believe that waqf thinkers and activists should familiarize themselves with the thinking and with the thinkers and activists behind the rise of this new “common good” economic agenda in the West<sup>(17)</sup> and find common ground with them, especially given the fact that the waqf system in history has also been cross-denominational and cross-cultural.

Given what we know about waqf and its operationalization in vibrant, cosmopolitan Islamic societies prior to the age of global European hegemony,<sup>(18)</sup> I believe the people now actively involved in the ongoing revivification and revitalization of waqf have to think carefully and systemically about the kind of macroeconomic system implied and entailed by the institution of waqf and in which it is to be embedded. We can ask ourselves whether we want to take either a

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(17) Such as Herman Daly, *For the Common Good*; and David Korten, *Agenda for a New Economy: From Phantom Wealth to Real Wealth*.

(18) Janet Abu-lughod, *Before European Hegemony: The World System, 1250-1350*.

narrow, wide or comprehensive view about waqf, namely: (i) does waqf serve merely as a superficial, legalistic alternative to the modern western secular institution of the charitable trust?; (ii) can waqf provide a systemic alternative to neoliberal privatization?; or (iii) does waqf entail a macroeconomic framework called the gift or civil economy which runs counter to the global dominance of neoliberal capitalism lead by free floating, rootless transnational corporations that are disembedded from local communities?

If we take the narrow view, then waqf is only of technical, legalistic interest, only a “hollow pragmatism,” only a formal, operational variance, for the most part, to secular charitable trust which itself is largely an ad hoc appendage to an over-arching neoliberal macroeconomic framework that has little or nothing to do with the ethos of autonomous community-based charity in which social welfare is served rather than compromised by the market.<sup>(19)</sup> If we take the wide and comprehensive or holistic view then we will have to situate waqf within the larger context of Islamic economic ethics and mu’amalah, as argued in the foregoing two papers on “The Islamic Gift Economy: A Brief Conceptual Outline,” and “Waqf & the Revival of the Islamic Gift Economy.”

In other words, we have to adopt a holistic vision of waqf as an integral part of a comprehensive alternative socioeconomic package; we can’t take waqf without taking along the total package in which it is inextricably embedded. If we do that, then we reduce waqf to a mere technical, legalistic form without realising its profound ethical and socioeconomic substance, and the change from the secular charitable trust to Islamic waqf will largely just be a change in name and not in substance, in which case we shall be repeating the mistake of mainstream Islamic Banking & Finance (IBF) in its systemic preference for legalistic contractual form over the substance of socioeconomic equity.<sup>(20)</sup> We are not saying that the form is not important, indeed it is; but we are saying that *the legalistic form must always be in the service of the socioeconomic substance*. In other words, *Fiqh serves the Maqasid of the Shari’ah*.

Talking about the socioeconomic substance of waqf, I think we may do well to revisit briefly the meaning of the term ‘economy’. The word, of Greek provenance, originally means household management (*tadbir al-manzil*), or the

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(19) In neoliberalism, charity is an afterthought, to be compelled by the state through taxes, whereas in the Islamic Gift Economy, charity is salient and intrinsic

(20) On IBF preference for legalistic contractual forms over socioeconomic substance see the careful discussion in Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press,

management of the family, as opposed to ethics (personal management = *akhlaq* = *tadbir al-sakhs* = *tadbir al-nafs*) and politics (management of the city = *siyasah* = *tadbir al-madinah* = *tadbir al-ummah*). In household management, the over-riding concern of the head of the household is the prudent management of the resources and income and expenditure of the household to provide for the needs of all members, humans and non-humans, of the household. In a typical household, relatively more concern is devoted to the care and provision of the needs of the disabled and the weak (babies, children, the elderly, the handicapped), while the less dependent and independent members (grown-ups and the abled bodied) are pretty much left alone to take care of themselves and even contribute to the overall economy and general well-being of the household.

Now, the city and the country as a whole can be seen as an extended household in which the head is called the government, and the same principle of relatively more concern for the weak (in this case the weak, the poor and the marginalised of the population) applies well too. Through waqf we have a largely decentralised, community-based economic system, called the 'market-welfare'<sup>(21)</sup> system, whose prime concern was ultimately the systemic provisioning of private commercial surplus for public services and for the needs of the poor and marginalised, thus realising the true purpose of 'economics' as a science and of the true meaning of 'economy' as extended household management. In my view, ulama, thinkers and activists involved in the current global revival of waqf should be self-consciously aware of this original meaning and purpose of economics and the economy, namely an economics and an economy of the common good.

This awareness would lead to a systemic redefinition of economics away from the standard neoliberal capitalistic one of scarce natural resources chasing after unlimited human wants, which needless to say is a contradiction in terms, for how can what is scarce chase after and catch up with what is unlimited? Rather, instead of scarcity we shall have abundance, and instead of unlimited wants, we shall have the contentment of living within our means, thus the alternative definition of economics that is proposed here:

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(21) Relli Shechter, "Market Welfare in the Early-Modern Ottoman Economy: A Historiographic Overview with Many Questions," in *Journal of the Economic and Social History of the Orient*, 48: 2 (2005), 253-276. He says (on page 254): "By welfare through the market (or market-welfare), I mean an economic system that partially stifled competition (and efficiency/growth) for the sake of economic stability and a certain level of equity for those established within its boundaries."

*the provisioning and sharing,  
by mutual giving and receiving,  
of natural and cultural abundance  
for realising material and spiritual well-being.*

The remainder of the article explores through some concrete case studies how the above re-definition of economics is been operationalized in the contemporary context through waqfs.

## **2. The Malaysian Case in General**

The Malaysian case is complicated by the fact that Islamic religious regulations are under the diverse jurisdiction of the various autonomous state governments with no uniform standards at the federal, national level. Most property and cash waqfs are either owned or administered by the various State Religious Departments, and there are reasons to believe that this overly centralized arrangement have a negative effect on administrative transparency, economic efficiency and the ethical honoring of the original intent of the donors.

Notwithstanding the socioeconomic merits or lack thereof of the above top-down arrangement, for Islamic civil societal purposes, we need to have a more decentralised waqf management system which provides incentives to privately owned capital to found and administer cash and property waqfs, since these will be more sensitive and responsive to the peculiar needs and requirements of a particular communal context.

The role of the State Religious Departments should be mostly supervisory and regulatory, and to set high standards and enforce them through the agency of the shari'ah courts, thus extending their juristic role into the wider, public socioeconomic or mu'amalah arena instead of being restricted to purely private ibadah and munakahah matters as is presently the case. The tax system at both the federal and state levels can also play their part by allowing tax or rates exemption for waqf properties and giving tax incentives for private companies to create cash or property waqfs.

Despite the above over-centralised scenario, there are in fact quite a number of private waqf initiatives, though some of these may not have been strictly formalised as waqf (probably to avoid state interference and centralization) but they are in any case waqfs in substance. What follows are some two brief case studies from Malaysia and one case study from Jordan:

### **3. Jenderam Foundation, Malaysia**

This foundation has its modest beginnings in the early 80s when a group of friends belonging to a traditional religious texts study circle lead by a local alim decided to collectively buy a piece of rural land of about a few acres in Jenderam about 30 kilometers away from Kuala Lumpur the capital. The land was subdivided into small family sized lots with a portion in the center devoted to a mosque. The idea was to have a small community in which its members can collectively live life according to Islamic ethical principles as far as possible, by buffering themselves from the ceaseless intrusions and distractions of run-away consumerist modernity and thereby create much needed autonomous space for their own emotional, spiritual and intellectual growth.

Over the course of the past twenty-five years or so, the community slowly developed its infrastructure and a foundation was formally set up which administers an orphanage, an old-folks home, a primary religious school, including a foundation cooperative which administers an on-site traveler/visitors inn and hostel, a bakery and a travel agency (mostly conducting tours to places of Islamic religious and historical interest). Recently a philanthropist endowed funds for the building of a school and hostel dedicated to the teaching of new Muslim converts and socialising them into an Islamic communitarian ambience.

The work of this foundation is now locally, nationally, regionally and internationally recognised both by Muslim scholars and the Muslim public in general. Having personally known the founder of the Jenderam Foundation, Ustaz Hashim Salamat, ever since the time he began this grass-roots community-based project, and observed its growth over the years, I must say I admire and share his vision and partake of the sense of accomplishment all those involved must have had felt. (Website: < <http://yayasanaljenderami.blogspot.com> > ).

### **4. Johor Corporation's "Corporate Waqfs"**

This "market-driven" business corporation sees itself as "a community of enterprises serving a higher cause," and that cause is the socioeconomic empowerment of Muslims through what it calls "business jihad," which is operationalized through inter alia identifying and developing entrepreneurial talent and founding "corporate waqfs." While personally I have my own reservations (to be detailed on another occasion) about the corporation's overall investment strategies and some of the commercial enterprises it is presently engaged in, I believe that its notion and practice of corporate waqf deserves our closer scrutiny and critical appreciation.

According to Tan Sri Muhammad Ali Hashim, President and CEO of Johor Corporation, the corporate waqf involves an institutional entity having full mutawalli or management-trustee status and power bestowed by the relevant state Islamic religious authorities. Thus the corporate waqf or waqf corporation is authorised to autonomously exercise discretionary managerial powers within the provision of the trust or waqf deed and within the framework of a corporate or collective decision-making structure, such as the appointment of a CEO answerable to a supervising board of directors, members of which may include fuqaha, qadis or muftis to provide expert and authoritative Shari 'ah oversight. He sees "the fastest way to set-up such a Corporate Waqaf...would be to 'implant' the Corporate Waqaf 'head and face' into the body framework or corporate structure established under the provisions of the prevailing (Malaysian) company legislation." He goes on to say the following:

To ensure its effectiveness, a waqaf corporation must ascertain that right from the beginning the ownership is not limited only to equity with a meaningless minority position but in sufficient quantity to allow the corporation to exercise influence over the strategic direction and critical affairs of the business involved.

Thus, a corporate waqaf must be in a position of influence to enhance business value in order to reap the full harvest of capital appreciation over the long term.

Hence, a truly functional and dynamic corporate waqaf must not only have equity ownership, but a "controlling" position in equity ownership. It may start from a passive, or minority equity position, but must move towards a position of influence, especially in businesses that offer strategic long-term growth opportunities. Even in a situation where it is in a minority, waqaf should also understand that "control" and "influence on control" can still be proactively exercised by waqaf if it can work out alliances and coordinate strategies with other likeminded shareholders.

In any event, an effective corporate waqaf must successfully move towards a position of corporate

control of its investments, if not across the board, then at least in selected, key strategic businesses. Such controlling ownership or influential voting power will grant the waqaf corporation real, active control over all assets - tangible or intangible - as well as the use of these assets. In this manner, it can influence the impact created from business to ensure that maximum benefit will accrue to its targeted beneficiaries as defined by the trust deeds of the waqaf.

Over time, the cumulative impact of successful corporate waqaf ownership will create for it a dynamic leadership position in strategic industries and businesses. This will enable it to determine the direction, develop strategies and generally define the scope and kind of impact the waqaf wants to have. Once the corporate waqaf builds sufficient corporate critical mass (for example, by becoming a “Corporate Waqaf MNC” - which is not impossible), it will be in a much stronger position not only to maximise returns to its intended beneficiaries, but also to be in a position to create an impact on the economic system.<sup>(22)</sup>

My quick personal preliminary take on the corporate waqf as operationalized by Johor Corporation is that it can be a good Islamic alternative to the secular ‘corporate trust’ which mainly acts in the interest of private investors for their private profits, e.g., as in the case of securing a bond issue to fund large commercial for-profit enterprises. In contrast, a corporate waqf is an institutional waqf foundation, very much like the Waqf al-Haramayn discussed earlier, which manages diverse waqf endowments in the interests of the beneficiaries specified in the relevant waqf deeds. Obviously such a public interest waqf corporation staffed by ethical and dynamic business and financial professionals are in a better position than State religious departments to manage the waqf assets in an economically viable manner thus ensuring optimum returns

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(22) See, <http://www.theedgemalaysia.com/commentary/151603-my-say4-corporate-waqaf-way-to-prosperity-.html>. See also other relevant websites: (i) <http://www.jcorp.com.my/> ; (ii) <http://www.businessjihad.com/>; and (iii) <http://www.businessjihad.com/?p=1682>.

to beneficiaries as well as preserving and enhancing the economic value of the waqf corpus or capital assets.

Also a waqf corporation can also be an Islamically acceptable way to restructure a standard private stockholders-owned company into a management cum employee-owned company or corporation or “employee-ownership corporate structure,” in which a company’s assets are transferred to the indirect “ownership” of its staff through the company’s autonomous waqf trust board which shall act in the collective interests of the employees as the waqf’s immediate beneficiary as well as in the interest of some designated charitable causes in the community as its other beneficiary. In other words, a waqf “employee-ownership” structure is a kind of “co-ownership” structure or waqf mushtarak, in which indirect ownership of the enterprise is shared by means of company trusteeship between private owners, investors or stockholders, on the one hand, and the management and working staff, on the other. This equitable set-up will of course essentially render all direct stakeholders (original private owners, management and workers) and indirect stakeholders (the designated charitable causes) *partners* in a common enterprise for the common good, namely the good of the entrepreneurs and the good of the community in which that enterprise finds its home. It might be noted in passing here that the corporate waqf can be conceived as a creative revival in the modern context of the Ottoman guild waqf.<sup>(23)</sup>

This waqf-ownership structure would systemically embeds the enterprise into the community so that there is ensured a dynamic symbiosis between the pursuit of private profit and communal welfare, thus creatively re-realising the traditional Islamic “market-welfare” socioeconomic dynamics in today’s context. Specifically, I believe the extremely successful employee-ownership or “common trusteeship company” structure of the Scott Bader Company (which, incidentally has a branch in South Africa) can be remodelled within an Islamic corporate waqf framework.<sup>(24)</sup>

## 5. Sunnipath Academy and Foundation

This is an extremely well managed online Islamic madrasah based in Amman, Jordan, offering well-structured certified ijazah courses in English on various fundamental aspects of Islam based on classical, authoritative core texts

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(23) Nelly Hanna, “Guild Waqfs in 18th Century Cairo,” See also Randi Deguilhem, “The Waqf in the City,”

(24) Relevant websites: <http://www.scottbader.com/global-commonwealth.html>; and <http://www.employeeownership.co.uk/about.htm>.

or mutuns. It began in the early 2000s when its founders (comprising both scholars and professionals) recognised the urgent need of Muslims in the West for scholarly guided learning in the core classical, religious texts of Islam, and came together to set up the Sunnipath Academy. Given the dispersal of the Muslim population in the West over a wide geographical area and the dearth of authoritative, traditionally trained ulamas who can teach well in English, the establishment of Sunnipath Academy made it convenient space, time and cost wise for many Muslims in the West to have personally guided online access to authentic Islamic learning. To ensure long-term financial support for its work, Sunnipath Academy has established the Sunnipath Foundation to accept and solicit donations including from supporters who want make a one-time donation into a general waqf fund or into a specific waqf fund (say, waqf scholarship fund). In this regard it says the following on its website:

The Messenger of Allah (Allah bless him and give him peace) said: “When a person dies, his works end, except for three: ongoing charity, knowledge that is benefited from, and a righteous child who prays for him.” [Muslim, Tirmidhi, and others]

If you are interested in making a one-time donation but in a manner that benefits the Foundation yearly, you can contribute to our general waqf. We will invest the money and apply the yearly returns to one of our non-profit programs. Generally, returns are 5-7% per year. For example, if you donate \$40,000 and we are able to invest it and earn a 5% yearly return, \$2,000 will be used each year, while not decreasing the principal at all. Ongoing charity, or sadaqah jariya, is an excellent way for you to create a long-term impact and earn endless reward.

Another option would be to have us create a specific waqf from your donation that will be used to finance a scholarship....

SunniPath Foundation has a number of merit-based scholarships so that we can support tomorrow’s scholars today. You can donate to our general scholarship program that provides grants to students who show a promise and dedication in seeking sacred knowledge....

Another option is to set up a separate scholarship under the name of the your choice with specific criteria required of the potential recipient. For example,

if you are a Danish organization dedicated to providing Danish students with an opportunity to study Islam, you can specify that these funds should be set up under a scholarship with your organization's name and that recipients must be Danish high school graduates. To setup a separate scholarship, you can either setup automated yearly donations or donate one-time to create a waqf <<http://www.sunnipathfoundation.org/index.php/foundation/waqfs/>>. The scholarship, including management of funds, recipient selection, and distribution, can either be managed by you or SunniPath Foundation.<sup>(25)</sup>

Sunnipath Academy and Foundation is a very good example of independent, community-based grassroots ulamas-scholars, academic intellectuals and management professionals pooling knowledge, skills and resources together to serve an urgent need of the Ummah which they themselves have identified. Their exemplary work is also proof that Muslims in their collective capacity can initiate and run successful programs to help their own communities without relying passively from the lethargic centralised public sector of the state or the indifferent private sector of the market. Similar like-minded and well thought-out Islamic educational projects in the West include Zaytuna College in California and Cambridge Muslim College in England.

## **6. Other Case Studies**

Many other contemporary case studies are discussed critically by Dr. Murat and other researchers, who in turn have referred to specialist researches done in the various countries, including those with Muslim minorities like the Phillipines. In my opinion these studies need to be read and understood in order that we can know some of the internal and external factors contributing to the rise and demise of waqfs throughout the Islamic world.

## **7. Waqf Research**

Based on the above conceptual and historical considerations, I suggest that it would be worthwhile for Waqf NGOs like AWQAF SA to have a qualified research officer who can:

- (a) look closer into the Islamic waqf issues raised above and provide advise/report as required from time to time;
- (b) study the manner in which secular trust laws overlap with Islamic waqf laws with a view toward formation of a kind of waqf institution that cut across

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(25) <http://www.sunnipathfoundation.org/index.php/foundation/waqfs>

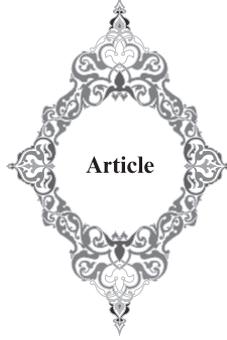
cultural, ethnic and religious divides to tackle the common problem of poverty alleviation.

- (c) explore alternative corporate structure in which company assets are owned by a trust whose beneficiaries are the company employees as indirect owners and a number of chosen charities, thus making corporate social responsibility a more systemic inherent part of corporate management, while making it also more embedded into the community in which the business is located, as per the slogan, “investing in the community.” Relevant cases in point along this line of thinking include the traditional Islamic artisan guilds (sinf, asnaf, ta’ifah) and the modern secular “employee-owned” company structure (e.g., the Scott Bader Company of England (see < <http://www.scottbader.com/global-commonwealth.html> > ; and also [www.employeeownership.co.uk](http://www.employeeownership.co.uk) < <http://www.employeeownership.co.uk> > ).

## **8. Conclusion**

There are other ideas and issues to be explored, fine-tuned and fleshed further, including in areas in which we can take advantage of aspects of the conventional economic set-up both at the macro and micro levels. But I need more time to figure that out. But if this brief paper can motivate us all to think and act as a body toward a creative and dynamic revival of waqf for modern times, then something good will have come out of it.

And Allah knows best.



## ***The Role of Awqaf in Poverty Alleviation: a Human Rights based approach<sup>(1)</sup>***

**By: Dr. Ismail Munshi<sup>(2)</sup>**

### **Abstract**

The sad reality in many developing countries is that the gap between the rich and the poor is ever increasing. Recent research in South Africa has shown this to be true despite the increase in spending on social welfare grants by government, the increased commitment by corporate social enterprise, and the growing philanthropy by civil society and religious communities.

This necessitates that Awqaf organisations worldwide should re-examine their strategies for poverty reduction. The traditional social grants and the religious giving provides only relief by ameliorating the immediate needs of the poor, without changing the structural foundations of societies. Long term strategies to eradicate intergenerational poverty requires a combined strategy of traditional giving as well as social justice philanthropy.

The paper proposes that the institution of Awqaf, combined with the use of modern societal structures, modern financial instruments, and new communication and social trends, makes Awqaf an ideal vehicle for mobilization of community resources to provide sustainable incomes to grassroots civil society institutions for the empowerment of the poor. This paper proposes that Awqaf

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(1) Paper presented at the: Training Program on: Developing Managerial Skills of Waqf Professional Cadres, Pretoria, S. Africa [4th -6th December 2009]

(2) Awqaf South Africa

organisations the world over should promote Social Justice Philanthropy through positive strategies of wealth creation to eradicate intergenerational poverty.

*“Overcoming poverty is not a gesture of charity. It is an act of justice.*

*It is the protection of fundamental human rights.”*

*-Nelson Mandela, 2006*

## **Introduction**

Poverty has always been considered as a state of deprivation and an erosion of human dignity. Poor people are afflicted with hunger, malnutrition, ill-health, unsanitary housing and living conditions, and often without much education. They do not have the resources to overcome these afflictions. Nor has society been successful in being able to create the conditions to overcome these afflictions. They lose their self-respect and ability to participate in any kind of fulfilling social life. In short, poor people lack the freedom to lead a life with dignity.

Recent research has shown that poverty, inequality and underdevelopment are problems that have worsened at a time when civil society and philanthropy have greatly expanded in the world. Nowhere is this more evident than in South Africa where we have had poverty and inequality have increased simultaneously with an expansion in philanthropy and in state expenditure on social and economic services. The implicit message of various researches in the field is that philanthropy on its own cannot address the problem of poverty alleviation and development. They call for a socially responsible state and an enabling political regime to address poverty and underdevelopment.<sup>(3)</sup>

This paper, however, suggests that the growth in philanthropy and social welfare spending is unable to comprehensively address the problems related to poverty and inequality because traditional philanthropy does not challenge the prevailing inequalities that exist within societies. Rather, it works within and even entrenches current social disparities.

This paper discusses the concept that poverty is a violation of the human rights of people, and that society has an *obligation* to give to the poor, who in turn have a *right* to receive. A rights-based approach to poverty eradication will lead to the empowerment of people and to the promotion of social justice. The paper

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(3) Habib Adam and Maharaj Brij, eds (2008) *Giving and Solidarity: Resource Flows for Poverty Alleviation in South Africa*. Human Sciences Research Council.

also defines and discusses the concept of social justice philanthropy, and proposes that it is compatible with Qur'anic teachings. Finally, this paper proposes that the institution of awqaf can be used as a vehicle to provide sustainable funding and human and intellectual resources for wealth creation and empowerment of communities at a local level.

## **Human rights in Islam**

The concept of human rights, according to some scholars, has a universal history that can be traced in the various religions and philosophies of the world.<sup>(4)</sup> It has been argued that the concept of rights was implicit in ancient cultures, even though it was not worded, or defined, as a "right". Long before human rights were recognised in international documents and national constitutions, societies revealed their commitment to principles of propriety, justice, and caring through cultural practices and oral traditions. Basic rights and responsibilities, such as the right to food and the golden rule of "Do unto others as you would have them do unto you," revolved around family, tribe, religion, class, community, or state. In addition, all the major religions of the world espoused and practiced what is known today as rights-based values in some way or other.

The principles and the implementation of these rights have existed for a long time. What is new, however, is the UN Declaration of Human Rights in 1948. The Declaration was signed after two World Wars brazenly infringed upon rights. Its endorsement by most nations of the world affirms the recognition of its importance as a mechanism to prevent future rights infringements. Non compliance could and should mean censure.

Yet, in many modern Muslim societies, there is a reluctance to embrace the theory and practice of Human Rights and Social Justice. The reasons for this are:

- Human rights is perceived to be a product of western ideology, and is therefore regarded as foreign to Islamic culture.
- Many Muslims have become weary of human rights because western nations tend to manipulate its principles in an opportunistic way to serve their national and corporate interests. They are stringent in observing democratic values of social justice and human rights in their own countries, but as imperialists, they are the biggest violators of human rights abroad. This is particularly vigorous against Muslim societies.

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(4) Freeman Micheal (2002) *Human Rights: An interdisciplinary approach*. Polity Press, Cambridge, p14

- Many Muslim countries themselves are very silent on the values of human rights and social justice because of their own internal transgressions.

Notwithstanding these reservations, it is important for Islamic communities in both Muslim majority and minority countries, to re-examine their approach to the HR Declaration, in general, and to understand poverty and poverty alleviation strategies from an HR perspective.

So what then is the Islamic perspective on human rights?

*Human rights in Islam [are] not about how man asserts his rights against man but how man discharges his duties towards God. It is not preoccupied with the horizontal relationship of man with his fellow man but with the vertical relationship that subsists between each man and his Maker. If the vertical relationship is properly tended, all human rights problems fall automatically into place.<sup>(5)</sup>*

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all Human Rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered. Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

To many Muslims the Qur'an is the Magna Carta of human rights. All the rights affirmed in the Universal Declaration of Human Rights of 1948, which all countries of the UN were signatories, including the Muslim countries, have been entrenched in the Qur'an 1400 years ago. Hassan emphasises that the Qur'an frees human beings from the bondage of traditionalism, authoritarianism (religious, political, economic, or any other), tribalism, racism, sexism, slavery or any other impediments that prohibit or inhibit human beings from actualizing the Qur'anic vision of human destiny embodied in the classic proclamation: "Towards Allah is thy limit" (Qur'an 53:42).<sup>(6)</sup>

In a world that is dominated by corporate globalisation and is still in the throes of imperial wars, a faith-based approach to human society is very

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(5) Weeramantry, C. G. (1988), *Islamic Jurisprudence: An International Perspective*, St. Martin's Press, New York.

(6) Hassan Rifaat (1996) *In Religious Human Rights in Global Perspective: Religious Perspectives* p. 361-86 (John Witte, Jr. and Johan D. van der Vyver eds., Martinus Nijhoff Publishers.

compatible to the human rights perspective. On the one hand, religious concepts that regard human beings as being created in the image of God according to Christianity, or as the vicegerent of God on earth according to the Qur'an, provide the proper foundation for human rights. This is an affirmation of the belief that human beings have an intrinsic value in themselves, that they are masters of their own fate, that they are the creation of God and that they are related to us as members of a universal human family. On the other hand, if we regard human beings as mere flesh and blood, as economic consumers and labour resources, we would have fewer qualms about suppressing their rights.

Were human rights to be embraced by Muslim societies, the effects would be far-reaching, extending beyond the scope of this paper. Not only will a right's based approach improve their handling of internal differences and divisions, but it will also provide a legitimate platform for dealing with external influences like corporate globalisation and the imposition of a global monoculture.

## **Poverty as a violation of Human Rights**

### ***Fighting Poverty: a matter of obligation, not charity***

Poverty is still rarely seen through the lens of human rights. Rather it is perceived as the tragic but inevitable result of choices made by people or the generations before them. At best those living in poverty - countries and individuals - are portrayed as unfortunate, at worst as lazy and undeserving.

Some scholars are of the view that poverty is not, in itself, a violation of human rights. However, government action or inaction leading to poverty, or government failure to respond adequately to the conditions that create, exacerbate, and perpetuate poverty and marginalisation, often reflect - or are closely connected with - violations or denials of human rights.<sup>(7)</sup> For example, Buckland et al (1999) argue that the lack of access to education, especially primary education, is increasingly recognised both as the denial of a right and as inextricably connected with poverty and ill-health. Education fosters empowerment and participation in informed decisions about health-related behaviour and is therefore key to breaking the poverty-ill-health cycle.<sup>(8)</sup>

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(7) Primary Health Care (1978). Report of the International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978. Geneva: World Health Organization.

(8) Backlund E, Sorlie PD, Johnson NJ. (1999) A comparison of the relationships of education and income with mortality: the national longitudinal mortality study. *Social Science and Medicine*; 49:1373-84.

Others, however, argue that poverty is both, a cause and a product of human rights violations. It is this double edge that makes poverty probably the gravest human rights challenge in the world. The links between human rights and poverty should be obvious: The poor in many societies cannot enjoy their rights to education, health and housing simply because they cannot afford them. And poverty affects all human rights: for example, low income can prevent people from accessing education, an “economic and social” right, which in turn inhibits their participation in public life, a “civil and political” right, and their ability to influence policies affecting them. People whose rights are denied and are victims of discrimination or persecution, for example, are more likely to be poor. Generally, they find it harder or impossible to participate in the labour market and have little or no access to basic services and resources.

The importance of integrating human rights into development cooperation and poverty eradication is now recognized by UN agencies and various donor governments. The UN Development Program (UNDP) (2000), in its Human Development Report, for example, has stated:

*"A decent standard of living, adequate nutrition, health care and other social and economic achievements are not just development goals. They are human rights inherent in human freedom and dignity. But these rights do not mean an entitlement to a handout. They are claims to a set of social arrangements - norms, institutions, laws and enabling economic environment - that can best secure the enjoyment of these rights. It is thus the obligation of governments and others to implement policies to put these arrangements in place."<sup>(9)</sup>*

However, implementation of the rights-based approach to development has been uneven at best.<sup>(10)</sup> Also, some international bodies, including the World Bank Group and the International Monetary Fund, have not integrated this

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(9) UNDP, Human Development Report, (2000), p. 73. See also, "UN Common Understanding of a Human Rights-based Approach to Development Cooperation" cited in UNDP, Human Rights in the UNDP, Practice Note, April 2005, p. 16.

(10) Alston, P. (2004), "A Human Rights Perspective on the Millennium Development Goals." Paper prepared as a contribution to the work of the UN Millennium Project Task Force on Poverty and Economic Development.

rights-based approach, even in areas where their work clearly has direct human rights implications.

Slim (2001) asserts that at a personal level, rights dignify rather than victimise or patronize people. They make people more powerful as claimants rather than beggars. They reveal them as moral, political and legal equals.<sup>(11)</sup>

### **Rights based approach to poverty eradication**

*“Human rights empower individuals and communities by granting them entitlements that give rise to legal obligations on others.”*

The UN Declaration and other international documents and treaties have given individuals some indispensable human rights and fundamental freedoms, the protection and promotion of which has received growing importance to states and institutions. Fulfilling human rights is slowly becoming an obligation to states as well as to the international community. Violations of rights have attracted international reprimand as well as the call for appropriate remedial action, in accordance with international law. Were poverty to be recognised as a violation of human rights, its removal would become an obligation for states who consider themselves members of the international community, bound by international law and by the obligation to provide assistance and cooperation, as recognized by the UN Charter itself.

In a UN paper, Groonsekdere (1998) states that:

“First, human rights bring to the development discussion a unifying set of standards, or a common reference, for setting objectives and assessing the value of action. Second, if sustainable economic development and the eradication of poverty are to be achieved, economic growth has to be combined with the concept of human development and respect for human rights. As such, the rights-based approach is an inherent dimension of the concept of people-centred sustainable development, with development constituting a comprehensive process directed towards the full realization of all human rights and fundamental freedoms...’

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(11) Slim, Hugo. (2001). *Not philanthropy but right: rights-based humanitarianism and the proper politicisation of humanitarian philosophy*. Paper read at a Seminar on Politics and Humanitarian Aid: Debates, Dilemmas and Dissension, Commonwealth Institute, 1st February, at London. Available at: [fletcher.tufts.edu/humansecurity/con2/ws1/slim-rights.pdf](http://fletcher.tufts.edu/humansecurity/con2/ws1/slim-rights.pdf). Viewed August 5, 2004.

Groonesekdere (1998) further notes that the application of a human rights-based approach to human development provides a holistic framework for planning, programming and decision-making which considers the dimensions of civil and political, economic, social and cultural rights”<sup>(12)</sup>

An-Naim and Abdel Halim (2006) have made a seminal contribution to the concept that a rights-based approach is essential for poverty eradication and that this approach has its foundations in the teachings of the Qur’an and Sunnah.<sup>(13)</sup> They stressed that by a rights-based approach, it is meant that there is a strong moral and social entitlement of poor and disadvantaged segments of society to material assistance and support *as a right*, rather than out of condescending pity. Although charitable giving should not be imposed as a legal obligation, conceiving it in terms of a right in a moral and social sense would promote a higher level of obligation to give, they say.

They further state that the term ‘rights-based’ approach refers to a change in popular attitudes regarding charitable giving, whereby the giver feels a sense of moral and social obligation to give, and the beneficiary has a sense of entitlement to receive ‘as of right’. The notion of a right to receive is of course the other side of the coin of the duty or obligation to give, which is a deeply embedded religious belief among all Muslims. But they believe that there is a ‘value added’ to emphasising the rights-dimension over a vague and highly subjective sense of obligation or duty that is not owed to any person or cause in particular.

They also stress that a rights-based approach to charitable giving is not alien to the Islamic tradition.<sup>(14)</sup> For example, verses 70:24 and 25 clearly state that the poor have a right in the wealth of the rich: “And those in whose wealth is a *recognized right*, for the beggar and the destitute”. Verse 2:29 applies the obligation to give to the maximum one can afford: “They ask thee how much they are to give; Say: All that you do not need [to spend on yourself at the time]. Thus doth Allah make clear to you His Signs: In order that ye may consider.” This strict obligation to give can also be implemented through a variety of institutional arrangements to achieve dynamic goals of social justice. Verse 2:177,

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(12) Goonesekere, Savitri (1998) “*A Rights-based Approach to Realizing Gender Equity*”; UN Division for the Advancement of Women.

(13) An-Na’im, Abdullahi Ahmed and Abdel Halim, Asma Mohamed (2006) *Rights-Based Approach To Philanthropy For Social Justice In Islamic Societies* The John D. Gerhart Center for Philanthropy and Civic Engagement American University in Cairo, Egypt.

(14) An-Na’im, Abdullahi Ahmed and Abdel Halim, Asma Mohamed (2006) *Rights-Based Approach To Philanthropy For Social Justice In Islamic Societies* The John D. Gerhart Center for Philanthropy and Civic Engagement American University in Cairo, Egypt.

which speaks of the futility of performing worship rituals when that is not accompanied by a range of activities in the service of community and society, can be cited in support of this proposition.

In their view, the strongest argument for a rights-based approach implemented through philanthropic organisations is its ability to achieve greater respect for and protection of the human dignity of the beneficiaries.

### **Social Justice Philanthropy**

*"Verily, Allah enjoins justice, the doing of good, generosity towards fellow-men; and He forbids all that is shameful and all that runs counter to reason, as well as insolence....."* (16:90)

This verse links the act of giving with the establishment of justice, and creates the foundation for social justice philanthropy. When we accept the notion that poverty is a violation of human rights, then our approach to its eradication has to necessarily change towards that vision, that philanthropy is now geared towards social change, or the establishment of social justice.

Social justice philanthropy is a recent concept that is compatible to the Islamic philosophy. It is the practice of making contributions to social organizations that work for structural change and increase the opportunity of those who are less well off politically, economically and socially.<sup>(15)</sup> Therefore, social justice philanthropy becomes a process through which we as a society increase the ability of the least well off to attain greater political, economic and social power and a more equal society.

Social justice might be thought of as the process through which society attains a more equitable distribution of power in the political, economic and social realms. Although social justice is an ideal toward which we can strive, a completely just society (a Utopian state) is unachievable. It is important to note that what makes social justice philanthropy is not merely *what* a foundation does, but *how* it does it.<sup>(16)</sup>

However, when society is made fairer in economic, social and political realms, when the opportunity for a more equitable distribution of power is achieved, we can say that a society is in the process of becoming more socially just.

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(15) National Committee for Responsive Philanthropy (2003), *Understanding Social Justice Philanthropy* April 2, Website: [www.ncrp.org](http://www.ncrp.org)

(16) Ibid

In response to promoting social justice philanthropy in the Muslim world, Mr Amanullah De Sondy stated:

*“Religious scripture, particularly the Qur’an, are at times manipulated for the personal or political ambitions of individuals in turn creating social injustice. Progressive Muslims are now promoting social justice philanthropy through fairly solid grounding in Islam’s sacred scriptures in hope of mobilizing, organizing and facilitating philanthropic activities in the Muslim world in support of local social justice initiatives and further building bridges between different faith communities who may differ on theological understandings but stand united in their mission to eradicate social injustices.”<sup>(17)</sup>*

Principles of social justice philanthropy:

There are certain principles that guide us towards understanding social justice philanthropy:

1. *A change in the power relations between marginalized groups and privileged individuals and institutions.*

Social justice philanthropy aims to redress traditional power relationships, especially in circumstances that come with a long history of oppression, bringing its own set of issues and dynamics. The goal of making organisations more inclusive is a fundamental principle of social justice philanthropy. It gives expression to the aspiration that solutions must come from the people themselves fully participating in decisions that affect their lives. Inclusivity is key to the practice of participatory philanthropy. Yet differences in class, race, ethnicity, and national borders are an everyday reality. The challenge is creating genuine opportunities for dialogue that build collaboration across gaps of wealth, power, culture, nationality, gender and race.<sup>(18)</sup>

2. *A focus on the root causes of social, economic and environmental injustice.*

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(17) De Sondy, Amanullah Centre for the Study of Islam, Newsletter - University of Glasgow <http://www.gla.ac.uk:443/newsdesk/newsletter/details.cfm?id=3524&issue=267&category=-catresearch>

(18) Shaw, Aileen, (2002) *Social Justice Philanthropy - An Overview* for The Synergos Institute. [www.synergos.org](http://www.synergos.org).

Community leaders should develop programmes that create systemic or policy change to address the root causes of problems, rather than merely addressing the symptoms of underdevelopment. Rather than applying band-aid solutions to problems, it aims to prevent the problems from arising in the first place. Such work requires a shift in the power dynamics in communities through grassroots organising, advocacy, policy-related work, research and activism.

3. *Encouraging the targeted community as active decision-makers in anti-poverty programmes..*

In social justice philanthropy, the *process* of giving is as important as to where the money goes. Integrating communities who are directly affected by a programme is a key part of this process.

4. *A focus on marginalised and disenfranchised communities.*

Social justice philanthropy focuses on social and economic justice issues that affect marginalised and disenfranchised communities. This includes protecting the rights of communities of colour, low-income populations, women, immigrants, international communities, disabled people, and other groups. It also aims to make the field of philanthropy more accessible and diverse.

The issues and campaigns that social change philanthropy supports include civil and human rights, political access, peace and non-violence, worker's rights, anti-poverty strategies, environmental justice, corporate reform, prison reform, education and healthcare access, as well as challenges to international trade and privatization.<sup>(19)</sup>

5. *Giving donors a bigger role*

Donors and charitable foundations are allies of social justice movements. They can contribute monetary resources as well as their time, knowledge, skills and access.

6. *Shifting the goal from charity to empowerment*

Emphasis is placed on conducting the funding process in the spirit of mutual respect, not charity. Funding for social changes goes beyond the award of money to provide information, training, networking and direct assistance to recipient organizations.<sup>(20)</sup>

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(19) National Committee for Responsive Philanthropy (2003), *Understanding Social Justice Philanthropy* April 2, Website: [www.ncrp.org](http://www.ncrp.org)

(20) Goldberg Alison D (2002), *HANDS ON: There are many paths to social change. Here's how funders dedicated to that concept go about supporting it.* Foundation News and Commentary, Vol 43, No3.

Social justice philanthropy doesn't just mobilise financial, material and voluntary resources more strategically; it also fosters empowerment of communities through access to knowledge, ideas and decision-making.

The general goals of this style of funding is to effect long-term, permanent, and progressive social, political, and economic changes. It reflects the ideal spirit of philanthropy and is in need of support. This approach has the best chance of effectively and efficiently using donor funding to facilitate a broad range of benefits to the most disadvantaged and previously disenfranchised members of society.

To understand the principles outlined above, the following hypothetical scenario explains the differences between Social Justice Philanthropy and traditional charity.

Community leaders within a certain geographical location begin to notice that the incidence of respiratory diseases among their children has increased dramatically. The traditional charitable approach results in fundraising initiatives and the establishment of a clinic to treat the affected children.

Social justice philanthropy, however, takes a completely different approach. It goes to the source of the problem. In this case, community leaders found that the cause of the respiratory problems was due to an increase in toxic gas emissions from a nearby chemical factory. The next step would be to approach the factory owners and begin a negotiation process to make them aware of the problem, as well as to work out a mutually beneficial course of action to resolve the gas emission problem. This has an added benefit of education and community empowerment

The scenario can become quite complicated if a large number of residents in the community are employed at the factory, in which case creative negotiation skills will be required to protect the health of the community.

But despite the constraints, the outcome is vastly different to the basic charitable approach. Among other benefits, scarce resources can be directed to more urgent priorities, and community concern for a cleaner environment is enhanced

### **Traditional charity versus a right's-based approach to Social Justice philanthropy**

To understand the concept of social justice philanthropy, we also need to comprehend its philosophical differences to traditional charity. The primary difference between the two is how they relate to social structures. Whereas traditional charity does not challenge existing power and wealth relationships,

and in fact, entrenches some of the inequalities in society, social justice philanthropy advocates a funding philosophy that is based on the principles of social, economic and political justice. It attempts to bridge the gaps between the different social classes.

In fact, social justice philanthropy is not charity. The difference between the two forms of giving is often articulated in terms of the “advocacy versus services” debate. Charity takes the form of giving to direct service programs or service providing activities such as museums, hospitals, schools, social service agencies and non-political organisations engaged in providing public goods.

According to Shaw (2002) advocacy on the other hand, focuses on individuals or groups working toward democracy, citizens’ rights, justice and quality of life issues. The focus is on organizations seeking to influence the public policy process or effecting policy changes to solve social programs.

Simply put, the emphasis is on helping people to help themselves. Social justice funding is concerned with addressing the causes rather than alleviating symptoms of inequities. It contains an implicit understanding that social services are the job of the government and should not be subject to mercy of private individuals or institutions.<sup>(21)</sup>

In contrast, traditional philanthropy tends to stress the mere act of giving without changing deeply rooted social and economic patterns that perpetuate poverty and inequality.

Social justice philanthropy is clearly a fresh approach to giving. However, it must be emphasised that it is not a new form of charity that is being introduced into social and religious practice. It does not imply that traditional charity is wrong or that society must put an end to it. On the contrary, there will always be the need for relief work in the form of food security, shelter, clothing etc. Natural disasters, like earthquakes, tsunami, floods, drought, famine makes this form of giving essential

What is proposed here is that Islamic organisations re-evaluate their relationship with their beneficiary communities, and that they transform their practices towards programmes that are in the spirit of the Qur’anic vision of justice and generosity.

Mahomed (2008) asks the following questions: What makes social justice philanthropy important? Why is traditional philanthropy alone not enough on its

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(21) Shaw, Aileen, (2002) *Social Justice Philanthropy - An Overview* for The Synergos Institute. [www.synergos.org](http://www.synergos.org)

own?<sup>(22)</sup> According to her, traditional philanthropic giving has played (and continues to play) a significant role in addressing immediate needs and basic service provision. This must be underscored, particularly in a country with such high levels of poverty and deprivation and where the state has not been able to effectively address this circumstance.

However, without addressing the issues that give rise to the existence of these needs, and the crises that they generate, these same needs will continue to arise perpetually. This is not to say that traditional charity does not have a valuable role to play, nor that it does not have significant impacts, but rather that it needs to be complemented with giving that asks questions about the underlying issues.

### **The Role of Awqaf**

There is a long tradition of institutionalised charity in Islamic societies and cultures. This is based on the moral teachings of the Qur'an and Sunnah - that the best form of serving Allah is to serve His creation. Throughout history, the different forms of Islamic philanthropy in the form of Zakaat, Sadaqah and Awqaf were institutionalised to serve the broader purpose of sustainable social development. The institution of Awqaf served as a powerful vehicle for redistribution of income, and the provision of social, educational, religious and other services.

Initially, Awqaf was limited to real estate only, but over the centuries, the fiqh of Awqaf was modified to accommodate waqf of movable properties, cash waqfs, and more recently, discussions around intangibles, patent and copyrights. This means that the rules governing Awqaf were adapted and modernised to suit the prevailing circumstances in the respective societies at various times.

Just as there is a tradition to adapt the rules of Awqaf to function in the new social and economic framework as societies evolved over time, there is now a new call to for a re-examination and re-implementation of awqaf in a modern context based on Human Rights understanding of society and towards establishment of social justice. This approach is grounded in Qur'anic principles and at the same time uses modern financial and redistributive instruments.

What is called upon here is not a new form of giving. The time has come for Muslims to use a rights-based approach to revive the institution of Awqaf by establishing a groundswell of waqf institutions aimed at establishing of the Qur'anic goal of social justice.

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(22) Mahomed, Halima (2008) *Philanthropy And Social Justice In South Africa: Addressing Underlying Causes Or Mitigating Impact?* Thesis - MA Developmental Studies, University of the Witwatersrand, Johannesburg.

New Awqaf interventions should have a component of empowerment. The areas of engagement should focus on education, orphan care, health care and wealth creation through models like microfinance.

Kahf provides an economic definition of Awqaf, and argues that the establishment of an Islamic Waqf is very close to the establishment of a business corporation whose life span is unlimited.<sup>(23)</sup> It is an action that involves investment for the future and accumulation of productive wealth that benefits future generations.

The investment Waqf has the potential to develop into a key instrument in providing sustainable incomes to grassroots organisations that are involved in community empowerment at the local level. The establishment of investment waqfs entails mobilisation of financial resources from within the donor community to create designated investment waqfs that could provide sustainable incomes to grassroots or civil society organisations.

Wealth creation is a concept that deserves careful scrutiny by philanthropic organisations. In fact, it is more positive and buoyant concept than poverty reduction because it provides a historically productive solution to poverty that is universal application.<sup>(24)</sup> It includes the poor in a process that empowers them based on the things they can do. This is important because microfinance has shown that the working poor can create significant benefits for themselves with quite small loans.<sup>(25)</sup> Wealth creation may also be a bit more focused than poverty reduction.

It is just as important when looking at new forms of investment waqfs, to explore new forms of distribution of waqf revenues. Awqaf is not only about pooling of financial resources, but also the mobilisation of skills, talents, and capacity building, where the total community resources could be used to empower marginalised and previously disenfranchised communities according to the principles of Social Justice Philanthropy. The exchanges between these sectors of society can only be for the benefit of all mankind.

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(23) Kahf, Monzer, (1998) *Financing The Development Of Awqaf Property*, Paper presented at the *Seminar on Development of Awqaf* organized by IRTI Kuala Lumpur, Malaysia, March 2- 4, 1998.

(24) Norbert Kloppenburg (2006) In: *Microfinance Investment Funds: Leveraging Private Capital for Economic Growth and Poverty Reduction*. Ingrid Matth?us-Maier and J. D. von Pischke (eds). Springer

(25) Hassan, Abul and Baha, Roslee (2006) *The Challenge in Poverty Alleviation: Role of Islamic Microfinance and Social Capital*. Paper Presented in the International Seminar on Islamic Alternative to Poverty Alleviation: Zakah, Awkaf and Microfinance 24-26 November 2006

## Conclusion

There is a need for a deep reflection by Islamic societies to re-evaluate their charitable practices as well as their institutions of giving. The traditional model of charitable giving where there is a vertical exchange of resources from the rich to the poor should be reformed towards a rights-based approach to poverty alleviation. As suggested in the paper, this paradigm shift in philanthropic practice involves mobilizing total community resources, financial and human capital, to support social justice initiatives at the local level.

Mindful of its historical success, a reformed institution of Awqaf that uses modern financial and administrative instruments, can play a pivotal role in this process. Designated investment waqfs should be established to provide sustainable funding to grassroots institutions that promote community empowerment. A civil society driven Awqaf sector could be the key player in the establishment of strategic partnerships with government agencies and the business sector to facilitate the process of helping people to help themselves.

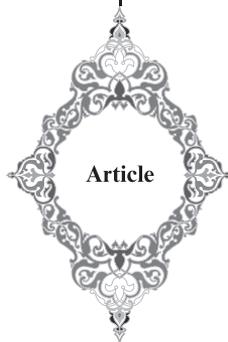
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## **Administration of Waqf Institutions in the Kenyan Coast: Problems and Prospects**

**By: Abdulkadir Hashim<sup>(1)</sup>**

### **Introduction**

Waqf institutions in the Kenyan coast existed since the establishment of the Sultanate of Zanzibar in 1832 A.D. The Sultan of Zanzibar administered the *bayt al maal* (public treasury) that catered for Waqf properties before the formal establishment of Waqf institutions. The first Waqf legislation along the East African coast was enacted by the Sultan of Zanzibar in 1900. In Zanzibar the first formal Waqf institution was established in 1904 under the title “The Commission of Waqf and Trust Property” to administer inheritance and all Waqf property donated by Muslims.

In Kenyan, the Waqf Commissioners Act was enacted on 8<sup>th</sup> June 1951.<sup>(2)</sup> The Act establishes the Waqf Commissioners of Kenyan as an independent body with corporate powers to administer Waqf properties. The Waqf Commission of Kenyan consists of eight persons, all government appointees, including the Chief Kadhi and the Provincial Commissioner of Coast province. The Provincial Commissioner of Coast province has the upper hand in nominating the other six members for appointment by the Minister (currently the Attorney General) “after taking into consideration Muslim opinion.”

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(1) University of Nairobi

(2) Chapter 109 of the Laws of Kenya

## **1. Challenges facing the Waqf Commission in Kenyan**

There are a number of challenges that face Waqf institutions in Kenyan. The article will briefly explore below some of the challenges facing the Waqf Commission of Kenyan and suggest means of overcoming them.

### **a. Application of the Waqf Commissioners Act of 1951**

Due to the political set up of the Kenyan coast, the Act only applies to the Coast province as provided by the Legal Notice 124 of 1964 subject to Section 1 of the Act that states “shall apply to such areas as the Minister may direct”. This was because the Sultan of Zanzibar was ruling the ten-mile coastal strip of Kenyan as part of his dominion until he surrendered it to the new independent Kenyan in 1963. On the other hand, the British established the Colony of Kenyan beyond the ten-mile coastal strip. Application of the Act is only confined to the Coast province.

Owing to the demographic set up of the Kenyan Coast, definition of the terms such as “Muslim” has led to a legal debate. For instance, the 1951 Act defines a “Muslim” to be “a member of the Twelve Tribes, a Baluchi, a Somali, a Comoro Islander, a Malagsy or a native of Africa, of the Muslim faith”. Definition of Muslim in the Act is restrictive and discriminative to the extent that it leaves out Muslims of the Asian, European American and other descent. Uncertainty in defining such terms seemed to have paved the way for incorporating a policy of favouring a particular section of the Muslim community.<sup>(3)</sup>

### **b. Management of Waqf properties**

Establishment of Waqf institutions was intended to be distant from the State control but with the lapse of time, States gained control of such benevolent institutions. Muslim countries have established Ministries and Directorates of Waqf to manage Waqf properties. Another challenge that faces Waqf institutions in Kenyan is the lack of efficient management that can take full control of the Waqf properties. Due to lack of logistics, the Waqf Commission of Kenyan is unable to ascertain and identify Waqf properties before registering them. There is no accurate statistics which show the exact number of existing Waqf properties. Identification of Waqf properties on the ground could help in the process of registration of all Waqf properties and determine the operational income and expenses of such properties.

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(3) Saad S. Yahya, (1995) “The Uses and Abuses of Wakf”, in *Islam in Kenya*, Proceedings of the National Seminar on Contemporary Islam in Kenya Edited by Mohamed Bakari and Saad S. Yahya, Mombasa: Mewa Publications, p.214

Waqf properties are underutilised and proper valuation of the properties is not done. This in turn results into renting such properties at a relatively lower rate as opposed to its real market value. The samples of income from some Waqf properties below illustrate the low turnover of rents obtained from Waqf properties. Waqf institutions have confined their efforts to retain the inherited properties with very limited efforts on acquiring new ones. Despite investment opportunities, such as developing housing estates, educational institutions and recreational facilities, Waqf institutions have been unable to create a convenient and attractive environment for potential investors available locally and abroad.<sup>(4)</sup>

#### **c. Funding the Waqf Commission of Kenyan**

Although there is a number of Waqf properties in the Kenyan coast, strikingly enough funding is considered to be a major obstacle in developing the Waqf sector. Most of the Waqf properties in the Kenyan coast are lying idle due to legal provisions that prohibit change of ownership or inheritance of these properties. Low class and even poor people who seldom pay their rents occupy most of the Waqf properties. Cases of abuse of Waqf properties have been noted where people with adequate income reside in Waqf houses paying relatively lower rents. This under utilisation of Waqf properties results in the “underlying proposition that Waqf assets are not realising their full potential with a consequential financial loss to the beneficiary facilities and families or individuals.”<sup>(5)</sup> The Waqf Commission of Kenyan relies on fees charged on Waqf properties for running expenses of the Commission. The Commission charges on monthly basis 15% from properties under the category of *Waqf khayri* (public Waqf) registered with the Commission and 35% from *Waqf ahli* (private Waqf).<sup>(6)</sup>

#### **d. Composition of the Waqf Commission of Kenyan**

In Kenyan, the appointment of Waqf Commissioners is done by the Government after taking into consideration the Muslim opinion. Despite the good charitable work done by the Waqf institutions, Muslim community regards Waqf institutions as Government organs which contribute towards lack of public confidence and trust. It is therefore imperative that the Waqf Commission should first restore the public confidence as part of its reformation process.

The Waqf Commission of Kenyan consists of eight persons, all government appointees, including the Chief Kadhi and the Provincial Commissioner of Coast Province as *ex-officio* members. The Provincial Commissioner of Coast Province has the upper hand in nominating the other six members for appointment by the Minister (currently the Attorney General) “after taking into consideration

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(4) Yahya, *Uses and Abuses*, 218

(5) Yahya, *Uses and Abuses*, 220

(6) Interview with Executive Officer, Wakf Commission of Kenya, Mombasa, 3rd January 2008

Muslim opinion”. Composition of the Waqf Commissioners calls for reorganization. By virtue of his office, the Chief Kadhi of Kenyan chairs the Waqf Commission, in addition to his busy schedule in the courts and other religious functions. Establishment of the Mufti’s office in Zanzibar, the Mufti has replaced the Chief Kadhi in chairing the Waqf Commission.<sup>(7)</sup> The Mufti’s Act has altered the composition of the Waqf Commission by substituting the Mufti as the Chairman of the Waqf and Trust Commission in the place of the Chief Kadhi as was the case earlier under the Revolutionary Council Decree No.5 of 1980.

Chairing the Waqf Commission by such Government officials assuming dual roles impedes the efficient and smooth running of the Waqf institutions. Instead, an independent member from amongst the commissioners who is qualified and enjoys religious support could chair the Waqf Commission. One of the ways to make the Waqf Commission of Kenyan efficient is to re-constitute membership of the Waqf Commission. Qualified and business minded commissioners could be appointed in order to make decisions based on commercial considerations in conformity with spirit and rules of Islamic law. Muslim professional with sound knowledge of Islamic law that include lawyers, architects, surveyors, accountants etc. should be engaged in the management of Waqf properties.

#### **e. Awareness on the significance of Waqf institutions**

Another neglected significant area is the lack of efficient outreach programmes that educate the society on the role and importance of Waqf institutions. Due to the negative image borne in the minds of the people, large part of the society is ignorant of the significance of Waqf institutions.

## **2. Prospects for Waqf Institutions in Kenyan**

Waqf institutions have confined their efforts to retain the inherited properties with very limited efforts on acquiring new ones. Despite investment opportunities such as developing housing estates, educational institutions and recreational facilities, Waqf institutions have been unable to create a convenient and attractive environment for potential investors available locally and abroad. In Kenyan the Waqf Commissioners are given the power “to place on deposit in any bank, or to invest in and upon such investments and securities as are allowed by law for the investment of trust funds”<sup>(8)</sup> Such options for investment can be properly utilised to comply with Islamic rules of transaction in dealing with Islamic financial institutions. Investment in housing estates, educational institutions, recreational facilities and other acceptable and viable investments opportunities which are Sharia compliant.

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(7) Establishment of the Office of the Mufti Act No.9 of 2001

(8) The Wakf Commissioners Act, Chapter 109 of the Laws of Kenya Sec.21(2)

Despite the challenges facing Waqf institutions in Kenyan, the Waqf Commission owns several immovable properties that could be invested in development projects. Currently, Waqf properties which are only confined in the Kenyan coast are mainly for the maintenance of Mosques, reciting *maulidi*, *khitma*, maintenance of cemeteries and performing of pilgrimage. There is a need to shift focus of Waqf investments from ritual services to utilization of Waqf funds for various humanitarian purposes e.g. elimination of poverty, eradication of ignorance and alleviating of suffering.

Waqf institutions in Kenyan can borrow from the successful experiences in the Muslim world. Such experiences can help Waqf institutions in the East African Coast to overcome its challenges and shortcomings found in its legislation. For instance, the Indian Waqf Act 1995 provides that the Waqf Council is to be appointed by election of eleven members from the Parliament, Federal Legislative Council, Judicial Council, *mutawalis*, Muslim organizations, Muslim jurists, and the Regional Government. The Act also provides that no Waqf is to be rented unless it has been advertised locally. Furthermore, deserving students are entitled to scholarships through the various State Waqf Councils.<sup>(9)</sup>

In Sudan, an independent Islamic Endowments Corporation was established in 1989. The Corporation owned all Waqf properties. The Sudan experience has revealed that reviving the Waqf institution started by reforming the legislation, the administrative structure and freeing it from the government bureaucracy. The Corporation supported a wide range of activities that included educational institutions, *dawa* programmes and charitable organizations, colleges for memorizing Quran, repairing mosques, and assisting the poor.<sup>(10)</sup> Waqf institutions in Kenyan can also benefit from the South African experience of managing Waqf properties on commercial basis by mobilizing community-based fund raising programmes e.g. credit/recharge-card based on bulk purchasing of fuel, supermarket shopping and Muslim human resource pool.

Although majority of Muslims in the East African coast follow the *Shafi'i madh-hab*, Waqf institutions could consider adopting the concept of Waqf of usufruct (*Waqf manafi'*) known in the *Maliki madh-hab* to increase venues for income. This may cover potential opportunities such as toll way charges, parking fees, authorship and patents rights.<sup>(11)</sup> Waqf institutions needs to go beyond the traditional boundaries by contributing in the socio-economic sector such as supporting programs

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(9) Mahdi, M. Ahmad., (ed.) 1423 A.H., *Nidhamu al-waqf fi al-tatbiq al-Muasir*, Seminar Proceedings No. 45, Jeddah: Islamic Research and Training Institute, p.128

(10) *ibid* pp.112

(11) Khan, M. Fahim., *Integrating Faith-based Institutions (Zakah and Wakf) in Poverty*

related to poverty alleviation and providing health care to the poor. Waqf funds can also be utilised in periods of famine and other crisis to assist the needy persons.<sup>(12)</sup>

### 3. Samples of Income from Waqf Properties in Coastal Kenyan

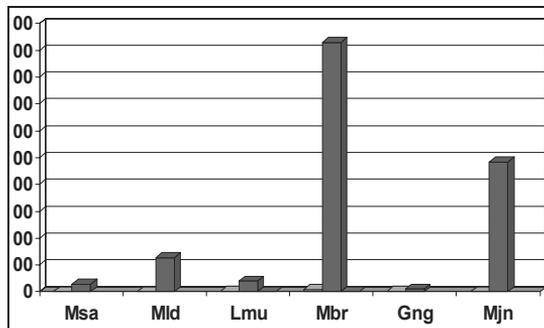
**Table A: Annual rent from agricultural land owned by Waqf Commission of Kenyan**

Town	Acreage	Current annual rent	Market annual rent	Percentage difference
Mombasa	5.6	750*	28,000	3%
Malindi	18.76	600*	127,568	0.5%
Lamu	10.04	1,370*	40,160	4%
Mambrui	154.66	8,575*	927,960	1%
Mjanaheri	82.2	400*	484,300	3%
Gongoni	115.3	3,125*	10,000	31%

Source: Ali Hemed Awadh “*Al Awqaf wa dauruha fi Sahil Kenyan: Dirasa tahliliyya taqwimiyya*”, PhD thesis, International University of Africa, Khartoum, 2007, p.68

\* Figures reflecting the current annual rent (as provided by the researcher) seem to be on the lower side. However, even if the annual rent would be multiplied by the acreage, still the current annual rent is far below the market rent. (NB: 1 US \$ is currently equivalent to Kshs.77)

**Graph A: Annual rent from agricultural land owned by Waqf Commission of Kenyan**



(12) Reductions Strategies (PRS)

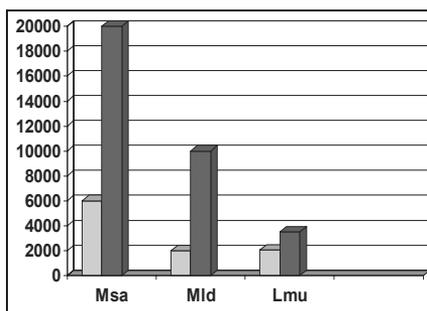
(13) Mahdi, M. Ahmad (ed.) 1423 A.H., *Nidhamu al-waqf fi al-tatbiq al-Muasir*, Seminar

**Table B: Average monthly rent from residential houses owned by Waqf Commission of Kenya**

Town	No. of houses	Average current monthly rent	Average market monthly rent	Percentage difference
Mombasa	49	6,000	20,000	30%
Malindi	17	1976	10,000	20%
Lamu	215	2046	3,500	58%

Source: *Ibid.* p.87

**Graph B: Average monthly rent from residential houses owned by Waqf Commission of Kenya**

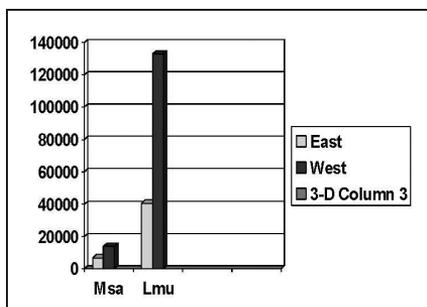


**Table C: Monthly rent from rented houses owned by Waqf Commission of Kenya**

Town	No. of houses	Current monthly rent	Market monthly rent	Percentage difference
Mombasa	14	40,680	133,000	31%
Lamu	3	6,750	14,000	48%

Source: *Ibid.* p.107

**Graph C: Monthly rent from rented houses owned by Waqf Commission of Kenya**

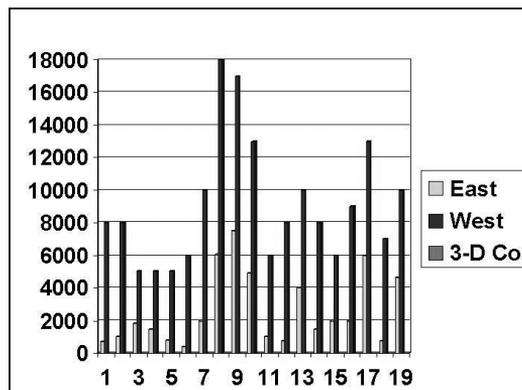


**Table D: Monthly rent from Waqf houses for mosques in Mombasa**

Mosque	Current monthly rent	Market monthly rent	Percentage difference
1	700	8,000	9%
2	1,000	8,000	13%
3	1,800	5,000	36%
4	1,500	5,000	30%
5	800	5,000	16%
6	400	6,000	7%
7	2,000	10,000	20%
8	6,060	18,000	37%
9	7,500	17,000	44%
10	4,900	13,000	38%
11	1,000	6,000	17%
12	750	8,000	9%
13	4,000	10,000	40%
14	1,500	8,000	19%
15	2,000	6,000	33%
16	2,000	9,000	22%
17	6,000	13,000	46%
18	7,50	7,000	11%
19	4,605	10,000	46%
Total	49,265	172,000	29%

Source: *Ibid.* Appendix

**Graph D: Monthly rent from Waqf houses for mosques in Mombasa**



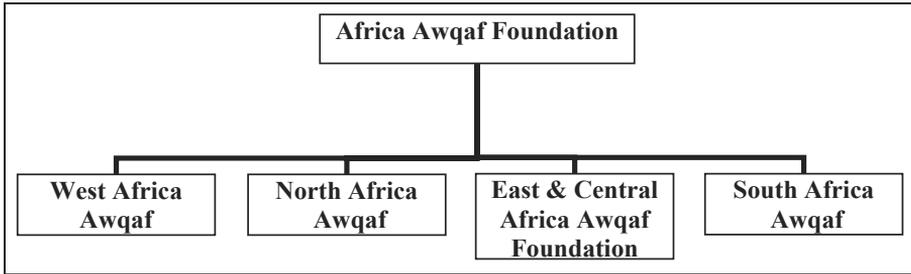
## **Conclusion**

In countries where the State controls Waqf institutions, logistics to be provided in training Waqf personnel and allow exchange of expertise between these countries. Lack of credibility and professionalism in Waqf institutions has led to the public distrust to such institutions, thereby giving justification to the State control over them. It is therefore imperative for Waqf institutions to be efficient and effective to regain public confidence. This will in turn attract public support, hence allow Waqf institutions to free themselves from the State control and ensure administrative and financial independence. This article proposes that, where possible, non-governmental Waqf institutions to be established and complement the activities undertaken by the existing Waqf institutions administered by the governments. This will provide the public with freedom to give out their charities according to their preference.

The article proposes also the establishment of regional Awqaf foundations to co-ordinate activities of Waqf institutions at the continental level. Geographical as well as demographical factors should be taken into consideration when establishing the regional Awqaf foundations. For instance, in the African continent the following regional Awqaf foundations can be established under the umbrella of the Africa Awqaf Foundation:

- 1) North Africa Awqaf Foundation to cater for countries stretching from Egypt to Mauritania.
- 2) West Africa Waqf Foundation to cover countries from Chad to Senegal.
- 3) East and Central Africa Waqf Foundation to take charge of countries from Sudan to Tanzania including Democratic Republic of Congo.
- 4) South Africa Waqf Foundation to cover countries from Malawi to South Africa.

The above model for establishing regional Awqaf foundations in the African continent could serve as a basis in creating Awqaf foundations in other continents. These regional Awqaf foundations would in turn establish a global Awqaf network and support the noble initiative made by the Islamic Development Bank in establishing the World Waqf Foundation.



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