



Refereed Biannual Journal Specialized in Waqf and Charitable activities

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Abu Hurairah (may Allah be pleased with him) reported, The Messenger of Allah (peace be upon him) said: "When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ceaseless charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."

[Narrated by Muslim]



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 in 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 to 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 in 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 researchers and establish a link between theory and practice.
- * Promoting reliance on the civilizational repertoire in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individuals 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, and seminars dealing with the field of waqf.

Materials meant for publication in AWQAF Journal should abide by the following :

- * The material should not have been published or meant for publishing in any other magazine.
- * The material should abide by the academic ethics in connection with documenting the sources and references, together with the academic processing.
- * A research should fall between 4000- 10.000 words, to which a 150-word summary must be attached.
- * A research should be typed on A4 paper and it is preferable to send an electronic copy on CD (word).
- * All researches and articles will undergo a confidential refereeing.
- * AWQAF Journal approves of all books' presentations, theses' summaries, seminars' and conferences' coverages which are compatible with the journal's publication regulations.
- * Material once sent for publication, whether published or not published, is unreturnable.
- * The journal is entitled to re-publish or translate any material separately without checking with the relevant author.
- * Researches shall receive a remuneration for the publishable researches and studies as per the respective rules and regulations in this regard, in addition to 20 offprints of the research as per the relevant rules.
- * AWQAF journal shall not assume the least responsibility for the attitudes of the authors reflected in AWQAF journal. All Submissions should be sent to:

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Editorial



Waqf as a driving development force: Waiting for the second wave

Some theorists use the term “wave” while dealing with the various social sciences such as economics, psychology, history... etc. to indicate the specific time in certain fields. Such a development carries major changes with it which can be identified through the emergence of several quantitative and qualitative indicators which bring with them radial changes in dealing with the issue at stake which generate behaviours, initiatives and legislations. Furthermore, there will be achievements at both levels associated with material or value, all of which, or most of them, more in one direction or rather within the framework of a specific “Social wave” carrying its intrinsic characteristics. We can benefit from this analytical type in dealing with the subject of waqf due to the direct relation between waqf and social sciences on the one hand, and to study the impact of waqf in a community sense throughout forth coming periods which can be measured and identified, and setting the plans for developing waqf in the light of the major needs of a Moslem society.





Waqf in modern history:

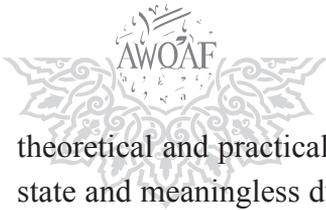
- Waqf in the modern historical epoch has restored its status in connection with the social and developmental arenas in both the Arab and Islamic worlds, thanks to the Gulf countries and especially the state of Kuwait. Reflecting on the fact will not fail to notice what we may indicate as “First wave” which took 15 years and combined three elements which prove decisive in bringing forth waqf from its historical inertia as to restore it to the domain of the social and developmental projects in the Arab and Islamic countries.
- During the last decade of the 20th century the waqf-related government institutions strove to improve their performance through the process of re-structuring the waqf sector in a way that assists in managing its assets and distributing the State of Kuwait presented a model for introducing an institutional and advanced model for managing waqf. This effort came through the establishment of Kuwait Awqaf Public Foundation as per an Amiri decree which granted it a set of organizational characteristics that enabled it within a limited period of time to revive the waqf which had lost its luminescence long time ago. A new culture connected with the management of waqf came into existence and formed with the establishment of KAPF a specific shift at both the regional and international so that the connection between KAPF and modern waqf has become a landmark for researchers and waqf interested people.
- The role of the private and non-governmental institutions has been clear in tracking waqf and the expansion in adopting waqf formulas, and the outspreading use of the term by institutions, centers and

universities, in addition to the media and its role in casting a spotlight on waqf. It can be maintained that a fair part of this interest comes from countries and people outside the Islamic world, not to mention the western countries which attempt to use all means to bring capitals irrespective of any legal to creed considerations.

- The remarkable growth of the waqf assets as certified by the report of Ernest and Young which maintains that the market value of this sector is about \$105 billion, most of which are in the Gulf countries.

On the intellectual level, the first wave was characterized by the emphasis it laid on the historical experience of waqf, while highlighting the jurisprudential sides, and reviewing the social, economics and scientific institution witnessed by the Islamic civilization and in which waqf played a prominent role. On the practical level, the wave shed a light on the administrative and legal issues and means of aligning them the modern waqf institutions. This period benefited mainly from the growing awareness about the importance of waqf for the social sectors in many of the Islamic and Gulf countries. This, no doubt, had a direct effect on the appreciation in the value of waqf assets if compared with the previous periods.

Given the importance of the first wave and based on a comprehensive perspective, waqf is still marking time as a driving developmental force. Its effect, despite its theoretical and practical potentials, is limited if compared with the events, literature and addresses revolving round its role at the social development and academic levels. Thus it is important to point out, from a futuristic point of view, that the first wave, if ceased to move, may form something like the neck of a bottle which checks any future progress for the waqf work such is the state of affairs, all the basics connected with the revival of waqf and its role in development could come to nothing. We see those “bad models” in dealing with waqf at both the



theoretical and practical levels. Essays and articles on waqf have become state and meaningless due to boring replications because the lay stress on clichés which have been defunct long time ago. Moreover, the conferences and academic seminars come up with more copies with nothing the serve the waqf culture as a specialization with specific characteristics and regulations.

Among the discrepancies of this period is the conversion of the name of waqf into a corporate name as represented in for-profit companies whose main concern is to make profit through organizing “touristic awqaf” under the cover “specialized training courses” or “Awqaf services”, seeking profit and issuing illusive certificates which have nothing to do with waqf except its name, at the level of governmental waqf institutions, it is noticed that they are passing by a period of sluggishness through they have been the product of the first wave. The regional and international conditions may account for such a state of affairs, but there are internal impasses connected with bureaucracy, legislation and state budgets at a time these countries face economic challenges which impinge with the performance of their duties.

Future of waqf and conditions of the second wave

The process of developing waqf in the modern era requires a new stage in addition to having parametres for the launching of this stage whose mechanisms are directed towards a major objective: the launching of waqf as developmental driving force.

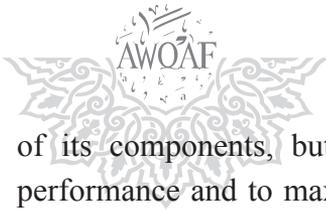
Among the priorities of this stage is to address the state of confusion related to the waqf work at the academic or scientific levels. These aspects



cannot be dealt with without creating an institutional referral or what is termed as a house of experience which has the required qualification and human and financial resources which mates the achievement of an objective possible. This is an institutional tradition adopted by all the pioneering developmental and developmental experiences which sought to develop their institutional structure in respect of dealing with the subject of waqf in particular. We find European and American countries sought long time ago to show an interest in “house of experience” which were entrusted with rationalizing the waqf work and the strategic manning associated with it, besides giving advice and consultation to the waqf-interested bodies, both governmental and non-governmental, to the individuals interested in learning and research or the charitable people. In addition to all this, it was important to build an institutional referral on which development depends. We, as Moslems, are in dire need for having this entity which will serve the waqf sector and spare a lot of effort and capacities in order to get waqf out of the preaching stage to the construction stage.

Given that we do not suspect the current effort of the components of the waqf sector at the institutional or individual levels, nevertheless the philosophy underlying any strategic building for any social system willing to achieve its objectives should go through the process of linking the idea prevailing here and there and combine the details of the experience carried out by various institutions with different sizes and legal formulas. Subsequently any distortions or irregularities contradictory to the principles of the sought social system must be encountered.

Within this content, we can understand the important role assumed by the experienced institutions in creating successful civilizational experiences. They are entrusted with the issues of organization and planning for the components of the social systems without being contradictory the interests



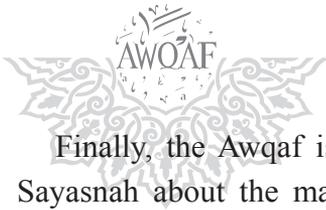
of its components, but, on the contrary, they seek to improve their performance and to maximally benefit from the available resources. The transition of the waqf experience from the call to revive the waqf institution to the stage of applying it requires an overall vision which utilizes all the potentials and to guide them to tracts, though multiple, but they converse in one tract, i.e. the development of the Ummah.

Issue 28 of Awqaf Journal includes a number of referred researches approaching three major dimensions; the first is related to the economic issue. Abdul Qader Zeitouni in his research entitled “Towards an optimal exploitation of waqf agricultural lands”: one of the best means for exploiting the waqf agricultural lands. The researcher deals with the problems which affected the ability of the waqf lands to generate good profit. He explained the means for adopting the investment mechanisms which are deemed nearer to the nature of waqf, especially the lands, for example Muzara’a sukuk as an investment means which provides the opportunity to the waqf institution to optimally exploit its agricultural lands and what might come out as a result of magnifying revenues. This process will provide the adequate finance to cover the requirements of agricultural investment and the ability to attract an important sector of investors as based on confidence lodged in the waqf institution and its economic status related to its fixed assets.. in the same context, Mohammad Abdullah Khudur in his research entitled “Accountancy measurement principles in the economic projects and applying them to the Awqaf accountancy” deals with applying the accountancy systems related to business governed by the market regulations on waqf. The researcher, while approaching the waqf institution, and the Dhurri waqf in particular, maintains that the Thurri waqf, economically speaking, is similar to family business companies. Thus, it seeks to safeguard its assets and argument its financial components, taking into account the Shari’a regulations connected with waqf. Taking

into consideration this vision, the researcher tries to define how accounting systems can be utilized to manage a business, the principles of accountancy maturity and the average cash basis in the Thurri waqf-related accountancy systems. This is applicable in case the waqf administration and beneficiaries wanted to participate in economic activities which realize profits exceeding the financial component of the waqf.

Mohammad bin Mohammad Al Hajawi approaches the Dawa dimension in connection with waqf and he sheds a light on the “Achievements of waqf and their role in the Islamic awakening”. He reviews some of those historical achievements in the religion, cultural and social domains along the Islamic civilization. The researcher maintains that such domains must be the center of interest during the current period, seeing that Islamic communities suffer from a clear weakness in understanding Islam which brought about extremism, or rather giving up pure Islamic and scientific thought which is able to bring the Ummah back to the track of righteousness.

Abdul Rasheed Abdul Razzaq in his article “Strategy of developing Islamic environmental waqf” put forward a strategy for reviving and developing environmental waqf so that it can be re-applied so as to handle the environmental issues and sustainable development the bare of modern time. The objectives and justifications of its strategy are made clear, with its three axes: study of the environmental waqf, environmental waqf media and environmental waqf fund. The study ends by highlighting the environmental projects deemed more appropriate for financing them through the environmental waqf fund and the measures through which these projects were selected, furthermore, the study submits traditional models for the application of environmental waqf.



Finally, the Awqaf issue includes a reportage by Ammar Ahmad Al Sayasnah about the manuscript “Awqaf manuscript” which dates back to 1288 Ah, by the scholar the Mufti of Bilad Al Sham Mahmoud Bin Mohammaed Al Husaini Al Hamzawi, this manuscript has a great cognitive and historical importance. It follows the system adopted by the Moslem scholars in writing about waqf to the students and learned people. The aim of the book, as maintained by the author, is to bring nearer the issue of waqf to the students through a style which makes it easy to memorize following his predecessors in writing on such an issue, for example “Al Isaaf” by Al Tarabulsi and “Al Oqoud Al Durriyyah” by Ibn Abdien.

Verily Allah is the grantor of success

Editorial Team

Researches



***Sukūk Al-Muzāra`ah* (or, Backed-up Crop-sharing Bonds): Towards an Optimal Exploitation of *Waqf* Farming Lands**

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Abstract

The present paper closely examines the characteristics of (backed up) crop-sharing bonds in search of elements that are likely to contribute to an optimized exploitation of *Waqf*-held farming lands. The paper starts with a brief and simple survey of the most notable investment problems which have undermined the capacity of *Waqf* farming lands to generate rewarding revenue and impelled the *Waqf* institution to neglect them. The paper also considers, in some detail, the main reasons for adopting modern investment mechanisms and expounds the fundamentals of crop-sharing bonds as one kind of investment instruments. The paper reaches some significant results which are apt to optimize the exploitation of tied-up farm lands. Perhaps the most preponderant and far-reaching outcome consists in using crop-sharing bonds as a method of investment which enables the *Waqf* Institution to expand the exploitation of its agricultural lands and to augment the crops yielded by them. The proposed mechanism has the





capacity of raising the adequate funds to cover the requirements of farming investment projects. It also has the capacity to capture wider public interest and to attract other investors, thanks to its proven convenience. Likewise, the possession of secure bonds provides investors with the means to own the assets and to ensure higher returns. Adopting this method of investment allows tied up *Waqf* lands to make the most of modern agricultural tools and methods, thereby conserving and increasing their production capacity, as well as boosting their yields. It also satisfies a considerable portion of *Waqf*'s on-going funding requirements.

Introduction:

One aspect of failure in *Waqf* revenues, as seen in its fixed assets in particular, is the unwarranted stasis which characterizes the way they are invested and the way funding resources are actually managed. Several studies and report indicate that in spite of the massive volume of tied up tangible properties, their yield no longer cover the expenses, or not even the expenses related to maintenance and renovation. If the situation obtains, then there is a serious threat to the permanence of the social and economic benefits procured by *Waqfs* (pious endowments), in general.

Given that *Waqfs* jurisprudence bearing on fixed investment is seriously wanting and needs a measure of renewal in terms of its theoretical outlook in ways which would confer more room to accommodate and keep in steps with cultural evolutions and developments. Then perhaps renewed

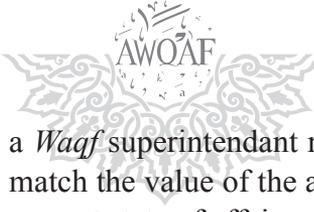
theoretical interest should be centered on the exploitation⁽¹⁾ *Waqf* farm lands.⁽²⁾ This is because most *Waqfs* Trustee and Superintendants have always and still are considering the lease contract⁽³⁾ as the only way and method of investing in the land. While this method is largely a legitimate way of generating revenue which is applied to charitable ends, it does not satisfy the requirements of the *Waqf* patrimony.

The Islamic jurisprudence branch dealing with investment has never been subject to impediments; our ancestors had displayed a great deal of ingenuity in devising novel funding and investment methods which actually met their own needs. They had thus managed to benefit themselves and to extend their benefits on to their posterity. Suffice it here to say that most contemporary Islamic funding and investment instruments and methods have been the outcome of past transactions. And there is no disgrace in all of this, as long as the said method and tools continue to generate much good and procure many benefits. The disgrace resides in the fact that many

(1) In the original Arabic version *Istighlāl* in language means looking for and getting the fruits of something. *Ghillah* (fruit) refers to the income generated from renting a house, leasing an animal, or the usufruct of land. See *Lissān Al-`Arab* (the Arabic Tongue/Language), the subject matter of *Ghillah*. Jurists distinguish between *Ghillah* and *Manfa`ah*. The word *Ghillah* is as has been previously explained. *Manfa`ah* (benefit) comes from something other than a tangible asset, such as accommodation or use of something. See the marginal gloss of *Al-Qalyūby* in relation to *Sharh Al-Mahaly*, Vol. III, p. 171; *Al-Qāmūs Al-Muheet* (or the Comprehensive Dictionary); Al-Fayyūmy *Al-Misbāh Al-Muneer* (the Enlightening Lantern), Vol. II, p. 121. Regarding *Istighlāl* (exploitation) and *Isthitmār* (investment) there are affinities and differences between the two terms; however, the differences should not be taken to refer to opposition but rather simple differences which do not affect their gist and purport. For more information on this issues see Qotb Mustapha Sāno, *Al-Mudhakarāt: Ahkāmhuha wa Turuq Takweeniha wa Isthitmāriha fy Al-Fiqh Al-Isslāmy* (Savings: the Ordinances pertaining to them and the Ways they are Constituted and Invested, according to Islamic Jurisprudence), First Edition (Jordan: *Dār An-Nafā`iss*, 2001), pp. 95-96.

(2) *Waqf* farm land is part of the assets which are tied up for the purpose of exploitation.

(3) In some rare instances, the lands were fructified through self-exploitation by farming the land. See Mohammed Abdelhalim Omar, *Nidhām Al-Waqf Al-Isslāmy wa An-Nudhum al-Mushābihah* (The Islamic Pious Endowment System and Similar Systems in the Western World: Endowments and Trusts Foundations), a comparative study, a research paper submitted to the Second *Waqfs* Conference “Development Schemes and Future Visions” (*Makkah: Umm Al-Qura University*, 2006), p. 26.



a *Waqf* superintendant relies on investment methods whose returns never match the value of the assets calling for investments. And this is, alas, the current state of affairs now!

In order to correct this bitter state of affairs, it has become mandatory for the *Waqfs* Institution to reconsider the current methods whereby tied up assets are being invested. I have particularly in mind *Waqf* lands. It is also mandatory to search for more useful, beneficial, and modern investment instruments. What is intended here specifically are *Sukūk Isslāmiah* (Islamic backed up bonds) as exemplified in one type known as *Sukūk Al-Muzāra`ah* (Crop-sharing Bonds).

The Importance of the Research:

The tremendous significance of the present research is readily seen in the dangers that are now looming in the horizon, owing to continued reliance on obsolete investment methods currently used by *Waqfs* Institutions in their exploitation of *Waqf* farming land. The dangers are perceptible in the state of the tangible assets themselves and in their yields. This has also impacted on the whole *Waqfs* Institution, especially if we bear in mind the fact that one third of *Waqf*-managed resources are agricultural lands. If this be so, and bearing in mind that the Islamic world has, to this day, been suffering from a food crisis, should serious and caring reformers not be empowering the *Waqfs* Institution by bolstering this mighty resource which is described by the Glorious Quran as “a treasure”? Besides, contemporary Islamic financial thought has put forth a more ingenious and significant investment scheme than the one hitherto relied on by *Waqfs* trustees? I have in mind here *Islamic Sukuk* (Islamic backed up bonds), and *Sukuk Al-Muzāra`ah* (Crop-sharing bonds), specifically.

The Aims of the Research:

On the basis of the foregoing, the present paper aims to shed light on the investment methods adopted by *Waqfs* Institutions in their exploitation of *Waqf* agricultural lands, and their bad outcomes as seen in reduced yields and narrowed developmental scope. The paper then puts forth an



alternative investment method whose novelty is particularly attuned to modern requirements. We shall mention its benefits, unveil its impacts, and define the requirements of its success, and the advantages to be had from developing it.

Research problematic:

One of the most formidable problems which have overwhelmed *Waqf* tangible assets resides in their low returns when compared with the volume of the capital invested on them. This is clearly seen in *Waqf* farming lands, for in spite of their great number and their extensive surface areas, these assets have been unable to expand the overall *Waqf* patrimony in any way. This is so because lease contracts constitute the only means of investment. Needless to say, there is no room of comparison between land rental revenues and effective investment flows made by the *Waqfs* Institution itself.

This being the case, the people in charge of *Waqfs* affairs ought to consider novel methods and new transaction schemes apt to boost the bounties flowing from constraining lease contracts to the roominess afforded by the Crop-sharing bonds. But do the latter have what it takes to meet optimal investment requirements on *Waqf* farming lands? And what success and empowerment factors can be made available to the new schemes by the *Waqfs* Institution?

The Main sections of the Research:

In order to ensure that our consideration of novel investment formulas meets the requirements of objectivity and methodology, we have deemed it worth the while to organize the contents of the paper in four main research sections, developing the following main themes:

- **The first thematic section: a reading into contemporary problems facing Waqfs, in general, and Waqfs lands, in particular;**
- **The second thematic section: presenting the rationale and the benefits to be had from the modernization of investment schemes and of the methods whereby Waqf farm lands are currently exploited;**



- **The third thematic section: expounding Sukūk Al-Muzāra`ah (Crop-sharing bonds) in detail;**
- **The fourth thematic section: towards an optimal exploitation of Waqf lands –outlining the advantages of Crop-sharing bonds.**

The First Thematic Section: A Reading into Contemporary Problems facing *Waqfs*, in General, and *Waqfs* Lands, in Particular:

Ever since *Waqf* was established the vanguard backers undertook to make it as accommodating, gentle, and flexible as to be able to relieve the destitute from want and to mitigate their feeling of being wronged. In their endeavors they have applied to *Waqf's* tangible assets innovative investment methods so as to keep in step with and adapt to occurrences and incipient matters. By doing so they have been able to generate abundant good which has benefitted humans greatly and extended even to benefit animals. However, the providence of *Waqf* was somewhat stunted when weak-willed people started to take charge of its affairs. Owing to their deficient management and bad practices, these people lent a hand to incompetence and paved the way for ruination. As a result, *Waqf*-held assets took the course of decline and their boons started to diminish. Some aspects of these ill-advised practices, all of which related to investment,⁽¹⁾ are as follows:

- The insignificant number of new *Waqfs* that are being set up;
- The ruination of a great deal of *Waqf's* tangible assets;
- The low returns of standing *Waqf's* assets compared with the size of capitals invested on them, on account of the mismanagement

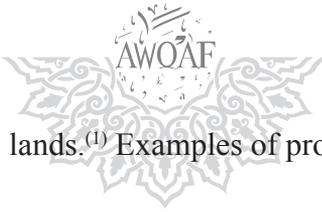
(1) Mohammed Abdelhalim Omar, *Al-Isthitmār fy Al-Waqf* (Investment on *Waqf*, its Fruits, and Its Yield), a research paper presented to the Fifth Session of the *International Islamic Fiqh Convention*, Sultanate of Oman 2004, p. 1.

characterizing the investment of *Waqf* funds;⁽¹⁾

- Third party infringement of *Waqf* properties –a practice arising essentially from some traditional investment methods, notably monopoly.

Bearing in mind the requirement of pertinence to the aim and topic of the study, what is of immediate relevance are the last three of the above factors. Having analyzed them in detail, we have identified some of the practices which have contributed to ruination and dwindling revenues. While the latter are but general manifestations of corruption, they are inextricably connected with fixed assets, most notably with *Waqf* farming

(1) This is a significant point which should be understood by the reader: the necessity of distinguishing between *Isthitmār fy al-Waqf* (investment in *Waqf*) and *Isthitmār al-Waqf* (Investment of *Waqf* proceeds). The distinction may not be clear for everyone. The difference lies in the fact that the former term suggest the idea of setting up and adding to the pious endowment; preserving its productive capacity by reforming what has been ruined (through renewal) or swapping it and obtaining another asset (*Ihlāl*). This is what we may call the development of *Waqf*. And obviously in this case, *Waqf* stands in need of funding. *Isthitmār al-Waqf* suggests the use of money generated by *Waqf* to get the benefits or the fruits which are then expended in charitable areas, for which the *Waqf* was originally intended. In this case, the *Waqf* is funded. Our topic relates specifically to the second meaning, that is, investing and boosting the capacities of tied-up *Wakf* farming lands. For more details see p. 17 of Mohammed Abdelhalim Omar, *Al-Isthitmār fy Al-Waqf* (Investment in *Waqf*, its Fruits, and Its Yield), which has been cited above. For more information about the causes behind reduced *Waqf* revenues see for more details and elaboration: Abdelkabar El-Alaoui El-Medaghri, *Idārat Al-Awqāf Al-Isslāmiah fy Al-Mujtama` Al-Mu`āssir fy Al-Maghrib* (*Waqf* Management in Contemporary Society in Morocco), a research paper presented to the conference “On the Importance of Islamic *Waqfs* in Today’s World” (London, 1996), p. 480.



lands.⁽¹⁾ Examples of problems are presented as follows:

First: Deficient Expenditure on Waqf lands

While the aim of *Waqf* is to produce yield that can be benefitted from; the viability of the yield may not be guaranteed save by means of the preservation of tied-up assets. And effective preservation may not be achieved except by allocating funds which are commensurate with the nature of the asset (this could be periodical or whenever the need should arise). The purpose is to be able to face up to any degradation, ruination, or loss.⁽²⁾ The same can be said about agricultural lands which are equally

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- (1) Up to the end of the 19th Century, tied-up farm lands had accounted for as much as one third of agricultural lands in Tunisia, Egypt, and Syria. And in 1925, three fourths of all farmed land in Turkey consisted of *Waqf* lands. See Abdelkader Mohammed Abū Al-`Alāa, *Qussūr Al-Himāyah Al-Jinā'iah* (Deficiency of Protection in the Provisions of Criminal Law with regard to *Waqf* Assets and Its Impact on their Disintegration), a research paper submitted to the Third *Waqf* Conference “Islamic *Waqfs*: an Economy, Management, and Civilization-building.” (Kingdom of Saudi Arabia, (1430 A.H), p. 99). *Waqf* agricultural lands added up to 3 million hectares in Algeria and to 80,000 hectares in Morocco. See Mohammed Ahmed Mehdi, *Nedhām Al-Waqf* (The *Waqfs* System and Contemporary Practices: Selected Models featuring the Experiences of Islamic Societies and Countries), (Kingdom of Saudi Arabia: The Islamic Research and Training Institute), First Edition, 1423 A.H, p. 33. Mursi As-Sayyid Hijāzi, *Dawr Al-Waqf fy Tahqeeq At-Takāful Al-Ijtimā`y fy Al-Bay`ah al-Isslāmiah* (Of the Role of *Waqfs* in Realizing Social Solidarity in an Islamic Environment), *The Islamic Economics Review* (King Abdulaziz University), Vol. XIX, Issue no. 2 (2006), p. 61. Mustapha Mahmūd Mohammed Abdul`al *Al-Athār At-Takāfuliah Lil-Waqf* ... (Solidarity-fostering Impacts of *Waqf* and the Possibility of Implementing it in the Arab World) a research paper submitted to the Third *Waqf* Conference “Islamic *Waqfs*: an Economy, Management, and Civilization-building.” (Kingdom of Saudi Arabia, (1430 A.H), p. 868). `Ikrimah Said Sabri, *Waqi` Isthimār Al-Awqāf bi Philisteen* (The Reality of *Waqfs* Investment in Palestine), a research paper submitted to the Conference on *Waqfs* Investments (the *Waqfs* and Palace Affairs Institution), Dubai, 2008, p. 495. See also Fouad Abdellah Al-Umur, *Isthimār Al-Amwāl Al-Mawqūfah* (Investing Tied up Monies/Properties: Economic Condition and Development Requirements), Kuwait: the *Waqfs* General Secretariat, 1428 A.H, p. 92.
- (2) The degradation is due to a number of factors. See Mohammed El-Mehdi El-Hassani, *Al-Hifādh `ala Al-Arādy fy Al-Maghrib* ... (the Preservation of Lands in Morocco: Natural Law, Positive Law, and the Aims of the (Canonical) Law) (Rabat, 1997), p. 10.

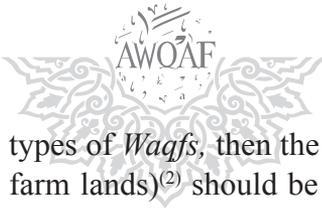
concerned by this rule. The preservation and enhancement⁽¹⁾ of their productive capacity requires expenditure, as has pointed out by Hilāl Ar-Ra'y when he said that the trustee of a tied-up land may hire wage-earners to work towards its preservation and pay their wages from the fruits yielded. He may, likewise, hire workers to drill wells and clear the grounds and so forth. He must, in fact, do all of this, should the land need it. In this respect he says:⁽²⁾

I asked “Have you seen a man who has tied-up land for the purpose of helping the poor and destitute but never as much as mentions ways of developing it? What is the stand of the law? His reply was: “the judge should start by ordering that money yielded by the fruits be spent to reform the land and improve it, then the rest of the proceeds may thereafter be distributed among the poor and the destitute.” I then asked the following question: “What if the soil is briny? Would you say that he should reform the land by washing up the brininess and then expend the rest of the proceeds on the poor?” His reply was in the affirmative, adding that “such reformation would increase the fruit yielded by the land and develop it.” I further inquired whether money should be expended on drilling wells, improving its irrigation system, fertilizing the land and doing anything apt to boost its production. His answer was “Yes, certainly he ought to do all of this.”

To be sure, hundreds of thousands of *Waqfs* have been established from the dawn of Islam up to the present time. And if we were to represent the evolution using a line graph from the era of the Prophet (Peace and blessings be upon him) when *Waqf* was limited solely to a simple kind, namely “fruitful lands,” up to the present when it has expanded to include all other

(1) This can be done by drilling wells so as to make farming possible or to increase the production of the land by transforming it from rain-dependent land to irrigated land, or again, by using fertilizers and such like methods.

(2) Hilāl Ben Yahya Ibn Muslim Ar-Ra'y, *Kitāb Ahkām Al-Waqf* (The Book on *Waqf* Ordinances), First Edition (Haydar-Abad: *Ottoman* Knowledge Council Printing House, 1355 A.H), p. 20



types of *Waqfs*, then the cumulative total of these *Waqfs* assets⁽¹⁾ (notably, farm lands)⁽²⁾ should be showing an exponential growth. However, if we examine the situation in the present time, we would notice that the graph has actually taken a downward trend, which suggests that there is marked decline in *Waqf* farming land. An example that clearly illustrates this, the memoirs of Karl Marx suggest that during his visit to Algeria in 1882, the *Waqfs Institution* then had three million hectares of farming lands.⁽³⁾ But the surface area of such lands has ever since been in such decline that *Waqf* lands barely exceed one tenth of that figure!

If we were to investigate the causes which led to this disquieting reduction in the surface areas of *Waqf* lands, we would inevitably find that the budgets allocated to the preservation and enhancement of the productive capacity of these farm lands have been seriously deficient. The deficiency may be accounted for by the phenomenon of marginalization of farming activities.⁽⁴⁾ It may also be explained by a deliberate transformation of the nature of agricultural lands, turning the latter into real estate parks, given that the latter activity is far more lucrative. Another explanation resides in low *Waqf* returns.

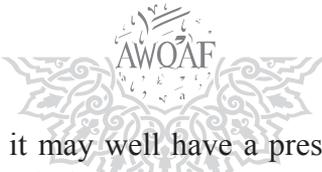
- (1) In Egypt, *Waqfs* spread most conspicuously in the form of farming lands with the expansion of private property. It eventually came to constitute the essential patrimony from which the *Waqfs* administration derived most of its assets. See Ibrahim Bayyūmy Ghānim, *Al-Awqāf Assiyāssiah fy Missr* (Political *Waqfs* in Egypt), Op. cit., p. 76.
- (2) The historical formation of the economic foundations of *Waqfs* was marked by a salient feature, which is on-going cumulative growth of *Waqfs* assets, thanks to perpetuity as one requirement of the validity of *Waqf*. Another characteristic was the respect shown to *Waqfs* by various social categories. See Ibrahim Bayyūmy Ghānim, *Al-Awqāf Assiyāssiah fy Missr* (Political *Waqfs* in Egypt) (Egypt: *Dār As-Shurūq*, First Edition, 1998, p. 81). For more details about the advantages of *Ta'beed* (or perpetuity) see Yasser Abdelkarim Al-Hourāni, *Al-Waqf wal `Amal Al-Ahly fy al-Mujtama` Al-Isslāmy (Hālat Al-Urdun)* (*Waqfs* and Customary Popular Practices in Islamic Society: the Case of Jordan) Kuwait: the General Secretariat of *Waqfs*, 2001, p. 15.
- (3) The Directorate in charge of *Waqfs*, Ministry of Religious Affairs in Algeria, “*Waqf* Properties in Algeria,” a research paper submitted to the Conference on “the Development and Enhancement of Islamic *Waqfs*,” The Islamic Research and Training Institute (Nouakchout: 2000), p. 3
- (4) The contribution of the farming sector to GDP hardly exceeds 18%. For more details see Abdelhamid Brahimi, *Al-`Adālāh Al-Ijtimā`iah wa Tanmiah fy Al-Iqtissād Al-Isslāmy* (Social Justice and Development in Islamic Economy), (Beirut: the Center for Arab Unity Research, First Edition, 1997), p. 141.

Preference for Lease Contracts:

Ijārah is a legal contract which covers assets that are benefited from, such as building, farming lands, and movables. The purpose of *Ijārah* (leasing) is to benefit from the yield of leased asset. *Ijārah* has a number of legal rules and regulations.⁽¹⁾

Data reveals that most of the *Waqfs* agricultural lands that have been exploited ever since *Waqf* appeared up to the present times have been subjected to the formula of lease contracts.⁽²⁾ While this formula is acceptable from the legal perspective, it is the least rewarding of all *Waqf* land exploitation formulas. It is characterized by rigidity and lack of economic efficiency. Besides the contract is more of an exploitative funding contract than an investment contract in the wider sense of the term ‘investment’. This is readily seen in the low value of the lease which does not reflect in any way the real value and significance of agricultural investment.⁽³⁾ What makes the situation of *Waqf* farming lands even worse is the length of the lease-time which may reach 99 years (and this is specifically the case when the land is transferred to the lessee in the form of monopoly-investor. The formula is not fit to serve as an investment benefitting *Waqf* lands, though

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- (1) For more details see *Hāshiat Ibn Al-Abedeem* (or, Ibn Al-Abedeem’s Marginal Gloss), Vol. VI, p. 699; *Al-Uqūd Addariah* by Ibn Al-Abedeem, Vol. I, pp. 174 and 225; *Mughny Al-Muhtāj* (Satisfying the Requirements of the Aspiring Scholar) by Al-Khateeb As-Sharbeeney, Vo. II, p. 395; *Hashiat Al-Khurshy* (or, Al-Khurshy’s Marginal Gloss), Vo. VII, p. 99.
 - (2) Statistics reveal that 87% of agricultural lands in Morocco are subjected to lease contracts. As for Malaysia, farming lands have not been the subject of any other investment formula save the *Ijārah* formula. See Mohammed Ahmed Mahdi, *Nedhām Al-Waqf* (The *Waqfs* System and Contemporary Practices: Selected Models featuring the Experiences of Islamic Societies and Countries), Op. Cit., pp. 20 and 120. In Algeria, statistical data suggest that more than 45% of lands are exploited by way of lease contracts. See Ibn `Ishy Bachir, *Al-Waqf wa Dawruhu fy At-Tanmiah ...* (Pious Endowments and their Role in Economic Development: a Practical Case Study of Algeria), a research paper submitted to the third *Waqfs* Conference: “Islamic *Waqfs*: an Economy, Management, and Civilization-building.” (Kingdom of Saudi Arabia, (1430 A.H), p. 211).
 - (3) As time goes by, the *Waqfs* Trustee or *Waqfs* Administration tends to neglect the land, whose ownership is “transferred” by the weak-willed to lessees or to the bearers of investment contracts. For more details about the negative aspects of lease contracts and more examples see Fouad Abdellah Al-`Umr, *Al-Amwāl Al-Mawqūfah* (Investing Tied up Monies/Properties: Economic Condition and Development Requirements), Op. Cit., pp. 77 and 89.



it may well have a presence in actual practices, especially if we bear in mind the fact that many Islamic countries have lost interest in farming activities). This is ominous for it entails threats that are more serious than the dangers posed by ruination. One such is the loss of the lands themselves, as (such extended contracts) facilitate unlawful acquisition of *Waqf* lands. This is especially true in case of the succession of generations of beneficiaries and the succession of *Waqf* administrations. This is indeed what *actually* happened in many Islamic countries,⁽¹⁾ in spite of the repeated and vehement warnings issued by jurists.

Moreover, it is a well-known fact that a lease contract has a fixed income. It is also a known fact that the inflation rate in developing countries, including Islamic countries, tends to be acute. This means that the real value of the income is bound to fall. Many *Waqf* jurists and trustees have indeed stressed the necessity of reviewing the value of the lease whenever prices change and the wishes of the contracting parties change.

Three: the Damage inflicted on *Waqf* Farming Lands

Waqf farming land may be prone to loss or ruination due to its location in strategic and sensitive points. As Islamic cities expand, these lands may be used to lay sewerage systems, roads, power and water adductions and so forth. They often end up being seized to serve some public interest, in return for some monetary compensation or other compensation in kind which may take such a long time to materialize as to lose its value. In most case, *Waqf* lands are seized without any compensation.⁽²⁾ The loss may also

(1) Some researchers consider that the monopoly formula has been a direct cause of the loss of most *Waqf* lands in the Islamic World from the Turkish era up to the present times. For more details see Ikrimah Said Sabri, *Al-Waqf Al-Isslāmy bayna An-Nadhariah wa Tatbeeq* (Islamic Pious Endowments: Theory and Practice), (Jordan: *Dār An-Nafā'iss*, 1428 A.H), p. 304.

(2) The most recurrent cause is the prevalent belief that *Waqf* property is a neglected asset. Any party desirous to build a school, hospital, public garden, or a green area to beautify a neighborhood and happens to find a *Waqf* land-plot, it does not hesitate to lay hands on it. More often than not, the party then proposes a symbolic compensation, at best. See Abdelkadir El-Alaoui El-Medaghri, *Idārat Al-Awqāf Al-Isslāmiah fy Al-Mujtama` Al-Mu`āsser fy Al-Maghrib* (*Waqf* Management in Contemporary Society in Morocco), Op. Cit., p. 476.

be attributable to the fact that *Waqf* lands are turned into dumping areas where garbage, detritus, and other wastes are heaped. This can happen in cities as well as in rural areas.

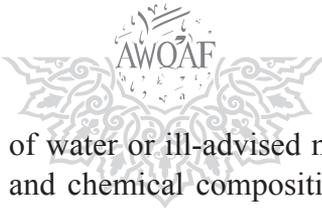
One of the most manifest aspects of deliberate ruination of *Waqf* farming lands in the present time is due to the growth of *Waqf* institution and its undue focus on real-estate development. The activity is opted for owing to its ease⁽¹⁾ –residential and business buildings are readily built and used—especially in strategic spots in cities.

Another reason behind the ruination of *Waqf* farm lands resides in their deliberate neglect and non-cultivation. Put another way, farming lands are left desolate, not yielding any crops which would procure food. This stand is referred to as *Tabweer Al-Arādy* (letting the land lie fallow, systematically, even though it is arable and perfectly fit for farming activities). The purpose of course is to use the land in non-productive, yet highly lucrative and fast-producing activities. The reason behind such practices is two-fold: negligence on the part of *Waqf* Institutions, on the one hand, and neglect of farming activities on the part of individuals and States, alike.⁽²⁾

Loss or ruination of *Waqf* lands may also be unintended, owing to a number of reasons: rising water levels on the land due to excessive use

(1) Senior scholar Hilāl Ar-Ra'y believes that the distinctive feature of the land does not reside in claiming housing rental, but rather in developing palm-trees, fruit trees, and other crops. See Hilāl Ibn Muslim Ar-Ra'y, *Kitāb Ahkām Al-Waqf*, Op. Cit., p. 20.

(2) Food and Agriculture Organization's (or, FAO) statistics point to a decline in individual share in agricultural production in developing countries. Currently, it hardly exceeds \$179 a year. They also point to a decline in the contribution of the agricultural sector to GDP in Islamic countries, along with an ongoing decline in the surface areas of farming land in some countries, and a slight increase in others. For more details, see FAO's yearly reports and UNDP (Habitat): the State of Arab Cities: the Challenges of Urban Transformations, 2012-2013." Kuwait: the Kuwait Office for Arab Cities (Habitat), Second Edition, 2012. The marginalization of farming lands take on aspects other than the one I have mentioned above. For more details, see "Challenges facing Egyptian Agriculture and how to face up to them." *Al-Majallah Az-Zirā`iah*, Issue no. 614, 2010, p. 30. Mohammed As-Sayyid Abdessalām, "Modern Technology and Agricultural Development in the Arab World." Kuwait: the National Council for Culture, the Arts, and Letters," (1982), pp. 82-110.



of water or ill-advised methods of irrigation; the depletion of the natural and chemical composition of soils, owing to the adoption of unsuitable farming cycles; the adoption of intensive farming methods; and the use of fertilizers and pesticides which pollute and undermine the farming environment in general.⁽¹⁾

Fourth: the Reluctance of the Waqf Administration to exploit Farming Lands by means of Agricultural Contracts:

Even though *Al-Muzāra`ah* contract⁽²⁾ is one of the most notable investment formulas in the agricultural sector, large expanses of tied-up farming lands have remained desolate and unexploited owing to the inability of the authority in charge of *Waqfs* to till them, on the one hand, and their failure to allow farmers⁽³⁾ who are willing and able to invest⁽⁴⁾ on them

(1) Mohammed Mansūr Abdelfettah et. al., “Farming and Food in Egypt: Realities and Alternative Scenarios up to 2020,” (Cairo: *Dār As-Shurūq*, 2001), p. 17.

(2) *ʿAqd Al-Muzāra`ah* (or, a Crop-sharing Contract) is a legally permissible contract which consists in giving the land to a farmer so that he may cultivate it in return of a portion of the crop which is agreed on at the time of the conclusion of the contract. There is no prejudice for the persons designated to benefit from the proceeds of *Waqf*, because the agreement bears on the crops which are actually yielded by the land, and not really on a sum of money or given weight of the yield—which may not be realized, after all. The contracts offers the *Waqf* Institution two mighty advantages: the first is that it guarantees the exploitation of lands which may not be fertile and may require considerable amounts of money which the *Waqf* superintendents may not be able to make available. Moreover, the contract does not span a lifetime. The recovery of the land at the expiry of the contract makes it possible to exploit it forthwith without the participation of any third party. Furthermore, the formula enables venture capitalists and farming specialists to find such lands as would enable them to invest their capital, bearing in mind that they are working for the benefit of destitute or underprivileged people in society. For this reason, they are keen on investing in these lands as a matter of priority. They may at time even claim few returns in order to serve *Waqfs*, increasing thereby the portions of the beneficiaries. See `Alach Ahmed, *Muhafizāt An-Nashāt Al-Iqtissādy fil Isslām* (Incentives for Economic Activities in Islam), an unpublished doctoral dissertation, the University of Algiers (2006), pp. 288-289.

(3) In Egypt, for instance, as a coercive measure taken, the authority in charge within the Ministry of *Waqfs* increased the metric rental value from 30 pounds in 1993 to 500 in 2007 and to 850 pounds in 2011.

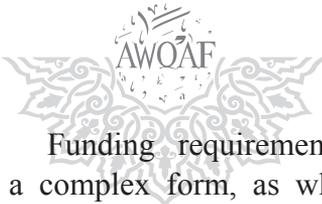
(4) Sorayah Zardam Ibn `Ammār, *Waqf Property Regulations in Algerian Legislation*, an unpublished Masters’ thesis (Algiers University, 2010), pp. 140-141



to do so, on the other. Broadly speaking, the failings of the administration are too well known to warrant detailing here: red-tape and bureaucracy, low capacities, modest performances, and pervasive negligence.⁽¹⁾ But all of this may be attributable to the marginalization of the agricultural sector by the State as a whole.⁽²⁾

The most formidable problem confronting *Waqf* today is the dearth of financial resources which would allow it to continue performing the roles for which it was originally instituted. What makes the need for these resources all the more acute is the fact that most *Waqf* assets consist of real estate and lands. From the juristic stand, these tied-up properties are difficult to “liquidate” at a time when funding and investments require liquid money. This, of course, makes it mandatory to find sources of liquidities to make up for such a deficit, which is not without adverse impacts.⁽³⁾

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- (1) Mundhir Qahf, *Al-Waqf Al-Isllāmy fy Al-Mujtama` Al-Isllāmy Al-Mu`asser* (or, *Waqfs in Contemporary Islamic Society*), (Qatar: Ministry of *Waqfs* and Islamic Affairs, 1419 A.H), p. 43.
 - (2) FAO statistics reveal that more than 9/10th of arable lands in developing countries are not farmed, owing to the agricultural policies devised by States, which do not provide for any empowerment or grant incentives. For more details, see FAO, *The Statistics' Book: the Division devoted to Land Use* (Rome, 2009). Concerning the phenomenon of marginalization, it may be attributed to the view adopted by certain States which consider that food is available in global markets and readily accessible to all those who can pay for it. Other States have been lured by industrial development to such extents that they have lowered their interest in agriculture. For more details, see Mohammed Es-Sayyid, *Modern Technology and Agricultural Development in the Arab World*, Op. Cit., pp. 5-6. Marginalization is also attributable to the economic reforms implemented by developing countries, including Islamic ones. These reforms have reduced the incentives given to agricultural producers and deterred them from increasing production or even continuing farming activities. The declining purchasing power of people engaged in agricultural activities is also to blame for the marginalization. For more details see, Mohammed Mansūr Abdelfettah et.al., *Agriculture and Food in Egypt: Realities and Alternative Scenarios up to 2020*, Op. Cit., p. 72.
 - (3) Omar Ibn Fayhān Al-Marzūqi, *The Economies of Waqfs in Islam*, a research paper presented to the Third *Waqf* Conference: “Islamic *Waqfs*: Economics, Management, and Civilization-building,” (Kingdom of Saudi Arabia, 1430 A.H), p. 104.



Funding requirements⁽¹⁾ increase whenever the investment takes a complex form, as when the intention centers on investing in *Waqf* agricultural lands by enhancing or intensifying farming. Of all assets, the latter is the one that needs sundry funding⁽²⁾ the most, starting with short term funding which is provided to cover current expenses (operational expenses, fertilizers, sacks and pallets, and so forth) during the tilling and harvesting stages.⁽³⁾ Medium and long-term funding is intended to secure agricultural equipment, engines, and irrigation systems/apparatuses.⁽⁴⁾

Sixth: the absence of an investment entity specialized in agriculture

The development of *Waqf* and its returns requires serious commercial and financial thinking aimed at enhancing profits and exploring the best ways to increase returns. This requires the existence of a dedicated and specialized investment entity.

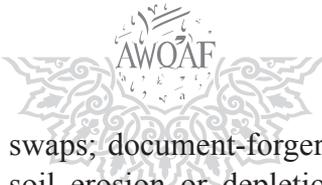
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- (1) Here we must differentiate between two kinds of funding: development funding and operational funding. The former term means the increase of the size of the exploitation, investment, or capital monies devoted to the *Waqf*. An example is when the *Waqf* consists in an agricultural land which is open to investment but which requires reformation and development before it can actually be tilled and farmed. We have already mentioned this case in the first component which relates to deficiency in expenditure. Operational funding consists in enhancing the *Waqf* itself, as when the land requires both seeds and fertilizers. For more details, see Mundhir Qahf, *Al-Waqfs Al-Isslāmy fy Al-Mujtama` Al-Isslāmy Al-Mu`āsser* (or, *Waqfs* in Contemporary Islamic Society), (Qatar: Ministry of *Waqfs* and Islamic Affairs, 1419 A.H), p. 18. This paper is available on the following web-site: <http://monzer.kahf.com/papers.html>
 - (2) In terms of investment, agricultural activities require considerable and on-going investments, due to the multiplicity and overlapping nature of activities: the land requires preparation, tilling, irrigating, weeding, fertilizing, harvesting, storing, transporting and so forth.
 - (3) Fakhri Hussein `Azzy, *Siyagh Tamweel At-Tanmiah fil-Isslām* (Development Funding Formulas in Islam) (Jeddah: the Islamic Research and Training Institute, 2nd Edition, 2002), p. 127.
 - (4) Othman Babakr Ahmed, *Tajribat Al-Bunūk As-Sudaniah ...* (The Experience of Sudanese Banks in Agricultural Funding) (Jeddah: the Islamic Research and Training Institute, Research Study no. 49, 1418 A.H), pp. 91-92. For more details and comprehensive account, see Sūran Raffiq, *Ilm Al-Iqtissād Az-Zirā`y* (Agricultural Economics), Op. Cit., pp. 168-169.

Investment in agricultural sector is obviously high-risk⁽¹⁾ inasmuch as it is tributary on atmospheric conditions and natural changes. The existence of an investment entity specialized in farming is necessary ⁽²⁾ though not obligatory, especially if we bear in mind the fact that agricultural *Waqf* assets have a prominent position among fixed *Waqfs* properties. Nevertheless, though the *Waqf* administration is aware of this investment priority, it certainly does not have such a dedicated and specialized entity. Suffice it for a proof that agricultural *Waqf* investments are limited to the formula of rent, as has been stated above.

These are some of the problems which threaten agricultural *Waqf* assets in the present time. It should be noted that there are other problems which are common to all fixed *Waqf* assets, whether they be lands or real estate. There are other problems that we have not dealt with here owing to their impertinence to investment. Still, we may cite a few of them here: the unavailability of land registration documents; annexation of lands; land-

(1) For more details about the types of risks related to agricultural activities, see Mohammed Nour Ali Abdellah, *Tahleel Makhāter Al-Isthitmār fil-Massārif Al-Isslāmiah* (An Analysis of Investment Risks in Islamic Banks: Theory and Practice), *Da`wat Al-Haqq* (the Holy *Makkah*: the Islamic World League, Issue no. 195, 1423 A.H), pp. 88-89. For a more rigorous and detailed analysis and understanding, reference should be made to Sūran Wafeeq, *ʿIlm Al-Iqtissād A-Zirā`y* (Agricultural Economics), Op. Cit., pp. 14-22 and 188-189.

(2) The experience of the Moroccan *Waqfs* Ministry indicates that it has set up an agricultural investment entity and has, as a result of this measure, increased agricultural revenues by 300%. For more details, see El-Alaoui El-Medaghri, *Islamic Waqfs Management in Contemporary Society in Morocco*, Op. Cit., p. 483. One of the most notable advantages procured by the existence of a dedicated and specialized agricultural investment entity which takes care of arable lands is the avoidance of non-economic use or misuse of lands. Well-intentioned, at times, and ill-intentioned at other times, the farmer disregards the fundamentals of good land use. For more information about types of land-use and the fundamentals of good farming practices, see Salāh-Eddine Chāmi, *Dirrāsah Jaghrāfiah* (Geographical Study) (Alexandria: *Al-Ma`ārif* Institute, 1990), pp. 51-53. To widen the horizons of the reader concerning the rules underlying optimized agricultural land use, reference should be made to Mohammed As-Sayyid Abdessalām, *Modern Technology and Agricultural Development in the Arab World*, Op. Cit, pp. 165-172; and Kheir-Eddine Iliass, *Falāh Al-Fallāh*, (the Prosperity of the Farmer), 1359 A.H, pp. 6-91.



swaps; document-forgery; land sale; land usurpation⁽¹⁾; natural disasters; soil erosion or depletion⁽²⁾; agricultural lands nationalization⁽³⁾; and so forth. All of these problems have an adverse impact on the viability of the agricultural *Waqf* culture.

The Second Thematic Section: a Scrutiny of the Reasons and the Advantages of Modernizing Investments in and *Waqf* Lands' Exploitation Methods:

I would not be far from the truth if I asserted that one of the major reasons behind the decline in the yield of *Waqf* farming lands, despite their great number and their vast surface areas, is undue reliance on obsolete farming methods. Besides, land-leasing contracts, notwithstanding their legitimacy in the sight of jurists, have not been granted priority by the latter, especially in agricultural areas. This is because the characteristics of the leases are not flexible enough as to provide greater benefits and higher returns. Even if the crop-sharing contract is the most suitable formula for farming activities, its current applications are problematic. This makes the farmer (the second party to the contract where the first party is the *Waqf* administration which makes the land available to the farmer) prey to anxiety because farming is largely tributary on natural conditions. Besides, it is an activity which requires considerable financial resources. A modest

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- (1) A report has revealed that in Egypt the *Waqfs* Authority has lost the equivalent of 3,000 *Feddans* in the wake of the January 25th Revolution, on account of usurpation. For more details, see Marwa Al-Bashīr and Nadīr Abulfutūh, *Lā Tassāluh ma`a At-Ta`ady `ala Māl Al-waqf* (No Reconciliation with the Usurpation of *Waqf* Property), the daily *Ahrām* (or, Pyramids) newspaper, read on September 12, 2013.
 - (2) A case in point: the natural disasters which have hit Istanbul have wreaked havoc on *Waqf* lands. See Omar Abdellah Al-`Umr, *Isthitmār Al-Amwāl Al-Mawqūfah, As-Shurūt Al-Iqtissādiah wa Mustalzamāt At-Tanmiah* (Investing *Waqf* Properties: Economic Criteria and Agricultural Requirements), Op. Cit., p. 106.
 - (3) A case in point: the natural disasters which have hit Istanbul have wreaked havoc on *Waqf* lands. See Omar Abdellah Al-`Umr, *Isthitmār Al-Amwāl Al-Mawqūfah, As-Shurūt Al-Iqtissādiah wa Mustalzamāt At-Tanmiah* (Investing *Waqf* Properties: Economic Criteria and Agricultural Requirements), Op. Cit., p. 106.

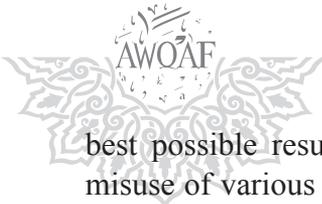


farmer is unable to meet these requirements. If this be the case, the *Waqf* administration should have detected the weaknesses inherent to the old systems and sought to address them by exploring and adopting new and innovative methods. By doing so, it would certainly preserve the assets and augment their yield in ways that are commensurate with their value. It is a well known fact that lands are high-value assets; therefore, one of the most salient aspects of optimal investment thereon resides in the achievement of equally high returns.

First: Reasons warranting the modernization of investment methods on Waqf farming lands:

- Low returns: if the essence of *Waqf* and its aims reside in procuring ample good for the society and its designated beneficiaries, then the *Waqf* administration ought to grant utmost attention to the exploration of ways and means of augmenting its returns. Obviously, even if the tied-up asset is substantial, when its returns are low or declining, then the asset runs the risk of obliteration, misuse, and loss of economic value. This state of affairs has several causes, of course, one of the most important of which is unsuitable investment methods.⁽¹⁾ In support of this, the current state of *Waqf* agricultural assets and investment methods provide a telling example. The rent-based method which has “detained” *Waqf* farming lands is not without risks: the value of the rent is low; the recipients of the *Waqf* proceeds are suffering from declining portions, with the passing of time, and even the agricultural lands are faced with the dangers of loss and degradation.
- Economic inefficiency: in Islamic usage, the concept of economic efficiency has several meanings. One of which is striving after the

(1) Qassim Nayef `Alwān, *Idārat Al-Isthitmār bayna An-Nadhariah wa Tatbeeq* (Investment Management: Theory and Practice) (Amman: the Culture Publishing and Distribution House, First Edition, 2009), p. 35, with some adaptation.



best possible results. The second one is avoidance of waste and misuse of various resources.⁽¹⁾ On the basis of these considerations, if we watch the behavior of *Waqf* Institution, notably its preferment for the rental formula as an investment method, we will certainly detect serious dysfunction. By opting for this investment method, the Institution is neither seeking to achieve the best results nor attempting to make an optimized use of *Waqf* farming lands. The returns or income derived from rental does not reflect in any way the real value of the asset (especially if the latter were to benefit from an optimal investment method). The greatest beneficiary here is the lessee who takes advantage of the long rental period and of the low level of rent which is not updated or reviewed. This, alas, is the situation is our present time.⁽²⁾ There should be no surprise then if we asserted that this formula seems to be more exploitation than genuine investment. The abandonment of this formula has therefore become mandatory and the *Waqf* Institution is required to look for a better alternative.

- The difficulty of matching requirements and real possibilities: we have in mind the crop-sharing contract itself. In spite of being one of the farming investment formulas, its actual enactment and implementation in the *Waqf* patrimony, at the present time, in particular have not occurred save in a few cases.⁽³⁾ There are of course and number of reasons for this, of which the most significant perhaps

(1) See Ahmed Ibrahim Mansūr, *‘Adālat At-Tawzee` wa Tanmiah Al-Iqtissādiah* (Fair Distribution and Economic Development: A Comparative Islamic View) (Beirut: Arab Unity Research Center, First Edition, 2007), p. 246.

(2) Many systems in different countries refuse to augment the rent or even to review it. See Mohammed Qāssim As-Shum, *Al-Waqf Al-Iszlāmy fy Lubnān* (Islamic *Waqf* in Lebanon (1943-2000): its Management and Investment Methods. *Al-Biqā` Province as a Model*) University Dissertations Series (5), Kuwait: the *Waqfs* General Secretariat, First Edition, 2007, p. 142.

(3) There are unfortunately no precise statistics to back up our view. However, owing to the prevalence of the rental formula, it is more probable than the implementation of *Muzāra`ah* (crop-sharing) and *Mussāqāt* (sharecropping contract over the lease of a plantation limited to one crop period only) has not materialized except in a few cases.



is the swinging size of resources needed by an individual farmer to cover (notably, the purchase of machinery, tools, and irrigation systems, in addition to current expenses). It should be stressed here that the crop-sharing contract,⁽¹⁾ the seeds are jointly procured by the two parties, that is, by the *Waqf* Institution and the farmer, in this case, the other means are borne by the farmer himself.⁽²⁾ Bearing in mind the fact that a Muslim person finds it hard today to earn his livelihood, how can he then possibly make available all of the above agricultural means which are hard even for groups to acquire? It may be argued here that the activity may be undertaken by agricultural firms instead of individuals. While this is certainly possible, firms typically require large tracts of lands in order to ensure large returns and to reduce costs. But this is not always possible, as *Waqf* lands are usually remotely located and small in size, sometimes.

Second, the advantages and benefits of adopting modern investment methods:

- The preservation of *Waqf* agricultural assets: some people assume that the purpose of investment is to obtain returns or the crops only; however, a far more important goal resides in the preservation of the

(1) For more information about the terms of crop-sharing contracts, see Ahmed Safar, *Al-Massāref Al-Isslāmiah: Al-`Amaliāt, Idārat Al-Makhātir, wal-`alāqah ma`a al Massāref al-Markaziah wa-Taqlēediah* (Islamic Banks: Operations, Risk-management, and Relations with Central and Conventional Banks) (Lebanon: the Arab Banks Union, 2006), p. 179. Mohammed Hussein Al-Wādi and Hussein Mohammed Samhān, *Al-Massāref Al-Isslāmiah: Al-Ussuss An-Nadhariah wa Tatbeeqat Al-`Amaliah* (Islamic Banks: Theoretical Foundations and Practical Applications) (Amman: *Al-Massirah* Publication and Distribution House, First Edition, 2007), p. 204.

(2) *Muzāra`ah*, in fact, takes several forms, including the one mentioned above. For more details reference could be made to Khalid Al-Rabii`, *Aqd Al-Muzāra`ah fil Fiqh Al-Isslāmy: Dirrāsah Muqāranah* (Crop-sharing Contract in Islamic Jurisprudence: A Comparative Study) *As-Shari`ah and Law Review* (Cairo, 2001), pp. 54-55. See also Abdelqader Benazzou, *Fiqh Isthimār Al-Waqf wa Tamweelihi* (The Jurisprudence underlying the Investment and Funding of *Waqf* in Islam: a Practical Case Study of *Waqf* in Algeria), an unpublished doctoral dissertation, University of Algiers, 2004, pp. 185-188.



assets which procure the returns. This is the opinion of contemporary specialists in the area of investments. One of them states⁽¹⁾ that when we start a project and gather the necessary funds for it, we call this operational investment. The goal then, as he defines it, is to *preserve* the funds invested. This is an important fact which Muslim scholars highlighted a long time ago when they asserted that the aim of all trade is to see to the security of capital while striving to make profits.⁽²⁾ By applying the rule to *Waqfs* we find it clearly stated in the opinions of jurists who have unanimously asserted that the preservation of the tied-up asset has precedence over the act of expending on the intended beneficiaries of *Waqf* proceeds.⁽³⁾ Accordingly, the *Waqf* Institution's continuous reliance on the rental formula as a means to invest in *Waqf* agricultural lands has an adverse impact on the viability of the assets themselves. This is because the preservation of land fertility⁽⁴⁾ and the enhancement of its productive capacity require considerable resources which rental proceeds fail to meet. Besides, limited implementation of the *Muzāra`ah* formula, owing to the difficulties we have previously outlined threatens to keep the land fallow and exposes it to ruination. Consequently, the search for modern investment methods provides the opportunity for wider

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- (1) Hassan Ahmed Taoufiq *At-Tamweel wal Idārah Al-Māliyah* (Finance and Financial Management) (Egypt: the Arab Renaissance Publishing House, 1971), pp. 7-8
 - (2) Al-Fakhr Ar-Rāzy, *Mafāteeh Al-Ghaib* (Keys to the Unseen) (the Charity Printing House, First Edition, 1308 A.H), Vol. I, p. 150.
 - (3) *Al-'Uqūd Ad-Dariah fy Tanqeeh Al-Fatāwa Al-Hāmidiah* by Ibn Al-'Abideen (Beirut: *Dār Al-Ma`rifā*), Vol. I, p. 187.
 - (4) For more details about the meaning of land fertility and the advantages procured by fertility as far as crops are concerned, see Mohammed As-Sayyid Abdessalām *At-Teknologiāh Al-hadeethah wa Tanmiyah Az-Zirā`iah fil-Watan Al-'Araby* (Modern Technology and Agricultural Development in the Arab World), Op. Cit., pp. 157-162.

participation and promises to give ample returns.⁽¹⁾ It has actually become a priority which the *Waqf* Institution must address by channeling current efforts towards the preservation of the remaining farm properties and the production of higher yields in order to ensure the permanence of procurement. Enough for a loss sustained under the cover of current rental-centered methods!

- Keeping the asset within the economic cycle (the achievement of optimal use): the permanence of economic and social benefits accruing from *Waqf* assets cannot be achieved, save by keeping the latter within the economic cycle (that is, by putting it to good use). Of course, this requires the renewal and modernization of exploitation methods, similar to the modernization which applies to tools, equipment and other means. An individual bound by a *Muzāra`h* contract with the *Waqf* Institution may be unable to invest in and use a portion of the land, owing to his inability to gather the requisite and adequate tools and means. As a result, a good portion of the land remains idle, depriving the economic cycle from the yield which could have been procured by that portion. If some amendments, or rather modernization, were brought to that contract to accommodate the modern requirements of the activity, the exploitation of the asset would certainly be optimal and the economic cycle would benefit assuredly. A risk that is no less serious than the former resides in the rental-based method. The lessee of *Waqf* farm lands may not use the land for cultivation purposes; he might thus use it as a sales outlet, a parking space, or the like. By doing so, the lessee alters the original function of the asset and deprives the economic cycle of the yield. He even provokes some dysfunction in the commodities market, as a whole. On the basis of the above, the innovation and enhancement

(1) Dr. Anas Az-Zarqa considers that *Waqf* monies should be invested on the basis of the principle of profit- maximization. For more information, see Mostapha Az-Zarqa, *Al-Wassā'il Al-Hadeethan Litamweel wal Isthimār* (Modern Financing and Investment Methods) an article in a book titled *Idārat wa Tanmiat Mumtalakāt Al-Awqāf* (Managing and Developing *Waqfs* Properties) (Jeddah: the Islamic Research and Training Institute, 1994), p. 387.



of methods by adapting them to the exigencies of the age guarantee optimal use of resources and assets and keep the latter firmly within the economic cycle.

- Boosting the yield of tied-up lands: there is no way to retrieve *Waqf* agricultural lands from the clutches of the informal (underground) economy and bring it up to the formal sector, save by abandoning old investment methods (lease of the land) and by modernizing others (the *Muzāra`ah* method). By so doing, we move on to more innovative methods based on scientific and practical pillars (i.e., premised on feasibility studies)⁽¹⁾ and capable of generating returns matching the value of the asset being invested. This becomes particularly true, especially if we bear in mind the fact that cultivable lands are assets whose yields can be substantially augmented providing improved investment methods are adopted.⁽²⁾
- Raising the productive capacity of *Waqf* agricultural properties: it is a well-known fact that the achievement of productive efficiency in the use of *Waqf* farming lands is largely tributary on the use of modern technology,⁽³⁾ as well as novel and innovative tools and

(1) For more information concerning feasibility studies see Hamdi Abdeladem, *Dirrāssat Al-Jadwa Al-Iqtissadiyah fil-Bank Al-Isslāmy* (Feasibility Studies in the Islamic Bank) (Jordan: the World Islamic Thought Institute, 1996), pp. 30-31

(2) Land is a genuine asset having value in itself: it has a concrete material entity and has the capacity to yield fruits through use. For more details, see As-Sayyid Metwalli Abdelkader, *Al-Aswāq Al-Māliyah fy `Alamin Mutaghayyir* (Financial Markets in a Changing World) (Jordan: *Dār Al-Fikr*, First Edition, 2010), p. 28

(3) In the past agricultural requirements were limited to natural resources, man-power, and capital. But now a new element has been added: modern technological tools: tractors, harvesters, chemical products, packaging units, storage space, transportation, distribution and so forth. For more details about this highly significant aspect, see Sahar Fāwy "A Study featuring and discussing the Economic and Environmental Impacts of Organic Farming," *Al-Majallah Az-Zirā`iah* (or, The Agricultural Review) (Issue no. 613, 2009), pp. 42-44; Sūran Rafīq, *Ilm Al-Iqtissād Az-Zirā`y* (Agricultural Economics), Op. Cit., pp. 116-117. For more details about the advantages of these technological means, see Mohammed As-Sayyid Abdessalam, *At-Teknologia AL-Hadeethah wa Tanmiah fil-Watan Al-`Araby* (Modern Technology and Development in the Arab World), Op. Cit., pp. 77-79.

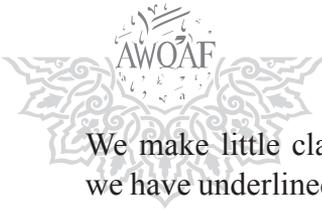


methods. Needless to say, the availability of the latter depends on the availability of financial resources, which have become a matter of serious concern, as well as the hardest resource to find as far as conventional exploitation methods (such as *Al-Muzār`ah* contract, for instance) are concerned. The implementation of new investment methods in this area is a solution which the *Waqfs* Institution ought to consider and adopt. This is because it has the capacity to offer ample funding and possesses sound practical and scientific assets, in addition to competent and efficient human resources.⁽¹⁾

- Enhance the confidence of the farmers by creating an investment-friendly environment: one of the advantages of modern investment methods resides in its meticulous and seamless mastery of all the details pertaining to investment activities. Investment schemes comprise information covering transaction terms, the practical stages of the investment process, investment requirements in terms of resources, tools, and means, as well as the expected returns on investments. It thus gives an appropriate and positive⁽²⁾ mental perception of the activity as a whole. This actually contributes to the facilitation of the business and boosts the confidence of individual farmers. It may be objected here that all of this is also readily available under conventional investment schemes. While this is certainly true, we should not forget that keeping in step with evolutions is necessary to achieve optimal use of the available resources as well as a powerful lever to raise return at the lowest possible costs. This is something that the *Waqf* Institution ought to be aware of whenever it considers exploiting farming lands, in particular, and *Waqf* assets, in general. These are some of the points that we have deemed relevant –notably, the merits of using modern and innovative investment methods and the advantages they may procure in the area of agricultural *Waqf*.

(1) Modern investment methods usually rely on efficient, seasoned, and competent human resources.

(2) Mohammed Mahmūd Al-Makkaoui, *Al-Isthitmār fil-Bunūk Al-Isslāmiah* (Investments in Islamic Banks) (Egypt: *Dār Al-Fikr*, 2011), p. 101 with some adaptation.



We make little claims to exhaustiveness; however, the advantages we have underlined in broad terms point to several other advantages.

Third: Standard Criteria in the Investment and Exploitation of Waqf agricultural lands.

- Full use of the land factor⁽¹⁾: given that land is one of the assets which lose their productive capacity when they remain desolate and dead, it is necessary to consider the possibility of using the land factory⁽²⁾ fully and comprehensively, whenever it comes to choosing an investment method. The expansion of the basis of benefits derived from *Waqf* assets⁽³⁾ (the agricultural land) and the recycling of the land assume paramount significance because they serve to furnish the conditions of economic feasibility.⁽⁴⁾ Added to this, comprehensive investment

(1) Just as Islam has fought the idea of idleness and exhorted people to work, it has also resisted the idea of keeping natural resources and money idle, as this idleness withdraws all of these resources from the circuit of mutual benefit-derivation. Islam has thus impelled people to make optimal use of natural forces and resources and harness them to increase production, to serve mankind, to stimulate investment and to procure wider benefits. For more information, see Mohammed Baqir As-Sadr, *Iqtissāduna* (Our Economic System), (*Khurassān*: Islamic Media Office, Second Edition, 1425 A.H.), 619-620.

(2) We often notice that the available agricultural potential is not used fully. It is only used partially in many Islamic countries. This is attributable to many factors. See Mohamed Hussein Bahshety, *Al-Iqtissād Al-Isslāmy* (The Islamic Economic System) (Syria: *Dār At-Ta`āruf* for Printing and Publications, 1988), p. 99 with some adaptations.

(3) Ahmed Mohammed As-Sa`d, *Al-Malāmih Al-Assāssiah Lil-`Alaqah Bayna Al-Waqf wal Iqtissād: Madkhal Nadhary* (Basic Features of the Relations between the Pious Endowments System and the Economy: a Theoretical Introduction), a research paper published on the net. See the following web-site: www.arablowinfro.com

(4) For more information about economic feasibility see Abdelfettah Mahmūd Idriss, *Waqf: Manāfi` Al-Jadwa Al-Iqtissādiyah, Al-Mu`awiqāt, wal Hulūl* (Benefit-procuring Endowments: Economic Feasibility, Impediments, and Solutions), a research paper submitted to the Second *Waqf* Conference, "Development Schemes and Future Perspectives) (*Umm Al-Qura* University, the Honored *Makkah*, 2006), pp. 42-43.

and exploitation of the land prolongs its viability,⁽¹⁾ boosts its benefits, and enhances the *Waqf* patrimony by instilling dynamism in it and promoting its growth. Furthermore, one of the motivating factors behind comprehensive and optimized used of *Waqf* lands is the increase of the yield which is closely connected to an increased use of resources.

- Returns that match the value of the asset being invested: an aspect of optimal use of an investment formula resides in its capacity to strike a balance between the factors of production and their respective returns. This means that each one of the factor should obtain an appropriate return corresponding to its contribution to economic activity.⁽²⁾ It simply does not stand to reason that an asset (of the value of land) should have a return barely exceeding a clutch of *Dirhams* (like the returns currently coming from land leases). In our view, a rewarding return for such a valuable asset should exceed the requirement of development to benefit the recipients of the proceeds and even to realize surpluses which may then be applied to the institution of new *Waqfs*.
- Its capacity to preserve *Waqf* lands: even if many applications of economic mechanisms have now become available to *Waqf* investments, the *Waqf* superintendent has several investment options to choose from. He is required to choose the one which he believes to be most secure⁽³⁾ and most apt to preserve the asset, in the first

(1) Abdellah Ibn Mūsā Al-`Ammār, *Isthitmār Amwāl Al-Waqf* (Investing Pious Endowments Assets and Money), a research paper submitted to the First Forum on *Waqf* Juristic Issues, “Legal Commitments and Renewable Solutions,” Kuwait: the *Waqf* General Secretariat, First Edition, 2004), p. 215.

(2) Rif`at As-Sayyid Al-`Aawdhyy, *Mawssū`at Al-Iqtissād Al-Isslāmy ...* (The Encyclopedia of Islamic Economy: Banks, Money, and Financial Markets), Volume IV “The Economic Aspects of Islamic Banks,” (Egypt: *Dar As-Salām* for Printing, Publishing, and Distribution, First Edition, 2009), p. 128.

(3) Mohammed Mokhtār As-Sallāmi, *Isthitmār Amwāl Al-Waqf* (Investing *Waqf* Properties), a research paper submitted to the First Juristic *Waqfs* Issues, “Legal Commitments and Renewed Solutions” Kuwait: the *Waqfs* General Secretariat, First Edition, 2004, p. 147.



place, in order to avert the prospect of its loss and to guarantee its constant growth and returns. Let us pause here and ponder the lease-based method. The lessee does not care as much if the land should deteriorate and remain idle; his interest centers on the quickest sources of profit with the least effort. One way of doing this, consists in using *Waqf* assets to sell construction materials⁽¹⁾ (a widespread phenomenon in Algeria), to turn them into car parking lots, and similar other low-cost and high-return business activities.

- Appropriateness: it is necessary to investigate whether the investment formula is suitable and appropriate for *Waqf* properties, if the latter are to augment their returns. If we looked at the lease formula, for instance, we would realize that it is not suitable or appropriate for *Waqf* lands, notably agricultural ones. This is because the revenue it generates is inadequate. Besides, its bases and applications have nothing in them to command the lease formula to the attention of the *Waqf* Institution or establish it as an attractive and profitable investment method to be opted for as far as agricultural properties are concerned. In addition to the components that the present research paper has highlighted, there are other criteria for investment-formula optimization. We may cite some here, by way of example, and not exhaustiveness:
- The capacity to manage various kinds of risks, be they technical, material, or economic by monitoring them, identifying them and devising the right solutions for them;
- The investment method should abide by legal regulations as well as the rules set forth by the *Waqfs* investment services;
- Flexibility and ease of implementation;
- The capacity to keep in step with technical and managerial evolution;

(1) Or what we might term non-productive uses. For more details, see Mahmūd Mansūr Abdelfettah et. Al., *Azzirā`ah wal Ghada`fy Massr* (Agriculture and Food in Egypt: Current Situation and Alternative Scenarios up to 2020), Op. Cit., pp. 17-18.



- Investment methods should be premised on scientific and pragmatic bases and methodology;⁽¹⁾
- The availability of managerial staff that is well-versed in investment methods and keenly aware of success requirements.⁽²⁾
- The investment scheme should comprise clear indicators and criteria to assess and amend investment performance
- The capacity to rationalize investment spending;
- Documentation and information management: this has a paramount significance in preserving property (by guarding it⁽³⁾) and conferring on investment methods a binding force and an official character and defining the rights and obligations⁽⁴⁾ of the parties;
- Fulfillment of legal requirements: innovative investment schemes often require the building of convention around them in practice. The convention is established by means of guaranteeing uniformity of behavior and dissemination of knowledge about it so that people may not deviate from them or breach them. At the outset, the establishment of conventions necessitates the definition of an appropriate legal and regulatory frame governing these investment schemes. This enables the parties to get used to interact accordingly. They thereafter act

(1) *Lajnat Dirrāssat Al-Waqi` Az-Zirā`y I* (The Research Committee on Current Agricultural Realities) the Executive Agricultural Emergence Program, *Majallat Al-Massārif* (the Banking Review), (Sudan: the Sudanese Banking Union, Issue no. 26, 2009), p. 43.

(2) Ussamah Omar Al-Ashqar, *Tatweer Al-Mu`assasah Al-Waqfiah Al-Isslāmiah fy Daw' At-Tajribah Al-Khairiah Al-Gharbiah* (Developing the Islamic *Waqf* Institution in Light of the Experiences of Western Charities: A Case Study) (Kuwait: the *Waqf* General Secretariat, First Edition, 2007), p. 93

(3) Abdellah Al-'Umr, Investing Tied-up Monies/Properties: Economic Conditions and Development Requirements," Op. Cit., p. 205.

(4) For more information about the importance and the benefits of documentation, see Fayssal Abdelaziz Farah *Tawtheeq (Siyāghat Al-'Uqād) ... Documentation/data storage and (Contract-drafting): its Regulations and Implementation in Financing and Investment*, a research paper submitted to the twenty-third *Al-Barakah* Banking Conference, the Holy *Makkah*, 2002, pp. 32-33.



spontaneously and show commitment to established guidelines and practices, thanks to their belief that adherence to the rules pertaining to the legal frame guarantees the preservation of rights.⁽¹⁾

These are then some criteria which we may consider as being regulatory and binding as far as optimized investment of *Waqf* agricultural lands are concerned. There is no doubt that adherence to them would assuredly lead to a *Waqf* agricultural resurgence which would lead to abundance, flowing to the beneficiaries and extending further to benefit humans and animals. Naturally, we do not make the claim that the aforementioned criteria embody all the aspects of an optimal investment scheme. Suffice it to say that what we have presented above constitutes the basic guidelines which should regulate the agricultural *Waqf* investment scheme effectively.

The Third Thematic Section: *Sukūk Al-Muzāra`ah* (Crop-sharing Bonds) Expounded in Detail

Even if we have devoted several pages to the importance of renewing investment schemes to develop *Waqf* agricultural lands and put forward theories and different kind of specialized themes, the paper would still be deficient unless we supplemented it by means of examples and models which furnish elaborate descriptions.

Besides, even if agricultural *Waqf* investment has been endowed by Almighty Allah with vast tracts of lands, it has been seriously curtailed by the dominant (lease-centered) methods which are known for their inadequate returns and limited benefits. Consideration of ways and means to take this wealth-creating patrimony from its current lowliness to something better and more profitable has impelled us to explore new methods. The investigation of new and innovative methods has led us

(1) Abdelmalek Mansūr, *Al-`Amal bi Sukūk Al-Isthitmāriah Al-Isslāmiah ...* (Use of Islamic Investment Bonds at the Official Level and the Need for New Regulations), a research paper submitted to the Conference titled "Islamic Banks: Realities and Prospects" (Dubai, 2009), p. 45 with some adaptation.



to the *Sukūk* formula. This has enabled us to devise an innovative *Waqf* investment scheme.

While breadth has prevailed over details in the foregoing, in this part of the paper we shall be expounding in detail one type of bonds which we deem to be effective and profitable in the agricultural sphere. We also assert that this investment scheme is the most innovative and effective method to invest on agricultural *Waqf* lands.

Before delving into the subject, we have considered it worth the while to survey aspects of the jurisprudence underlying agriculture. We shall then begin by identifying the activity and outlining its importance and merits. Thereafter, we will consider the stand of the law on it. In the end we shall conclude by shedding light on the concept and terms of the crop-sharing contract.

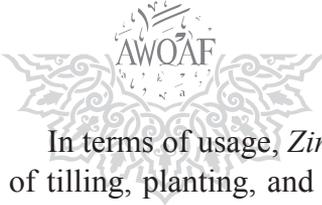
First: Agriculture –the Concept, the History, and the Significance:

A- Agriculture: the History and the Aim:

In language, the verb has two forms in the past *zara`ah Al-Habba* (he planted the seeds); and in the present *yazra`hu* (he is planting). *Zar`an* and *Zira`ah* (refer to the fruit and the process, respectively).⁽¹⁾ A *Hadīth* states with respect to agriculture: “*Let any one that has land till it or grant to his brethren to till. But if he should refuse, then it should be taken from him.*” *Az-Zar`* refers to anything that sprouts from any seed or seedling that has been planted.⁽²⁾ In *Sharh Nahj Al-Balāghah* (Explaining Rhetorical Methods) by Ibn Aby Hadīdah, we have this sentence which illustrates the use of the word: *Zara`tu Al-Burra wa Sha`eer* (I have planted wheat and barley).

(1) As-Sayyid Mohammed Murtadah Az-Zubaidy, “A Study and Editing of *Ali Sheery*” *Tāj Al-`Arūss min Jawāhir Al-Qāmūss* (the Bride’s Crown as Part of the Gems of the Dictionary), Vol. XI, (Beirūt: *Dār Al-Fikr*; First Edition), p. 187.

(2) Abū Al-Fadl Jamal-Eddine Ibn Makram (Ibn Mandhūr), *Lissān Al-`Arab* (the Arabic Tongue/ Language), Vol. VII (*Dār Sād*, 2003), p. 27.



In terms of usage, *Ziraā`ah* is viewed as the working of land by means of tilling, planting, and irrigating in order to obtain some crops or fruits which are benefited from as staple foods and fruits. In another richer and highly suggestive definition, Ibn Al-`Awwām Ishbīly: “the tilling of the land, its reformation, and the planting of trees thereon –in addition, to the installation of various devices, the tilling of the land and the use of usual seeds, the weeding of the land and the procurement with all things beneficial—all of this serves to improve the crop and to ward off all pestilence, blights and other calamities (by the Grace of Allah). These activities also enable the farmer to get to know high-grade, medium-grade, and low-grade lands –and this is an indispensable skill. Added to this, such diligence allows the farmer to know which kinds of seeds are the best and to schedule a list of activities meant to treat plants, vegetables, and trees to protect them from possible banes. Constancy in management and superintendence is crucial to improving crops and deriving greater benefits from them.”⁽¹⁾ The ample and comprehensive scope of the definition, as well as its elaborate description of all the stages of farming activity, commands the reader’s admiration.

Agriculture is one of the oldest and most importance activities practiced by man. Scientists assert that human activities designed to earn livelihoods and to make money, notwithstanding their multiplicity and ways, have been restricted to three main categories of activity: farming, industry, and trade. These activities, which are connected with one another in one way or another, are essential to the life and the settlement of the world. The activities started with man simply and easily, satisfying his simple and basic needs. As man’s needs grew, he started to develop and expand the activities which obviously became more complex. To this day, in fact, they have not ceased to evolve.⁽²⁾ Scientists also claim that agriculture was the

(1) For more details and descriptions, see Ibn `Awwām Ishbily, *Kitāb Al-Filāhah* (The Book on Agriculture) (Madrid: Real Printing House, 1802), pp. 5-7.

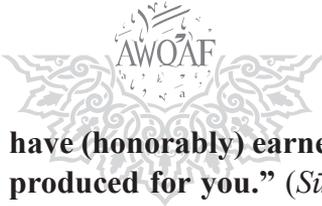
(2) Abū Al-Wafaa Mostapha Al-Mirāghy, *Min Qadāyah Al-`Amal wal Māl fil-Islām* (Of Matters of Work and Money in Islam) (Cairo: Islamic Research Complex, Second Edition, 1970), p. 70.



first activity engaged into by man, on account of its simplicity,⁽¹⁾ and also owing to its necessity to man's survival. In this connection, senior scholar Ibn Khaldūn says:⁽²⁾ "as for agriculture, industry, and trade, they constitute natural aspects and means of livelihoods. Agriculture, in particular, was developed first due to its simplicity.⁽³⁾ It is a natural and spontaneous activity which did not require much consideration or scientific knowledge. It is often associated with Adam, the progenitor of mankind, who is the foremost teacher and superintendent of farming activity. All of this is indicative of the fact that agriculture is the oldest activity and the most attuned to nature."

Islam has granted agriculture utmost attention by exhorting and even commanding people to engage in it. On the authority of Aby Hureyra (May Allah be pleased with him), the Messenger of Allah (Peace and blessings be upon him) said: "*Let any one that has land till it or grant to his brethren to till. But if he should refuse, then it should be taken from him.*"⁽⁴⁾ The Predecessors also said: "whoever wished to increase his means, let him excel in trade and keep a farm, for Almighty Allah combines between the two activities thus: **O ye who believe! Give of the good things which ye**

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- (1) The operation is simple enough; it consists in putting the seeds into the soil and let it grow naturally until the plants are ripe and ready for harvesting.
 - (2) *Al-Muqaddimah* (Or, the Proem) by Ibn Khaldūn (Abderrahmane Ibn Mohammed Ibn Khaldūn Al-Khadramy), p. 165.
 - (3) In his time, agriculture was essentially based on human efforts, simple implements, and modest amount of knowledge. The concept of farming was limited to "tilling or cultivating the mind." The recurrent mental image is a farmer with a plow drawn by a pair of oxen. The yield was just enough to feed the farmer and his dependents. See Mohammed As-Sayyid "Modern Technology and Agricultural Development in the Arab World", Op. Cit., p. 7. In general, Ibn Khaldūn's view is based on the realities of his times. If he were destined to behold modern agriculture and the sciences it requires in order to select the best seeds, to devise the best means to protect crops from various pests, to decide on irrigation time, and to ensure efficient management of all operations, he would certainly have changed his views.
 - (4) Reported by Al-Bukhāry in his *Sahīh* (the Compilation of Authentic *Hadīth*-sayings), *Kitāb Al-Muzāra`ah* (the Book on Crop-sharing) the chapter devoted to the ways in which the Companions of the Prophet (Peace and blessings be upon him) used to show sympathy for one another (2216); and by Muslim in his *Sahīh*, *Kitāb Al-Buyū`* (the Book on Sales: On the Lease of Lands) (4013).



have (honorably) earned, and of the fruits of the earth which We have produced for you.” (*Sūra Al-Baqarah*, or the Heifer, 267). In exhorting people to settle and develop the land in order to cultivate it and make yield its fruits, Islam has gone as far as giving inducements. The Messenger of Allah (Peace and blessings be upon him) said: “*If a person works the land as to revive it (and salvage it from desolation), then it is (rightfully) his!*”⁽¹⁾ Among the other traditions which command people and spur them to engage in farming activities, mention could be made of a message send by Omar Ibn Abdelaziz (May Allah be pleased with him) to his governors: “Consider the lands stretched before you and give them out on the basis of crop-sharing agreements worth half, then a third (if you cannot find a sharecropper); you may even go as far as accepting a tenth of the yield in return! If no one comes forward, then give it out to anyone willing to work it! As a last resort, you may expend on the land from *Beit Māl Al-Musslimeen* (or, the Muslim Treasury House). But, by all means, never let lands remain fallow or desolate.”⁽²⁾ Concerning the interest granted by Islamic Civilization to agricultural activity, a book titled *Islamic Civilization and City-building, described by Christian Writers*, teems with evidence put forth by Westerners which suggest the pioneering role played by Muslims in the area of agriculture which was an area of predilection. Rimbeau thus said: “during the Abbassid era, no other activity topped agriculture. Thanks to their skills, Arabs showed the merits of Persian fruits and the flowers and plants grown in the *Mandarin* Province. They also greatly enriched sciences—notably, botany—by adding many new facts to it.” Elsewhere he said: “for a long time, the peoples of the Arab Nations had been seasoned farmers and skilled workers. Drawing on the agricultural knowledge developed by Babylonian, Assyrian, and Egyptian civilizations, the Arabs

(1) A sound *Hadīth* reported by Abu Dāwūd in his *Sunan* (Traditions) *Kitāb Al-Kharāj* (or, Land Tax), the chapter devoted to land revival and development (3075); by At-Thirmīdhī in his *Sunan*, *Kitāb Al-Ahkām*, the chapter devoted to the revival of desolate or fallow lands (1378), as authenticated by Al-Albānī in *Sahīh Al-Jāmi`* (5976).

(2) Ahmed Ibn Ali Ibn Hajr Al-`Asqalāny, *Fath Al-Bāry* (Victory granted by the Originator of the World): Explaining Al-Bukhāry’s Compilation of *Hadīth*-sayings. The Chapter devoted to Crop-sharing. (*Ar-Rayyān* Heritage Publishing House, 1986), p. 15



developed a genuine science. They drew the theories from ancient books but they expanded them and made them more rigorous, through constant application, experimentation, and actual practice. Even the members of high social classes were not averse to the idea of working the land with their own hands, at a time when other people looked down on husbandry, deeming it demeaning. In the book titled, *Tareekh At-Tamadun Al-Hadith* (The History of Modern Urbanization), Seignbos⁽¹⁾ states: “Arab princes observed the well-established tradition of irrigating lands by digging and opening waterways, drilling wells, and amply rewarding people who discover new water sources.” The author added that the Arabs made use of all types of agriculture that they had found in their dominions. They also brought to Sicily and Spain several plants and seedlings which they planted and cultivated so well that one might think them to be home-bred plants. Orientalist Luis the Portuguese said: “Arab history teems with instances suggesting their ingenuity, advancement, and sovereignty in all sciences and arts, including agriculture. When they conquer a province they set out to turn desolate lands into fertile ones. Within a few years, these lands become genuine gardens thanks to Arab people’s endeavors, know-how, and marvelous management skills. After the *conquest* of Andalusia and Southern France, French people drew on Arab agricultural techniques and their experiences in digging canals and waterways, and developing irrigations schemes. They also took from them plants and trees unknown to them, making it possible to transfer many species to Europe.⁽²⁾ There are in fact several similar testimonies⁽³⁾ ; however, the nature of the research does not allow us to quote all of them and discuss them.

(1) Charles Seignbos, *A History of Modern Urbanization* (Translation by *Dār Al-Hilāl*) (Egypt: *Dār Al-Hilāl* Printing House, 1909), p. 266

(2) Read on the following web-site: <http://www.bayanelislam.net>

(3) For more, see Anwar Ar-Rifā`y, *Al-Isslām fy Hadaratih ...* (Islam: its Civilization and Administrative, Political, Literary, Scientific, Social, Economic, and Artistic Systems) (Damascus: *Dār Al-Fikr*, 1997), pp. 280-294).



B- The Merits of Agriculture which make it the Most Preferred of Trades:

With regard to its standing among the other trades, most views seem to concur on the idea that of all trades and activities, agriculture is certainly the most decent and best way to earn a livelihood. In reply to a question in this connection, Imām Al-Mawerdy says: “the sources of earning are of three kinds: agriculture, commerce, and industry. According to As-Shāfi`y, the best is commerce. However, in my view, it is probably agriculture because it is the activity which is most reliant on trust in Allah’s help.” Along the same lines, Imam An-Nawawy says: “In all fairness, the best-earned livelihood is the one earned through the work of the hand. Agriculture is certainly the best because the earning it yields is the outcome of manual labor. It is also good because it vests a great deal of trust in Almighty Allah, it procures benefits for humans and animals, alike, and usually confers self-sufficiency as the farmer eats from the produce and does not have to purchase it.”⁽¹⁾ Al-`Ayny asserts that “inasmuch as people are in need of more and more foods, agriculture is the best activity because it caters to their needs.”⁽²⁾ Imām Al-Habashy says: “Proofs of the merits of agriculture are far too many to mention and too well-known to be mentioned here. Besides, no one can deny its higher standing compared with other trades.”⁽³⁾ In the same vein, Imām Ibn Hazm Al-Andalussy says: “be advised that rest, delight, peacefulness, dignity, and reward are all assets earned and enjoyed by people engaged in agriculture. The cultivation of the land is certainly the most wholesome and salutary means to earn a livelihood.”⁽⁴⁾ Another person said: “many facts points to one thing: the need for agriculture is compelling; and its standing is lofty. And no one may give the lie to this.

(1) Yahya Ibn Charaf An-Nawawy, *Al-Majmū` Sharh Al-Madhab (Al-Muneeriah Printing House)*, Vol. IX, p. 65.

(2) Badr-Eddine Al-`Ayny *Umdat Al-Qāri` fy Sharh Al-Bukhāry* (The Reader’s Reliable Guide to the Explanation of Al-Bukhāry’s Compilation), Edited by Abdellah Mahmud Mohammed Omar, Vol. XII (Beirut: *Dār Al-Kutub Al-`Ilmiah*, 2001), p. 219.

(3) For more information, see Mohammed Ibn Abderrahmane Al-Habishy, *Al-Barakah fy Fadl As-Sa`y wal Harakah* (The Blessings and Merits of Strivings and Action), p. 10.

(4) Ibn Al-`Awwām Al-Ishbily, *Kitāb Al-Filāha* (the Book on Agriculture), Op. Cit., pp. 4-5.



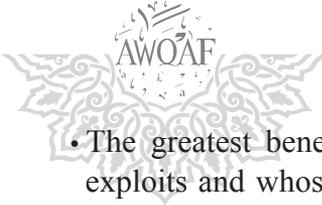
Were it not for food, living bodies would not have survived.” In his book titled *Al-Madkhal* (or, Introduction), Ibn Al-Hajjāj says: “Of all trades, the most blessed is agriculture. Provided it is lawful, the activity is the most thriving. It is also one of the greatest treasures hidden underground.”⁽¹⁾ Here are a set of well-thought and apt handed-down statements which underscore the high standing of agricultural activities in comparison with other trades. To be sure, all other legitimate activities, professions, trades are honorable (albeit some are better than others). But agriculture remains the best in that it benefits the *Ummah*, procures countless boons, and satisfies the requirements of its members.

Regarding the advantages of agriculture, Imām Al-Habishy has enumerated countless advantages and merits in his book *Al-Barakah fy Fadl As-Sa`y wal Harakah* (the Blessings and the Merits of Strivings and Business). We present some of them here succinctly and without elaboration, well knowing that each one of them requires an entire section to develop⁽²⁾:

- Reward: the farm hand earns a reward even if he does not intend it. Even if he tills the land, harvests it, and sells the crop, he still earns a reward for contributing to the satisfaction of people’s need for food;
- Contributing to the happiness of children by striving to cater to the needs of his dependents and feeding them lawfully. And in each of these endeavors there is a clear reward, at any rate;
- Self-sufficiency and independence which procure the greatest happiness and the highest benefits;
- There is another benefit: a person may hire it to another person, donate it in *roqbah* (donation with the *proviso* that the land will not revert to the donee after the donor’s death or return to the donor after the death of the donee), or *`umri* donation (a donation for life). Such actions are highly commendable.

(1) Ibn Hajjāj, *Al-Madkhal* (Introduction) (Cairo: *Dār At-Thurāth*), Vol. IV, p. 3.

(2) Mohammed Ibn Abderrahmane Al-Habishy, *Al-Barakah fy Fadl As-Sa`y wal Harakah* (The Blessings and Merits of Strivings and Business), Op. Cit., pp. 10-35.



- The greatest benefit perhaps is that a person has land which he exploits and whose crops he benefits from. It also keeps him busy and spares him the demerits of mixing with people and having to endure their many failings.

Talking about the virtues and merits of lands, one clear merit relates to the development of *Waqfs*, most notably the development of agricultural *Waqf* lands, by reforming it and tilling it. While these operations can be costly, the returns are ample. Besides, the crops yielded by the land earn the person that has tied it up and offered it as a pious endowment a mighty reward, inasmuch as the crops are of great benefits to people and animals, alike. In the two *Sahih*s (the authentic compilations by Al-Bukhāry and Muslim), a *Hadīth* reported on the authority of Anas (May Allah be pleased with him) reads: the Prophet (Peace and blessings be upon him) said: “*Verily, every time a Muslim plants a tree or cultivates the land and obtains crop from which fowls, or humans, or beasts eat there is a reward therein for the planter.*”⁽¹⁾ It is a well-known fact that any person that ties up an agricultural land actually seeks to benefit many people (as the latter actually derive many benefits from the land) and also to earn a reward for doing so. And when the land is actually tilled and cultivated he receives a reward each time a creature eats from the fruits of the land. The *Waqf* superintendent should strive to augment the rewards earned by his brother who establishes the pious endowment and to benefit the recipients, by reforming the land and cultivating it.⁽²⁾

(1) Al-Bukhāry, “On Tilling and Cultivating the Land,” in the opening sections of his compilation (no. 2320); Muslim, “On *Mussāqat* (share-cropping) and the Merits of Planting Trees and Cultivating Crops,” (no. 155), on the authority of Anas (May Allah be pleased with him).

(2) Ahmed Ibn Abdelaziz Al-Haddād, *Min Fiqh Al-Waqf* (the Jurisprudence pertaining to *Waqf*) (Dubai: the Division in charge of Islamic Affairs and Charitable Work, First Edition, 2009), p. 126.

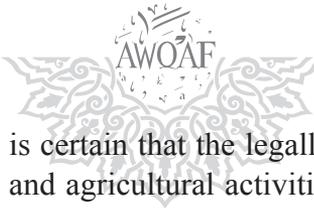
C- The Stand of the Law on Agriculture:

In many of their writings, scholars have considered agriculture *Fard Kifāyah* (Collective responsibility), because worldly affairs, religious ones, and even livelihoods are so dependent on it. Therefore, if all people were to abandon the activity, this would amount to a sin on their part. However, if some of them engaged in it and satisfied people's requirement, then this would release all people from the sin. In his book *Sharh As-Sahīh* (Explaining the Authentic Corpus), Al-Qortoby states: "Agriculture is an instance of collective responsibility. An *Imam* must compel people to engage in it and in other related activities like tree-planting and tending."⁽¹⁾ What is meant by the term is that agriculture, tree-planting, and the settlement and development of the land remain duties binding on the Islamic *Ummah*, so long as they have not been taken care of satisfactorily, within the limits of its members' capacity. However, as long as the *Ummah* continues to depend on others and to import all agricultural produce and foodstuffs from abroad, it remains largely deficient and negligent of its duty in this regard. In this case, the *Imām* should compel people to engage in agriculture, planting, and working the land so as to ensure that sufficiency is met in all of these areas.⁽²⁾ Sheikh Al-Isslām, Ibn Taymiah states in this respect: "One such is people's need for other people's industry—their requirements in terms of agriculture, textiles, construction, and so forth. For this reason, many jurists and followers of As-Shāfi'y, Ahmed Ibn Hanbal, and others, such as Aby Hāmid Al-Ghazāly, Aby Al-Faraj Ibn Al-Jawzy, and others have stated that these industries are collective responsibilities because people's interests are furthered by them. Similarly, *Jihād* is a collective responsibility, though it may be specified and made an individual responsibility."⁽³⁾ Similarly, in *Al-Madkhal*, Al-Hajjāj notes: "It

(1) Al-Qortoby, *Al-Jāmi' Li-Ahkām Al-Qur'ān* (the Comprehensive Compilation of *Qurānic* Ordinances), Vol. III (Beirut: *Dār Ihiā' At-Thurāth Al-'Araby*, 1985), p. 306.

(2) Abdelghani Ahmed Muzhir, *Fadl Az-Zirā'ah fy Al-Isslām* (the Merits of Agriculture in Islam), *Majallat Al-Buhūt Al-Isslāmiah* (Islamic Research Review), Issue no. 33 (1433 A.H), p. 199.

(3) Ibn Taymiah, *Majmū' Fatāwa Ibn Taymiah* (A Comprehensive Collection of Ibn Taymiah's Legal Opinions), Vol. XXVIII, p. 23.



is certain that the legally-liable are responsible for such industries, trade, and agricultural activities which provide the basic sustenance of life and cater to the needs of the self, too.”⁽¹⁾

The perception that some people have about agriculture –notably, that it is a lowly profession unbecoming of a noble man—is inaccurate and unfounded. Indeed all lawful work honors the worker. Rather than degrade him, it actually confers dignity on him and raises his standing in Allah’s sight and that of people. This is all the more true of agriculture which is assuredly one of the most noble and venerable activities. Some scholars have even argued that it is the best way of earning a livelihood and that it is a collective duty binding on all Muslims. Besides, it earns the farmer and the planter ample rewards whenever a human being, an animal, a fowl, or an insect feeds on the produce. Agriculture may well be an on-going charity with unceasing rewards being granted to those engaged in it even after their death.⁽²⁾ For this reason, the Companions of the Prophet (Peace and blessings be upon him), in their search of means of subsistence, divided into two groups: one of them worked in orchards, while the other worked in market-places. While both occupations are good and legitimate, agriculture is far better for persons who excel in it, bearing in mind the rewards they earn and the ample benefits that they procure.⁽³⁾

Second: Al-Muzāra`ah (crop-sharing)—its Meaning, Legitimacy, and Terms:

Al-Muzāra`ah in language is *mufā`alah* (suggesting interaction with crops). It is the act of planting and growing plants. This activity which was assigned by Allah (Exalted in Might be He) to His servant is necessitated by the fact that crops are not brought forth or evolved; rather they are

(1) Ibn Al-Hajjāj, *Al-Madkhal* (Introduction), Op. Cit., p. 3.

(2) *The Islamic Research Review*, “Of the Merits of Agriculture in Islam,” Op. Cit., p. 200

(3) Ibn Al-Hajjāj, *Al-Madkhal* (Introduction), Op. Cit., pp. 4-5



the produce of the act of planting and growing.⁽¹⁾ In terms of usage, jurists have defined it in different ways. The *Hanafids* have defined it as a contract bearing on the crop with a portion of the produce obtained.⁽²⁾ The *Mālikites* have defined in terms of association in the production of crops.⁽³⁾ The *Shāfi`ites* define it as the act of working the land in return for some of its yield, with the seeds being supplied by the land-owner.⁽⁴⁾ And according to the *Hanbalites*, the term consists in making the land and the seeds available to anyone willing to till the land and tend it. It also consists in giving a tract of land to someone ready to work it, in return for a specific and well-known share of the yield.⁽⁵⁾

With regard to the legitimacy⁽⁶⁾ of *Muzāra`ah*, all *Hadīth*-scholars who have considered it –namely Ahmed Ibn Hanbal (and his followers from the vanguards and the latter ones), Ishāq Ibn Rahouiah, Aby Bakr Ibn Aby Shiba, Suleiman Ibn Dāwūd Al-Hashemy, Aby Khaithamah Ibn Harb; as well as most *Kufah* scholars like Sufian At-Thūry, Mohammed

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- (1) Abū Bakr Mass`ūd Ibn Ahmed Al-Kassāny, *Badā`i` As-Sanā`i` fy Tarteeb As-Shāra`i`* (Well-wrought Craftsmanship in Arranging Laws) Vol. XIII (*Dār Al-Kutub Al-`Ilmiah*, Second Edition, 1986), p. 485. Kamal-Eddine Ibn Abdelwahed, *Fath Al-Qadeer* (Victory granted by the Omnipotent), Vol. VIII (*Dār Al-Fikr*), p. 463.
 - (2) Ibn Najeem, *Al-Bahr Ar-Rā`iq: Sharh Kanz Ad-Daqā`iq* (The Glistening Sea: Explaining Treasured Subtleties) Vol. VIII (*Dār Al-Kitāb Al-Isllāmy*, Second Edition), p. 182.
 - (3) Mohammed Ibn Ahmed Ibn `Arafah Ad-Dassūqy, *Hashiat Ad-Dassūqy `Ala As-Sharh Al-Kabeer* (Ad-Dassūqy's Marginal Gloss to the Great Exegesis), Vol. III (*Dār Ihiā` Al-Kutub Al-`Arabiah*), p. 372.
 - (4) Mohammed Ibn `Ali As-Shawkany, *Nail Al-Awtār* (the Attainment of Sought-after Aims), Vol. III (*Dār Al-Hadīth*, First Edition, 1993), p. 328.
 - (5) Mansūr Ibn Yunus Al-Bahuty, *Kashf Al-Qinā` `an Matn Al-Iqnā`* (Unveiling the Text to Appreciate its Power of Persuasion), Vo. III (*Dār Al-Fikr*), p. 533.
 - (6) Jurists differed considerably on the question of the legitimacy of *Muzāra`ah*, which has given rise to a great deal of scholarly discussions. However, given the nature and scope of the present paper, I have contented myself with the presentation of one aspect only. We have thus presented the view put forth by Ibn Taymiah (which sums up the arguments of the most notable jurists). For those who want more details regarding *Al-Muzarā`ah* contract, they may refer to the following research paper. In it the researcher has gathered most opinions and views put forward by jurists, as well as the area of divergences between them. He subjected them all to a rigorous analysis in a good way. See Walīd Khalid Ar-Rabii`, *Aqd Al-Muzāra`ah fil Fiqh Al-Isllāmy* (The Crop-sharing Contract in Islamic Jurisprudence: a Comparative Study), Op. Cit., pp. 34-35



Ibn Abderrahmane Ibn Aby Laila, Aby Yussuf and Mohammed (Aby Hanīfah's companions), Al-Bukhāry, author of the *Sahīh* (or, the Authentic Compilation of the *Hadīth*), Aby Dāwūd, and the generality of latter-day jurists and *Hadīth* scholars, such as Ibn Mandhūr, Ibn Khuzaimah, Al-Khattāby, Ahl Ad-Dhāhir, and most of Aby Hanīfah's companions and followers—agree that it is lawful to engage in *Muzāra`ah* (crop-sharing), *Mu`ājarah* (leasing) and other similar contracts. By so doing, the parties would only emulate the Tradition of the Prophet (Peace and blessings be upon him), the *Caliphs*, the Companions, the Ancestors, and the practices observed by the majority of Muslim people. They also expounded the real meanings of some *Hadīths* which have given rise to differences as to their presumed implications. One such is the way the Prophet (Peace and blessings be upon him) and the *Caliphs* after him had dealt with *Khaibar* community up until Omar had them evicted from the land. On the authority of Ibn Omar⁽¹⁾ (May Allah be pleased with him): “the Messenger of Allah (Peace and blessings be upon him) dealt with *Khaibar* community on the basis of letting them use the land, in return for a portion of its crops or fruits.”⁽²⁾ According to Muslim, An-Nassā'y, and Aby Dāwūd, “*He (Peace and blessings be upon him) gave Khaibar Jews the lands and the palm-trees thereon so that they may work on them, using their own money and giving the Messenger of Allah a share of the crops.*”⁽³⁾

As to the terms of the *Muzāra`ah* (contract) we may present them succinctly and without elaboration in eight terms, as have been set forth in a book titled, *Nassb Ar-Raya fy Takhreej Ahādīth Al-Hidāya* (Setting the

(1) Ibn Taymiah, *Tahqeeq Ahmed Ibn Mohammed Khalil* (Authentication and Editing Ahmed Ibn Mohammed Khalil's Writings), *Al-Qawā'id An-Nurāniah Al-Fiqhiah* (Luminous Juristic Rules) (*Dār Ibn Al-Jawzy*), pp. 229-230.

(2) An-Nawawy, *Sharh An-Nawawy Li Musslim* (An-Nawawy's Explanation of Muslim's Compilation), *Hadīth*-saying no. 1551.

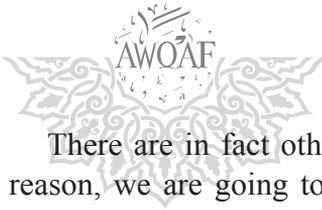
(3) Reported by Al-Bukhāry in *Kitāb Al-Ijārah* (the Book on Lease), no. 2124; and *Kitāb Al-Muzāra`ah* (the Book on Crop-sharing), no. 2160; it was also reported by Muslim (*Hadīth* no. 2898).



Banner in Authenticating the *Hadīth*-sayings of Guidance)⁽¹⁾:

- The land should be arable and fit for cultivation because the intended goal (the crops) may not be had otherwise;
- The owner of the land and the cultivator must be qualified to engage in a contract, as the contract would not be valid unless the parties are qualified for it;
- The validity period must be specified: given that the contract bears on the benefits to be procured by the land and the benefits obtained by the cultivator (in compensation for his labor), the validity period is an essential criterion;
- The party which would supply the seeds or seedlings should be specified to obviate any disputes and to clarify the aim and purpose of the contract, namely the benefits procured by the land and by labor;
- The share to be received by the landowner who supplies the land without the seeds should be specified because he is entitled to some compensation, pursuant to a contract term. The share must be specified and known because something that is unknown or unspecified cannot establish the basis for a contract term;
- The land-owner should vacate the land and let the worker work it. Even if the landowner stipulates that he should participate in the work, the contract is invalidated due to non-compliance with the vacancy requirement;
- Produce-sharing after the crops have been obtained: the purpose of the contract is to share the produce yielded by the land. Anything that breaches sharing actually breaks the contract;
- The type of seeds/seedlings should be specified so that the earning or reward (to be obtained) may be specified.

(1) Jamal-Eddine Abdellah Ibn Youssef Az-Zil`y, *Nassb Ar-Raya fy Takhreej Ahādīth Al-Hidāya* (Setting the Banner in Authenticating the *Hadāth*-sayings of Guidance), Vol. VI (*Dār Al-Hadīth*, First Edition, 1995), pp. 24-25.



There are in fact other terms which we deem to be implicit. For this reason, we are going to content ourselves with the above-cited original terms.

Third: Sukūk Al-Muzāra`ah (Backed-up Crop-sharing Bonds) –the Concept and Operational Mechanisms:

The adoption of any specific investment method or way is never achieved in a vacuum. There are always a number of factors which influence the process. This means that whenever these factors or conditions change, the investment methods and means are also bound to change. The resulting change may be radical, breaking altogether with past methods and practices. It may also be qualitative, moving beyond the older method but still keeping the essence of the said method. Hence, it is necessary to introduce some modifications and amendments. This actually applies to the topic at hand –Backed up Crop-sharing Bonds. The bonds are essentially based on the crop-sharing contract, which is an inherited investment method. However, to keep in step with and facilitate agricultural investments, this new method has been evolved by bringing qualitative amendments.

A. Defining Backed up Crop-sharing Bonds: these have been defined as equal-value documents (instruments) issued to raise money in order to finance a crop-sharing based project. The bearers of bonds are entitled to a share of the yield, as specified by the contract.⁽¹⁾ They are also defined as document having equal value, which are issued by an agricultural land-owner for the purpose of financing agricultural activities by virtue of a crop-sharing contract, in return for a share in kind derived from the yield or the crops, as deserved by

(1) The Islamic Financial Institutions' Accounting and Auditing Committee: Legal Criteria (Criterion no 17), p. 252.

the bond-bearers.⁽¹⁾ Bonds are also defined as monetary instruments having equal value which are issued on the basis of a crop-sharing contract. The money raised is then applied to finance the cultivation of land which is made available by the owner by virtue of this contract. The bond represents a joint share of the yield or produce of the land, but not the land itself, or the crops after they have become ready for harvesting, or again, the proceeds of the crops after sale. The bearers of the bonds, by virtue of being ‘cultivators’ with their money, receive specific shares of the crop, while the land-owner gets the rest.⁽²⁾

B. Bonding of Crop-sharing Contracts: here, we should distinguish between two methods of issuing⁽³⁾ crop-sharing bonds which we shall deal with in some details as follows:

The First Method: the issuer of bond may be the owner of an arable land who wishes to get funding in order to till the land and cultivate it. The bond-buyers are “cultivators” of the land by means of the money that they invest in order to receive a share of the yield or produce. The money raised from the issuance of the bonds covers the cost of land-cultivation.⁽⁴⁾ A bank undertakes to organize the issuance⁽⁵⁾ of the crop-sharing bonds and to assume

(1) Hassan, *Tahreer As-Siyagh wal Adawāt Al-Isslamiah wa Jadwāha `ala Lmustawa Ad-Dawly* (Devising Islamic Instruments and Checking their Feasibility Internationally), a research paper submitted to a conference on “the Funding of State Projects by means of Loans in Sudan”, Sudan, 2012.

(2) *Al-Jareedah Ar-Rassmiah ...* (The Official Gazette of the Arab Republic of Egypt), Law in Backed-up Bonds, Article 3 (2013).

(3) Issuing bonds means putting them forward so that people and entities may subscribe to them.

(4) The costs comprise the following: the purchase of machinery and equipment; the purchase of seeds; the preparation of the land; the fertilization of the plants; the harvesting of the crops; the packaging and marketing of the produce; as well as the wages and salaries of farm-hands, engineers, and other workers. The costs may also relate to the reform/reclaiming of the land.

(5) For more information about the stages of the bond-issuance process, see Abdelmalek Mansūr, *Al-`Amal bi Sukūk* (Using Islamic Backed up Investment Bonds Officially and the Need for New Legislation), Op. Cit., p. 30.



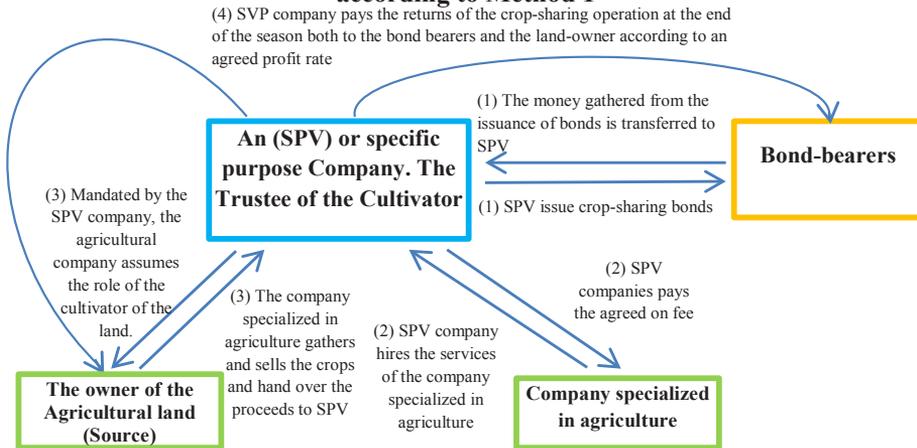
general management of the issuance process. The bank may assume other functions, according to the aforementioned method.⁽¹⁾ This is achieved by way of the following steps:⁽²⁾

- The landowner who seeks to cultivate his land applies to an Islamic Bank⁽³⁾
- The bank sets up a company having a specific purpose (called the underwriter) which serves a trustee on the land-owner and undertakes to issue crop-sharing backed up bonds;
- After collecting the money, the issuance manager sets out to appoint a specialized company which undertakes to cultivate the land on behalf of the bond-bearer, in return of a specific fee;
- The issuance bulletin⁽⁴⁾ specifies the percentage of the crop-yield to be given to the bond-holders;

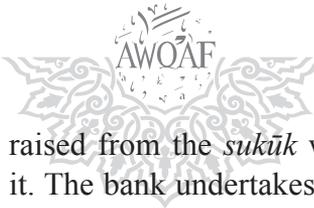
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- (1) Hussein Hamid Hassan, *Sukūk Al-Isthitmār Al-Isslāmy* (Islamic Backed up Investment Bonds), a research paper submitted to the 9th Session of the Islamic *Fiqh* (Jurisprudence) Convention on “Islamic Backed up Bonds: Modern Application and Circulation” (*As-Sharjah*, 2009), p. 6.
- (2) Khalid Ibn Saud Ar-Rashūd, *Al-Uqūd Al-Mubtakarah Li-Tamweel wal Isthitmār bi Sukūk Al-Isslāmiah* (Innovative Funding and Investment Contracts by means of Islamic Backed-up Bonds) (Kingdom of Saudi Arabia: the *Sābiq Chair for Islamic Financial Markets Research*, 2013), p. 631.
- (3) Prior to issuing bonds, an Islamic Bank is supposed to conduct a study of the land, the need for certain crops, and demand. Demand for agricultural produce is tributary on two very important factors: population growth rates and per-capita disposable income growth rate. But before even considering these factors, a study is conducted to ascertain the fitness of the land and its capacity to produce, to assess the size of potential production, and to evaluate expected income and the duration of crop cycles, and so forth. It is necessary that the size of the land be considerable and thus in need of substantial funding (as this is the intended purpose of backed-up bonds). The aim is to obtain wholesome and marketable produce. See Khālid Ibn Saud Ar-Rashūd, *Al-Uqūd Al-Mubtakarah Li-Tamweel wal Isthitmār bi Sukūk Al-Isslāmiah* (Innovative Funding and Investment Contracts by means of Islamic Backed-up Bonds), p. 573.
- (4) The Backed-up Crop-sharing Bond issuance Bulletin specifies the characteristics and the surface area of the land; the types of crops sought; the cost of the operation, including equipment, seeds, fertilizers, as well as engineers’ salaries and farm workers’ wages; the expected yield; and the way the proceeds should be divided between the land-owner and the bond-bearers, as well as the duration of the crop-sharing period. *The Banking Association for Islamic Financing: Sukūk in 30 Questions and Answers*, Issue no. 1 (2012), p. 12

- The specialized company undertakes to harvest the crop, sell it, and give the proceeds to the specific-purpose company which gives the land-owner his share of the sale-proceeds. It also undertakes to distribute the portions of the proceeds among bond-holders, taking into account the overall number of bonds. To simplify all of the above, we have included a diagram which sums up and clarifies the process.

Diagram 1: the Operational Mechanism of backed-up Crop-sharing Bonds, according to Method 1



The Second Method: when the issuer of the bond is a cultivator – whether as an individual or as a company specialized in agricultural projects—having sufficient funds to achieve set goals (that is, having all requisite entrants: seeds, seedlings, and trained personnel) but wishing to have areas of arable lands to cultivate. The company issues backed up crop-sharing bonds by virtue of being the cultivator of the land. The bond bearers are “owners” of the land by means of their money. The aim is to share the crops between themselves and the agricultural company in its capacity of cultivator (as specified in the issuance bulletin). The money



raised from the *sukūk* would be the cost of buying the land or reviving it. The bank undertakes to underwrite and manage the issuance of bonds. Besides, the bank may assume other functions, as required by the backed crop-sharing bonds issuance bulletin.⁽¹⁾ This is achieved through the following steps:⁽²⁾

- An experienced agricultural company applies to an Islamic bank for an investment by means of a crop-sharing contract;
- A specific purpose company –serving as the underwriter and manager of the issuance—is set up. It then issues crop-sharing bonds;
- When the money raised from the underwriting is collected, the specific purpose company, by virtue of its being the manager of the issuance process, undertakes to lease or buy arable land, on behalf of the bond-bearers;
- As a result, the bond bearers become the owners of the actual land or its usufruct;
- The underwriter (“The Specific Purpose Company”), on behalf of the bond-bearers (the land-owners) undertakes to sign a crop-sharing contract with a company specialized in agriculture (the Cultivator), which takes care of the entire agricultural process until the crop is harvested and marketed;⁽³⁾
- The portions of the crops to be received by the bond-bearers and the cultivator by virtue of the crop-sharing contract are referred to in the bond-issuance bulletin;
- In case the land should be owned by bond-bearers, the crop-sharing contract may be renewed for more than one production cycle.

(1) Hussein Hamid Hassan, *Sukūk Al-Isthitmār Al-Isslāmy* (Islamic Investment Backed-up Bonds), Op. Cit., p. 6.

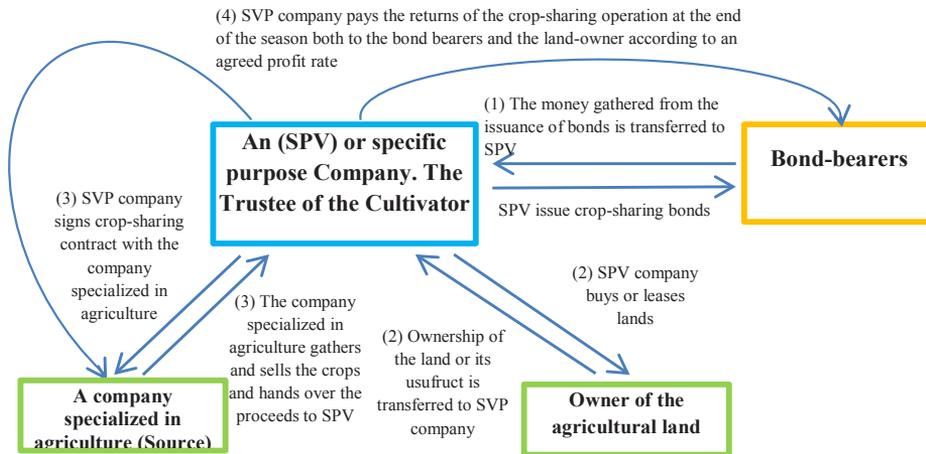
(2) Khalid Ibn Saud Ar-Rachūd, *Innovative Investment Contract by means of Islamic Backed-up Bonds*, Op. Cit., p. 633

(3) For more information about agricultural marketing, see Surān Rafīq, *Agri-economics*, Op. Cit., p. 114.



To simplify matters further, we present the following illustrative diagram of the second method.

Diagram 2: the Operational Mechanism of backed-up Crop-sharing Bonds, according to Method 2



While the purpose of the study has been to study the role played by backed up crop-sharing bonds in boosting efficient exploitation of *Waqf* institution-held arable lands, a close analysis of the two methods reveals that the first method is fit. The *Waqf* Institution, as the issuer of bonds remains the owner of the land while the bond-bearers constitute the financial backers of the agricultural project. The second method⁽¹⁾ is more

(1) The bonds which are issued according to this method are different from the ones which are issued to finance a specific agricultural project. The issuer of the bond in this case is a speculator or investment agent who makes use of the money collected from the bond to finance a specific agricultural project, by buying land, cultivating it, and spending on various farming entrants, such as equipment and machinery, seeds, fertilizers and the wages agricultural workers. This is speculation contract bearing on a specific project where the profits of the activity are distributed according to the agreement of the contracting parties. The bond in this case may be called an agriculture speculation bond (i.e., speculation in an area which is agriculture).



suitable as an investment method apt to help the *Waqf* Institution expand its ownership of arable lands. The method indeed enables it to acquire new agricultural lands, through the acquisition of bonds issued by cultivators (be they individuals or agricultural companies, as we have pointed out earlier). Accordingly, our focus will center on the first method, and not the second.

The pillars of the Backed-up Crop-sharing Bond Contracts: Like the *Mussāqāt* contract, the pillars of the crop-sharing contract are five according to the majority of jurists: 1. formulation; 2. the contracting parties; 3. the land; 4. the crops; 5. Labor. The *Hanafids* consider that the contract under consideration, like other contracts, has only one essential pillar which is the formulation.⁽¹⁾

The afore-mentioned pillars take on other meanings when it comes to adopting the instrument of the backed up crop-sharing bond. They are as follows:

Seeghah (formula): is the issuance bulletin which specifies the fact that the bond-bearers are the cultivators and the land-owner (the *Waqf* Institution in our case) is the entity on behalf of which cultivation is carried out. It also specifies other tributary relations (agencies/trustees) and the original relation which is established by the two parties to the crop-sharing contract. The bulletin also spells out the other pillars and terms of the contract.

The Contracting Parties: the two contracting parties in the crop-sharing contract are the land-owner and the cultivator. But by studying the two contracting parties in elaborating the bond, we actually find two relations: an original relation and a branching-out relation. The original relation is the crop-sharing contract which is concluded by the bond-bearers, by virtue of being cultivators, and the land-owner. The branch-relation, which comprises two contracts, is a mandate contract, with the bond bearers acting as the mandating party and the specific purpose company and the underwriter as the mandated parties. The second contract is a hiring one:

(1) Manala Khessrou Al-Hanafy, *Ad-Durrar Al-Hikam fy Sharh Ghurar Al-Ahkām*, Vol. II, p. 324.

the bond-bearers, through their agent/mandated party, become the hiring party and the company specialized in agriculture becomes the hired party.

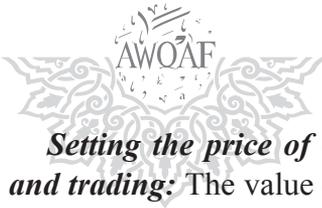
The stand of the law on the trading of baked up crop-sharing bonds: according to the *Shari`ah* compliant criteria as defined by the Islamic Financial Institutions' Accounting and Auditing Board, it is permissible to trade⁽¹⁾ *Sukūk Al-Muzāra`ah* even after the closing of subscription and the beginning of actual activities, provided that the bond-bearers are the owners of the land. However, if they are bound by actual agricultural work, then it is not permissible to trade bonds until there is actual wholesome growth of the plants.⁽²⁾

The permissibility of trading crop-sharing bonds when there is evidence that the crop is growing and wholesome is warranted by the fact that the crop can readily be sold wholesale. Given that the bond constitutes the worker's (the bond-bearers') share of the crop, then it is right to sell it. By implication, it is also valid to trade the bond. The (legal) basis for saying that it is permissible to trade crop-sharing bonds –on the condition that the bond-bearers represent the cultivator—is derived from the evidence produced by the jurists who have asserted its permissibility. It is argued that once a cultivator has tilled the land, fertilized it, and tended it, he remains a partner in the land until the time the crop appears ready for harvest and he actually receives his share of the crop. Prior to this stage, a cultivator's share is indivisible. That is why he remains a joint tenant. Much like a person who participates in rebuilding what has been destroyed, he becomes a partner of the rebuilding project. And as such he is entitled to sell his share in *Mushā`* (a joint-tenancy or joint ownership of land).⁽³⁾

(1) For more information about the meaning of bond trading, see Hassan *Sukūk Al-Isthitmār Al-Isslāmy* (Islamic Investment Bonds), Op. Cit., p. 46.

(2) The Accounting and Auditing Organization for Islamic Financial Institutions, *Shari`ah Compliant Standards* (Standard no. 17), Op. Cit., p. 260.

(3) Khalid Ibn Saud Ar-Rachūd, *Innovative Investment Contract by means of Islamic Backed-up Bonds*, Op. Cit., p. 642-645



Setting the price of the Crop-sharing bond at the time of the issue and trading: The value of bonds at the time of issuance is determined by dividing the overall agricultural costs by the number of bonds to be issued. Here it is important for the issuing authority (the *Waqf* Institution in our case) to take into account the financial capacity of investors by dividing the overall agricultural costs into small-value units which would allow small investors to take part in agricultural investment operations. The value of the bond during the trading stage is determined in the market depending on the value of the harvest or agricultural produce.

One might well wonder here: what will the *Waqf* patrimony earn from the circulation of the crop-sharing bond, bearing in mind that the *Waqf* Institution is the issuer of the bond and not part of the actual buying or selling process? We may tentatively say that the seller of the bond is aware that he is dealing with resources whose profits have been allocated to segments of society which are deprived. He may therefore apply some (or all) of the profits made from the sale of the bonds to benefit the *Waqf* patrimony. The income of the latter is increased as a result, just as the portions assigned to the recipients are boosted. This is but one of the many advantages that may be had from making use of crop-sharing bonds. In the next thematic section we shall deal with other benefits.

The end of the crop-sharing bonds: this happens in two cases.⁽¹⁾

- When the bonds come to term: on the basis of what has been said before, it is permissible to define the crop-sharing period, though it is not stipulated. The crop-sharing bonds may be timed according to the time required by the crop to appear and become ripe or depending on the actual harvesting or picking-time for the first time;
- When the agricultural cycle ends or when the picking and harvesting time comes: when crop-sharing bonds are issued without any specific

(1) Khalid Ibn Saud Ar-Rachūd, *Innovative Investment Contract by means of Islamic Backed-up Bonds*, Op. Cit., p. 649-650

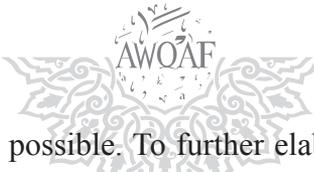


or set time, the bonds come to maturity as soon as the crops become ripe. The implication of this is that all the costs related to the remaining agricultural operations –notably, harvesting and marketing—will be borne by the bond-bearers, unless otherwise stipulated.

The Fourth Thematic Section: Stimulating Investments on *Waqf* Lands –a Reading into the Benefits procured by Backed-up Crop-sharing Bonds

Given that agriculture is one of the best trades and the best means to earn a livelihood, as evidenced by the testimonies provided by knowledgeable people; and bearing in mind the fact that *Sukūk* are the best utilized instruments, as well as the best investment methods, as testified to by business and finance pundits, then we would not be exaggerating if we stated that the *Waqf* Institution has *finally* found “the stray she-camel,” so to speak –a way to revive and boost its agricultural patrimony. This resides in the crop-sharing bonds which should be enhanced both in theory and practice. Suffice it here to point to the flexibility and modernity of these bonds, added to their characteristics which enable people, both poor and rich, whether they be knowledgeable in agricultural affairs or not, to participate in the revival of the *Sunnah* (Tradition) of cultivating the land and planting it. Moreover, if one were to consider the potential of agricultural *Waqf* which is lost, on account of inefficient and obsolete methods, on the one hand, and misuse and mismanagement of lands, on the other, one would readily find the most eloquent and potent argument in favor of this modern method of investment. The latter beckons to any person that is aware of its significance and keen on seeing it adopted in order to augment *Waqf* lands and significantly boost its bounties.

More specifically, in this thematic section we intend to look into the effectiveness of crop-sharing bonds in stimulating the exploitation of *Waqf* agricultural lands, by analyzing the characteristics which make all of this



possible. To further elaborate on this, we are going to outline the factors conducive to the success of these bonds and to their wider adoption on the part of the *Waqfs* Institutions. We shall thereafter consider, in some detail, the positive impacts of wider use of crop-sharing bonds.

One thing which may be evident or unknown to the generality of readers is that crop-sharing bonds may take two guises: they may be charity-gear⁽¹⁾ed or profit-centered (that is, premised on the idea of sharing profits in kind, and not loss, because money which is intended to promote good and generate benefit is blessed by Almighty Allah). Both kinds of bonds have sufficient inducements which make individuals seek them. The bearers of charity-gear⁽¹⁾ed bonds do not get any returns –as they look forward to a mightier reward from Allah. The bearers of profit-centered bonds, on the other hand, seek to get their share of the returns, as has been stated previously.

First: Studying the Characteristics of Crop-sharing Bonds and their Influence on the Exploitation of Tied-up Agricultural Lands

The Capacity to provide the requisite funding: we have already stated that agricultural activities are among the investment activities which require considerable and on-going financial resources. We have also suggested, albeit implicitly, that bonds, as investment instruments, have been restructured essentially to provide funding for huge projects. To this end the designers of the bonds have relied on a very important idea –the idea of dividing the sought-after capital into small equal securities (an aspect

(1) We may give an example which is akin to what we are presently attempting to show in the present paper. The example is furnished by the example of *Waqf* shares in Malaysia. *Jawhur* Province issued *Waqf* shares in 2005. Being charity-gear⁽¹⁾ed, these shares offer their holders no dividends or profits. The proceeds from the subscription process enabled the Province to fund a large number of economic and educational projects. One such project consisted in the cultivation of 3,800 *Feddans* (or, roughly 1,596 hectares). For more information see Dhul-Kafal Hassan, *Investing Waqf Lands as a Means to Develop Muslim People's Economy in Malaysia*, a research paper presented to the *Waqf* Investments Conference (Dubai: the *Waqfs* and Palace Affairs Institution, 2008), p. 123.

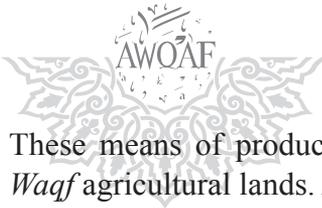
we shall have an occasion to analyze and develop further). The aim has been to create marketing ease and to attract small investors (whether they are cultivators or not) and thereby expand the base of participants. In other words, the aim has been to increase the number of subscribers, instead of dwelling on their financial capacities. Nevertheless, the overarching aim has been to attract sufficient money for funding.

While crop-sharing is one type of bonds, conferring on them the qualities just mentioned would undoubtedly foster the capacity to draw various financial resources from individuals. These individuals may be motivated by purely charitable ends –and there are indeed bonds for such people, considering that *Waqf* is one kind of charitable causes—but they may also be people with lesser religious motivations –and, again, there are crop-sharing bonds for investors looking to have profits or to fructify their means, or both. Whatever the intent may well be, we are certain that crop-sharing bonds will “kick-start” idle *Waqf* lands and that they will eventually be the exclusive method of funding and managing these lands.

The ownership of the assets:⁽¹⁾ ownership of assets is a natural feeling which is endeared to man. Indeed, an individual is ready to sacrifice his resources to satisfy it. Economists deem it a powerful drive and inducement to undertake all sorts of economic activities. The more individual property base expands, the more opportunities a given society has to pick and choose among possible work and investment options.⁽²⁾ As a modern investment method, crop-sharing bonds have not neglected this aspect; they have come up with means to consecrate the rule and expand its scope. As we have pointed out earlier, crop-sharing bonds offer bond-bearers vast opportunities in terms of the ownership of crop-sharing assets (I have in mind equipment and machinery, here) after their actual purchase.

(1) To be clear and to leave no room for question, our talk about ownership does not apply to the tied-up land, for this is an indisputable and settled issue. We have in mind here, the ownership of productive assets and means which are utilized in agricultural activities, such as machinery and equipment which do have a long productive life-span.

(2) Ahmed Mohammed En-Nejjar et.al, *One Hundred Questions and Answers about Islamic Banks*, (Cairo: the International Islamic Banks Union, 1981), p. 60



These means of production have a great impact on the exploitation of *Waqf* agricultural lands. As we all know, machinery and equipment⁽¹⁾ have become an essential component of advanced farming methods and their ownership assuredly offers multiple advantages. Free disposal of these means guarantees optimal use of *Waqf* lands: the more widely we use them, the closer we come to optimal land-use). Proprietorship of these means contributes to a reduction in operational costs –given that opting for rental entails additional costs which reduce the proportions of profits. Besides, they increase the price of crops, which impacts on the end user. We may go on and on citing other advantages. However, we do believe that an individual, having satisfied the requirements of investments in crop-sharing bonds, whose proceeds are applied to revive tied-up agricultural lands, and having expended efforts to promote *Waqfs* for some time, he comes to foster benefaction and charitable work. By then, he is bound to transfer all the assets that he has acquired by means of these crop-sharing bonds to the *Waqf* institution. And such a deed is apt to increase the *Waqfs* patrimony and to boost its capacity to generate other income (through the leasing of these assets to other agricultural companies, for example).

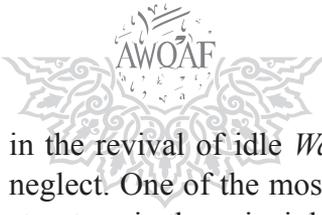
Its liquidity capacity: liquidation is one of the characteristics of monetary instruments. Liquidation is a transformation which applies to fixed assets and to assets with lesser degree of liquidity. The sought-after aim is a measure of ease in disposal in that non-liquid assets are turned into paper money conferring on the bonds the qualities of liquidity. Crop-sharing bonds, as one kind of paper money, together with its being a part of a joint-ownership of assets other than the land, the crop after its maturity, and the proceeds of the sale of crops, enjoy one characteristic:

(1) Examples include: tractors and accessories; sowing machines; fertilizing machines; combines and harvesters. Other equipment: pesticide spraying machines, modern media, water-pumps; and so forth.

they can readily serve as an instrument that can be bought and sold.⁽¹⁾ This means that they can be turned into ready cash whenever the need should arise. This is a characteristic which we believe will definitely stimulate the exploitation of agricultural lands which benefactors have entrusted with the *Waqf* Institution and boost their production. So long as there are opportunities for liquidating⁽²⁾ crop-sharing bonds, people will be induced to put their savings in agricultural investments⁽³⁾ and spurred to own investment instruments so as to invest in agricultural projects. Besides, as long as the process of liquidating crop-sharing bonds easily and swiftly, by selling them to other investors, the bearer of bond is offered the option to leave the investment process any time he wished. This offers the opportunity to reduce risks, to modernize investments, and to facilitate agricultural investment methods, which will, in turn, heighten people's interest in investment and to improve the image of agricultural activities in their minds.

The Capacity to issue small (value) bonds: in a bid to facilitate the raising of substantial funds and to widen the base of money-lenders, while stimulating their desire to acquire investment instruments, financiers came up with the idea of breaking down these bonds. Accordingly they issued bonds in the form of shares bearing different small values to meet the financial capacities of individuals looking to own means of production. Crop-sharing bonds constitute a creative response to agricultural investment requirements. They have a number of characteristics apt to renew interest

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- (1) For more information about the motives which impel individuals to buy and sell bonds, we refer the reader to Abdesattār Abū Ghādah, *Sanādeeq Al-Isthitmār: Dirrāssah Fiqhiah Ta'sseliah Muwassa'ah* (Investment Funds: A Comprehensive Consecrating Study), a research paper presented to the 14th Annual Conference on Islamic Financial Institutions, (United Arab Emirates, 2005), pp. 109-110.
 - (2) Concerning the importance and advantages of the liquidation, see Abdesattar Abu Ghadah, *Sanādeeq Al-Isthitmār: Dirrāssah Fiqhiah Ta'sseliah Muwassa'ah* (Investment Funds: A Comprehensive Consecrating Study)
 - (3) Sami Hassan Hammūd, *Al-Adawāt Al-Māliyah Al-Isslāmiah* (Islamic Financial Instruments), *The Islamic Fiqh Assembly Review*, Session 6, (Kingdom of Saudi Arabia, 1410 A.H), p. 1032 with some adaptation.



in the revival of idle *Waqfs* agricultural lands which have suffered great neglect. One of the most notable characteristics of the crop-sharing bond structure is the principle of break-down. This principle, which has been easily conceived and readily adopted, holds out many promising prospects. We can confidently assert that *Waqfs* Institutions are hereby afforded a great opportunity to revive its agricultural assets which have remained fallow for long. Some of these advantages deserve to be detailed below:

1- Widening the base of money-lenders (or, bearers of crop-sharing bonds): the principle of breaking down bonds into small units essentially aims to give an opportunity to small investors –who are numerous, including small cultivators and others—to participate in the financing of large-scale projects,⁽¹⁾ such as major farming projects. By breaking down bonds into very small units, the issuer of bonds open the door before people with different incomes to become investors. We may even say that any person with an income may readily become the owner of one or more bonds.⁽²⁾ This will make it possible to draw a great deal of financial resources as the base of investors widens and not in proportion to an increase in their respective financial capacities solely.⁽³⁾ These cumulative resources will assuredly enable the *Waqf* Institution to cover agricultural costs and will certainly lead to the exploitation of all available *Waqf* agricultural lands regardless of their surface areas.

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- (1) Youssef Ibn Abdallah As-Shbiliy, *Issdār wa Tadāwul Al-Ashūm wa Sukūk wal Wahadat Al-Isthitmāriah Al-Mushtamilah `ala Nuqud awy Duyun wa Dawabitihā As-Shar`iah* (Issuing and Exchanging Shares, Bonds, and Investment Units comprising Cash and Loans: Legal Regulations), a research paper submitted to a Conference on Islamic Bonds: Presentation and Amendment (Jeddah: King Abdulaziz University, 2010), p. 1.
 - (2) Kamal Taoufiq Hattab *As-Sukūk Al-Isthitmāriah Al-Isslāmiah wa Tahhadiāt Al-Mu`āssirah* (Islamic Investment Bonds and Contemporary Challenges), a research paper submitted to the conference on “Islamic Banks: Realities and Prospects,” (Dubai: 2009), p. 10, with some adaptation.
 - (3) Hussein Abdelmuttalib Hussein Al-Assraj, *Dawr Sūq Al-Awrāq Al-Māliyah fy Tanmiati Al-Iddikhār fy Missr* (The Role of Financial Markets in Developing Savings in Egypt), a published Master’s dissertation (Egypt: Az-Zaqaqeeq University, 2007) p. 41, with some adaptation.



2- Ease with which Crop-sharing Bonds can be traded and marketed:

this is also attributable to the attractive quality of smallness and division. Breaking down crop-sharing bonds into shares with small value confer on them ease, allowing small investors to trade them and market them. And this, in turn, expands ever wider use of these bonds and stimulates sales and purchases of bonds. As a result these bonds acquire the status of efficient and secure bonds. This has the added merit of improving the image of the *Waqf* Institution. As ever wider use of bonds increases, thanks to ease in bond circulation and marketing, individuals will increasingly apply their savings to benefit the agricultural sector. As the success of the latter is confirmed, people will doubtless change their perception of the agricultural sector; they will show keener interest in it and direct the greater portions of their savings to it. The same thing applies to *Waqf* lands which will benefit from enhancement and development.

3- The Multiplicity of the Parties participating in Crop-sharing bonds:

one of the distinctive characteristics of bonding resides in its capacity to interconnect various economic entities, by virtue of the relationships which are established between them. Crop sharing bonds, as one type of bonding products, is apt to connect the *Waqf* Institution with various economic operators in the agricultural sector. This is bound to widen the base of investors in the sector. Among the parties which we consider to be stakeholders, as shown in the diagrams we have previously presented in the previous section, we may cite the following: individuals, agricultural companies, and intermediary firms (the specific purpose company and an Islamic Bank. While it is true that their intervention is limited to the provision of certain services and advice, their access to the area of agriculture, which is in full development and vigor, is apt to improve the image of agricultural activities in the minds of the generality of people). To be sure, as these various stakeholders commit to invest in *Waqf* agricultural assets, the latter will reap good benefits. The savings and resources pooled by individuals (including small farmers and



others) will serve to remove one major obstacle –funding. However, their contribution to the operation of *Waqf* lands, will remain somewhat limited in view of the fact that the methods relied on by small farmer do not obey any productive method which takes into account economic fundamentals conducive to an increase in the scope of production and an augmentation in returns,⁽¹⁾ arising from the operation of *Waqf* agricultural lands. As for agricultural companies, they serve as the technical entity which manages the overall *Waqf* agricultural activities,⁽²⁾ using modern techniques and sophisticated technology apt to significantly boost the produce yielded by farm lands.

4- Direct linkage between funding and investment: the bonding of investments goes through several stages, during which the size of assets or the investment opportunities are defined, along with the sought-after financial resources, as well as the expected costs. Bonds are then produced on the basis of the quantity, time, and the terms which are appropriate to the requested investment. The bonds are then categorized depending on such considerations as type, time-limits, and issuance terms in order to suit targeted segments of savers/ investors. Bonds thus establish direct links between saving activity (as a source of funding) and investment on the basis of profit and real returns accruing from genuine productive activities.⁽³⁾ This perfectly applies to crop-sharing bonds which go through stages during which the size of *Waqfs* agricultural land assets are determined, along with the size of financial resources needed. The value of the estimated

(1) Yasser Abdelkarim Al-Hawrāny, *Al-Mu'assassah Al-Waqfiah Kaqitā` Iqtissādy Musstaqqil* (The *Waqf* Institution as an Autonomous Economic Sector: A Study of Organizational and Regulatory Aspects), a research paper submitted to the Third *Waqfs* Conference on “Islamic *Waqfs*: Economy, Administration, and Civilization-building), (Kingdom of Saudi Arabia: the Islamic University, 1430), p. 614.

(2) Surān Rafiq, *Ilm Al-Iqtissād Az-Zirā`y* (Agricultural Economics), Op. Cit., pp. 176.

(3) Abdelmalek Mansūr, *Al-'Amal bi Sukūk ...* (The Use of Islamic Investment Bonds in an Official Way and the Need for New Legislation), Op. Cit., pp. 37-38.



investment is then issued in the form of bonds, with different sizes and maturity terms, and especially designed to meet the financial capacities of individuals looking to invest their surplus financial assets. The existence of direct links between investment and funding, together with a proactive definition of investment opportunities, is bound to help the *Waqf* Institution to exploit agricultural property in the most optimal way.

5- Profit-sharing instead of fixed inflows, such as rent: the bond-bearer as a financial backer and investor, at the same time, as has been previously stated in the definition, shares with the *Waqf* Institution ownership of the crops whatever their nature or size. If there are profits, then both parties benefit. But if there are losses, the bond-bearer makes losses proportional to the value of the bond; the *Waqf* Institution loses the value of the commission paid to the Bank for accepting to underwrite the bonds and issuing them, in addition to the flows coming from alternative opportunities (meaning the flows coming from investing the land in different ways). Even so, the prospect of loss is remote, in our view, on account of two considerations: the agricultural project is premised on a rigorous feasibility study (as such studies have been proven to be able to enhance the likelihood of profitability in many real cases). The second consideration is that the money used is intended to shore up the *Waqf* Institution, even if the aim is to make profits. Money thus applied to promote goodness is blessed and augmented by Almighty Allah. By contrast, economic realities indicate that rental flows often diminish in value compared with the proportion of profits accruing from genuine productive activities. This is particularly true of the agricultural sector, where the gap between flows becomes all the more apparent when *Waqfs* agricultural lands are exploited. We may confidently assert that the flow coming from the rental of *Waqf* farming lands is many folds lower than the flows accruing from actual exploitation of the land either by the *Waqfs* Institution itself or in partnership with third parties. In addition to this, rental flows



are usually fixed, changing only over the long-term, and as a result, it is often impacted on adversely by increasing inflation rates. The latter, in fact, increase more quickly and recurrently than the value of the rent itself. Profits generated by genuine activities usually take on upward trends, along with inflation rates.⁽¹⁾

In spite of these considerations, we believe that that profit sharing (and also shared-losses, if Allah should decree them) on the part of the bond-bearers (including cultivators and others) and the *Waqfs* Institution (as the issuer of the bond) offer several advantages which should impel the latter to make use of them, instead of contenting itself with dwindling rental flows. In addition to the aforementioned arguments, we also find that they offer the following advantages:⁽²⁾

A- A greater level of security and lesser risk for the *Waqfs* Institution as the issuer of bonds. The financial backer (the buyer of the bond) shares with it profits, as well as losses (if these should occur). Fairness is achieved depending on the outcome of the business and neither party is slighted;

B- Preserving the purchasing power of the capital invested by the financial backer: the assets are registered on the basis of market prices in the final statements. If there should be some inflation, it is reported in the balance sheet together with profits, showing an increase in the value of the assets. The investor is entitled to it the way he is entitled to profits. He thus recovers his capital, without being adversely affected by inflation.

C- Just as fairness is achieved for the benefit of the Waqf Institution through profit (and loss) sharing, and for the benefit of the bond-

(1) For more information about the relation between the increase in inflation rates, profit rates, and the degree of impacts see Youssef Kamal Mohammed, *Al-Massrifiah Al-Isslāmiah: Al-Assāss Al-Fikry* (Islamic Banking: the Intellectual Basis) (Egypt: *Al-Wafaa* Printing and Publishing House, First Edition, 1996) with some adaptation.

(2) Youssef Kamal Mohammed, *Al-Massrifiah Al-Isslāmiah: Al-Assāss Al-Fikry* (Islamic Banking: the Intellectual Basis), Op. Cit., pp. 110-111.

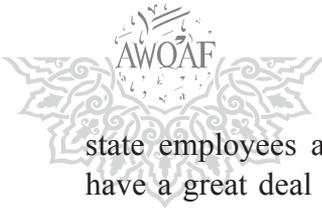


buyer through protection against inflation, great benefits are procured for society by way of enhanced and meaningful development.

Second: the Driving Factors behind the Success of Crop-sharing Bonds:

• ***The Reward to be earned in the Hereafter:*** all creatures share a need for the yield of the land. Life is sustained and its continuity is made possible by crops. Land produce is certainly one of the mightiest charities. Any person that plants and harvests a plot of land receives some reward each time a creature eats from its produce. Bearing in mind the fact that benefactors are always looking for ways to earn forgiveness and receive rewards, that they are fully aware of the boons procured by farming activities, and that they are cognizant of the fact that crop-sharing bonds are issued by the *Waqf* Institution in order to use the land and reap the fruits for the benefit of countless beneficiaries, we may rest assured that benefactors would not withhold their money. Instead, they would be the first to acquire crop-sharing bonds, without necessarily considering profits in the first place. The great number of benefactors (and we assume them to be multitudes in this blessed *Ummah*) would certainly and considerably boost the subscription operation. The *Waqfs* Institution will stand to benefit from these resources, which we confidently expect to be considerable, indeed. This is because the main motive is faith. When the driving force is tantamount to faith, then we should be certain that money would flow from many unexpected sources.

• ***The fact that crop-sharing bonds are issued in the form of small value bonds:*** we have previously pointed out to the idea of breaking down the capital sought into small value bonds and we have talked in some detail about this particular characteristic. Thanks to the latter, a considerable number of resources may be harnessed in order to meet *Waqf* land farming requirements. It is a well-known fact that the great majority of the populations in Islamic society are small



state employees and small business-people. These people do not have a great deal of money which would enable them to meet the costs of land-farming single-handedly; however, most of them enjoy fairly good living standards and receive steady incomes which allow them to save a fairly good portion. And in order to benefit from such savings, the *Waqf* Institution had to adopt the idea of breaking down crop-sharing bonds into small units having small values. The idea has the merit of offering small investors the opportunity to contribute to land development and exploitation, albeit with small sums of money. But when pooled, these small sums constitute huge resources. Added to this advantage, small investors are given a chance to make regular and on-going contributions, much like the incomes derived from their employment or businesses.

• ***Increasing returns from crop-sharing bonds:*** the returns of the crop-sharing bonds come from a genuine added-value which is generated by a genuine economic activity, whose produce is consumed by a very large base of consumers. As the consumer base expands, so do the profits generated increase, especially if the producer is strategic. No one may do without the produce of the land, even in a small measure. This means that the *Waqf* Institution has not only a great opportunity to generate handsome profits but also a great opportunity to boost them significantly. By issuing crop-sharing bonds, the Institution will be meeting the requirements of optimal agricultural land-use, both at the level of funding and at the level of improving means of exploitation, thanks to networking with specialized agricultural firms. This should ultimately lead to an increase in the size of production, and by implication, an increase in profit for the bond-bearer. Naturally, this would spur investors to seek these bonds and thereby widen the base of crop-sharing bond-bearers.

Now even if we assume that the returns of crop-sharing bonds are low, an individual Muslim, aside from his charitable motivations,

stands in need of income or economic returns, however small it may be. This is because of relative poverty and limited financial resources. Moreover, if that person allocates a small portion of his resources to acquire *Waqf* crop-sharing bonds, he should expect the blessings associated with his charitable deed to generate additional returns and income.⁽¹⁾

• **Reduced bond risks:** the specialized agricultural company which is entrusted by the *Waqf* Institution possesses ample knowledge, extensive expertise, and multiple skills in this area. It does not take any decision on agricultural investment until it has conducted the requisite research and analyses bearing on financial and economic issues and premised on feasibility studies. Such studies take into account many variables such as economic trends, market conditions, the costs of entrants, rates of inflation,⁽²⁾ and other influencing factors. All of these studies serve to reduce and mitigate the risks attendant upon crop-sharing bonds and help the company present expected returns in figures and thus induce people to subscribe. Further, the agricultural company, aware that the beneficiary is the *Waqf* Institution which seeks to generate benefits for the less fortunate categories of the population, is bound to implement the best and most modern methods and know-how so as to avert or reduce the risks related to agricultural activity. This also means averting the risks associated with bearing bonds. This is yet another means to gain the trust of investors and to widen the base of crop-sharing bond bearers.

(1) Hussein Berchtek, *At-Takāmūl Al-Iqtissādy bayna Al-Iqtissād Al-Isllāmy wal Mu'assassat Al-Waqfiah* (Complementariness between Islamic Economy and *Waqf* Institutions), a research paper submitted to the *Waqfs* Investment Conference (the Palace and Waqfs Affairs Institution) (Dubai, 2008), p. 59

(2) Hicham Ahmed Abdelhay, *As-Sanadeeq wa Sukūk Al-Isthitmāriah Al-Isllāmiah* (Islamic Investment Funds and Bonds), a published doctoral dissertation (Beirut: Imam *Al-Awzā'y* University, 2009), p. 56, with some adaptation.



Three: Empowerment Factors

State support: this materializes in its intervention to create appropriate conditions for the exploitation of *Waqf* lands by applying reduced prices to seeds and fertilizers, by facilitating access to agricultural infrastructures, including dams, wells, canals, and power-stations,⁽¹⁾ and by granting tax-breaks. This, together with other inducements, is likely to bolster the success of the farming firms entrusted by the *Waqf* Institution to exploit its agricultural lands. Besides, this constitutes an indirect support to crop-sharing bonds because the enhancement of the latter is tributary on the success of the exploitation operation. The success of the latter is in turn dependent on the proportion of facilities granted to it. Support may also take the form of subscription to bonds (the State may act as a party ostensibly interested in profit but intent on furnishing support). Naturally, if the State should choose to become an investor, then this would further enhance smaller investors' confidence and impel them to own bonds. State support may be provided by facilitating the legal frame governing the issuance and exchange of bonds. Added to this the State may intervene by purchasing all the crops yielded by *Waqf* agricultural lands, or at least a portion thereof, if the crops should exceed market requirements.

***Waqf* Information-media:** information media, by virtue of being means of communication aimed to change individual interest in given issues from time to time, depending on the changes that affect the nature and scope of media topics and themes; given the capacity of media to target all segments of society, they can promote and speed up development,⁽²⁾

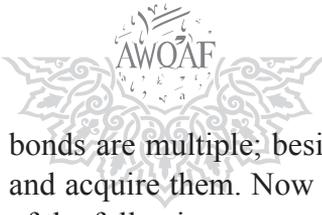
(1) Saleh Salhi, *Al-Minhāj At-tanmawī Al-Badeel fy Al-Iqtissād Al-Isslāmī* (Alternative Development Model in the Islamic Economy: A Study of Concepts and Priorities and an Analysis of Pillars, Policies, and Institutions) (Cairo: *Al-Fajr* Publication and Distribution House, First Edition, 2006), p. 380, with some adaptation.

(2) A study conducted in an Egyptian village, by way of example, has revealed that information media which are directed to the nation in the form of services, like religious, educational, and agricultural programs play an important role in raising the social awareness of its members. This actually served to accelerate the development process in a concrete way. See Shahinaze Tal'at, *Wassā'il Al-Ġlām wa Tanmīyah Al-Ijtīmā'īyah* (Information Media and Social Development) (Cairo: the Anglo-Egyptian Bookstore, 1980), p. 322.

provided they are given the means of success. The media play a major role in this connection: they raise the awareness of the members of society and educate them about the reasons warranting savings and innovative investment methods. *Waqfs*, by virtue of being a charity institution serving large segments of society, constantly needs resources, which should impel it to exploit all of its income-generating assets in its possession. To this end, we consider that *Waqf* media can play a highly-significant role. The fact that the media constitute the swiftest as well as the best channels to reach out large segments of society should induce the *Waqf* Institution to make use of them to garner and maximize benefit from individual savings. Regarding the specific case at hand –the exploitation of agricultural lands, all that is needed is that the *Waqf* Institution should advertise its intention to issue crop-sharing bonds for the purpose of financing the use of agricultural lands and provide information and data about the bonds (in what is called the issuance bulletin). We can assert that this would be greatly beneficial as the message would reach all the members of society, by way of various media. Bearing in mind all of the characteristics and merits we have outlined previously, individuals will assuredly respond,⁽¹⁾ regardless of whether the drive is charity and benefaction or sheer profit-making.

Listing bonds in financial markets: as home to investments, financial markets are fertile investment grounds. When crop-sharing bonds are listed as investment instruments that can be traded, bonds acquire a whole range of advantages which make them all the more attractive to investors. *Waqf* money and property gain access to financial markets and thus derive many benefits. The advantages that financial markets confer on crop-sharing

(1) With regard to the influential role played by the media in Non-Islamic countries, several studies have revealed that the use of appropriate media channels and carefully selected approaches designed to induce the general public to contribute to charity fund-raising usually accounts for their great success. See Mohammed Ibn Abdelaziz Al-Haizān, *Dawr Al-I`lām fy Tawjeeh Al-Jumhūr bil Waqf* (the Role played by the Information Media in directing the Attention of the General Public to *Waqf*), a research paper presented to the conference, titled: “The Standing of *Waqfs* and its Impact on the *Da`wa* and Development) (Kingdom of Saudi Arabia, 1420 A.H), p. 107.



bonds are multiple; besides, they induce potential investors to seek them and acquire them. Now among these advantages, mention could be made of the following:

- Ease with which bonds can be liquidate and money retrieved: whenever a bond-bearer needs the money he has invested or a portion thereof, he may readily sell all (or part) of his bonds and obtain payment which comprises the original asset and the profit, if the project has made any.⁽¹⁾ Of course, this is an inducement for savers to buy crop-sharing bonds;
- The creation of venue for trading crop-sharing bonds will make them more acceptable and even attractive to funders and investors, expanding thereby the base of bond-bearers;
- Listing bonds in financial markets will serve to organize trading rules and to help the process of integrating them among other investment instruments and this would enable them to absorb ever bigger volumes of savings,
- Besides, listing these bonds in financial markets will make them the center of attention of Islamic financial institutions. As the latter make the bonds part of their portfolios, the trading of these bonds gains in momentum, given the dynamism that institutional players confer on financial markets.

We thus consider that the act of listing crop-sharing bonds as an instrument that can be traded in financial markets will make it possible to integrate *Waqf* funds in the transactions carried out by financial and investment institutions. This is bound to increase opportunities for placing these funds and achieve additional returns.

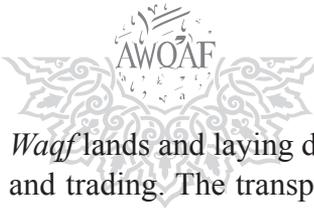
Support to Islamic Banks: this can be achieved by entrusting these

(1) Mohamed Ali At-Taskheery *As-Sukūk Al-Mu`āsserah wa Hukmuha* (Contemporary Bonds and the Applicable Legal Provisions), a research paper submitted to the 9th Session of the Islamic *Fiqh* Convention on *Islamic Sukūk (or, backed up) Bonds: Modern Applications and Trading*, (United Arab Emirates, 2009), p. 1.

banks with the underwriting of bonds and organizing issuance and subscription. Further, cooperation with these banks is apt to draw attention to them among the population of depositors and investors. And banks will also persuade the latter to acquire crop-sharing bonds by highlighting the importance of acquiring them and the merits of these bonds as investment instruments. Islamic Banks may play another role which consists in taking care of bond trading on behalf of the bond-bearers, in the capacity of broker and investment expert possessing institutional skills, capabilities, and expertise which individuals do not have. By considering these banks as essential players in the market, and regardless of whether this is achieved in return of a fee or not, Islamic Banks are empowered in the sight of depositors and investors who may adopt them and make them part of their investment portfolios.

Support lent by Infrastructures: the most important component relates to the legislative and legal frame. Given that crop-sharing bonds are innovative instruments, they need a comprehensive legislative frame which regulates all aspects of bonding and bond-trading. Also, inasmuch as they bonds are repositories where large populations commit their monies, these populations need to benefit from appropriate protection and the assets of society need to be preserved in order to earn the trust of the members of society.⁽¹⁾ Another means of empowerment here resides in setting up a technical and information base. The *Waqf* Institution is called upon to set up a data-base especially designed for crop-sharing bonds which may be consulted by individuals wishing to invest their savings for the purpose of sharing in profit or simply willing to make donations by way of charity. This data-base is apt to enhance the interactions between various categories of society. Equally significant here is the *Fatwa* (or, Expert legal Opinion) Commission whose role will be to define the (canonical) legal rules governing crop-sharing bonds, including such tasks as consecrating this type of bonds as an instrument fit for funding the exploitation of

(1) Abdelmalek Mansūr, *Al-'Amal bi Sukūk Al-Isthitmāriah Al-Isslāmiah ...* (Use of Islamic Investment Bonds at the Official Level and the Need for New Regulations), Op. Cit., p. 44.



Waqf lands and laying down the specific rules pertaining to bond-issuance and trading. The transparency of the legal aspects of the new instrument is bound to enhance the sense of satisfaction in the minds of investors, whether they are investing by way of charity or seeking to make profits.

Fourth: Expanding Use of Crop-sharing Bonds and Outcomes

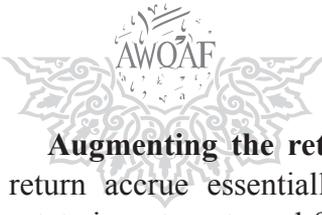
Enhancement of the economic role played by *Waqfs*: as the *Waqfs*' scope of operation widens and as the base of people needing *Waqfs*' proceeds expands, the necessity to energize and optimize their economic role grows all the more intense. It has become inevitable to overhaul and shore up the roles played by the institution: from an institution which merely supervises and manages *Waqf* properties, preserving, maintaining, and distributing the yields of the properties among the beneficiaries, the Institution is required to take on the role of enhancer and developer of the *Waqf* patrimony, taking an active part in the investment of various assets in order to expand them and develop them further. To this end, several modern development models and instruments have been evolved. And if the *Waqfs* Institution were to adopt them, the effects on the economic roles played by *Waqfs* would assuredly be praiseworthy. Obviously, the economic role played by the *Waqfs* Institution should not be limited to a single economic activity but rather extend to all activities. However, the latter activities have different ranks, the highest-ranking and most beneficial of which is certainly agricultural activity. Reviving and breathing new energy into this activity –which has received only scant attention in our present time— ought to be one of the top priorities of the *Waqf* Institution, in a bid to optimize its economic role anew.⁽¹⁾

(1) The fact of the matter is that the promotion of the economic role of the *Waqf* Institution requires changes, modernization, and harmonization at the level of three systems –the legislative and legal schemes; the institutional system; and the arsenal of policies and mechanisms. For more detailed explanation, see Saleh Salhi, *Al-Minhāj At-tanmawy Al-Badeel fy Al-Iqtissād Al-Isslāmy* (Alternative Development Model in the Islamic Economy: A Study of Concepts and Priorities and an Analysis of Pillars, Policies, and Institutions), Op. Cit., p. 390.

Of all the contemporary development models that are most apt to revive and stimulate agricultural activities, crop-sharing bonds have been elected, by Islamic investment thinkers, as being the most eligible one, in view of their multiple characteristics and merits. The merits we have seen above lead us to assert that if the *Waqf* Institution were to adopt them and to expand trading in bonds this would assuredly enable it to recover the economic role it used to play in the recent past. This is largely attributable to the following factors:

- 1- Wider issuance of crop-sharing bonds would enable the *Waqf* Institution to meet the needs of the most underprivileged social categories in terms of basic foodstuff (crops in their variety);
- 2- Expanded crop-sharing bonds would also make the *Waqfs* a developmental institution which empowers the members of society by making it possible for them to own and control production resources;
- 3- Enhanced crop-sharing bonds would enable the *Waqfs* Institution to become an entity that strives to fructify agricultural properties (notably by developing agricultural lands which are not exploited);
- 4- Issuing crop-sharing bonds and fostering wider use of them would serve to integrate the *Waqfs* Institution within the Islamic financial system. Islamic financial institution would benefit from the developmental model/approach adopted by the *Waqf* Institution, while the latter would benefit from Islamic financial system in order to modernize its role and emerge as a civil society institution, enjoying transparency, responsive to people's need, able to produce goods, and committed to carrying out related public projects.⁽¹⁾

(1) Hussein Berchtek, *At-Takāmul Al-Iqtissādy bayna Al-Iqtissād Al-Isllāmy wal Mu'assassat Al-Waqfiah* (Complementariness between Islamic Economy and *Waqf* Institutions), Op. Cit., p. 49



Augmenting the returns of the *Waqf* patrimony: *Waqf* patrimony return accrue essentially from investments in two basic areas: real-estate investments and financial investments⁽¹⁾ –the latter being relatively recent. Real-estate investments constitute the largest area for generating huge revenues. The agricultural sphere appears prominently in this area. Needless to say, by allowing the latter to benefit from modern farming methods, it would guarantee heftier revenues and returns to the *Waqfs* Institution. However, the adoption and effective implementation of these modern methods require substantial financial resources which the *Waqf* Institution is unable to furnish. For this reason, the *Waqfs* Institution has no other option but to solicit the cooperation and interaction with various social categories in order to mobilize such resources. The sought-after cooperation may not be achieved, save by adopting the crop-sharing bonds, as we have suggested, whether the aim of the would-be bond-bearers is charity or profit.

Releasing accumulated (and stagnant) assets: the phenomenon of amassed assets takes the form of assets in kind and financial assets. Given that bonding relates to assets in kind and financial assets, the issuance of crop-sharing bonds (as one type of bonding products) would make it possible to use all these assets purposefully. The *Waqfs* Institution as owner of the agricultural lands and individuals as proprietors of financial resources would be working together to generate additional revenue. The *Waqfs* Institution would issue bonds whose value covers the requirements of agricultural land use. These lands are then operated thanks to the money collected from the sale of bonds. Both the *Waqfs* institution and bond-bearers benefit; individuals are given the opportunity to make use of accumulated but idle financial assets and the Institution makes use of its land assets and saves them from stagnation.

(1) For more details see Omar El-Kettani, *Al-Jawānib Al-Iqtissādiah Lil-Waqf* (the Economic Aspect of Pious Endowments), a research paper submitted to the forum on “The Legal Texts Regulating *Waqfs* and *Zakāt* (or, Alms-Tax),” (Morocco: the National *Waqfs* Institution, 2008), pp. 9-10

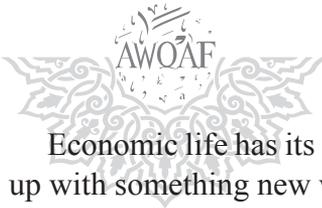
Transition from the idea of simple profitable *Waqf* land-use to optimal and comprehensive land use: simple use of land consists in exploiting arable lands only for the purpose of ensuring on-going growing of produce and perennial benefits. Comprehensive land use, on the other hand, means the transition to another phase marked by wider profitable use of all lands held by *Waqfs* –meaning, that even the lands that are unfit for agricultural use should be developed in such a way as to be of some profitable use and to enhance their productive capacity.

Drawing greater attention to agricultural investment and developing the base of individual ownership of agricultural productivity

Entrenching the idea of collective participation in the funding of *Waqf* projects

Conclusion and the Most Important Outcomes

Even if *Waqf* –by virtue of its status as a charitable institution—has taken upon itself the heavy duty of satisfying the needs of the least fortunate categories of society; even though it is backed up in this by the assets and monies which benefactors have entrusted the *Waqf* Institution with, the vision has not materialized in a perfect way nor has it been fully achieved, as evidenced by hard facts. Notwithstanding the agricultural assets (farming lands) it has, the Institution still suffers from shortages in resources and revenues. The assets (farm lands) hold abundant bounties for humanity: if people were to deal fairly with these assets, they are bound to reward them amply. While the *Waqfs* Institution is expending commendable efforts in order to preserve the assets and distribute the proceeds, it has been too engrossed in these activities to invest in these assets. When it endeavors to invest, its investments usually yield only small returns. This should come as no surprise: the expanse of land assets and the significance of the monies would be of little use when they end up being distributed or when only the most inefficient investment methods are opted for in the exploitation of these lands.



Economic life has its specific interactivity: every now and then it comes up with something new which displaces obsolete managerial schemes and investment models. If our goal is to enhance benefit, then we have no other option but to take the path of renewal and innovation, along with on-going creativity so as to keep in step with progress and novelties. This is certainly one of the messages sent by *Mujtahideen* (people noted for the exercise of independent and creative judgment) in *Waqfs* jurisprudence. In their time, was *Waqfs* not the main caterer for the requirements of the *Ummah*, notwithstanding its vastness? We have to concur that it was. Jurists thought judiciously; they, therefore, made good use of assets available to the *Waqf* Institution and managed to reap abundant boons.

The fitness and efficiency of any investment method are largely dependent on the returns, benefits, and profits achieved by the method, in addition to its pragmatism and appropriateness to the age we live in. More often than not, profitability is tributary on the flexibility and adaptability of the investment method itself. In light of these considerations, subjecting *Waqf* farm lands to the models of *Ijārah* (leasing) and *Muzār`ah* (crop-sharing) in their old guises is not likely to bring the *Waqf* Institution its due portion of the returns and profits. Where is the flexibility of these models when land use is limited to only one category of people? And where are the substantial returns when the monies yielded by land lease hardly exceed a handful of *Dirhams*?

Considering that modern endeavors in the areas of finance and investment find the latter to be roomy, accommodating, and easy (Allah Willing!) and considering that Islam has called upon and even induced Muslims to undertake these endeavors, the people in charge of *Waqfs* ought to be on the look-out for all that is new and innovative. One such example has been highlighted in the present paper. Indeed the latter has sought to show that crop-sharing bonds ought to be adopted as an ideal modern model to exploit *Waqf* agricultural lands. In a bid to establish this, we have put forward several proofs and given scores of examples. To make it even easier for the dear readers, I have summed up the outcomes of the study. And here are the most significant and preponderant ones:



• We have exercised ourselves to the utmost in order to shed light on the main investment problems which have undermined the capacity of *Waqf* agricultural lands to generate rewarding returns. This has naturally impelled the *Waqf* Institution to neglect them. We have established that this inadequacy is related to a number of causes – six to be exact. And we have dealt with them in some detail. They are as follows: the insufficiency of *Waqf* resources that are allocated to the exploitation of lands; preference shown for leases; ruination of agricultural lands; the reluctance of the *Waqf* Administration to exploit the lands by means of farming contracts; the dearth of funding; and the absence of an investment entity specialized and dedicated to agriculture. However, the factors we have discussed are not exhaustive and do not cover all the causes accounting for inefficiency and failure.

• We then shifted our focus of attention to one of the problems we have implicitly pointed out –the investment method adopted in the exploitation of *Waqf* farming lands. At the outset, we argued that the most notable factor behind the decline in land produce has been undue reliance on, and contentment with old agricultural methods – mainly, land lease and crop-sharing in their old and obsolete guises. We substantiated our case by invoking dwindling returns, economic inefficiency, and the difficulty of matching real potentialities with ever increasing requirements. All of this has been established to press towards the adoption of modernization and updating. In this respect we have underscored the main advantages and merits of adopting novel investment methods and contended that such adoption would serve to: preserve *Waqfs* agricultural assets; keep them within the economic cycle, while ensuring optimal use; increase land produce and boost its productive capacity; foster the confidence of cultivators by creating an agricultural investment-friendly environment. In the course of our criticism of the *Waqf* Institution’s reliance on the methods of *Ijārah* and *Muzāra`ah* in the exploitation of its arable lands, we have attempted to outline standards which would provide

the contours of an ideal investment models. We have thus managed to glean a number of criteria, which, if given due consideration and satisfied, the *Waqf* Institution would be bound to give them precedence. Examples: the capacity to make full and comprehensive use of all *Waqf* lands in order to guarantee results that match the value of the invested assets; the capacity to preserve the *Waqf* assets; appropriateness; the ability to manage risks; compliance with *Shari`ah* regulations and the highest interest of *Waqf* investments; flexibility and ease of implementation; the ability to walk in step with technical and managerial evolutions; scientific and pragmatic fundamentals; the availability of managerial competencies that are keenly aware of the investment method and the requirements of its success; the existence of clear indicators and criteria for assessing and adjusting investment performance; the capacity to rationalize investment spending; documentation and satisfaction of legal requirements.

• Once the main sketches of the model have become clear to us, we have centered our attention on one of the most significant contemporary Islamic financial innovations –*Sukūk* (Backed-up bonds) in general, and *Sukūk Al-Muzāra`ah* (Backed-up crop-sharing bonds). We expended some efforts trying to elucidate the various concepts that have been developed with regard to these bonds and to show their operation mechanisms. We concluded by showing two operational methods and adopting the first method. According to the latter, the *Waqf* Institution, the issuer of bonds, is the owner of the lands, while subscribers act as the financial backers of agricultural activities and their requirements. In this respect, we have discussed some of the matters pertaining to the backed-up crop-sharing bond contract. We have referred to the main components and terms of the contract and focused on the formulation and the contracting parties. We then tackled the issue of bond trading and stated that it is permissible to trade these bonds when the wholesomeness of the crops becomes apparent. We also showed the ways in which the

price of bonds is set. The value of bonds during the trading stage is determined in the market-place, depending on the value of the harvest or agricultural produce. The bonds come to an end at the conclusion of the validity period of bonds, or the end of the agricultural cycle, or again, with the harvest or cutting. Prior to the section, we dwelt on agricultural activities conceptually and historically, highlighting its significance and its wisdom. We then dealt with the crop-sharing contract itself, with a particular emphasis on meaning, legitimacy, and terms. However, given the constraints of space, we cannot provide a summary of the section even in a sketch.

• As soon as we finished dealing with the basic matters pertaining to agriculture, in general, and to crop-sharing bonds, in particular, we moved on to scrutinize the main characteristics of these bonds. We have checked and ascertained the ability of each bond to stimulate the exploitation of tied-up farming lands. Some of the main characteristics which have benefitted from considerable analysis are as follows: the capacity to provide the requisite funding; the ease wherewith bonds can be liquidated; the possibility of breaking up the capital requested into small value bonds; the multiplicity of stake-holders; direct linkage between funding and investment; profit-sharing instead of fixed inflows, like rent-money. These characteristics have both the power of attraction and the potential to enable the *Waqf* Institution to exploit the farm lands which benefactors have entrusted it with. And we recommend readers who have time to read widely to do so in order to ascertain the facts. In this connection, we have briefly alluded to the factors contributing to the success of bonds, the means of empowering them, and the benefits to be had from using them widely. As far as the factors of success as concerned, we have mentioned: the rewards to be earned in the Hereafter; the fact that bonds can be produced in small units with small value; the higher expected returns; and reduced risks. With regards to the factors of empowerment, the study has contented itself with enumerating some of them: the support to be given by the State; information media;



listing these bonds in financial markets; the support provided to and by Islamic banks; the development of infrastructures which foster crop-sharing bonds and shore them up firmly in the economic cycle. Concerning the outcomes of wider use of bonds, we have been brief; we asserted that wider use of bonds will certainly enhance the economic role played by *Waqf*, increase the returns of the *Waqf* patrimony, and liberate its stagnant or idle assets. More than that, bonds are likely to attract people and induce them to invest in agricultural projects and develop the base of individual agricultural production properties. Besides, the idea of collective participation in the funding of *Waqf* projects will be entrenched, thanks to an easy approach.

To round off the present study in a useful and good way, we have deemed it worth the while to append this conclusion with some recommendations which we would like to see embedded to ensure the development of *Waqfs*:

- In the exploitation of its agricultural assets, the *Waqfs* Institution should make use of modern investment methods which guarantees the highest returns and achieves the most optimal social utility;
- The Institution should also conduct a large-scale awareness raising campaign: through various media, it should repeatedly underscore the importance of crop-sharing bonds in helping the *Waqf* Institution exploit its agricultural lands. Besides, appropriate conditions should be created to make the process of issuing and trading crop-sharing bonds a success and thereby attract the attention of the general public and earn their trust;
- Stimulate the dynamism of *Waqf* investments by using different kinds of bonds, as the diversity of bonds actually matches the diversity of *Waqf* properties and resources.

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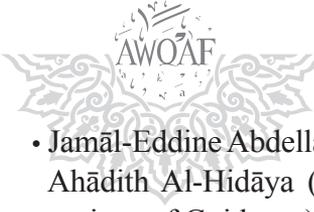
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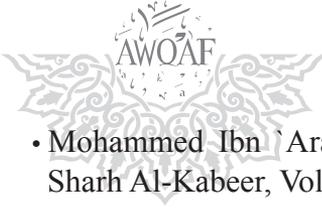
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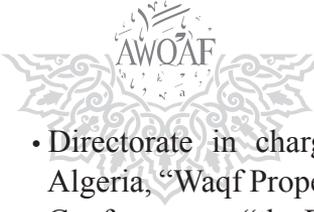
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Fourth: Electronic Sites

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Researches



Accounting Bases Measurement of the Economic Enterprises and its Application on Endowments Accounting

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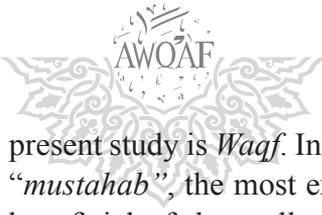
Sibai Institute, Medina, Saudi Arabia

Introduction:

Islam strongly urges its adepts to promote social solidarity among Muslims. In Islam, the act of charity and helping those in need is one of its central tenants. In fact, Zakat or Almsgiving is an obligation in Islam and one of the five pillars of the religion, and it is mentioned along with Salat in many verses of the Qur'an as in (Sura 2: 277) "*Truly those who believe, and do deeds of righteousness, and perform As-Salat (Iqamat-as-Salat), and give Zakat, they will have their reward with their Lord. On them shall be no fear, nor shall they grieve*"⁽¹⁾. Besides Zakat-ul-Fitr, which is a *Sunnah* that is obligatory upon every Muslim, Islam contains a great number of principles and mechanisms for voluntary charity such as: *Al -Sunanu al-Mustahabba* (desirable Sunan), which includes voluntary almsgivings, charity and *Waqf* or endowment. The subject dealt with in the

(1) The Holu Qur'an (Sura 2: 277)





present study is *Waqf*. In fact, making *Waqf* for God's sake is considered as "*mustahab*", the most exalted act of caring and recognition and the most beneficial of them all. On the authority of Abu Hurayrah, the Prophet Muhammad said: "*when a man passes away, his good deeds will also come to an end except for three: Sadaqah Jariya (ongoing charity), a beneficial knowledge or a virtuous descendant who prays for him*", related by Muslim.

Waqf is considered as an ongoing beneficial charity for both the person who makes the *Waqf* (*waqif*) and the beneficiaries. In fact, *Waqf* provides grants to help in fund charity and social programs for which the *Waqf* is made and which in turn generates financial resources needed to provide for the poor and the underprivileged people in terms of health and educational services. Therefore, *Waqf* system is based on voluntary donation in a form of a fixed capital that generates income and profits to be used in a beneficent manner.

There is no doubt that financial administration is a vital part of any economic activity in order to guarantee its sustainability through a regulatory accounting system where the focus is primarily on calculating, tracing and analyzing its financial operations. In fact, the role of a financial administration with its accounting division has become much more important to preserve the *Waqf* assets; hence, the importance of accounting systems for all types of *Waqfs* in providing adequate information on its money and how this money is invested⁽¹⁾.

The purpose of the following study (divided into three chapters and a preface) is to examine the relationship between the family *Waqf* (*Waqf Zuri* or *Ahli*) and business accounting systems.

(1) Prof. Mohammed Abdelhalim Omar, «Issues and Problems in al Waqf Accounting» available at the following web address: <http://iefpedia.com/arab/?p-20738>.

Research question:

Family *Waqf* is considered a charitable economic entity administered by a council or a Board of Trustees, called *Nazart al Waqf*, whose primary task is to preserve its assets, including lands, houses, farms etc and to distribute its income to designated beneficiaries according to the terms and conditions of the *Waqf*. Because of their charitable aspect, these entities can be classified as non-profit organizations using a unique monetary based accounting system in their accounting processes. However, despite its implementation simplicity and easy applicability, it has been shown that the system suffers from several shortcomings, particularly when the financial capital is put into profitable investments, including the absence of all the accounting records of the fiscal year except for the paid expenses and the earned revenues.

As it is known, the business administration accounting systems using accrual method of accounting aims primarily at preserving the promoters' capital, as it is the case with regard to *Waqf*, and at analyzing the financial databases of their profitable activities. Despite the fact that it bears the label of non-profit institution, the family *Waqf* has as its objective, like any other economic enterprises, to achieve its sustainability, growth and development in order to cater for the increasing number of its beneficiaries. Accordingly, the purpose of this study is to describe and explain how these business administration accounting systems and the accrual basis of accounting or modified cash-base accounting system are applied in the family *Waqf* in case its trustees and the beneficiaries decided to venture into lucrative economic activities in order to increase their capital.



Literature Review:

Prof. Mundir Qahf (1997)⁽¹⁾.

Mundir divided his research in two parts; the first one focuses on some contemporary experiences in the administration of *Waqf* investments, as in the case with the family *Waqf* independently administered by a board of trustees, called “*nuddar*”. He indicated that other causes of low productivity and profitability of *Waqf* include the prevalence of corruption, mismanagement and incompetence among the trustees, leading to the emergence of a pattern whereby the government has taken authority over *Waqf*. This new approach also has shown many disadvantages such as lack of administrative competence to choose the right investments, lack of monitoring capabilities and absence of personal motivation. He also discussed the problems related to the implication of judges in nominating members of *Waqf* Board of Trustees and the modern administrative methods of *Waqf* providing detailed information on the Sudanese and Kuwaiti experience as regard to the management of *Waqf* affairs.

In the second part of his study, Mundir proposed an alternative model for the family *Waqf* administration based on time limit, public and governmental financial control and motivational strategies. He pointed out that the administration principles of the new modern *Waqf* are similar to the principles of business enterprises. In his conclusion, he stressed the need to develop new administrative model for *Waqf* based on the productive enterprise concept subjected to competitive factor markets and which has to be modified according to the nature of the *Waqf*. Again he emphasized the vital role the government has in controlling *Waqf* and resolving disputes as the ultimate judicial authority.

Two things can be concluded. First: as mentioned in the scope of our study, Mundir agrees with our approach that the modern *Waqf* and business enterprises are practically identical. Second: it is clear that Mundir’s study

(1) Mundir Qahf, “*Al-asalib Al-Haditha fi Idarati Al-Awqaf*”, 1997. Published in: www.kantakji.com/fiqh/files/Waqf/7001.pdf

addressed, in its totality, the administrative aspect of *Waqf*: who manages *Waqf*? , who controls it and how to possibly introduce an administrative model regulated by market competitiveness. However, he did not tackle the technical aspect of accounting in the management of cash *Waqf* as a business enterprise, which requires an accounting system based on generally accepted principles. So it is this aspect that our study is going to focus on.

Prof. Mohammed Abdel Halim Omar (2002)⁽¹⁾.

Omar's study deals with charity *Waqf* without referring to the family *Waqf*, and this reveals the first difference between the two studies. He divided his study into two sections. In the first one, he discussed the necessity and the importance of accounting in *Waqf* and the main issues related to it. He clearly stated that an efficient accounting system to record, control and analyze *Waqf* activities is the only means to preserve and maintain its properties. He further said that literature is very scanty relating to the cash *Waqf* management. He concluded this section by stating that there is no such one accounting model valid for all projects. In fact, there should be different accounting models that are theoretically the same but differ in their practical application.

In the second section, he devoted two chapters to two main *Waqf* accounting issues. The first discussed some principles of *Waqf* accounting, namely, the unit property *Waqf* accounting, audit of *Waqf* accounts and its assets, liabilities, financial statements, income and expenditures, providing some samples of the *Waqf* financial statements. In the second chapter, he discussed some accounting issues from a jurisprudential perspective, including the different types of financial investment contracts of *Waqf* and the question of its maintenance, allocation and replacement.

It is worth noting here that Omar's study is different from the following one in the sense that his paper, which can be considered as a link of series

(1) Mohammed Abdelhalim Omar, Professor of accounting at Al Azhar University, "*Qadaya wa Mushkilat al Muhassaba ala al-waqf*", 2002. Available at the following web page: <http://iefpedia.com/arab/?p-20738>.



of working papers intended to shed light on the main issues and to elicit scientific ideas that can be themes for upcoming conferences and action programs, focused mainly on how accountancy can be applied on different types of old and modern *Waqf* financial investments. However, this paper will focus on the idea of adopting accounting standards similar to those used in the management of business operations, such as the accrual basis of accounting.

Abdellah Saad Al-Hajiri, 2006⁽¹⁾

Al – Hajiri’s study aims at identifying the relationship between the income of *Waqf* financial investment and the average income prevailing in the market and investigating to what extent the Kuwaiti General Secretariat of Religious Endowments has managed to apply diversified investment policies with regard to *Waqf*. He assumed that there is no connection between *Waqf* investments incomes and those of business enterprises or those of the Kuwaiti Stock Exchange.

He concluded that there are no substantive differences between types of policies used in the investment of cash *Waqf* in Kuwait and the policies actually used in practice. He also discussed the differences between *Waqf* institutions and financial institutions with regard to the precepts of the Islamic religion. In fact, unlike *Waqf*, the main objective of financial institutions is to achieve economic value added for the institution and the stakeholders alike.

The basic assumption of the following study is that the only difference between private sector companies working according to the Islamic *Shari’a* and the family *Waqf* investments is that the first are owned by stakeholders who benefit from the revenues while the second are not owned by their beneficiaries. This situation requires that accounting treatment of the family *Waqf* should be the same as the one used in the

(1) Abdellah Saad Al-Hajiri, « *Tqyim kaf’atistithmar Amwal Al Waqf bi dawlati al Kuwait* », 2006. M.A. dissertation published on the following web site: www.awqaf.org.kw/Arabic/informatics/Issues/ScientificPublications/Waqf_investment.pdf

private sector companies, including the accounting principles and bases of the administrative investment affairs and taking into account the provisions of the Islamic *Shari'a* and the terms of the *Waqf*.

Husein Husein Shahata (2004)⁽¹⁾.

His paper focused on the Islamic *Shari'a* guidelines, the investment criteria and the accounting principles of the modern *waqf*, including the applicable models and areas of investment of Cash *Waqf*. The first chapter deals with the general framework of the *Shari'a* guidelines with regard to *Waqf* investments on the basis of the judgments and advisory opinions (*fatawa*) issued by the jurisprudential institutions as legitimate evidence for the investment decision makers, accountants and auditors. While the second chapter discusses the accounting principles of the *Waqf* investment, suggesting a new approach to the investment plan for the cash *Waqf*, ways to control it and criteria of its investment performance appraisal. The third chapter is devoted to clarifying accounting bases and treatments of cash *Waqf* investments with an emphasis on the following operations: exchange, maintenance, restoration, profit, provisions and the necessary precautions to preserve and promote the cash *Waqf* funds. One of the main conclusions he reached is that modern and the traditional cash *Waqf* accounting operations are a set of accounting bases and principles issued by both the accounting council for the Islamic financial institutions and the traditional accounting principles that do not violate the laws of the Islamic *Shari'a*. He also concluded that one of the objectives of the *Waqf* accounting system is to provide investors with the necessary accounting information in order to make the right investment measures.

However, it should be noted that Shahata's article failed to mention how these accounting basis should be applied. For example in the event of the depreciation of *Waqf* assets, he said: "*in case the Waqf assets exist,*

(1) Husein Husein Shahata, Professor of accounting at Al Azhar University, "Ad-dawabit A-shar'iyah wa L-usus L-muhasabiya li istitmar Amwal Al-waqf", published in Kuwaiti Awqaf Magazine, issue 6, 2004. Pp. 73-188. Also available at: www.awqaf.org/awqafjournal/portal.aspx?tabid-77.



the application of the depreciation basis is absolutely necessary in order to preserve the cash Waqf and to exchange it when it is lost according to the jurisprudential opinion which authorize the exchange of immovable assets". This and other related questions will be covered in this paper including: is *Waqf* depreciation allowed in the cash basis accounting? Is it possible to create a special redemption fund in the accounting manual of the *Waqf*? Will the cash basis accounting allow increasing the tenant's account by using the receivable revenue accounts?

Mohammed Yassine Rhahala (2005)⁽¹⁾

The purpose of Rhahala's study was to determine the accounting and the regulatory aspect of *Waqf* on the basis of its regulatory jurisprudential and legislative provisions with reference to some investment and administrative issues. He also reiterated the impact of *Waqf* terms and the jurisprudence and legislative provisions on the regulatory and accounting principles used in *Waqf*. He stated that, unlike the private and the public sector, *Waqf* activities further charitable purposes rather than economic benefits. In fact, the *Waqf* sector resembles the public sector in the sense that they both provide valuable community services, but they differ in the way they manage their incomes and expenditures. He also said that *Waqf* is a concept which resembles closely the concept of a business firm for they are regarded as financial entities. However, the management of the cash *Waqf* cannot follow the principles of market economy due to its lack of profit motive. After comparing the accounting system of the public, the private and the *Waqf* sector, he concluded that *Waqf* accounting system differs from the governmental accounting standards as in the case of historical-cost and disclosures principle. Finally, he recommended that the development of *Waqf* accounting system and its supervisory standards be based on *Shari'a* rules and stated the importance of organizing awareness campaigns on the social and economic benefits of *Waqf*.

(1) M. Yassine Rhahala, «*Al-Jawanib al-Muhassabiya wa Raqabiya fi l-Urdun*», Al- Manara magazine for research and studies, Ahl Bait University, number 13, 2005. Also available at: web2.aabu.edu.jo/manar/artDetSub.jsp?art_id.

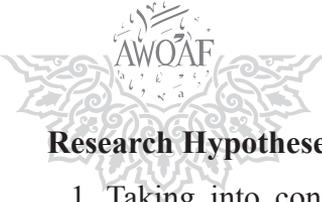
Although there are numerous points of convergence between Rhahla's study and the following paper, the major difference between the two lies in the fact that while he claims that economy market principles cannot be used in cash *Waqf* management due to the lack of the personal motive, the following study claims that these principles can be applied in the family *Waqf* and the profit motive is clearly indicated by the percentage income (usually 5% per annum) the *Waqf* Board receives. Finally, we do agree with his recommendation to develop a *Waqf* accounting system and its supervisory standards on the basis of *Shari'a* rules.

Study Objectives:

In light of similarities between family *Waqf* and the private sector firms and following the natural increase in the number of the *Waqf* beneficiaries and to avoid any reduction in their benefits over time, this paper aims at providing evidence that the family *Waqf* can operate within the competitive market just like any other business facility that seek to maintain and maximize the value of its assets in accordance with the principles of *Shari'a* laws governing endowments by using a model of accounting similar to the one used in a business enterprise.

Study Methodology:

The methodology used in this study is a mixture of analytical and descriptive methods of investigation of case studies. The theoretical section includes the study of references, scientific papers published in professional magazines and a number of reliable internet sites in order to highlight the nature and the importance of accounting systems in the management of the family cash *Waqf*. On the other hand, the practical section aims at evaluating case studies of accounting systems used in the family cash *Waqf* including the majority elements of its accounting cycle and reporting some views and concerns expressed by its supervisors and beneficiaries from **Madinah** al-Munawwara. Finally, information gathered will be analyzed to reach conclusions and lead to suitable recommendations. The results section of this paper confirms the validity of the research hypotheses and includes proposed recommendations.



Research Hypotheses

1. Taking into consideration the principles of the Islamic *Shari'a* laws and the conditions of the *waqifin* (persons making *Waqf*), the organizational structure of the family *Waqf* and its investment activities that increase its capital are similar to the ones found in business firms except for the principle of assets property.
2. The accrual accounting method used in business corporations can also be used in the family *Waqf* in order to control and preserve its funds providing accurate financial statements required to make sound investing decisions.

The study structure:

This paper is divided into three sections preceded by an introduction. The first one deals with the realities and trends of the family *Waqf*. The second section discusses its accounting methods and principles, while the third section focuses on some practical application of accrual accounting on family *Waqf*. Each section includes a number of themes devoted at presenting studies, theoretical analyses and practical applications. The conclusion will include an analysis of the results, recommendations and a list of books and references.

Chapter one

The family *Waqf*: Realities and Trends

Introduction:

Islam contains a great number of values and precepts to help Muslims in their daily living and the conduct of their private affairs, whether related to the physical or spiritual world. Among such values, we may mention social solidarity, mutual affection and co-operation. To consolidate such values and bring about their implementation, Islam makes of *zakat* obligatory



as it is the third pillar of Islam like *zakat al-fitr*. Muslims are also urged to give *sadaqa* (giving alms), for example by making a *Waqf*, in order to purify the soul of the poor from hate and jealousy which they might feel for the rich to assure their full participation in all aspects of social and economic development of their community. Allah Almighty Says in the Holy Qur'an, ““*You will not attain virtuous conduct until you give of what you cherish. Whatever you give away, God is aware of it* » (Sura 3: 92)⁽¹⁾. *Waqf* is a form of ongoing charity (*Sadaqa Jariya*), similar to the general concept of “charitable trust” or ‘endowment’. It is considered a noble act that benefits the poor and the needy and plays an important role in the provision of education, health services and accommodation, which enables them to be fully active members of their community. In fact, “*it is on the basis of awqaf that all charitable institution have been founded throughout the history of Islamic civilization*”⁽²⁾

I. Types of Islamic *Waqf*

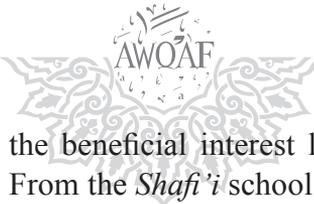
1- The concept of the Islamic *Waqf*

The term *Waqf* literally means “confinement and prohibition” or causing a thing to stop or stand still. In other words, *Waqf* is an Arabic word meaning assets that are donated, bequeathed, or purchased for the purpose of being held in perpetual trust as ongoing charity (*sadaqah*) for a general or specific cause that Islam regards as socially beneficial. The legal meaning of *Waqf* according to Imam Abu Hanifa, is “*the detention of specific thing in the ownership of Waqf and the devoting of its profits for the poor or for other good objectives*”⁽³⁾. According to the *Maliki* School, the legal interest in the *Waqf* property remains in the *wāqif* (endower) while

(1) The Holy Qur'an, Surat Aal-Imran, Verse 92

(2) Omar Ibn Muhammed al-fulayni , “*fda'il l-waqf wa 'atharuhu fi ri'ayati l-mujtam'I l-Islami*”, 2009, available at; www.waqf.org.sa/Magazin.

(3) Mahmoud Muhammed al-Najiri, “*Ta'rifu al-waqfi Qdiman wa Hadithan*”, 2011 available at: www.feqhweb.com/vb/t8750.html.



the beneficial interest lies on the *mawquf alayhim* (the beneficiaries)⁽¹⁾. From the *Shafi'i* school point of view, “*the Waqf of anything is valid from which profit can be derived whilst its original endures*”⁽²⁾. While according to the *Hanbali* School of jurisprudence, by endowing a property as *Waqf*, the endower transfers the ownership to the beneficiary”⁽³⁾.

2- The legitimacy and rules of Waqf:

The majority of *Fiqh* scholars (*fuqaha*) are on the view of the legitimacy of the concept *Waqf* as aligned with the spirit of charity endorsed by the *Quran* and *Hadiths*, as Allah Almighty Says, “*You will not attain virtuous conduct until you give of what you cherish. Whatever you give away, God is aware of it* » (Sura 3: 92)⁽⁴⁾; and as the Prophet Muhammad said, “*when a man passes away, his good deeds will also come to an end except for three: Sadaqah Jariya (ongoing charity), a beneficial knowledge or a virtuous descendant who prays for him*” on the authority of Abu Hurayrah and related by Muslim. It is clear from the forgoing that the *Waqf's* legitimacy is based on the significant role it plays in generating a prominent source of financing for the needs of the Muslim *ummah* and in fighting social vices. In fact, making a *Waqf* is one of the virtuous acts which Islamic *Shari'a* calls for and urges Muslims to do.

3- Objectives of the Islamic Waqf:

- a- To fight against poverty by promoting self-sufficiency among the poor, the needy, the sick and scholars.
- b- To promote the global economy and help raise national income by providing beneficiaries with the opportunity to accelerate the economic growth.

(1) Id.

(2) Kingdom of Saudi Arabia, Portal of the General Presidency of Scholarly Research and Ifta'. “Islamic Research Magazine”, Vol. 36. Available at: <http://www.alifta.net/Fatwa/fatawaDetails.aspx?View=Page&PageNo=4&PageID=5084>.

(3) Id.

(4) The Holy Qur'an, Surat Aal-Imran, Verse 92



- c- To promote the noble principles and ideals such as, co-operation and solidarity among Muslims.
- d- To improve nutrition and quality of life to the most vulnerable populations by exploiting the *Waqf* resources. In fact, *Waqf*, if financially well administered, is considered a regular source to finance and achieve the afore-mentioned objectives.

4- Types of Waqf:

Basically, Waqf can be classified into two major types:

- a- Family *Waqf* (*Waqf Zurri*): the proceeds of this *Waqf* are designated for the *Waqf* founder's children, their off-spring and members of his tribe.
- b- Charitable *Waqf* (*Waqf Khayri*): the proceeds of this type of *Waqf* are earmarked to charity and philanthropy and it is typically used to finance mosques, shelters, schools, and universities and other forms of charitable deeds.

II. The Administrative System of Family *Waqf*:

Given the charitable aspect of the family Waqf as an independent institution with its own corporate identity and fixed capital investments generating income to be distributed to its beneficiaries, an organizational structure administered by an executive board has become necessary. Like any nonprofit organization, the family Waqf must have an administrative system to ensure a proper record keeping, to maintain and preserve its assets, to supervise the income distribution in conformity with its provisions to beneficiaries, to establish its rules of procedure and its organizational structure and finally to monitor and evaluate its performance. The Waqf manager is usually called "*Nazir*" or "*Mutawalli* » designed by the Waqf founder "*waqif*" or by approval of the majority of beneficiaries before the court provided that such person is of high moral character and a righteous person with recognized expertise and scholarship in the field of Jurisprudence. *Mutwallis* are subject to supervision by the court where



he can be held responsible for any mismanagement or fraud. It should be noted that, under article 10 of the regulations of the Saudi Arabian General Authority for the State of Funds of Minors of 1437 Hijira, civil courts have jurisdiction over the family *Waqf*⁽¹⁾. He is remunerated for his services by a profit share arrangement designated by the terms of the waqif and has the legal right to appoint an assistant, a committee, an engineer to maintain the *Waqf* properties, or an accountant (or an accountability office) responsible for the financial and accounting matters of the cash *waqf*.

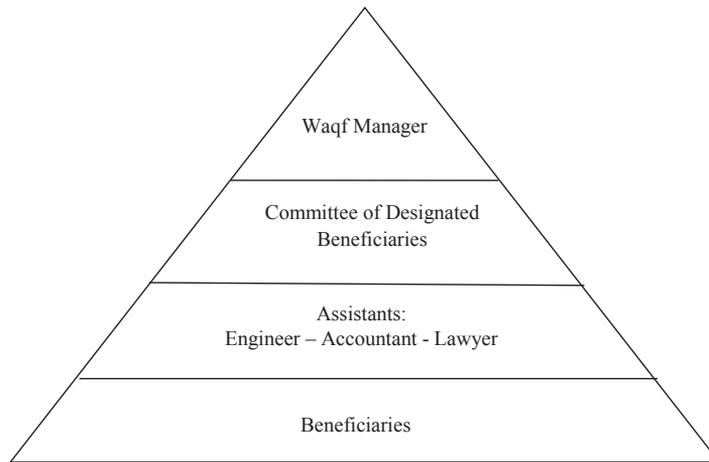
The followings are the main duties of the *Waqf* Manager (*Nazir al-Waqf*):

- *Maintain the Waqf, safeguard its properties and pay maintenance or exchange costs.*
- collect its return and distributing it to its rightful eligible persons
- Change or exchange the nature of the *Waqf* property taking into account the legitimate interests of all parties
- Exploit, invest and develop the financial resources of the *Waqf*
- Represent *Waqf* before the courts and government bodies
- Prepare and submit financial statements to the concerned third parties.

From my studies on the family *Waqf* management in practical reality, we put forward the following hierarchical form where authority extends from the top to the bottom of the organizational structure:

(1) Abdellah Ibn Muhammad Ibn Saad Ahl Hanine, « *dabt tasarufat nuzzaru al-Awqaf min Qibali l-Qudat* » available at: www.kantakji.com/fiqh/Files/Wakf/52064.pdf

Figure I. line authority in the family Waqf



In the figure above, the Waqf Manager is in the top of the administrative hierarchy assisted by a committee of beneficiaries then an engineer in charge of the Waqf property maintenance followed by an accountant then a lawyer responsible for the legal aspect of the *Waqf*.

III. Family Waqf accounting: Present Realities and Future Prospects.

Generally, cash Waqf administration is regulated and managed either under the government authority represented by the Ministry of Islamic Affairs for the general charitable Waqf or under the authority of the Board of Trustees of the Waqf for the family Waqf which has nothing to do with the government. As a matter of fact, it may be noticed that, in Sudan and Saudi Arabia, for instance, where the charitable Waqf is administered by Ministries of Islamic Affairs, the accounting system used to manage its financial affairs is somehow similar to the system applied in government institutions with its bureaucratic structure and deficiencies inherent



in governmental accounting, in which case Waqf turns out to be like a ministerial department, though the nature of the Waqf concept is a public concept with special characteristics.

As far as the family Waqf is concerned, it may be noted that the generally accepted accounting principles are not applied as the majority of the Waqf Managers believe that they can manage cash Waqf by using simple accounting methods, probably because they know that Waqf properties cannot be sold and monitoring the income collection and its distribution to beneficiaries do not require an integrated accounting system. It seems, however, that they did not take due account of the fact that Waqf is becoming similar to business corporation seeking to preserve its assets and ensure its continuity and that the Waqf assets are subject to depreciation over time which requires methods to calculate the annual depreciation cost. Besides, the cash *Waqf* needs to be invested in order increase its assets and its income to cover the natural increase in the number of its beneficiaries over time.

In the context of the spread of the free- market economies and the resultant contraction in the economic role of the state and the failure of these models to achieve social justice leading to an increase in poverty, it has become necessary to create new *Waqfs* and to preserve the financial asset of the existing family *Waqfs* by providing scientific assistance including the application of a generally accepted accounting system. Hence, this study suggests that with the continuing growth of the *Waqf* financial component, it has become necessary to use adequate accounting procedures to accumulate accurate information needed to make sound financial decisions.

Chapter II - Accounting basis of the family *waqf*

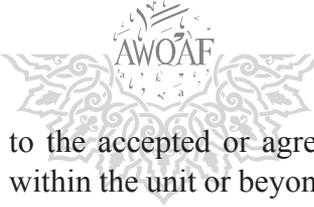
Introduction

The family *waqf* has been considered as a religious endowment the profits or revenues of which (usufruct) are assured only to the beneficiaries. As such, *al-waqf* was exclusively limited to the religious aspect, with no consideration to its economic and financial aspects. The fact that the donated assets or property (*al-mawqūf*) is an important asset in the community's wealth was given no consideration as well. The Islamic family *waqf* is established when a Muslim voluntary and irrevocably donates his/her wealth or a portion of it- in cash or in kind- hoping this good deed will be rewarded by Allah . It can also be established by many individuals jointly, as it is actually known in the Islamic jurisprudence (*fiqh*)⁽¹⁾. The family *waqf* is like a trust. It has many objectives. It serves the community. It can help increase one's income within the community, thus increasing the GDP as the national income increases. It is an important institution. Its financial assets should thus be maintained and should grow. It should have an efficient and professional accounting system. This chapter discusses the accounting methods and principles that can be used in a system that provides financial information to enable decision-making and thus help achieve the aforementioned objectives.

1) Importance and aspects of family *waqf* accounting

The economic units always need financial information to survive, maintain its activities and achieve its aims. Financial information is even more important now; as money is now the backbone of life. This information is provided through an accounting system, as the aim of any system of the kind is to provide financial information for the economic unit, according

(1) Dr. Mohamed Abdualhaleem Omar "a research on Waqf in Islam and similar arrangements in the West" A research presented to the Awqaf second conference. Um alQura University, Makkah Almokaramah, #27, available at feqh of Islam translations center.



to the accepted or agreed upon criteria and standards, to the end users, within the unit or beyond. The family *waqf* is no exception. It is one of the active economic units and financial institutions in the community. Without an efficient and proficient accounting system to control and manage its financial operations, the *waqf* may be lost. The objectives and importance of the family *waqf* accounting can be put as follows⁽¹⁾:

- a) It can provide precise timely information as required by the trustees of the *waqf* and the beneficiaries, on the basis of clear, accurate and complementary data and information;
- b) It can be used for the optimal investment of the financial resources generated by the properties, farms, etc. i.e. supporting and improving good governance in the financial decision-making process;
- c) Improving and supporting active communication with the stakeholders concerned;
- d) Improving the approaches and methods, like in collecting revenues or corps, distributing revenues, maintaining or replacing properties, and engaging in profitable investments to increase the financial resources of the *waqf*.

2) Fundamentals of the family *waqf* accounting

Every system has its own particularities. The same applies to accounting. In general, accounting is all about keeping and providing proof documents, bonds and legal instruments, all kinds of books, general ledgers and subsidiary ledgers, inventories, settlements and arrangements, etc., in addition of course to the human resources behind the system and its operating policies. In the family *waqf* accounting, these policies should take into account the relevant principles of the Islamic jurisprudence (*fiqh*) and the terms of the *wakif* (the donor) which usually show how the *waqf* should be managed and where and how to invest and spend the money.

(1) Dr. Abdularazag Mohamed Qasem “a book on the analysis and development of accounting information systems” college of economic, Damascus university, Dar Althaqafa library for publishing, Jordan, 2004, #20

The customs, in term of financial policies used since the establishment of the *waqf*, shall also be taken into consideration. With the information technologies and the computerization of many systems, including accounting that relies now on accounting applications and software, after long been driven manually and paper-oriented, all the mentioned instruments are now replaced with programmed electronic files and records that handle things automatically, saving both efforts and time. The fundamentals of the family *waqf* accounting can be as follows:

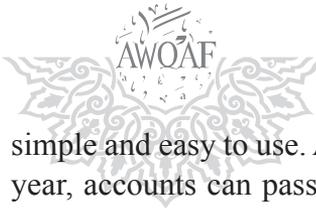
- a) The used accounting software, including the accounting manual, daily entries, ledger, balance sheets, reviews, lists and financial statements;
- b) Competent human resources who have IT and accounting skills to operate the software;
- c) The Islamic jurisprudence (*fiqh*) principles, the terms of the *wakif* (the donor), the policies, the accounting relevant and appropriate customs, that show how the system works;
- d) The accounting bases and their types (cash basis, accrual basis, and modified cash basis)

3) Accounting bases and principles & the family *waqf*

The major accounting bases will be briefly described hereafter. There are several accepted accounting bases that can be used, according to the nature and requirements of the party that uses the accounting system. The major accounting methods are as follows:

A. The cash basis

The cash basis is an accounting method that recognizes revenues and expenses only at the time physical cash is actually received or paid out during the financial year. Despite being confirmed as rights and commitments, the revenues and expenses, respectively, can affect the books only once a completed exchange of value has occurred. In this case, only one account can be used. It is similar to the cash balance. One similar example is the government cash accounting system. This basis has many advantages. It is



simple and easy to use. Accurate cash recording; at the end of the financial year, accounts can pass and reports and final statements can be prepared easily. But inaccuracy is one of its main drawbacks. The statements can be misleading at the end of the financial year, as the basis recognizes revenues only when they are actually received but expenses are recorded when they are actually paid out. So many states are now progressively using the IMF's Government Finance Statistics, which strictly uses the accrual basis.

B. The accrual basis

Under the accrual basis of accounting, all transactions (revenues and expenses) are reported in the statements of the financial year; revenues, received or not, and expenses, paid out or not, are reported on the income statement. It recognizes events regardless of when cash transactions occur; i.e. when the revenues received and the expenses paid out. The due revenues, the already paid expenses and the debtors' accounts are thus confirmed and reported on the financial year statements. The already received revenues and the due expenses will also be reported. This of course will need some necessary adjustments at the end of the financial year. This method provides a more accurate picture of the current condition of the stakeholder using this basis. Some people argue that the final adjustments in the accrual basis delay the release of the financial reports and statements and that it can confuse the accounts. This is not actually true, for three reasons:

- Primo, IT and accounting software make it possible to have financial statements when required, as far as entries are made appropriately on time;
- Secundo, the value (due revenues) is a right and a legally binding asset until it is received and the other value (expenses) is a legally binding commitment till it is paid out;
- Tertio, the cash balance before the financial period is precise and flexible. It can adjust to the expected changes in the prices and currency rates. It allows the current cash inflows/outflows to be combined with future expected cash inflows/outflows to give a more accurate picture of the current financial condition. It has the same accuracy advantage of the cash basis.

So many States are now rather using the accrual basis in their government accounting systems. This is in fact clear evidence to the shortcomings of the cash basis, even if some are using the modified cash basis that we will briefly discuss in § (C).

C) The modified cash basis

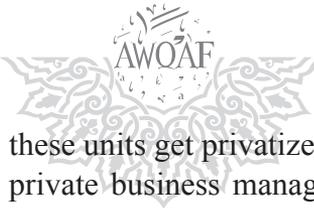
The modified cash basis is an accounting method that combines elements of the cash basis and the accrual basis. Some States that exclusively used the cash basis wanted to give more accuracy to their budgets, so they started using some accrual basis' principles and elements. They use intermediate accounts in expenditure allocations, for example, providing that the value will be recorded in the next financial year as is the case for the supplies that occur at the end of the financial period. This means the expenses will be recorded in the year when the commitment is made. As for the revenues, it would be possible to confirm revenue that is yet to be received, after it is compared with the estimated value. In both cases, the rights and commitments of the financial year are recorded on the statements of the year. And this is the very essence of the accrual basis.

The modified cash basis is adopted and actually used in some units, but in fact using the cash basis for some events and the accrual basis for other events is kind of double standards. But this is open for researchers to debate and analyze. In this paper, we will mainly discuss the accrual method of accounting.

4) Why the accrual basis for the family *waqf*

There is a similarity between government units accounting systems and the accounting systems of the family *waqf*. Governments have an accounting unit for the allocated financial resources. Each family *waqf* accounting unit is a separate unit⁽¹⁾. Since the expenses are paid out of the earned revenue, one can say that when it is sought to have accurate financial operations of some government units that use the cash basis

(1) Mohammed Yassen Alrahalah "accounting and control aspects of waqf in Jordan" previous reference, #37.



these units get privatized or converted into a public company, to apply the private business management accounting system. This implicitly means the use of accrual basis as an accounting method, which in fact shows that the accrual basis is more accurate and allows optimal monitoring of the purchase and use of fixed assets. It is also used for permanent and continuous monitoring of the accounts of debtors and creditors and to have the rights and obligations, when they are already or yet to be paid, reported on the statements of the financial period. This is exactly why it was recommended to use the accounting and financial bases that are used to manage the operations of the privatized government institutions, which are very similar to the accounting systems of businesses. These systems can be used for the *waqf*, taking into account the principles of the Islamic jurisprudence and the terms of the *waqif* (donor). On the other hand, there are many similarities of the accounting systems used by businesses and the systems that can be used in the family *waqf*. Both primarily aim to handle the financial statements of the economic activities to protect and save the capital, mostly fixed assets, invest them and reap the profit. This is why the business accounting systems can be recommended for the economic activities of the family *waqf*. The aim is to avoid the negative aspects of the cash basis, mainly the time gap and the inaccuracy in recording the costs of the fixed asset uses. As for the cash flows in the cash basis, a reasonable cash balance, effective implementation and use of installments under collection can help achieve the same the cash flow. The installments under collection are reported in four-accounting entries, including the two bank or fund and installments under collection accounts for the debits and the two receivables and revenues accounts for the credits (the next chapter discusses this point in detail). We conclude that the use of the accrual basis in the family *waqf*, taking into account the principles of the Islamic jurisprudence and the terms of the *waqif* (donor), can take the advantages of the two accounting methods and, at the same time, avoid the disadvantages of the cash basis. This conclusion further supports the hypothesis of this paper.

Chapter III

Practical applications of the accrual basis of accounting for the family *waqf*

Introduction

It was believed, for a quite long time, that the accrual basis cannot be applied to government accounting and that cash basis is the best suited method for this type of accounting. But governments, one after another, are now using the International Monetary Fund's Government Finance Statistics (GFS) framework, which shifts emphasis to the accrual basis; the consumption of fixed capital (the economic equivalent of "depreciation"). Under this method, the revenues are recognized and reported even if they might not be received immediately. Expenses, on the other hand, are matched with the related revenues and/or are reported when the expense occurs; they are recognized in the period in which the related revenue is recognized (the Matching Principle). The same also applies to the public budgets and the other elements of the principle of accrual basis accounting. By the same token, according to the researcher's views in practice, that belief even prevails in legal review offices⁽¹⁾; they too believe that the cash basis is the best accounting method for the financial operations of the family *waqf*. However, this paper has demonstrated theoretically and will prove practically in this chapter that the accrual accounting basis is the best method to manage the Islamic family *waqf* funds, especially in light of the complexities of the market and the evolution of the accounting methods, with the electronic accounting applications and software. But of course capital in the *waqf* has its own particularities. There is no ownership over the assets which can rather be invested in accordance with the Islamic jurisprudence and the terms of the *waqif* (donor). The beneficiaries share the fruits and usufruct of the *waqf* and the investments. Here are some suggestions for practical cases of the uses of the accrual basis in the family *waqf* accounting:

(1) The researcher is in charge of the accounting system of the Falata *Waqf* in the Holy Madinah. This system was handled and reviewed by the Office of Al Amri and Partner Co. for legal accounting, Jeddah



1) Recording fixed assets, their consumption and replacement

The fixed assets are potential future economic benefits resulting of past economic events⁽¹⁾. In the family *waqf*, fixed assets are limited to real estates, farms and land in mortmain (*muhabbasa*) for religious purposes. So the following cases will be limited to the real estate that might be donated (*mauqufa*) as newly established *waqf* and the endowments that are long been established as *waqf*. The accounting bases of these two cases can be as follows:

A. A newly established *waqf*: the cost of the asset is entered. It is consumed through fixed installments. An account for the fixed assets consumption must be established and reported in the end of the financial period

When purchasing the asset or adding assets:

xxxxx from acc of the asset, according to its nature
xxxxx to the bank or fund acc

When accounting for the use of the asset (the consumption rate)

xxxxx from acc of expenses – consumption of fixed assets
xxxxx to the acc of all fixed assets consumption

(Recording expenses and depreciation of fixed assets in the end of the financial period)

When replacing the asset

From

xxxxx acc/all asset consumption
xxxxx acc/fixed assets – the new asset
xxxxx acc/losses of replacing fixed assets (in case of loss)

To

xxxxx acc/ fixed assets – old asset
xxxxx acc/profits from replacing fixed assets (in case of profit)

(Replacing the asset and entry of both revenues and expenses accounts according to the case (loss or profit) after assessment of the new asset)

(1) Dr. Tawfeq Abdulmehsen, associated proffesour at King Abdulaziz university “PowerPoint presentation on financial accounting”, published in King Abdulaziz university, #25, entered in 13-4-2011

The previous entries confirm the possibility of maintaining *waqf*'s fixed assets by knowing their true value at any time. They should be maintained or replaced to be protected from loss or decay over time. This paper suggests recording the depreciation rate in a separate bank account without any accounting entry so that the amount remains within the cash account. The aim is to have ready and available funds when there is need to maintain the assets, in order to avoid monetary differences and preserve the assets. This can be handled the same way businesses handle their assets, bearing in mind that the endowment assets (*waqf*) can be replaced but cannot be sold in accordance with the Islamic principles and the terms of the *waqif* (donor)

(2) Collecting and monitoring revenues

When renting the property

No accounting entries. The rental event and its value are written down as memo in the rents book

When collecting the rent

xxxxx from the bank or fund account

xxxxx to the revenue account

(Collecting the rent in cash or by check)

At the end of the financial period, if the rent or a rent portion is yet to be paid it shall be recorded:

xxxxx from the due revenue account

xxxxx to the received revenue account

(Remaining amount shall be settled at the end of the period)

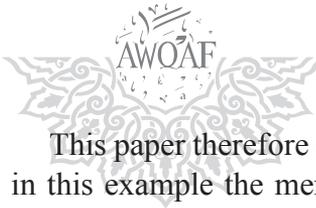
On the last day of the financial period, the management expenses can be calculated. These expenses are taken from the actual revenues collected during the financial period. The value of the amounts to be given to the eligible beneficiaries shall be calculated as well, after deducting the expenses:

xxxxx from activity expenses account (management fees)

xxxxx to the bank or fund account

(The value of management fees is calculated as a percentage of revenues that have been collected during the financial period)





This paper therefore concludes that the accrual basis of accounting uses in this example the merits of the cash basis and avoids its shortcomings and disadvantages. It carried out the required cash basis functions from the beginning of the period until the end. This confirms the second hypothesis in this paper and the views of the author who argues that the accrual accounting is the best suited for the family *waqf* accounting

(3) Calculation of due and paid expenses

In the case of immediately paid expenses, the accounting bases do not differ in how to establish the accounts. The expenditure account will be value debtor and cash account creditor. But there is a difference when we are talking about the due expenses and paid expenses. The cash basis does not recognize the expenses that should be recorded in case of supply or services that have not been paid for yet. But it recognizes the paid expenses even if the required supply or service is yet to be carried out. This is why it is inaccurate. Under the cash method, the expenses, regardless of their value, will not be recorded in the financial period, if the value is not paid.

xxxxx from the expenses account (by type)
xxxxx to the due expenditures account

(Recording the due expenses in the expenses statements when their value is yet to be paid)

When paid in the following period, the following entry will be applied

xxxxx from the due expenditures account
xxxxx to the cash or bank account

(Passing of the account of due expenses from the previous period when they are paid)

The paid expenses are recorded as they are paid:

xxxxx from the due expenses account
xxxxx to the cash or bank account

In the next period IT will be as follows:

xxxxx from the expenses account
xxxxx to the paid expenses account

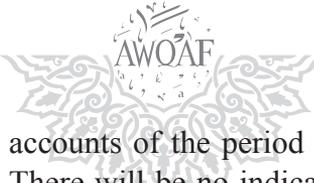
(Passing of the paid expenses account recorded in the previous period expenses account)

It is obvious that the accrual basis in this case is fairer. It is not different from any business accounting system. The regular settlement entries are recorded as the expenses are recorded in their financial period. The

balance of the actual expenses that have been paid will not be affected. The expenses settlement is carried out on the last day of the financial period and possibly the day after. Therefore, the distributions will not be affected nor the management fees which can be calculated based on what has been collected from the actual revenues, after reducing the expenses that have been paid. And even in the case the due expenditures are reduced from the revenue, nothing will prevent reducing the percentage of distributions and the proportion of management fees in order to have an independent 'personality' of each financial period, in a way that allow all its revenues and expenses to be recorded. When the payment of expenses is already made, there will be no difference between the two accounting methods (cash basis and accrual basis). Under the cash basis, the accounting operation supposes that there is a sum of money paid to another party and should therefore be recorded as a cash outflow. Under the accrual basis, the amount of money is paid to the other party which is supposed to supply something or perform a service for the unit during the next financial period.

(4) Control

Financial control is one of the most important objectives of any accounting systems. Without an efficient and effective control system, the assets and their investments will not be protected and will not grow. Control includes many activities: reviewing and auditing investment activities of the family *waqf* in order to maintain the integrity of the financial component of the *waqf*, protecting the rights of the beneficiaries, and providing timely accurate and objective data and information to the managers the family *waqf* and the eligible beneficiaries to help them make good investment decisions. Control, internal audit, external control over the accounts and the court oversight are one of the most important financial control systems. They all rely on information provided by the accounting system. If we compare the cash basis and the accrual method, in controlling an account of the family *waqf* accounting system, we will see that under the cash basis the fixed assets, that are often real estate, land or farms, have a purchase value or an estimated value recorded on the



accounts of the period in which the purchase or the estimation is made. There will be no indications in the accounting system to the asset in the next periods, except in the external statistics records. There will be no accounts for the use of the asset, its true value during its life cycle, its value when it is replaced. All what you got here is an administrative decision estimating its value. You can easily argue that this is not really credible. Besides, those estimates are often inaccurate. This can be further noticed in the government accounting systems that relies on the cash basis. Under the accrual basis, on the other hand, the real value of the asset is always there; when it is purchased, estimated, or even when it is replaced, thanks to the annual accounts of the uses of the asset during its life cycle. We will thus be able to know exactly when the book value of the asset equals zero; when it will need to be restored and maintained, which can help preserve it. This paper thus concludes that the accrual basis of accounting is more effective than the cash basis in controlling the assets.

(5) The financial position and the activity outcome statement

The goal of accounting in general is perhaps to shed light on the activity outcome and financial position of the accounting unit and to provide the necessary information to make decisions. This paper has already proved that the accrual basis helps provide realistic and accurate data and information. Under this accounting method, the revenues and expenses are recorded on the statements of the financial period, whether they are received/paid or yet to be. This can help make sound decisions to maintain the continuity of the family *waqf*. Such information is provided through financial statements:

- A- The financial position statement: the asset of the *waqf* and its fixed and traded assets (real estate, land, etc.) are recorded in this statement. This paper suggests a model for the family *waqf* financial position statement, using the accrual basis.

Table (1)
The financial position statement on 31/12/2010

Assets	Explanation	2010	2009	Observations
Current assets				
Cash in banks and fund	3	xxxx	xxxx	
Beneficiaries loans and other debit balances	5	xxxx	xxxx	
Paid installments and due revenues		xxxx	xxxx	
Total		xxxxxxx	xxxxxxx	
Estates and buildings	6	xxxx	xxxx	
Farms and land	7	xxxx	xxxx	
Other fixed assets	8	xxxx	xxxx	
Total		xxxxxxx	xxxxxxx	
Liabilities				
Current liabilities				
Accrued expenses, prepaid revenues and credits	9	xxxx	xxxx	
Funding				
Money of <i>waqf</i>	10	xxxx	xxxx	
Accumulated surplus	11	xxxx	xxxx	
Total of liabilities and funding		xxxxxxx	xxxxxxx	

*By the researcher

It should be noted that the fixed assets will appear in this statement only in accrual accounting, as there is no recognition of such assets in the cash basis. This clearly shows that the use of accrual basis in the *waqf* accounting systems helps protect the donated financial resources (*mauquf*).

B- The *waqf* revenue and expenses statement: this statement shed light on the activity outcome. It is like the revenue statements in business



projects. The revenues that are actually collected from the investment of the *waqf* assets and the money spent to preserve these assets are recorded in this statement, including the management fees and the distributed net profits.

Table (2)

Statement of revenues and expenses and the accumulated surplus of the financial year closed on 31.12.2010

Elements	Explanation	2010	2009	Observations
Activity revenues	12	xxxx	xxxx	
Activity expenses	13	- xxxx	xxxx	
Surplus		xxxxxx	xxxxxx	
Public and administrative expenses	14	xxxx	xxxx	
Other revenues	15	xxxx	xxxx	
Net surplus		xxxxxx	xxxxxx	
Balance account at the beginning of the period	17	xxxx	xxxx	
Net surplus		xxxxxx	xxxx	
Profit distributions (to the beneficiaries)	18	xxxx	xxxx	
Accumulated surplus		xxxxxx	xxxxxx	

*By the researcher

In this table we notice that the activity revenue is the outcome that results from the use of the endowment fixed assets. The activity expenses include for example money spent on the maintenance of those assets, on repairs and engineering and development studies. They also include money spent on the legal aspects for the protection of *Waqf*, and the bonuses of principals and their assistants in its management. The administrative expenses are any expenses other than activity expenses.

C– Statement of receivables and payments: this statement highlights the cash balance in the beginning of the period, the receivables and payments made during the period, and the cash balance in the banks and the fund at the end of the period. It is similar to a statement of cash flows in commercial projects that include resources and uses. This paper suggests the following statement:

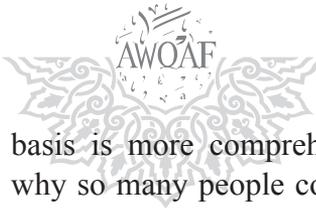
Table (3)

Statement of receivables and payments of the year closed on 31/12/2010

Elements	2010	2009	Observations
Cash in banks and fund – balance in the beginning	xxxx	xxxx	
+ cash receivables			
Activity revenues	xxxx	xxxx	
Other different revenues	xxxx	xxxx	
Total receivables	xxxxxx	xxxxxx	
- cash payments			
Amounts paid to the beneficiaries	xxxx	xxxx	
Activity expenses	xxxx	xxxx	
Public and administrative expenses	xxxx	xxxx	
Paid installments and other credits	xxxx	xxxx	
Payments of other debit balances	xxxx	xxxx	
Additional investment properties	xxxx	xxxx	
Additional fixed assets	xxxx	xxxx	
Total of payments	xxxxxx	xxxxxx	
Cash in banks and fund – balance at the end of the year	xxxxxx	xxxxxx	

(6) Electronic accounting systems

The electronic accounting system is a system that employs information and communication technologies in the treatment of all financial operations of the business parties. It manages the repeated typical accounting operations, which used to consume time and effort, not to mention the possibility of inherent human error in this kind of activities. The accrual



basis is more comprehensive and complex than the cash basis, that's why so many people consider that it's difficult, because it requires great knowledge and skills, particularly if the process is done manually or traditionally. And they have right to believe so. Using a manual accounting system, how all these operations can be done: controlling and monitoring intermediate accounts required under the accrual basis, calculating rent installments under collection, accounts of thousands of beneficiaries and hundreds of tenants... But with the electronic accounting information systems, all accounting procedures are programmed in advance so that all that the accountant needs to do is enter the correct data in the specific accounts, correctly. Therefore, the use of information and communication technologies and accounting digital software has encouraged officials to apply the accrual basis of accounting. *Al-waqf* is no exception.

Conclusions and recommendations

Following the arguments and views discussed in this paper, the researcher concluded that despite the fact that it is considered as a charity that does not aim to make a profit, the organizational structure and main activities of family *waqf* are similar to business organizational structure and business investment, except in the ownership of assets, particularly in generating profits and assets investment returns. It actually further supports the first hypothesis of this paper.

The researcher also concludes that the accounting system that uses the accrual basis applied in businesses is suitable for application in the family *waqf*. It enhances the efforts to preserve the resources and provides accurate financial information that can help take good investment decisions that increases the financial resources of the *waqf* which can be affected as the number of beneficiaries naturally and steadily grows. This conclusion further supports the second hypothesis of this paper.

On the basis of these conclusions, the paper recommends encouraging the family *waqf* departments, accountants and legal review offices to use business accounting systems in the family *waqf*, but taking into account the Islamic principles related to the *waqf* and the terms of the *waqif* (donor). This will help promote and preserve the assets and make investment decisions to increase the financial resources of the *waqf* which can be affected as the number of beneficiaries naturally and steadily grows. The accrual basis accounting method is efficient. It provides effective accounting procedures for the use and consumption of fixed assets and reaping the fruits. This accounting basis also generates true and accurate financial information to take good investment decisions.

Researches



The achievements of the endowment's institutions and their role in Islamic awakening

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Introduction

This study investigates some of endowment's achievements in religious, cultural and social domains throughout the history of Islamic civilization. Indeed, the focus on these domains are of utmost importance due to various troubles and problems that currently haunt Islamic societies, particularly that of religious extremism of some groups that ignore the Islamic tolerance and scientific investigations that would revive the community to its right path. Since all Islamic communities everywhere strive to overcome these troubles, this study is a reminder of what should be done on the part of the endowment institution, the state and civic society.

In the recent last year, Islamic communities have experienced a blessed renaissance in intellectual, scientific social, economic and even political domains. Such a renaissance shows signs of a strong desire to follow the right path to revive and revitalize its glory and radiance that enlightened mankind in the previous ages. It also seeks a vital role in the present times, especially in the domains of knowledge and technology. Such new role is

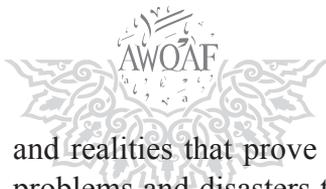


not new to Islamic civilization which exerted similar task in the past through the preservation of Greek, Persian and Indian tradition. It also created an authentic Islamic culture that drew its principles from the holy book and the Sunah. Indeed, Islamic civilization in the past pursued profound and scientific studies of the fundamental principles of Islam, yet with openness on the traditions and cultures of other nations, mainly experimental and rational sciences without religious bigotry and obscurantism.

This Islamic awaking, both in the east and west, is a rejuvenation of Islamic thought, hence restoring the right, scientific path, without any deviation from the Koran, Sunah and unanimity of our ancestors. Such endeavors are of utmost importance, particularly in an age when the Islamic community is subject to continuous attacks from its both internal and external enemies who have changed and distorted the realities and principles of Islam and its worshipping acts that helped people preserve the right path. Such enemies also targeted the laws and *chari'a* that oriented people and saved them from the darkness of ignorance and slavery.

In the past, the institution of endowment achieved many of the religious scientific, educational, and social expectations that Islamic communities aim at in our current age. Certainly, it is an ideal model for the different development and rebirth. Muslims cannot ignore such important and crucial role while pursuing their current blessed awaking. The purpose is not to imitate past endowment practices but to take advantage of the contribution and innovation made by our savants and scholars in the past. These innovations helped Muslims eschew many of the troubles and disasters that engendered them. Accordingly, the institution of endowment is a mirror that reflects the civilizational and humanitarian role of the Islamic community in the religious, charitable social and cultural dimensions; the same dimensions that should be revitalized to eliminate the calls of straying from the right path and to overcome poverty and ignorance that a large amount of the Islamic population are currently experiencing.

Those observing the achievement of the endowment's institutions in the current period in the Islamic world find real and concrete examples



and realities that prove that the Islamic community is now aware of the problems and disasters that endanger its existence and the right path that it should follow to overcome such troubles. It is an awaking that aims at eliminating the side effects of colonialism and the mistakes made by some rulers. Hence, this awakening did not emanate from vacuum, improvisation and promptness. It is an awakening that emanates from a long and authentic history of scientific research and field reform that was achieved in our Islamic civilization.

Hence this blessed awaking should take into consideration the endeavors and achievements made by the institution of endowment in various Islamic nations in the past, especially in the domains of religion, culture and society, the major pillars of any community. These domains were omnipresent in the initiatives taken by kings, reformers, and philanthropists. Hence, in what follows we will focus on these domains to identify and examine the different achievements that were and would be attained by such awakening to combat poverty, ignorance and ensure security, stability and social solidarity.

1- The Religious field:

The institution of endowment emanates from the Islamic Chari'a which rests on the worshipping of God and the realization of His teachings as the cornerstones for the completeness of Muslim personality and social stability. Its establishment goes, therefore, back to the appearance of the first Islamic community in the Holy City. It was the prophet who first incited Muslims to implement endowment in accordance with the teachings and principle of Islam. Indeed, the prophet (peace be upon him) was the first to implement endowment so that Muslims might emulate his example. Endowment, hence, remained a major feature of the Islamic world in the east and west. In the religious domain, the religious endowment covered the building of mosques, education, printing copies of the Koran and the books of correct Hadiths.

1-a) the construction and restoration of mosques and teaching the holy book and the prophet's sunah:

Constructing mosques in the Islamic community is a major requirement for the maintenance and perpetuation of the faith, the unity of Muslims and their power. For this reason, the first task achieved by the prophet upon his migration to the medina was to build a mosque for worshipping God and as a place where Muslims could meet to discuss religious and secular issues. The mosque in this sense became a worshipping place as well as a space where to discuss and study the Chari'a. The institution of endowment helped construct thousands of mosques in both urban and rural areas and in any place populated by Muslims: the mosques of Allah shall be visited and maintained by such as believe in Allah and the Last Day, establish regular prayers, and practice regular charity, and fear none except Allah. It is they who are expected to be or true guidance.⁽¹⁾ The first benefit was teaching children the holy book and the tradition of His prophet (peace be upon him) in mosques. Its function was widened to teach the different religious literary and rational sciences; sciences that flourished in the Islamic civilization, particularly those adopted from other nations. Accordingly, it is no coincidence that some mosques in both east and west (of Islamic civilization) had become famous universities that attracted students from all over the world to learn under the supervision of sheikhs who were knowledgeable in the sciences of language, grammar, rhetoric, jurisprudence, fundamentals, hadith, philosophy, mathematics, medicine, and chemistry without losing its religious role, that is fulfilling the obligatory prayers. Among the mosques that played such roles were those of the mosque of Mecca and the mosque of medina. In both mosques thousands of jurists and savants taught and thousands of students graduated from them. Students travelled to it from different poles of Islamic civilization. The most famous of these were the Hejazi travels as documented in travel narratives that provided plenty of information about the savants of Mecca and medina and the sciences that were thought in these two mosques. The

(1) Surah tawba(the Repentance) verse 18



most of these narratives is “mal’ al ‘iba bima jama’ bitouli al rayba fi al wihja al wajiha ila al aramayn mecca wa tiba” wich was written by abu Abdellah Muhammed ibn Omar ibn Rachid al Fihri al Sebti who died in 721 of the Hejir year. It exemplified a perfect example of the longing of the savants of the Islamic west to the sacred land and their quest for science, knowledge and scientists. We find similar accounts in chronicles, anthologies and biographies. For instance, ibn Abdelmalik Al Murakechi mentioned in his account that abu Omar Maymoun ibn Yassin al Lamtouni who died in Seville in 350 hejir made a pilgrimage to Mecca where he learned from Abu Abdellah al Tabari who taught him Sahih Muslim; he also learned from abu Abdellah Muhammed ibn Ahmed al andalusi from whom he learned the interpretation of al Tabari.⁽¹⁾

In the different Islamic countries many mosques were built, hosting the best of savants who played significant roles in the revitalization of the scientific and intellectual life in the Islamic civilization. They attracted students from various belongings due to the celebrity and erudition of their savants; cases in point are the Zaytouna mosque in Tunisia,⁽²⁾ the Qarrawiyyen Mosque in Fez⁽³⁾, al Azhar⁽⁴⁾ in Egypt and al Mustansiriya⁽⁵⁾ in Baghdad. The mosque was a major spiritual, intellectual, and cultural center. For this reason, the institution of endowment established next to every mosque a library that consisted of the holy book, hadith books, religious, scientific and philosophical books that students and tutors needed in their studies. Some of these libraries became widely known for the various publications in the different sciences’ and the rare manuscripts that it hosted. Students from all over the Islamic world travelled to these libraries to take advantage of its wealth and treasures. Cases in point are

(1) Al Dayl wa Tamila by Abu Abdellah Muhammed Ibn Abdemalek al Murakechi

(2) One of the oldest universities from which eminent scholars graduated.

(3) It was built by Fatima al Fihriya in Fez, indeed, Fez was the scientific capital of Morocco.

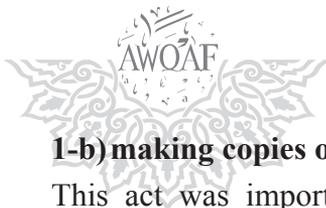
(4) It was built during the Fatimid period, many savants and scholars graduated frm this school, including Imam Muhammed Abdo.

(5) It is situated in Baghdad, it was built by the Abassid Caliph al Mustanssir bi Allah. Religious, literary, medical, mathematical and philosophical sciences were taught in this school.



the Qarawiyyen library, which was established next to that famous mosque. The Sultan Abu Inan al Marini who established this library in 750 hejir stated in a document that this library is endowed for the benefit of students from all over the Islamic world; its books cannot be sold, nor taken away for the sake of their protection. The document reads as follows: "He made it (the sultan) - may God grant victory to him-an eternal endowment for all Muslims until the Day of Judgment to promote the quest of knowledge and facilitate such quest for those who want to read copy or consult books. Yet, no one can take it away." All Moroccan kings took care of this library by enriching it with new publications; some of them used to by expensive manuscripts and endow it for the library to diffuse knowledge. They even sent delegates to the Mashreq to bring rare books. The mosque played a significant spiritual as well as cultural roles in Islamic civilization. Students used to move through the different lectures that the mosque arbitrated. In the current age with this blessed awaking is the mosque still fulfilling the same functions as it was in the past?

The role played by the mosque in the past is the cornerstone and essence of the Islamic faith; hence such role cannot stop regardless of the degree of development that the mankind might attain. Cultivating the spirit and relating it to its creator is the major role of the mosque. And is it possible to separate the spirit from the body? Certainly, the mosque will remain the spiritual and intellectual center that unites Muslims and relate them to the creator. Even with the propagation of universities and institutes, the mosque cannot stop fulfilling such functions; each as its essential role. The cultural and intellectual role of the mosque should be maintained through the institution of endowment that takes care of and controls mosques. This was manifested in the establishment of professional scientific chairs in different mosques to teach jurisprudence, the hadith, language, literature and rhetoric. Such endeavors should be intensified through the involvement of other institutes and entities such as the ministry of national education; the ministry of culture, civic society, intellectuals and savants for the notion of awaking entails the participation of all these entities.



1-b) making copies of the Koran and the books of Hadith:

This act was important for the mosque to fulfill its religious and intellectual functions. Muslims cannot do away without the Koran which is the truth, evidence and the constitution of Muslims until the Day of Judgment. The Koran orients Muslims in their acts of worshipping and practical life. For this reason, the institution of endowment prioritized the act of copying the Koran in accordance with the unanimous and agreed upon versions. It ensures that the general public read these versions that do not deviate the words of God and do not change its meaning. Accordingly, the book of Allah has always been preserved from deviation and change as the almighty said: “Indeed, it is We who sent down the Qur’an and indeed, We will be its guardian” (Surah, Hijr/verse9)

The same care was devoted to the books of Hadith, particularly those of sound Hadith. The institution of endowment copies these Hadiths as they were gathered by the prophet’s companions. They, then, distributed it in mosques and its affiliated libraries to make of it the major source of Hadith. Morocco has always been interested in the sayings of the prophet; this reached its apogee with the establishment of a specific school to teach the noble hadith and its related intellectual issues: the Hassanian Hadith Institute that was established by king Hassan the second in Rabat the capital city of Morocco. It has-and still- played a considerable role in training students in the sciences of Hadith and encouraging them to write theses on related topics.

2- The Cultural field:

In this aspect, the institution of endowment engendered outstanding results, for the cultural dimension is that facet reflects Islamic civilization and its message with its spiritual purity, and its cultural and the intellectual dimensions that came to free the intellect from all manacles; indeed, Islam is a faith that came to refine the reason and cultivate the soul in a period that was characterized by the accumulation of ignorance, injustice and obscenity. The Islamic faith freed the human from all constraints that enslaved people, and removed his veil so that they can see their reality, the secret of their existence and their creature whom they must worship alone:

for Him (alone) is prayer in truth: any others that they call upon besides Him hear them no more than if they were to stretch forth their hands for water to reach their mouths but it reaches them not: for the prayer of those without faith is nothing but(futile) wandering (in the mind)⁽¹⁾

The Islamic faith addressed humans as privileged creatures whom God granted a reason, senses and feelings to distinguish evil from good, and light from darkness. The human, thus, has a new civilizational role through science, knowledge, productivity and the cultivation of the land; it is a role that fits their humanity: “already have we shown the signs plainly to you, that you may learn wisdom.”⁽²⁾ Following this, the institution of endowment was not only devoted to the religious role (though the most important) but included the cultural as well. Such cultural interest was concretized by the establishment of specialized schools to teach religious, literary and scientific sciences; it even included administrative and military sciences that served the interest of the state. Though these schools complimented the role of the mosque, it was different from the latter in consistent and regular attendance of the students as is the case with universities. The institution of endowment in coordination with the state granted them scholarships and lodging such as dormitories. Upon their graduation, the students used to find jobs in their area of specialty. Hence, these schools fulfilled two major functions: the first was to diffuse the common culture and the second was to train students in the domains required by the state. In Morocco, for instance, endowment and the state played significant roles in the establishment and equipment of these schools. The most famous of these schools are:

The School of Sabirin:

It was built by Yussef ibn Tachfin the founder of the Almoravid dynasty. In this school, students used to study jurisprudence, interpretation and the hadith. It is believed that it was named like this for the patience of the students and their refusal to succumb to Amohads.

(1) Surah, the Thunder (Ra'd) verse : 14

(2) Surah, the Iron (hadid) verse : 17



The School of Saffarin:

It was built by Ya'cub ibn Abdelhaq al Marini in the city of Fez. It abode by the policy of moderation that was adopted by the banu Marin; it also encouraged openness to other sciences.

The School of Sahrij:

It was built by Sultan Abu al Hassan ibn Sa'd al Marini; it taught the sciences that was encouraged by the Banu Marin, particularly the religious and literary sciences.

The School of Sab'yyen:

It was specialized in teaching students the Koran.

The School of Attarin:

It was constructed by Abu Sai'd al Marini; many students graduated of justice, administration and education graduated from it.

The Misbahiyya School:

It was established by Abu al Hassan al Marini; it was the same in grandeur as the other schools.

The Bou'naniya School:

It was constructed by Abu Inan al Marini who himself supervised the school to make sure that it meets the needs of the state.

There many other schools that were built during the reign of the Alaouid who pursued the same objective. It is important to note that these schools were managed and supervised by kings and sultans to ensure that they meet the needs of the state. The Marinids were excelled in this tendency for they constructed le largest number of schools. They also experienced a cultural revival that touched all the fields. We also notice that the coordination between the institution of endowment and the state was very strong. While kings built and controlled these schools, the institution of endowment met the symbolic and material needs of the school. And of such cooperation Morocco witnessed an unprecedented cultural revival and rebirth.



Nowadays, and due to this blessed awakening, the institution of endowment, is required to revive such a cooperation in the cultural field by working with the concerned institutes to combat illiteracy and revive thought, and literary and religious culture in an age of scientific development with no place for backwardness.

The Social field:

In this domain, Islam achieves its most perfect results. It furthers human relations which are based on love, solidarity, and beneficence. It is through such principle that peace and security are maintained in society. It also helps remove animosity between people, and reduce the gap between the different classes; Islam conditioned believing in God with beneficence and charity. The Almighty said:

It is not righteousness that you turn your faces towards East or West; but it is righteousness to believe in Allah and the last Day, and the angels, and the Book, and the messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity, to fulfill the contracts which you have made; and to be firm and patient, in pain and adversity, and throughout all periods of panic. Such are the people of truth, the God-fearing.⁽¹⁾

Accordingly, the institution of endowment had a pioneering role in this domain due to its belief in the complementarity between worshipping and beneficence. It constructed orphanages and elders' houses to host the orphans, the widows, the elders and the wayfarer. It also supplied them with all that they need ranging from food, clothes, medicine, education to health. It also helped those in need, artisans, farmers and manufacturers in times and seasons of famine and drought. Besides, it facilitated movement between the rural and urban areas through the construction of roads, and the digging of wells.

(1) Surah , Al Baqara (the Cow) verse 177

The institution of endowment played significant role in the domain of health. Indeed, the healthcare is a major component of social services. In cooperation with the state, the institution of endowment constructed hospitals and equipped them with equipments, doctors and medicine. All social categories, including prisoners used to benefit from these services. Such interest in healthcare emanates from the Islamic principles that emphasized the cleanliness of the body, the clothes and the environment when humans live. These principles and teachings also ordered Muslims to avoid all what can hurt the body; God said: “o’ you people! Eat of what is on earth, lawful and good; and do not follow the footsteps of the Evil one, for he is to you an avowed enemy.”⁽¹⁾ Healthcare starts with the protection of the body from unhealthy food and drink. For this reason, endowment was careful to choose places where to build maristans. The Almohad historian Abdelwahed al Murakechi mentions that:

Yacub al Mansour al Muwahidi built an unprecedented Maristan in Marrakech; he chose an appropriate place with a moderate weather. He equipped it with water, doctors, medicine and clothes that patients needed. He himself supervised its services, visiting the patients occasionally. ⁽²⁾

These maristans devised new ways of curing different illnesses including the psychological one. Certainly the institution of Endowment achieved all of these in coordination with the state and civic society.

The Impact of colonization of the Institution of endowment:

Endowment system regressed during the colonial period due to the attempts of the colonizer to weaken Muslims. It represented Muslims as backwards without any civilization and history like primitive tribes. It instead promoted the slogan of the civilizing mission, that it to equate colonization with civilizing these backward societies. Yet, its implicit purpose was to prevent this Islamic community from regaining its past glory and power.

(1) Surah , Al Baqara (the Cow) verse 168

(2) See pages 411-412

The current blessed awakening is an attempt to correct all these misconceptions and ideas to revive all the authentic elements of the Islamic community, starting with a religious reform and the revival of Arabic language that was neglected through the diffusion of the colonizer's language. Accordingly, the institution of endowment should focus on the religious cultural and social principles to revitalize the civilizational role that characterized the Islamic community in the past.

It is important to underline that this awakening should seek tangible and concrete results and not big slogans. The elimination of poverty, ignorance, illiteracy, regression and the diffusion of knowledge and authentic thought have become necessary priorities in Islamic societies. Hence, the institution of endowment can play a significant and vital role in these domains. Muslims everywhere still strongly believe in the efficiency of endowment. They believe that charity is essential to worshipping; God said: O you, who have believed, do not invalidate your charities with reminders or injury as does one who spends his wealth [only] to be seen by the people and does not believe in Allah and the Last Day. His example is like that of a [large] smooth stone upon which is dust and is hit by a downpour that leaves it bare. They are unable [to keep] anything of what they have earned. And Allah does not guide the disbelieving people.⁽¹⁾

Even if Islamic communities attained outstanding achievements due to the role played by the institution of endowment, it is necessary to preserve the efforts made by our ancestors. Nowadays, our societies are in grave need of an education that would further our nations in all the different domains. It is in need of youth's training, investment and careful planning. The institution of endowment can achieve many developmental projects. Some Islamic countries pursued such policy through the establishment of Endowment Funds that helped develop the religious, social, intellectual, urban and medical domains. It also helped build mosques, schools, universities and institutes. Besides, it helped farmers and artisans. This situation should be the norm in our Islamic countries in our contemporary period.

(1) surah baqara verse 264

Researches



A Strategy for Developing Islamic Environmental Endowment

Dr. Adil Abderachid Abderazak

The president of the Yamani Association
for the Environment and Sustainable Development

Due to Western cultural hegemony on many aspects of life in the Islamic world and the waning of the latter's civilizational role, Muslim communities have lost much of their social, cultural and religious heritage, including the system of Islamic endowment. Indeed, in our modern times such system has been extremely marginalized and overlooked which hinders its development and diversity. Environmental endowment is an example of endowment that was about to disappear amidst these new conditions and transformations.

Accordingly, this study aims at reviving the tradition of environmental endowment through a suggestion of a comprehensive strategy to resuscitate and develop environmental endowment, taking into consideration current environmental issues and questions of sustainable development. Throughout, I explain and justify the goals of our strategy, which I divide into three major components: the study of environmental endowment; environmental endowment's media; and environmental endowment fund. This survey concludes with a presentation of some of the projects that may be concretized through the help of the environmental endowment fund and



the criteria we might adopt to select these projects. The study also provides examples of past practices of environmental endowment.

Islamic civilization pioneered in the establishment and development of a new type of charitable institutions, namely endowment, which sought to meet the general needs of societies, targeting not only the poor or religious entities but the other social domains as well. Jurists always regarded endowment as one of the specificities of the Mohammedan Uma (community). Imam al Nawawi had once said ‘it is a specificity of Muslims.’ Its diffusion all over the Islamic world pushed Ibn Khaldun to make the following statement: “any poor visiting a foreign place finds special care and welcome from its inhabitants.”

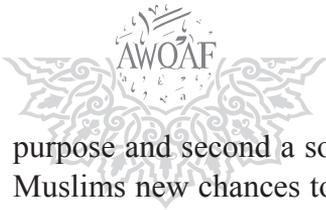
The scholar Ibn Muqqaddam al Maqdisi described endowment as “the endowment of assets and fruits,⁽¹⁾” taking into consideration that such endowment is an ongoing charity that aims at the perpetuation and the continuation of retribution and closeness to God through constant investment of its returns on the needy regardless of their differences. Abu Hurayra (Allah be pleased with him) reported Allah’s messenger (peace be upon him) as saying: When a man dies, his acts come to an end, but three, recurring charity, or knowledge (by which people) benefit, or a pious son, who prays for him (for the deceased).⁽²⁾ Endowment is a religious tradition and a charitable work that rests on the principle of ongoing charity that was highly recommended by Islam. This principle cannot be upheld unless the practice of endowment is preserved and perpetuated through the prohibition of selling, granting, mortgaging, renting or the bequeathing of the endowed assets. Its return is instead spent on charitable work and initiatives.⁽³⁾

Religious endowment has two general ends that are in themselves subdivided into several subcategories; the first is a religious, worshipping

(1) Abu Muhamed Abdellah ibn Ahmed Ibn Mohamed Ibn Quddama al Maqdisi : al Mughni ; the library of Modern Riyyad. 1981:597/5

(2) Sahih Muslim, Hadith number 1631

(3) Al Fath li l’ lam al arabi : 1993



purpose and second a social developmental one. While the former grants Muslims new chances to make up what they missed and hence get closer to God through good deeds, the latter inculcates happiness in the hearts of humans by satisfying their needs and helping them overcome their hardships and problems. In sum, religious endowment improves and secures people's lives by providing them with the basic necessities such as nutrition, healing and education. ⁽¹⁾

Thus, religious endowment has always been a basic source for every charitable work. Its returns helped inculcate the spirit of solidarity and fruitful work in the conscience of Muslims. It guaranteed the different social beneficence and solidarity. Unlike other charitable initiatives, endowment is permanent and ongoing with financial resources and specific goals.⁽²⁾

History testifies to the efficiency of endowment as a major sector of solidarity, capable of maintaining the vitality of Muslim communities and contributing to their development. The sector of endowment and solidarity refers to the different resources devoted by some members of society for social, cultural and economic development. This type of endowment is not a state or private property but a very distinguished form that elucidates the specificity of Muslim communities. It is, hence, linked to religious, moral and ethical principles.

The idea of endowment develops a third sector which is different from both the governmental and private sectors. Endowment promotes a group of activities whose nature does not follow state bureaucratic practices or any governmental hegemony or corruption through the abuse of power for the sake of serving personal benefits and interests as is the case with the private sector. Because of their nature, these activities intervene in the framework of beneficence, solidarity, mercifulness and cooperation.

(1) Hassan Abdel Ghani : the role of Islamic endowment in developing society ; Islamic Consciousness Magazine ; Kuwait

(2) Hassan Abdel Ghani : the role of Islamic endowment in developing society ; Islamic Consciousness Magazine ; Kuwait

2) Endowment and sustainable development:

Most countries have started to think in terms of sustainable development. The latter is generally defined as a kind of development that meets the present needs without affecting those of future generations. It pushes us to be fair with the future by saving an amount of resources to future generations. Sustainable development aims at combating poverty and improving the quality of life. It also ensures that all individuals benefit from its economic returns. Unlike the other traditional models of development, it cares about the environment. If we examine the goals and mechanisms of endowment, we realize its harmony with the orientations of sustainable development. Likewise, endowment is grounded on the idea of sustainability and the linking of generations. To achieve this, it assures that the endowed property can not be sold, or destroyed out of personal interest and misbehavior. Hence, the property of endowment passes down from one generation to another; everyone benefits from its returns without exhausting it. Yet, unlike sustainable development, endowment is a religious ritual with clear spiritual value, hence protected by religion and tradition.

If sustainable development cares about popular participation, endowment itself is based on such participation, in the sense that it offers a large and effective framework to involve individuals in the different facets of development. Endowment, with its religious and pious motives, makes individuals voluntarily serve their communities to the extent that it exonerates the state from bearing such burden. As a positive effect, endowment helps overcome the bureaucratic and unilateral planning that lacks the involvement of people, for it does not meet their needs.

Both endowment and sustainable development implements a policy of self-reliance and decentralization. As endowment provides funding sources through a dependence on local and individual capacities. It voluntarily redistributes the wealth instead of burdening the state with external debts. As far as decentralization is concerned, it is clearly articulated in

the administrative side of social practices. No one central administration manages all the state endowment; conversely, there exist several local administrative bodies whose basic principle is self-management according to the conditions of the endower and under the auspices of a judge and far from any assimilation in the governmental body. It is in the contemporary modern state that endowment started to be centralized.

Endowment intersects with sustainable development in their endeavor to fight poverty. Endowment has played an effective role in the elimination of poverty in Islamic societies. The investment of the endowed money is regulated by a number of general principles that have their sources in Islamic Chari'a; such principles are the basis for a more efficient profit. It aims at directing some of the investments towards projects that target the lower class and offer new job opportunities'

Endowment shrinks class differences by distributing resources on particular social groups, meeting their needs and transforming their productive capacities. It is due to such care that the poor gradually improves their social status, shrinking the gap between the different classes, particularly when endowment cares about those unable to work.

To create job opportunities, the mechanism of endowment consistently trades money, for if the money of the rich is used and traded, it will afford benefits for those who benefit from al waqf. It also leads to allocating some of the money to stock market, increasing the demand and supply. Consequently, new commercial facilities, institutions, factories and malls are constructed, leading to employment through the recruitment of the previously unemployed. These new recruitments will undoubtedly increase the demand and supply.

In other words, the further development of endowment sector creates a positive balance between total demand and total supply. The more returns and benefits increase the more the purchasing power strengthens, culminating in a new revitalization of the total supply of goods and services. Hence, the increase of endowed institutions leads to the furtherance of such supply, meeting directly or indirectly the needs of those in need. Besides,

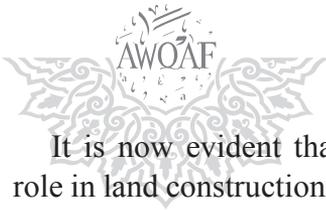
this positive mobility of money ensures the accumulation of money gained from the rich and used for the benefits of the deprived. Last but not least, in line with sustainable development endowment gives importance to the protection of the environment; it permeates many environmental domains as we illustrate below in the section the environmental endowment.

The notion of environmental endowment:

The purposes and expenses of al endowment have permeated all the domains of life in Islamic societies, ranging from education, healthcare, social care, infrastructure to the protection of the family. Indeed, the civilizational grace has reached a great status in the Islamic history, culminating in the allocation of some of endowment’s resources to humane, the protection of the environment as well as hygiene.

There exists a number of evidence and proofs that demonstrate the role played by the islamic endowment in the domain of environmental protection. The returns of endowment, for instance, was used to pave and clean roads inside cities. It was also used to help animals recover, particularly sick birds, including wild ones. Indeed, the system of endowment has contributed to sustainable development through the protection of the environments and the living creatures; such precedence is a source of pride for Islamic civilization.

One of the first endowment that were established in the era of the prophet were mainly environmental. Muhammad ﷺ inherited seven gardens and other forms of wealth from Mukhayriq. Muhammad ﷺ used this wealth to establish the first endowment - a charitable endowment - of Islam. It was from this endowment that the Prophet of Islam helped many poor people in Medina. – undoubtedly the endowment of the seven gardens to help the poor maintains its fertility, trees and fruits, all of which lead to food security. *Uthman bin Affan* purchased a well from a jew and registered it as endowment (وقف) to poor natives of Madinah. This type of endowment ensures water security.



It is now evident that the Islamic endowment has played significant role in land construction and the improvement of the environment in all its constituents: air, water, earth and food.

The role of environmental endowment stems from-as inspired from Islamic heritage-an institutional, financial, and legal contribution whose aim is to fund and encourage environmental initiatives. Such initiatives will help economize resources vis-à-vis the environment for future generations. For example the environmental endowment may participate in the following scientific domains: affording funds for organic agricultural and clean industries; supporting scientific research in environmental issues; the establishment of environmental Arabic libraries; encouraging translations into Arabic; establishing satellite Arabic, environmental channels for educational purposes; documenting local knowledge in the domains of the environment and development; the establishment of a web of Arabic reservation; the development of legislation; the development of environmental policies at the local level. In sum, the environmental endowment, through its elements and economic reality, is a developmental mechanism. Its definition implies the promotion of productive wealth via investment. It sacrifices currents consumer choices for the sake of future generations.⁽¹⁾

Based on the Heritage of endowment's contributions in protecting the environment, and taking into consideration current necessities and innovations, we can define the concept of environmental endowment as all what can be endowed for the sake of protecting the natural environment with all its constituents of air, water, plants, animals, seas, mountains and other natural resources and the useful exploitation of these constituents in reasonable and sustainable way. Its interest also extends to the domains of hygiene, disease's resistance, the generalization of healthcare, and the elimination of poetry to ultimately achieve sustainable development. The environmental endowment resulted from two major reasons:

(1) Awda, al Jayouchi, endowment and its role in sustainable development : the third regional Arab Conference for water

1-The orientation of Muslims towards charitable work, and their contribution in endowment in all the general needs of society, answering Chari'a's incitation to spend money in charity and beneficence. As the Almighty said: Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love. And whatever you spend - indeed, Allah is knowing of it.⁽¹⁾ This Hadith clearly encourages great environmental works and projects such as: the construction of rivers, wells and the planting of palm trees.

2-Conformity with the aspiration of Islam to protect the environment. According to the teachings of Islamic Chari'a, the protection and development of the environment and its resources is a religious personal obligation that every Muslim should fulfill⁽²⁾. Indeed, the protection of the environment is a top priority in Islamic Chari'a; hence, its protection is a safeguard of two basic necessities of life: the self and money, two necessities whose preservation is highly recommended by Chari'a. All the means used to guard these two necessities gain the judgment of obligation either it was an alibi or evidence, for that which obligation cannot be fulfilled without is an obligation.⁽³⁾

It's worth mentioning, that the current neglect of endowment has culminated in the neglect of environmental endowment to the extent that some people may think that endowment and environment are incompatible. The need to protect the environment due to the exacerbation of environmental problems has made it necessary revive and revitalize the role of endowment; hence it is important to set up a strategy that aims at developing environmental endowment as we illustrate in the coming sections.

(1) Surat al imran, verse 92

(2) The international union for the protection of nature and the environment in Saudi Arabia

(3) See al Shatibi, Ibrahim ibn Musa : al muwafaqa't fi usul al chari'a. Dar al Ma'rifa, 1996

II-Examples of past implementations of environmental endowment

History stands as a witness of the many pious, Muslim benefactors who endowed all or some of their money to feed the hungry, quenching the thirsty, clothing the naked ,helping the poor, healing the sick, sheltering the vagabond, supporting the widows and orphans; these benefactors also included animals in such care.⁽¹⁾ in this section, we will provide examples of Muslims' contribution to environmental protection and sustainable development through the system of endowment as elucidated below:

1- Water endowment:

Since the beginning of Islamic civilization, endowment has played a crucial role in ensuring water security. The positive impact of such contribution helped spread it throughout Islamic communities. 26 it is not a coincidence that the endowment of the first Islamic endowment was that of the Rumah well. The problem, however, was that the owner of the well charged a high price for water. The Prophet (phuh) then exhorted to Muslims to come forward to buy the well of Ruma and endow it for the community. When Othman ibn 'Affan came to learn of the Prophet's exhortation, he went to the owner and offered to purchase the well. The owner declined. Othman however, persuaded him to sell half of the rights of using the well. Both agreed to an arrangement under which each one of them would have the rights of use on alternate days. Othman used his right to benefit both Muslims and non-Muslims providing them with free water. This had the consequence of the owner losing all his customers and forcing him to sell the other half to Othman as well. The price was a whopping thirty five thousand dirhams.⁽²⁾

The importance of water made the procurement of water (tasbil) a major act of beneficence fulfilled by Muslim benefactors. This interest leads to the construction of fountains in cities to supply the population with water. Sultans and rich people cared a lot about such in endowment, for both humans and animals. ⁽³⁾

(1) Yussef al Qaradawi, charitable endowment and its effects in the life of Muslims

(2) Muhamed abdelqader al Fiqi, ibid, page 27

(3) Ibrahim al Bayoumi Ghanim, ibid page 46

Religious endowment has contributed to the diffusion of procurements that was welcomed by Muslims due to its charitable purposes, particularly water supply in moments of drought. It can be argued that al-asbila had the function of water public service in cities and to a lesser extent in countryside. and most of the times, such water was introduced to mosques, mid-cities and on the way of caravans so that anyone might have access to it.³¹ cold water was also introduced to ghettos, especially crowded places⁽¹⁾. Some of it was allotted to women who could not pay the fee to water suppliers. ⁽²⁾

One of the most famous examples of water endowment is that of “Ain Zubeida’s endowment.” Zubaida, who was the wife of Caliph Harun Rachid, endowed such water to supply Mekka with fresh water. Al Yaacoubi mentions in his History that lady Zubiada ordered her treasurer to repair the ain and make it useful to the inhabitants of Mekka. It is widely known that she said the following to her treasurer: do it even if every ax’s dig costs you a dinar.” Al Massoudi stated that the restoration and reparation of Ain Zubaida costed thousand, thousand, thousand and seven hundred thousand gold dinars. According to Al Arzaq’s account, after the end of the repair work, lady Zubaida threw the documents in the dijlra river and said “ we will live calculation to the day of calculation, and who still have some of the money, it is now his money, and who still owes something we will give it to him.”⁽³⁾ the use of cisterns and reservoirs is another example of water supply through endowment. Benefactors consistently filled it with fresh water as is stipulated in a document of endowment by Mamluki Sultan Birspay who allotted some of his money to supplying cisterns with fresh water from the Nil.⁽⁴⁾

(1) Al Maqrizi, al mawa 'id wa al i'tibar page 309

(2) Ahmed Sawi, al asbila ma'u al hadara, 1995 page 59

(3) Ibrahim Bayoumi Ghanem, Political endowment in egypt.1998 page 291

(4) Ahmed abu Zid, the System of Islamic Endowment.2000, page 49-50



2- The endowment of Animal protection:

Charity and beneficence had been extended to animals through the constructions of basins that supplied animals with water. These basins were constructed along the cities roads and on the roads that link cities to serve commercial caravans and travelers.⁽¹⁾ basins were also built along some asbila as the example of sabil darwish pacha in Damascus.⁽²⁾

There exist a number of endowments that were introduced to protect animals as the following examples illustrate:

- 1- Stray dogs' endowment: it is an endowment whose money is used to feed stray dogs.
- 2- Migratory birds' endowment : in the city of Fez there existed an endowment of a type of birds that came to Fez two consecutive seasons. Thus, some benefactors endowed what would help them sustain for the period of two years as if these muslim benefactors felt their duty of hospitality.
- 3- Stray cats' endowment: Islamic endowment included pets like cats, especially the blind ones; an example is cats' house that existed in Damascus in the Market of Sarujah. This house hosted four hundred cats.
- 4- Veterinary institutions: it was established to heal and feed and protect animals; an example if the Green Mutdj in Damascus. The latter was endowed to help horses and old animals.

During the Mamluki period there existed many endowed animal establishments whose purpose was to protect animals. Many endowed institutions were made to safeguard animasl such as the animal basin that was endowed by Sultan Qaytibay in the desert of Mamalik to quench the thirst of animals during their movement. These animals were healed in

(1) Fida'a Mouhammed Ahmed Qa'qur. Al asbila al ma'iyat fi al imara islamiya. A master thesis: the Faculty of higher studiesn university of al Najah, nablous

(2) Ahmed Sawi, ibid page 59



cast of injury. There also existed stables where they could sleep. Such endowment further stipulated that “those appointed to take care of these animals such as veterinarians would get a fee for their work”⁽¹⁾ In Cairo, there was Mosque that cats resorted to in a specific time to get food on the basis of an endowment.⁽²⁾

In the old city of Sanaa there still exists a market called (al Arj) that was endowed to protect lame and injured donkeys. There these animals could find food and healthcare. All of these illustrate the importance that Islamic religion gives to humane. God charged Noah with the responsibility of protecting animals to ensure their sustainability after the flood.

3- Health Endowment

Religious endowment played crucial role if the advancement of healthcare and the help of the sick particularly the poor in need. Many rich people endowed some of their money to what is commonly known in Islamic civilization as Maristans the latter offered significant services to the sick even in their abodes. Beginning with the third century H the Maristans became widespread in the Islamic world. It pleased Muslims for it offered them healthcare as well as food. Beside these services, most of these maristans taught the science of medicine.⁽³⁾

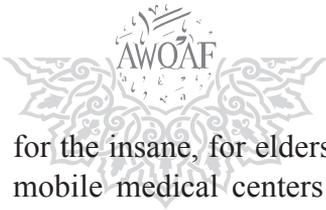
The maristan played the role of what we call now a hospital. Researchers of Arabic-Islamic civilization notice the role played by endowment in the establishment and development of maristans. Through endowment, the maristans were equipped and funded, including the salaries of doctors. It also contributed in the establishment of faculties of medicine and pharmaceuticals.⁽⁴⁾ Endowment had also helped establish different kinds of hospitals for different kinds of people such as hospitals for the leprous,

(1) Ibrahim Bayoumi Ghanim, *ibid* page 47

(2) Muhammed Muhammed al Amine endowment and social life in egypt. 1980. Pages 148-149

(3) Muhammed abdelqader al faqi, *ibid* page 28

(4) Ahmed Sawi, *ibid* page 56



for the insane, for elders, for the poor and for soldiers. It also established mobile medical centers that helped people in marooned places outside cities.⁽¹⁾

The establishment of maristans in Morocco goes back the Amohads dynasty. Al Mansour Yaacoub Ibn Youssef Ibn Abdel Moumen built a maristans in Marrekech and equipped it with water and trees. I was also decorated with mosaics. The Sulatn ordered a daily grant of thirty dinars to buy medicine.⁽²⁾

History books enumerate the different hospitals that were established in Egypt because of endowment. Historians give the example of a hospital founded by Al Fath ibn Khaqan, the minister of MutawakkiL ala Allah; and another hospital that was established by the Egyptian prince Ahmed ibn Tolon and named after him. Prince ibn Tolon endowed some of his money to equip and fund the hospital. He also buit bathhouses for men and women⁽³⁾. Historians and travelers described this hospital that was endowed by ibn Qalwoun to help Muslim patients. Describing it, Ibn Batouta notes: it is beyond description, it is equipped with countless of medicine and equipments.

While visiting Baghdad, Ibn Jubayr came across a whole street named the market of maristans which resembled a small city. In the middle of this street, there was a huge, beautiful castle surrounded by orchids and rooms which all of it was endowed for patients. It was frequented and visited by doctors and chemists and students of medicine for their fees were secured by endowment in Baghdad.

Beside its contribution in the establishment of hospitals and providing healthcare, religious endowment took part in the diffusion of medicine studies and related sciences. It also supported the establishment of specialized, educational hospitals that at the same time served as medication

(1) Youssef al Qaradawi, ibid

(2) Muhamed abdel Halim Omar ; Humane between Islam and contemporary reality. 2004 page 13

(3) Abdel malik chibani,al dhouhour al islami. 1996 page 248

spaces. Some of it was specialized in leprosy, others in arthritis and mental problems. Veterinary centers, which approximated the number of fifty, were established for Muslims depended on animal resources .⁽¹⁾ endowment has also contributed to the advancement of medical research, especially the sciences medicine, chemistry, pharmaceuticals and botany. Many scholars made outstanding studies due to endowment as illustrated by the book “al Kuliyyat” on medicine, written by Ibn Rushd; this book was adopted by Europe and became its major reference in the teaching of medicine for several centuries. Endowment also helped establish pharmacies, drugstores and the different public bathhouses. ⁽²⁾

4- the endowment of food security:

Religious endowment played an important role in ensuring food security for Muslims at an early stage of Muslim history. Muslims competed in dedicating some of their money to the endowment that aims at feeding those in need, the poor, vagabonds, foreigners and travelers. The Ottomans and the countries which were under their sovereignty competed in the establishment of almshouses that provided the poor, the vagabonds, and students with food. These almshouses were founded in various Islamic cities , including Mekka, and the holy city. The almshouse used to give food twice a day and for free in normal days. Yet, during Ramadan and other special occasions it offered more food. During these special days the food contains loaf of bread, soup, a piece of meat according to the amount defined by the endower.⁽³⁾ Endowers excelled at edifying and designing the almshouses; for instance the almshouse of the Ottoman governor Ahmed Pacha⁽⁴⁾ was one of the wonders of Damascus as one contemporary historian noted: al Hassan al Bourini who saw and described its great pool and beautiful orchid in its middle.⁽⁵⁾ There are many examples of the

(1) Ibn Jubayr

(2) Ibrahim Mahmoud Abdelbaqi, *ibid* page 128

(3) *Ibid*, page 100

(4) Muhammed Muwafaq al Arna'ut, *ibid* pages 97-95

(5) Al Hasan Muhammed al Bourini ; *Tarajoum al ay'an*. Volume 1

procurement of food through endowment. There were many endowments that supplied breast feeders with milk and sugar. Historians delightfully noted that Salah Eddine Al Ayoubi made a gargoyle from which milk pours in one of the doors of his castle. Another gargoyle furnished them with sweet water. Mothers came to them every week to get milk and sugar for their babies. Islamic universities such as al Azhar, were known for their distribution of daily rations of food to students so that they could focus on their studies. Such rations were funded by the returns of mosque endowment.⁽¹⁾

Ahmed ibn Baba Tambukti mentioned that Muslim countries that he visited in the provinces of Sudan were characterized by food abundance to the extent that they do not experience famine and starvation. Its inhabitants put the good remnants of food on clean rags close to the mosque so that hungry visitors and those in needs might use it. Surprisingly, strangers took only what they needed without keeping all of it for themselves.⁽²⁾

Endowment was not only restricted to food supply, but enabled society, particularly the poor to make food. Irrigation, cultivation and crop growing are examples that helped the poor and society in general ensure food security. There was also an endowment for the different grains and corns⁽³⁾, for the purpose of lending it to farmers who could not afford what to grow in their lands. They benefit from the harvest on the basis that they return it back in the following planting time. As a proof of the dissemination of such endowment is an augmentation in the number of endowed agricultural lands, reaching the third of farmed land in Egypt in the beginning of the 19th century.⁽⁴⁾ In Turkey, the endowed agricultural lands was no less than third of the agricultural lands during the transformation of Turkey to a republic in the twentieth century.⁽⁵⁾

(1) Muhammed abdelqader al fiqi, *ibid* page 29

(2) Muhammed ibn Abdelaziz ibn Abdellah, *endowment in Islamic Thought*. Volume 1, 1996 page 135

(3) Muhammed al Mahdi, *nidam ndara ala alawqaf fi al fiqh al islami*.

(4) Mohamed abu Zahra, *Lectures on Endowment* ;1971 page 26

(5) Tarwath Armghan, *an overview of endowment in Turkey*. 1989, page 339

The increase of such endowment was a response to the prophet Muhammed's incitation to endow lands through its cultivation as he said in one of his hadiths: The Messenger of Allah, peace and blessings of Allah be on him, said: "There is no Muslim who plants a tree or cultivates land, then there eat of it birds or a man or an animal but it is a charity for him."⁽¹⁾ some hadith interpreters understood it as an ongoing charity. The prophet also said: "If the Final Hour comes while you have a palm-cutting in your hands and it is possible to plant it before the Hour comes, you should plant it."⁽²⁾

5- Endowment struggling against poverty:

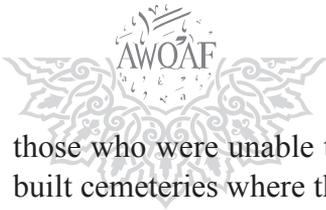
One of the manifestations of the prophet's incitation to help the poor is Omar Ibn Khatab's (may allah please him) endowment of Khayber land. «Ibn Umar reported, Umar Ibn Al-Khattab got land in Khaybar, so he came to the prophet Muhammad and asked him to advise him about it. The Prophet said, «If you like, make the property inalienable and give the profit from it to charity.» It goes on to say that Umar gave it away as alms, that the land itself would not be sold, inherited or donated. He gave it away for the poor, the relatives, the slaves, the jihad, the travelers and the guests. And it will not be held against him who administers it if he consumes some of its yield in an appropriate manner or feeds a friend who does not enrich himself by means of it;

The returns of endowment were used to shelter and protect orphans and the foundling. There were also endowments for caring about elders, the blind. Other endowment helped youths to get married who were incapable of affording the necessities of marriage. In some cities they established specific houses in which the poor celebrated their marriage. They also established infirmaries,⁽³⁾ and habitats that hosted travelers, particularly

(1) SAHIH MUSLIM ; hadith number 1552

(2) Masnad Ahmed, number 15569

(3) Ibraim bayoumi Ghanim, Ibid page 292



those who were unable to pay the cost rent of a house.⁽¹⁾ Some endowers built cemeteries where the poor could bury their deceased relatives.

During his rule, Nourddin Mahmoud made a funny and great endowment through a construction of a castle in Damascus as an abode for the lower class. When he saw the castles of the rich he found it a pity that the poor could not enjoy living in such places. So he populated the castle with poor people and endowed the village of Dariya; a poet celebrated this act in one of his poems:

When Nur'ddin saw
The castles of the rich
He built a great castle
And granted it to the poor

Dariya had remained endowed for the poor until the eleventh century(H)

One of the means that was employed to combat poverty is what is called *rubut* (the building of hospices). There was a famous hospice made by Jamal Eddine al Asfahani in poor's habitat in the holy city that he dedicated to the poor people. Beside the hospice dedicated to men another was dedicated to elderly women, the widows and the divorced. These hospices helped cover their expenses and meet their needs. And their was in every hospice a sheikha that is responsible of teaching them as the example of Adraa Khatun illustrates. Such initiatives also took place in Egypt through *ribat al baghdadiya* (the hospice of al baghdadiyya) that was established by Bay Khatun the daughter of al Dhahir Bebars in the year 684 H devoting it to women. She appointed a sheikh that taught women. It was also used as a refuge for the divorced and the widows.⁽²⁾

Many benefactors extended endowment to clothing the orphans as illustrated by a document that goes back to the reign of al-Mamalik in

(1) Ni'mat abdellatif, the impact of endowment on the development of society. 1997

(2) Ibrahim ibn Muhamed al mizini, Ibid page 623



Cairo. It stipulated that “the mentioned orphans should be given clothes and shoes in the summer and winter; they further give them a thick jubbah.⁽¹⁾Some endowers established private schools to teach orphans who lost their breadwinners or those who can not afford school in the lower class. Sometimes they sent educators to teach them in their houses. Such schools were called “katatib”. Al afid Ibn Askar talked about one of these schools that was established by Nur’Eddine Zinki; he said: “he appointed a group of teaches to teach Muslim orphans, and provided them with all what they need.”⁽²⁾

We can summarize endowment’s struggle against poverty in the following:

- 1)the endowment of hospices and habitats: it ensured lodging to the vagabond, travelers and the poor
- 2) The endowment of watering and food: it ensures food and water for those in need
- 3) The distribution of money, clothes and food to help those in need. This help was made possible by the returns of endowment

6-the endowment of hygiene and the amelioration of the environment:

There existed some endowments that were dedicated to hygiene and the amelioration of the environment; they were used to pave the roads and clean the cities.⁽³⁾there was another endowment for removing stones from the road.⁽⁴⁾In Morocco during the reign of the Alaouid dynasty there was a diversification of endowments, including that of lightening and cleaning the streets. ⁽⁵⁾The returns of endowment in Morocco were used to establish bathhouses, molars and watering sources. ⁽⁶⁾

(1) Yahya ibn mahmoud ibn junayd, endowment and society

(2) Ibrahim ibn Muhamed al mizini, Ibid page 623

(3) Muhamed Abdelqader Fiqi, Ibid, page 30

(4) Muhamed ibn Abdellaziz Ibn Abdellah, Ibid, page 142

(5) MAHMOUD Ahmed Mahdi, the system of endowment in contemporary practice ; 2003 page 16

(6) Ibid, page 18



Section Three: the need to revive environmental endowment through the implementation of a strategy that ameliorates such an endowment:

In the previous section we identified great examples of the role played by endowment in the protection of the environment and sustainable development. Since in our modern times, we experience many environmental problems, it is obvious that the Islamic world should exploit its heritage of endowment to revive the implementation of environmental endowment in accordance with contemporary innovations and issues. In what follows we introduce the most important aspects of this strategy:

First: justifying the strategy:

Setting up a strategy for the development of endowment is triggered by a number of reasons:

- 1-The Islamic world is experiencing an exacerbation of environmental problems which entails more efforts and actions. Hence, it has become necessary to utilize and mobilize environmental endowment to solve these problems.
- 2- A rising global interest in sustainable development. This requires a revitalization of environmental endowment to help achieve sustainable development. Indeed, our Islamic heritage provides us with great examples of the use of endowment to combat poverty.
- 3- since sustainable development requires the implementation of a policy of self-reliance and the utilization of local solutions and techniques, the Islamic world should utilize its past heritage and wealth to solve most of its problems; as for the environmental problems, the environmental endowment is one of the most effective solutions that we may draw from our past history. Indeed, the Islamic world may be distinguished by its implementation of such endowment.
- 4- There is a general orientation in the Islamic world to revive and revitalize the role of endowment as it was in the past. They try to develop it in accordance with modern changes. Undoubtedly,

environmental endowment necessitates such a new interest for its ability to solve environmental problems.

5-Arab nations bear the burden of development due to the augmentation of population, which leads to its inability to fulfill its duties regarding development. Hence, the implementation of environmental endowment is necessary to encourage and consolidate popular participation in the domain of environment's protection.

6-though endowment is on its way to extinction, some of its practices still exist in some countries; an example is that of Sultanate Oman where the endowment of Al Aflaj still exists. In Kuwait the General Secretary of Endowment devoted some of its activities to the environment through the establishment of the Environment Endowment Fund. It is necessary to preserve the remnants of such endowment and promote mutual exchange of expertise between Islamic countries regarding the modern implementations of environmental endowment.

7-spreading the implementation of endowment has a legitimate importance, for seeks to protect the environment through the Islamic chari'a principle. Indeed, the Islamic Chari'a makes of environment's protection a priority; hence preserving the environment is a religious duty that must be fulfilled.

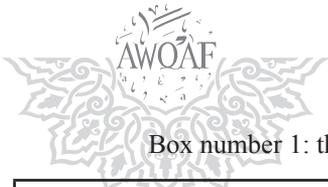
Second: the goals of the strategy:

It is possible to suggest a strategic vision for developing environmental endowment on the basis of was argued in the above section.

as for the strategic vision, it is formulated as follows:

(An Islamic community in which environmental endowment plays a major role through the revival and implementation of the latter on the basis of past tradition.)

As for the goals of the strategy, they are as follows: Box Number 1



Box number 1: the goals of the endowment's development strategy

- Working for the revival and reimplementation of environmental endowment in the Islamic world
- Drawing from the past heritage in the implementation of environmental endowment.
- Developing environmental endowment in accordance with modern changes.
- Sensitizing individuals on the importance of environmental endowment and encouraging them to pursue such endowment to protect the environment.
- Abiding by Islamic teaching regarding the protection of the environment and hence contribute to such development.
- Reinforcing popular participation in the domain of environmental protection through the revitalization of environmental endowment, lessening the state's burden.
- Affording local funds for developmental environmental projects instead of resorting to bank loans and external help.
- Planning for the preservation of the remnants of Islamic environmental endowments and insuring its sustainability.
- Transforming the expertise on endowment to other countries.
- The furtherance of sustainable development in the Islamic world

Third: the axes of the strategy:

The endowment development strategy is based on three major axes:

1-Studies on environmental endowment:

The success of reviving environmental endowment rests on the existence of a large number of scientific studies that address the different facets of endowment. Accordingly, this strategy emphasizes the importance of planning when undertaking such studies. It is also useful to take into consideration previous studies on endowment in general and environmental one in particular. Box two underlines the most important aspects that studies should consider for the revival and development of environmental environment.

Box 2: examples of studies on environmental endowment

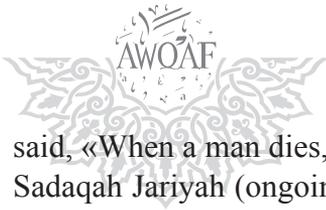
- Studies on the legitimacy of environmental endowment; they provide religious evidence for the use of endowment.
- Studies on the past contribution of endowment to the protection of the environment through the examination of manuscripts and endowment's documents.
- Studies on how to develop the role of endowment, taking into consideration its history and social role. They also examine the obstacles that hinder its development.
- Studies on the regularization of environmental endowment through the introduction of laws that protect the patrimony of environmental endowment.
- Studies on the establishment of new institutional systems to develop environmental endowment.
- Studies on the advancement of environmental endowment's funds.
- Studies on projects that might be funded by the Environmental Endowment Fund.
- Studies on ways of setting up plans for environmental endowment and the way to integrate them in the general model of development.

2-The media of environmental endowment:

Endowment's media aims at informing Muslim and non Muslim audiences about the religious reality and the humanitarian importance of endowment through new and innovative means of communication. Those responsible for such communication are highly versed in such culture. Indeed, the success of this media rests on a cooperation and coordination of both religious and artistic efforts and expertise. Such media should have a religious expertise as well as communicative skills and human resources that are can convince the different audiences.

Depending on the dimension of persuasion is important in the sense that it should convince the audience about the philosophy of endowment and its opinion on money spending as well as the relationship of endowment with charitable work. In media jargon, this is known as increasing hopes and expectations, linking the endowment's message with the other life; a link between charitable work and ongoing alms that lasts even after the death of benefactors as the prophet (PAH) said: The Messenger of Allah





said, «When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ongoing charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased).» Endowment's media is of utmost importance, particularly in our modern age; an interest that is triggered by the tendency to re-implement endowment as it was practiced in the past. Box number 3 illustrates the different facets of the importance of endowment's media.

Box 3 the facets of the importance of endowment's media

The reinforcement of mutual trust between the institutions of endowment and individuals, through a clarification of contemporary jurisprudence of endowment and the ability to deal with different social classes.

Conveying social and economic images of endowment, and the necessity of coordination with research centers.

The necessity of forming a popular and official opinion in the direction of figuring out a legislative and legal framework that may contribute to the establishment of endowment as one of the foundations of contemporary Islamic communities.

There should be a media support of endowment's institutional plans though modern techniques and new ways of investment.

Offering possible media chances to support the diversity of endowment through commercial biddings, media programs and financial returns.

Offering media services to encourage those capable of endowment and convince them of endowing some of their money.

Environmental endowment's media is a branch of endowment's media that aims at the diffusion of the culture of environmental endowment and the illustration of its importance. It also helps concretize the implementation of environmental endowment. Environmental endowment's media also incites individuals to not direct their endowment on one particular one, but increase their knowledge of the endowment's past heritage, drawing from its diversity and subsequently raise their awareness regarding endowment.

Environmental endowment's media has become more important in our modern times due to the necessity of endowment due to the degradation of

the environment. It is important to incite societies' memory to this type of endowment through written and visual media. Media should be mobilized to market this idea and attract supporters. Environmental endowment's media can fulfill the following tasks:

- A-sensitizing individuals of what characterized past endowment, especially diversity and its protection of the environment and sustainable development.
- B-increase public awareness of the importance of endowment. The need to use all the available media to encourage endowment in the domain of environment.
- C-highlight how environmental endowment helps decrease environmental problems.
- D-accentuating the importance of protecting the environment in Islam, hence environmental endowment better serves the environment.
- E-using and disseminating previous studies on environmental endowment (as mentioned above)
- F-the establishment of database for environmental endowment.

Environmental Endowment Fund:

Funds represent modern ways that aim at funding the different covered domains on the basis of certain conditions. The Fund is an organizational entity with a relative independence and fulfils its duty through the administrative council.

Environmental Endowment Fund is devoted to the domains of the environment, that is it employs the returns of endowment in investments on projects that solve environmental problems. The experience of Kuwait is revealing. Kuwait established the Environmental Endowment Fund for environment's protection under the decision, number 10, dated 17 April 1995, of the minister of endowments and Islamic issues as well as the president endowment council. The Fund set as goals the following: spreading



the environmental culture and awareness in the minds of individuals; enlightening them about the importance of protecting the environment; support the execution of projects whose aim is to stop environmental pollution; training national cadres in the domains of the environment; coordination with governmental organizations in this domain; this Fund was integrated in the Endowment Fund for Health Development in 2001.

In accordance with the axe of Environmental Endowment Fund's strategy, the following should be achieved:

- A-Endowment's administration should establish such a fund in every Islamic city.
- B-the Fund should be decentralized and managed in the same way companies work
- C-representatives from the institution of endowment, the ministry of environment, NGOs and local bodies should be represented in the Environmental Endowment Fund. It will be appropriate if the endowment's administration is led by a board of directors and an executive scientific council.
- D-the Environmental Endowment Fund should mainly cooperate with nongovernmental associations and the associations of agriculture and fisheries.
- E-the Environmental Endowment Fund should give priority to funding youth and women's projects and works on the basis that they are the most marginalized social categories.
- F-the Environmental Endowment Fund should fund studies on environmental endowment and the activities of endowment's media as mentioned in the two previous sections.
- G-the Environmental Endowment Fund should fund projects on the basis of defined criteria so that it might be effective. While box number 4 illustrates the criteria used to choose projects, table 1 provides examples of the most important environmental projects that might be funded by Environmental Endowment Fund.

Fourth Section: the nature of environmental projects which are funded by Environmental Endowment Fund in the framework of environmental endowment's developmental strategy.

Since the Environmental Endowment Fund is a major axe in the Environmental Endowment's strategy, it will be necessary to devote this section to the nature of environmental projects that should be funded by EEF and the ways that ensure the success of this strategy.

First: the criteria of choosing the environmental projects that ought to be funded by E.E.F

The purpose behind the setting up of the criteria of choosing environmental projects that should be funded is due to the multidimensionality and multiplicity of environmental problems. Consequently, it will be difficult for Environmental Endowment Fund to choose projects without defined criteria.

Accordingly, due to the nature of endowment and in accordance with the environment and its priorities, and in light of what we discussed before, we henceforth set up criteria that may help choose the environmental projects that should be funded by Environmental Endowment Fund. Such criteria are outlined in box number 4.

- Projects that treat environmental problems which are directly related poor and the needy.
- Projects that treat environmental problems of a local nature, that is problems that affect a region in which endowment or Environmental Endowment Fund exist.
- Projects which concern poor regions that are in need of the most basic requirement of a good life.
- Small projects that might be neglected by the government due to its focus on big projects.
- Eco-environmental projects, that is projects that afford returns but at the same time help protect the environment such as trash recycling projects.
- Projects related to the implementation of endowment's past practices.
- Projects based on local solutions of environmental problems.



- 1-to take into consideration the modernity of the implementation of environmental endowment in the modern time since it is still in its beginning with no accumulation of experiences; hence, small projects with a local nature were selected.
- 2-to consolidate the implementation of the policy of self-reliance through the prioritization of projects that re related to past practices in the domain of environment protection.
- 3-to take into consideration logic and priorities, for it is not logical to fund in a particular city an environmental project that aims at solving the problem of the ozone layer while this city suffer from major problems such as the absence of hygiene; or the funding of an environmental tourist project while in the city there swage problems.
- 4-the focus on projects neglected by the government, for the latter focuses on big projects ond overlook small one.
- 5-to take into consideration the balance between the environment and development, through the prioritization of eco-environmental projects.
- 6-to make sure that the poor and the needy benefit from the projects funded by the Environmental Endowment Fund.
- 7-to consider regions neglected by the government.
- 8-to make sure that regions where endowment exists benefit from such initiatives, allowing endowers to see tangible results.
- 9- to take into consideration gradual development, hence start with the local and then move to the national or regional level.
- 10-to take into consideration flexibility in that the criteria can be subject to amendment and modification. With every amelioration of Environmental Endowment Fund, it is possible to amend these criteria, including new projects

Second: the environmental projects which are mostly appropriate to funding:

Based on the criteria mentioned in box 4, we made a list of the projects that are appropriate to funding as illustrated in table 1:

Table 1: a list of the projects that are appropriate to funding

The idea of this project is to make use of ablution water resulting from every mosque Through its use in watering the trees next to the mosque. Such endowment helps stop air pollution through the act of forestation.	Projects of water used for ablution	1
Since traditional energy sources such as oil and coal are harmful to the environment, there is a global trend towards alternative energy that does not harm the environment as well as the use of renewable energy, and therefore this endowment will encourage Islamic countries to use these alternative sources, and hence contributes to the protection of the environment, and supplies remote villages in the Islamic world with energy.	Renewable energy projects	2
With the increase in population, and production to meet the needs of the people, and especially with the transformation of Muslim societies to consumer communities because of modern life, and with the blind imitation of the West, the volume of trash has grown to the extent that the state failed in its collection. Therefore, popular participation has become important in solving this problem. Indeed, endowment can help in such endeavor through the establishment of specialized firms to collect trash.	Projects of trash collection	3
Endowments of irrigation and cultivation have become widespread throughout Islamic history, but in our time, the need to re-apply this kind of endowment has become necessary in the deployment of Agriculture in the Islamic world and thus meets the challenges of food security, and also takes advantage of it in the fight against desertification.	Irrigation and cultivation projects	4

While buildings and cities increased in beauty and greatness throughout Islamic history, they are currently experiencing an unprecedented degradation due to an unthought-of planning. This degradation is evident in the diffusion of shanty towns and trash. Such endowment seeks to restore the beauty of the city.	Fighting visual pollution, the restoration of buildings and streets and public places	5
Because of its increase, it has become difficult to get rid of trash. Thus, endowment will help recycle trash in Islamic societies.	Recycling trash	6
This endowment is so important, particularly with an increase in urbanization and the diffusion of shanty towns as well as the inability of the state to solve such problems. This endowment helps spread green space and hence resist pollution.	The construction of public parks	7
In many Islamic cities, roads are still in a bad situation, regardless of the fact that there existed an endowment to remove stones from the road. So it is not enough to keep watching this without taking any action.	Repairing roads in ghettos and poor areas	8
Islamic nations, especially the Arab one are experiencing a lack of water; and with the year 2015 all Arab countries will be situated in the category of extreme lack of water.	Digging public wells	9

Third: explanatory model of the environmental projects that are appropriate to Funding

In what follows we will provide a further explanation of selected environmental projects mentioned in number..

1- Re-using ablution's water project:

We spend a lot of water during ablution particularly with the use of faucets. Since, most of its water is lost during ablution, the project of re-using such water aims at exploiting it to water the gardens that surround mosques. As for this project we can offer the following explanations:

A- The major characteristic of this project is that it can be controlled by the endowment's administration since the project takes place in a mosque. This control makes it easy to implement and realize this project.

B- The kind of trees should correspond to the specificity of every zone. But since this project is of a religious nature it will be appropriate to grow palm trees for beside its utility, it was highly appreciated by Muslims throughout Islamic history. Such tree was mentioned in the Koran

C- Even if they grow one tree next to a mosque, it can guarantee the achievement of some of its utilities. For example, the number of mosques in the city of Cairo approximates 3000, so if we grow one palm next to every mosque the result will be 3000 palms.

The recycling of ablution's water leads to the following Environmental Benefits:

- a- This project is a reasonable exploitation of water, taking into consideration the scarcity of water in Islamic countries.
- b- The project will help clean the air of zones next to the mosque. We all know that plants increase the percentage of oxygen and decrease carbon dioxide, which one of the major reasons behind air pollution.
- c- reduce the temperature in the area surrounding the mosque, for trees and plants help decrease temperature.
- d- Reduce noise
- e- Extend green spaces.

2- the projects of renewable energy:

Renewable energy is that kind energy that is generated from endless resources such as the sun, the wind, water and temperature. This energy is of utmost environmental and economic importance, for it is an alternative to energy which produced by materials that cause environmental problems and that are subject to extinction such as coal and petroleum

The other feature of renewable energy is that it can be generated through small projects, hence the use of endowment in such a project would result in major environmental, economic and social benefits such as creating job



opportunities and meeting the needs of several deprived cities and country sides.

And to illustrate the environmental and economic importance of renewable energy, we will take the example of Biogas Technology. It is a renewable energy source and in many cases exerts a very small carbon footprint. Biogas can be produced by anaerobic digestion with anaerobic bacteria, which digest material inside a closed system, or fermentation of biodegradable materials. Such technique reduces risks of pollution and improves ways of life in the countryside for the following reasons:

- a-its multi-functionality in the countryside's houses; it can be used to warm the house, to cook and the generation of electricity.
- b- The possibility of using the resulting compost from the anaerobic fermentation process, it is a fertilizer with an excellent high nutritional value.
- c- This technology is commensurate with local resources in developing countries and can be used at low cost and with simple technological means. The modular construction of biogas generation can be adapted according to the needs of any community.
- d- it has economic benefits for rural residents⁸³: For example, if a single cow can produce approximately 1 m³ of biogas, which means that what the cow gives a month is equivalent to a gas cylinder and therefore three cows produce enough gas for almost a year, and saves the farmer extra money, which was earmarked for the purchase of gas cylinders, as well as free use of the resulting compost to raise the productivity of their land.

3- trash recycling projects:

The importance of recycling waste lies in solving a major current problem associated with high consumption, resulting in the accumulation of trash and inflation. Instead of getting rid of this trash it should be recycled in a safe manner.

Accordingly, recycling trash projects realize a number of environmental and developmental benefits. Beside reducing the volume of trash it creates new job opportunities, particularly among youths. Indeed, trash recycling projects are the most appropriate for youths for the following reasons:

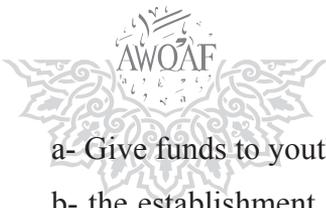
- a-investing in such projects does not necessitate big budgets for with one machine you can start such a project.
- b-the major resource of recycling is trash so youths may get it for free.
- c-it is easy to learn the technique of recycling.
- d- it requires simple and cheap machines that easy to use.
- e-it has a creative side that attracts the youths.

To clarify the importance of trash recycling to the environment and development we give the following example:

It is well known that the remnants of rice straw in Egypt are disposed of by burning, causing air pollution. Yet, the Egyptian Environmental Issues Body introduced new investments regarding the recycling of such remnants in 2008, turning it into biogas, electricity, wood and instruments for decoration. Hence, these remnants transformed from elements causing harm to an element of economic productivity and benefit. Table 2 illustrates the projects introduced by Egyptian Environmental Issues Body to recycle rice's straw.

Project's name	Total estimated cost
The transformation of rice's straw into biogas	70
The establishment of wood factories	20
The production of wood and decorations	15
The project of producing biogas	100
The project of producing electricity	550

Accordingly the Endowment Environmental Fund should fulfill the following:



- a- Give funds to youths and those who want to invest in recycling
- b- the establishment of training centers to provide youths and women with free training
- c- to fund youth's associations
- d- sensitize society on the importance of trash recycling
- f- To help market the products made through recycling

4- The projects of irrigation and cultivation

The current neglect of endowment led to the neglect of agricultural endowed lands whose surface reached two thirds of the total agricultural lands in the 19th century in Egypt, and Turkey.

Agricultural endowment aims at utilizing some of past endowment practices such as in the domains of irrigation and cultivation. Such practices push the landowner to improve his land. The following table3 illustrates ways of endowment's investment in spreading agriculture and green lands; ways that should be funded by Endowment Environmental Fund

The type	
cultivation	The endowment's administration gives the endowed land to someone for the sake of cultivating it and then shares the returns.
cropping	It grants the land to someone who can crop it and then share the returns
irrigation	It grants the endowed trees to someone who can irrigate it in return of sharing the benefit.
renting	Either for harvesting or constructing buildings;

Many economic and environmental benefits result from this project, contributing to sustainable development; we can summarize the major benefits in what follows:

- Economically, these projects will create new job opportunities; and they may contribute to the development of agricultural sector.
- Environmentally, such projects help combat desertification, especially with the spread of this phenomenon in the Islamic world.
- They promote sustainable development by ensuring the sustainability and continuity of agricultural productivity.

Articles



Waqf Rules

By Mahmoud Al- Hamzaoui
(The Grand Mufti of Syria)

Edited and annotated by
Aamar Ahmed Sayasina

Foreword

Praise to Allah, God of the two worlds, and great prayers and blessings upon our prophet Mohammed and upon his family, Companions and All who have taken his guidance to Doom's Day.

To further make jurisprudence accessible to most students, one needs to set down rules that will chart its terrain and subsume its different disciplines. Such a procedure may well facilitate its easy assimilation and promote its learning by heart among students, for rules are, in their own right, of few words, well-phrased that encompass myriads of images and examples, and it is our belief that of all matters of jurisprudence that call for such a procedure are questions that are quite opaque, polyvalent, and open to new facts.



There is no doubt that ‘rules of Al Waqf’, as a branch of legal scholarship, is one of the disciplines one needs to know and pay special attention to its minute rules. The rationale inheres in the number of questions and images one comes across, and the scant attention it has received from most students, especially of late.

Seeing this deplorable state of affairs, Mahmoud Hamzaoui, Grand Mufti of Syria and eminent scholar, endeavored to make it accessible to interested students through rules that help make it easy to master and learn by heart. Garnering rules scattered through books and chapters which are more often than not needed, he therefore compiled a checklist that amounted to fifty rules, most of them drawn from Tarabulsi’s *AL Isaaf* and Ibn Aabidin’s *Al uqud duria*.

These rules are distinct for their clarity, verbal economy, ease of memorizing, and unassuming simplicity.

Published in 1288 A.H. in the “province of Syria”, this treatise can hardly be found, if it is not lost forever. Out of such a deep concern, I am turning it out again to make it available to students, especially those concerned with waqf and its rules.

Moreover, I have not omitted to add footnotes that comprise comments by scholars emanating from different doctrines with a view to diffusing their knowledge, while pointing out all the time, as much as possible, points of consensus and dissensus.

I have tried to be as to the point as possible. Any good that may accrue from such an enterprise is from God, the Exalted, and any deficiency is mine.

May God bless this endeavor and make this treatise of good use. He is Attentive, Close and Responsive.



Writer's Biography⁽¹⁾

Great scholar and man of law, Mahmud ben Mohammed, Grand Mufti of Syria, was Nasib Ben Hussain ben Yahya Al Hussaini Hamzaoui al Hanafi.

Born in Damascus in 1236 A.H., he grew up under the wing of his father. His family was in charge of the guild of Patricians (Al Achraf) in Grand Syria for many centuries.

While he was just twelve years old, he learnt to read and write well. Working hard, he learnt Islamic law, Interpretation, Hadith, Science of precedents, Arabic, logic, rhetoric, science of shares, arithmetic and metrics.

Among his famous mentors one can allude to: Sheikh Abd Errahman Al kazbari, Sheikh Said Al Halabi, Sheikh Hamid Al atar, Mr. Mohammed Abidin, Sheikh Najib Al Kalii and his father Nasib Afandi, along with other prestigious Sheikhs and munificent leaders."⁽²⁾

“He mastered a sizable body of scholarship, edited texts, gained great erudition in sciences. He was well read, a convincing orator, well-spoken, and of sharp wisdom. He was also noteworthy for his awesome memory and his tendency to make right decisions.”⁽³⁾

While still a youth, he was appointed vice-judge to many a court law in Damascus, and following his father's death he was appointed to the board of administration of the province of Syria.

In 1269 A.H., he became the director of Endowments for the ‘province of Grand Syria.’”

Six years later, he was appointed president of the agricultural board.

In 1273 A.H., he became the president of the directorship of the department of bound property and public lands all over Grand Syria.

(1) For the writer's biography see, Al-Bitar's *Houliat Al Bachar Fi Al Qarn Thalith Aachar*(1467/3) And Dahlouli's *Faidh Al Malik Al Wahhab Al Moutaali bi Anbai Al Qarn Thalith Aachar* (1553/2)

(2) *Hiliat Al Bachar*, (1457/3)

(3) *Ibid*, (1476/3)



In 1284, he was appointed Mufti of grand Syria till he passed away.

In 1299, he was director of the department of scholarship in the province of Syria.

He was highly regarded by his contemporaries. “He was prominent in scholarship and theological learning,” said Abderrazak Al Bittar. “Being a peerless exponent and champion of virtue, he was an indefatigable chaperon of scholarship. Wedding telling to mastership, he cut a high figure among Imams and gentlemen, while he was at ease, entertaining people with his odd stories, and spreading joy through his own writings...”

There is a general acknowledgement, among all speakers and adepts of beauty and good manners, of his merit for which he was immortalized. For the scholar, he was noteworthy for his scholarship, for the layman he was believed in through imitation. And since he reached the apex of his achievements, he only loomed all the more meritorious and praiseworthy. He first rose in Damascus where he excelled, he made great progress till he was beyond all greed...”

He also said: “his prominence in literature was so great and unsurpassed that he was widely celebrated.”⁽¹⁾

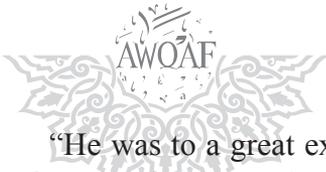
“The Mufti of Syria (pronouncing) on ancient and modern matters,” said Abu Al faidh Dahlaoui, “dispenser of knowledge on rhetoric through discourse to those seeking it, of great use to those willing to establish a lighthouse of religion, an extravaganza of the times, a miracle of the age.”⁽²⁾

According to Mohammed Jamil Chatti, “he was one of the masterly scholars, and meticulous jurists. He delved into the sea of the Noamani doctrine and came out with pearls and coral. He applied the rules to facts since he was appointed mufti in Damascus for a matter of twenty years. His great erudition was such that he was asked his opinion from different parts of the Ottoman sultanate and from elsewhere.”⁽³⁾

(1) Ibid, (1567/3)

(2) *Faidh Al Malik Al Wahhab*, (1554/2)

(3) *Aayan Dimachk*, p.323.



“He was to a great extent of sharp wit,” said Said Bani. “He was also of great wisdom, patience, perseverance, awe-inspiring, good looks and manners. He was of great esteem and regard so that was venerated by both the populace and the elite, his intercessions were accepted by those in power so that Sultan Abdel Hamid accepted his intercessions in favor of the notables of Medina who were then exiled in Damascus.”⁽¹⁾

He was a prolific writer. His books include:

- An interpretation of the Holy Coran entitled *Duraru Al Asrar*.
- Mahmudian Fatwas.
- Thriving Planets in Recurrent Ahadiths.
- Brilliant Oddities in Juristic Rules.
- Unveiling the problem of Earning Salaries Alternately.
- Elucidating Whether it is permitted to take wages for Koran recital.
- Warning Elites as to Hunting by Firearm.
- Writing on Guarantees between the Commander, the Commandee and the wages-earner.
- Exploring the Dealings of the Endowments.
- Students’ Treasury, A Comment on Ali Ben abi Talib’s Treatise on Friend.

Almost four years before his death, he lived in seclusion, devoting his time and attention to the study of sciences and perusing juristic matters. All the while, he was all the more celebrated and highly esteemed till he passed away on the midnight of Monday 9 Muharram 1305 A.H.

His funeral prayers took place at the Umayyad mosque which, for all its size, was thronging with scholars, ministers, notables and others. Then, he was taken to the burial soil of Alfaradees, known as the cemetery of Dahdah.⁽²⁾

(1) Qouted by Chati in *Aayan Dimachk*, p. 222.

(2) *Hiliat Al Bachar* (1476/3)



“People deplored his death a lot and he was eulogized by people of merit and literature.”⁽¹⁾

A description of the manuscript

To edit the following treatise, I have relied on two sources:

The first one is the typed edition published in the province of Syria on 15 di Hijja 1288 A.H. and contains 34 pages. I made a copy of that edition at King Saud University in Riad and it is kept in the chamber reserved for “rare books.”

And since this edition was published in the writer’s lifetime, I primarily relied on it. It is the copy written in his own hand.

The second source is handwritten and was photographed from Al Imam Bin Saud Islamic University in Riyadh under the following code (5188/Kh). This edition comprises 14 double-faced tablets, and the number of lines in each is 13. It is well-written and its copyist is Hassan Az Eddine Al Jamai who completed his copying in 1344 A.H. However, the copyist made no reference to the source of his copy, and it is out of the question that it was a copy of the typed edition, seeing that there are many differences between the two, and I marked the typed edition with the letter (t).

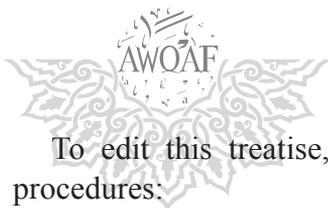
There is a third edition of the treatise, written in 1305 A.H.; safeguarded at the Khalidia library in Jerusalem, and there was no way to consult it.⁽²⁾

The title of the treatise and its relation to the writer:

The writer spared us much speculation as this question, as he explicitly mentioned the title of the treatise, saying at its introduction: “And I called it: Rules of Al waqf, hoping from His Greatest Blessing His Reward in such an enterprise.” This title is the self-same title on the first page of the handwritten copy I relied on, and it is the very title that the edition published in the “province of Syria” bears.

(1) Al Chatti, *Aayan Dimachk*, p.232.

(2) See, *AL Fahrmas Achamil li Thorat AL Arabi Al Makhtout*, (114/8)



To edit this treatise, I have adopted the following methodological procedures:

- Copying the manuscript.
- Verifying and editing the text, while keeping to the appropriate punctuation.
- Annotating intricate terms and phrases.
- Referring back to the sources the treatise uses, or refers to, and documenting what he took from them as far as possible.
- Identifying briefly the names mentioned in the treatise.
- Commenting on what requires comment in the writer's treatise.

In the name of God, the Merciful, the Compassionate

Praise to Allah, God of the Two Worlds, and blessings and prayers on our lord Mohammed, and upon all his family and Companions.

The light of science has diminished, its men have decreased, and its traces have almost vanished, particularly as it comes to jurisprudence. Such is the state that there is hardly any student shing to pursue its course.

Ignorance has spread far and wide, and those in charge are just a bunch of charlatans, unmindful of matters of endowments, and what they comprise of conditions. Hence, it has loomed hard to elicit its meaning.

No wonder, then, it is one of the most intricate matters, as new cases emanate beyond the hold of precedents, and you can behold on its path no treader. Hardly is there anyone happily ferreting out its questions, perusing its books, disclosing what is closed, or clarifying what is intricate, or taking its light, or covering oneself with its papers. It is a great calamity, May God come to our succor.

Seeing how people have become unenthusiastic, lazy and narrow-minded, I have decided to make things easy for them, and spare them the pain of such a long journey.

I have garnered rules scattered in books and chapters that people need a lot, and appended them with suitable commentaries that may suffice anyone anxious to look into such matters. I have limited myself to essentials, so that those wishing to study them in more detail will long to them, and they will be easy to master. Here they amount to fifty rules. And I called them: "Rules of Al Waqf," hoping from His Greatest Blessing His Reward in undertaking such an enterprise.



Rule 1: Only is valid an endowment whose founder is free, in charge, sound in mind, adult, and not under custody or a renegade.

(The same is in *Al Isaaf*. P. 10)

Commentary: it means that the endowment of someone in debt, even if his debt is outstanding, is valid.

Still, judges cannot declare upon the validity of the founder who withholds from paying his debts.

So is it stated in *Tanquih*, (112/1)

Rule 2: The conditions of the founder should comply with Sharia.

Commentary: this rule has permeates all books and run on every tongue so much that it has become recurrent.

It was stated in *Al Ashbah*, “the conditions of the founder should comply with Sharia; namely, in terms of complying with them, in terms of conception and signification.”⁽¹⁾

They should be followed except on seven questions:

- 1- If the founder stipulates that the judge not depose the fiduciary, the latter can depose whoever is not worthwhile.
- 2- If the founder stipulates that his waqf not be rented for more than a year, and no one is interested in it, or there is benefit in addition, the judge can object, not the fiduciary.
- 3- If the founder stipulates that it should be read on his grave, this is invalid.
- 4- If the founder stipulates that amends are given of what remains of its yields to anyone asking at a certain mosque, the fiduciary can give amends to anyone asking in any other mosque or not asking.
- 5- If the founder stipulated bread or meat to those deserving it, the fiduciary can pay its worth and they in turn can take it.
- 6- The judge can fix a higher amount if the specified one is not sufficient.
- 7- If the founder stipulated no replacement, the judge can contradict

(1) See, Ibn Timia’s Collection of Fatwas (47/31)

him if that is for the benefit of the waqf.”⁽¹⁾

It is worth noting that when he said “namely, in terms of complying with it and in terms of conception,” what is meant by ‘conception’ is not what can be enunciated, but what can be deduced.⁽²⁾

The scholar Al-biri stated: “we do not proclaim fatwas on the strength of conceptions as was decreed, and stated by Al Khassaf, and recommended by the scholar Quassim.”⁽³⁾

Nor can we argue on the basis of what is explicit in people’s discourse about what is explicit in the doctrine.⁽⁴⁾

As to the notion of classifications it is evidence.

The difference lies in that the concept here is intended, unlike in other places, and this was overlooked by many,” as in the footnote of Abi Sooud, with some modification.

What remains is “in terms of complying with it,” and this should not be taken as a general rule.

In his treatise, Abdelghani b.Ismail Nabulsi said, after quoting Al biri’s phrase and similar ones: “And it is known that they said: the conditions of the founder should be complied with Sharia, cannot be taken as a general rule.”

Rule 3: Any estimated money, whether it is property or moveable goods, whose endowment is designated in a specific place, then that place is that of the waqf.

So in the Isaaf.

Commentary: the validity of a moveable waqf is bound to a specific place known as such, which means that if it is commonly known in Iraq, for example, that buffaloes are waqf, and it is not known in Damascus, then the founder in Iraq and his waqf are valid, otherwise it is not. This was confirmed by most sheikhs.

(1) See Al Ashbah wa Nadhair, p. 195.

(2) See Ghamz Oyoun Al Basair.

(3) See Al Fawaid Al Bahia, p. 99.

(4) See Ibn Timia (136/31) and Abi Zaraa Al Iraqi, p. 227.



This was clearly stated in Al Isaaf, namely: “if a cow is the subject of a waqf in a designated place, its milk, curdle and butter are given to wayfarers, if they are in a designated place, otherwise it is invalid.” Now if you look at the phrase, “if they are in a designated place,” you realize that it is quite evident in what we have said.

Still, there remains the meaning of convention and dealing, which often recurs between them; where not one or two is enough. The same is stated in Tanqih (118/1).

Rule 4:

If a place is not owned by its founder in perpetuity, or it is a common property, its waqf, according to Mohammed, is not valid.

The same is true in Al Isaaf.

Commentary: both Abu Youssef and Mohammed agreed upon the validity of a commonly held waqf that cannot be divided, for example a Hammam, a well, a grindstone. And they disagreed on what can be divided. It was agreed upon by Abu Youssef,⁽¹⁾ and so was followed by the Sheikhs of Balkh⁽²⁾. It was refuted by Mohammed, as in al Isaaf.

In this fashion, the muftis followed what the sheikhs of Balkh took from Abu Youssef, concerning the validity of such a waqf, and so was proclaimed by many scholars of our lands.

In Tanwir⁽³⁾ and its commentary, he said: “A commonly owned waqf that was authenticated is valid; because he is hard-working, the traditionalist Hanafi had every right to judge upon the validity or invalidity of the commonly owned waqf because of the differences in opinions.”⁽⁴⁾

It is quite obvious that once there is a statement of the judge, there is no dissensus. The same was held in Al Isaaf.

(1) See Dakhira (314/6)

(2) A city in Khurasan

(3) See Al Ghazi.

(4) See Duru Al Mokhtar.



Rule 5: Any waqf bound by a condition is not valid.

As in al Issaf, namely, “and even if he said: if it were tomorrow, or it were the end of the month, or if I speak to someone, or get married to some woman, and like things, my land is waqfed, the waqf is invalid; because it was conditional, and waqfs do not bear being conditioned at risk, because it cannot be sworn by, so it cannot be stipulated .”⁽¹⁾

Commentary: if he said: if that land was mine then it is a charity endowed in perpetuity.

Then it can be seen: if the land were his the time he was speaking, the waqf is valid, otherwise it is not. Stipulating upon some condition is achievement, as in Al Isaaf.

Commentary: if the founder made the choice for himself. According to abu Youssef, if he designates a specific time, the waqf and its condition are valid; otherwise, they are not.

According to Mohammed, the waqf is invalid, whether the time is specified or unspecified⁽²⁾; and it was chosen by Hilal.

Commentary: the waqf emanates from the testament, and its matters are derived therefrom, as in Al Khayria and Tanqih.⁽³⁾

Rule 6: The waqf cannot be leased from anyone.⁽⁴⁾

As in Al Isaaf.

Commentary: If he buys a house from a man, and it transpires that it is a waqf, the buyer can sue the one who has sold him the house, if he is still alive, or his heir if he is dead.

This is the case if the one who sells the house is a fiduciary.

And if he is not?

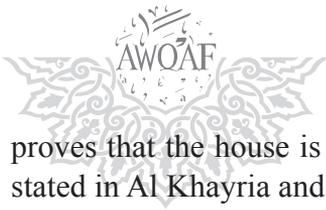
If there is a fiduciary, he can sue him. If there is not, the judge will appoint a fiduciary to hear the case, and the buyer argues with him and

(1) Al Isaaf, p.30.

(2) See Charh Fath Al Kadir (441/5), Dakhira (326/6), AL Moghni (192/8), Jawahir Al Okud (251/1)

(3) Tanquih (205/1)

(4) See Al Fatawi Al Hindia (420/2), Al Bahr Raiq (221/5)



proves that the house is a waqf, then he can get his money back. So was stated in Al Khayria and Tanqih.

Rule 7: Not anyone asking to be entrusted can be so.⁽¹⁾

As in Al Isaaf, p. 49.

Commentary: Are also concerned those who can prove that they have come of age, if they ask to be entrusted?

Someone might say, Yes, because they have asked to be entrusted, and if their demand accords with the founder's condition, because they are taken in their entirety, and no one was excepted.

But in Al Bahr I part with the aforementioned rule: anyone discharged from overseeing without having committed treason, and having asked of the judge to be entrusted, can be entrusted.

And he made exception in Dur al mokhtar and Annahr: those who claim to have come of age; because they want the fulfillment of the testament, as the claimant a fiduciary on the condition of the founder.⁽²⁾

This does not mean that if they are appointed by the judge they cannot be trustees; they can be. But one should look into the conditions of validity and invalidity. And only God knows better.

And in Al bahr, it was stated: "they should not be." And he quoted it.

Rule 8: Any Muslim founder who has become a renegade, may God protect us, his waqf is invalid.

As in Al Isaaf.

Commentary: The founder's waqf becomes invalid because waqfs are acts of piety and as such they become invalid out of renegacy.

And if he reconverts to Islam, his waqf does not accordingly revert to him.

If he dies after reconvertng to Islam, before renewing his waqf, it is just a bequest like other articles of bequest.

(1) As corroborated by the prophet, peace upon Him when He said, "We do not entrust anyone asking to be so, nor anyone who has administered (the waqf)." As quoted by Al Bokhari (7149) and Muslim (1733)

(2) See Duru Al Mokhtar

If he waqfed this on his offspring and descendants, and after them on the poor, then he becomes a renegade, then he dies or is killed, his waqf becomes invalid, and becomes a bequest.

If it was said: How can it be invalid, as he has waqfed upon designated people?

We said: He made the last line of beneficiaries the poor, out of piety to God, the Exalted, and since it was invalid what was an act of piety becomes invalid as well. For through his renegacy, he made invalid what he waqfed on the poor, as if he made a waqf without making the poor the last beneficiaries; and if they were not the last beneficiaries, the waqf is not valid.

As in Al Isaaf.

Rule 9: Every fiduciary has the upper hand in all matters dealing with contracts and expenditures.

As in Al Isaaf.

On matters not belied by what is evident, as in Al Alai's sharh al Multaqa and Tanqih.

Commentary: This rule is not to be taken in its generality, but is specific if he does not presume expenditure, namely, granting wages, as wages handed out to Al Imam, teacher, and other functionaries. If they deny having received their wages, there must be some evidence testifying to account for the expenditures of the fiduciary.

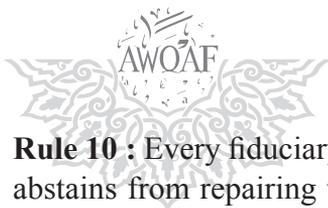
If there is none, then the functionaries are to swear.

Those to be accepted as having the upper hand in matters relating to contracts and expenditures are "worthy people" in Waqf, whether they are alive or dead, as there is no problem with any rent. As to functionaries, the problem is there.

Their argument is the following: if someone hires a carpenter or mason, and presumes that he has given his wages, there must be some evidence, as was recommended by Abu Sooud, Mufti of the Sultanate, with some modification (184).

Like the fiduciary, the tax-collector and the vice-fiduciary are taken on their oaths. As in Tanqih, p.211.





Rule 10 : Every fiduciary who is unfaithful, including the founder, or who abstains from repairing the waqf, though it contains its yields, should be deposed. Tanqih, p. 113.

Commentary: If the one who has come of age affirms that someone deserves half the position of supervision, for example, then he is taken by his word as long as they are both alive.

If the one who makes the affirmation is dead, the affirmation becomes invalid. The assignment reverts to what the founder has stipulated.

If the one entrusted with the position is dead, there is no text as to that. As followed by Ibn Al Abidin, the judge administers it, and appoints whoever he likes among those deserving the waqf. Tanqih, p. 168.

However, if the one who has come of age surrenders the administration of the waqf to someone else, or a part of of it, this is invalid. The same is true if he resigns or gives it up, it is invalid, as in Tanqih, P.194.

Rule 11: Lineage includes the child, the child's child, and so on, males and females.

As in Al Isaaf.

Rule 12: Descendants comprise: the child, the child's child, and so on, males without females.

As in Al Isaaf.

Commentary:

What is meant by "people of the waqf," in the founders' words: everyone who has a right to the waqf, at present or later, as in Tanqih (141).

Rule 13: The child, in the founder's words, includes just those who are out of his loins, male or female.

Not included is his child's child.

If he said, my land is a waqf in perpetuity to God, the exalted, to my child forever, then the yields revert to his child out of his loins, whether male or female as long as they live.

If they are extinct?



Then it is granted to the poor, and not to the child's child.

However, if he has no child at the time of the waqf, but a child's child?

The yields are granted to the child's child, as in Al Isaaf.⁽¹⁾

Commentary: If any of those deserving the waqf dies before the division of the yields, then his share is allotted to his heir. This is quite explicit in Al Khassaf⁽²⁾, and out of this stems other matters, as in Tanqih, P.150.

Rule 14: Any division annulled by the death of last person on the chain is really annulled when the use of the waqf reverts to the chain following it.

Its people should benefit from its yields themselves, or one of them should benefit in person, and the remainder should be distributed in accordance with the chain of beneficiaries established by the founder.

The meaning here is that it is not stipulated that to annul it that all the beneficiaries should in person benefit from the yields. It all suffices that one of them benefits in person.

The first part is explicit. But implicitness lies in the second part, where some of the beneficiaries benefit in person, for they are part of that class really, and some as designated by the founder.

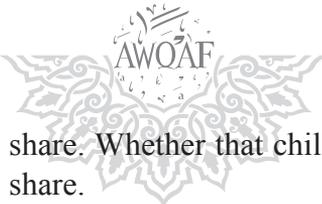
As he stipulated, that anyone dying before benefiting from the waqf, and he left behind a child, his share reverts to his child, and he has every right as his father, he gets what his father gets if he is still alive.

If the chain of beneficiaries comes to an end with the death of its last member, and the use reverts to the chain after it, and there transpires a child of someone who has died before it is proved he deserved it, and there transpired someone who deserves it because he belongs to the real chain of beneficiaries, the yields are divided between those of the second class of beneficiaries who are still alive, and the dead one who dies before it was shown he deserves it.

The living one gets his share because he deserves it in person, and the dead one who has left a child standing in his stead in merit receives his

(1) Al Isaaf, p. 99. Also Moghni Al Mohtaj (542/3), AL Moghni (168/8)

(2) Al Khassaf, Ahkam Al waqf, p.26.



share. Whether that child is one or many, he does not exceed his father's share.

This is what scholars agreed upon, as the editor ibn Hajar, Samhoudi, Sobouki, Soyouti, Al mahali, Chihab Eddine ramli, Al bourhane bin acharif, Boulkini, amongst Chafii Imams. And among Hanafi Imams, we can allude to Al Khassaf, Maqdessi, Al Biri, Khair Ramli, Chihab Ahmed Chalabi, Chornobali, Ibn Chohna, as they compiled treatises on the subject, except for the scholar Ibn Nojaim who expatiated on the subject and distinguished between 'and' and 'then.'

For more detail, see Tanqih.⁽¹⁾

Commentary: If the founder stimulated a handling of his waqf according to the class of beneficiaries, and one of those meriting the waqf dies before he benefits from anything, and has left a son, then he should proceed as we have already stated and as you know.

Still, there still something that we should mentions as it occurs frequently, and has become the subject of fatwas, namely, that the founder stipulates before the class of beneficiaries that anyone who dies of those meriting the waqf, and has left a child, or a child's child, his share reverts to his child, or his child's child. And if someone meriting the waqf from some side dies, and has left a child, and the child should get what his father merits. Then the waqf reverts to the dead man's class as the division is annulled, as the first class is extinct. The dead man's child has no right to the yiels of the waqf as the division is annulled, but it should be divided between the living members of the class as the condition here is "death before meriting." Also to be deprived he whose dies after meriting a part of the waqf when the division is annulled in accordance with the founder's first and second conditions, namely: he who dies after meriting the waqf, his share reverts to his child, and he who dies before that his child takes his place.

For if we grant, as the division is annulled, the son whose father dies after meriting, then we have contravened the founder's condition as to

(1) Tanqih, (158-159/1a)

ordering the classes first, and, second, in giving the father's share to the child and his taking his place although he is not dead before meriting the waqf but after. And if we deprive him of his father's share, we contravene also the founder's condition. If someone dies leaving a child after meriting the waqf, his share reverts to his son.

If the two conditions are at odds, then as the rule goes, we should comply with the last of the two, and here the last condition concerns the class of beneficiaries, then we should comply with it.

Still, it is stipulated that we cannot comply with both, in one way or another; if so, then we should comply with them, as far as possible, that's why we have used both, from time to time.

The net-result: if a member of the second class dies, leaving a child, then his share reverts to his child, benefiting from it till the division is annulled by the extinction of his father's class.

If money resulting from the yields reverts to the third class, then it is divided between them. The child does not need his father's share, and he has no right to it; because he will get his share in person; and as such, he takes precedence.

Then if a member of the third class dies, leaving a child, his share reverts to his child till the class is extinct and the division is annulled; after that, he has no right to his father's share, and so on so forth.

And if the child is part of the class to which the yields of the waqf have reverted to, he will take his share as the other members of his class, in compliance with the founder's conditions.

And if he was lower on the chain of beneficiaries than them, namely a child's child and the dead man is his grandfather, and he has received his grandfather's share that he merits after his death, as it is the will of the founder. However, if the waqf has reverted to his father, then he has no right to his grandfather's share, as in Tanqih, P.144.

Commentary: The transfer of the share of who dies to his child means a transfer of what he really gets, not what he will get, as agreed upon by most scholars, Tanqih, p.143.



Rule 15: Children and their children include all hi lineage; whereas, the child does not mean the whole descendency.

As in Al Isaaf.

Some said: he is like the child, and there is no difference between them, as in Tanqih, p.118.

Are the daughters' children included in the 'children'?

There are two opinions here, and the most reliable: they are to be included, as in Tanqih, p.158.

Commentary: If the founder keeps silent on who dies without leaving any child, his share reverts to the yields of the waqf.

As in Al Isaaf, and Tanqih, p.148.

Rule 16: Relations include any relation to him, small or adult, male or female, Muslim, Christian or Jew, free or slave.

As in Al Isaaf.

Commentary: The closer in terms of degree and womb, and not in terms bequest or association.

And if he says: the closer people to me, they are those of the same womb or out of the same loins.

And if he says: on the closer relation to me, and he has parents and a child, no one of them is included in the waqf, for they are not said to be his relations, as in Al Isaaf.

Rule 17: The poor are those destitute at the time of the yields, whether the need is original or accidental.

As in Al Isaaf.

Rule 18: The right person to administer the Waqf is the person who is good, straightforward, good-willing, harmless, not a liar or abusive.

As in Al Isaaf.

Rule 19: The orphan is a child whose father has died, and he has not come of age, male or female. Poverty is a condition, although not mentioned.

As in Al Isaaf.



Rule 20: A widow is a woman whose husband has died, or divorced her, as she has reached the stage of womanhood, whether she was legally his wife or not.

If she has not menstruated at the time of divorce, or her husband has died, she does not benefit from the waqf.

And here the name of the widow and she-orphan are not associated.

Here poverty is also a condition, for no rich widow or an orphan girl can benefit from the waqf. As in Al Isaaf.

Rule 21: The slave is a woman deflowered through marriage or out-of-wed, and she has no husband, rich or poor, reaching the stage of womanhood or not.

As in Al Isaaf.

Rule 22: Thaib is a slave woman whether deflowered or not, whether she has a husband or not, coming of age or not, rich or poor.

Rule 23: Al Bikr is a slave woman not deflowered, in wedding or out of wedlock, having a husband or not, small or big, rich or poor.

Commentary: The fact that she is no longer a virgin through menstruation or some accident, does not deprive her of the state of a bikr. As in Al Isaaf.

Rule 24: Any description coming after conjunctions reverts to the last.

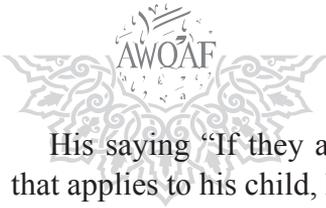
As in the founder's words: upon Zaid's children, and Khalid's children, and Aamrou's children, the poor.

Here "the poor" reverts to Aamrou's children, and not anyone coming before them in the sentence. As in Dour Al Mokhtar.

Rule 25: Any explicit condition coming after conjunctions refers to the whole.

As in Dour Al Mokhtar.

As he entrusted his waqf to his child, his child's child, his lineage, his descendants, if they are of children of males .



His saying “If they are of children of males” is an explicit condition that applies to his child, his child’s child, his lineage, his descendants; it is a condition agreed upon by all.

As in Al Bahr, and Al Minah; and this is a condition explicitly derived from the Imam.

Rule 26: If two conditions are at odds, we comply with the latter.

As in Tanqih, p.130.

Commentary: We comply with the last condition for it explains the point; as argued by the Imam Al Khassaf, Tanqih, p.137.

Rule 27: If the act of granting and depriving are at odds; namely, if there are two words from the founder, one implying granting and the other depriving, priority is given to granting.⁽¹⁾

As in Tanqih.

Rule 28: Any condition, whether an adjective, an adverb or otherwise, bound by the conjunction ‘then,’ the rule applies to the last item affected by the conjunction, Tanqih, p. 137.

Commentary: As he stated ‘bound by the conjunction ‘then’ it becomes a rule for us and the Shafii.

If the conjunction is ‘and’, the same is true in our case, without any difference, as far as the use of conjunctions is concerned. Such is the rule in Tanqih, in accordance with the phrase in Dour Al Mokhtar.

In the latter source, it is stated that “an adjective coming after phrases refers to the last item for us, and to the whole for the chafii even through ‘and’, and if through ‘then’ it refers to the last, as agreed upon. All of this is derived from Al Ashbah.⁽²⁾

It is stated in Tahtaoui’s footnote, “saying ‘to the last as agreed upon,’

(1) See Sayouti in Al Ashbah wa Nadhair, p. 251.

(2) Duru Al Mokhtar (687/6) ; AL Ashbah wa Nadhair, p.202.



this is different from what Al Iraqui stated in his fatwas. ⁽¹⁾

In his very words, our companions made conjunctions in Precedents and New cases unbound, without binding them with any conjunction. Arguing about this are Imam Al Haramain, Ghazali, and the two sheikhs. There is no difference for them between ‘and’ and ‘then.’

We bind conjunction by means of ‘then,’ as it is, and the origin in stating the difference is the author of Al ashbah, and he was followed in that, and the majority argued against that condition, as you have seen.

However, there is something we need mention, namely, the condition of malehood in the founder’s words if he says, “upon his children, and his children’ children, and their lineage, males without females. Does it apply to all the conjoined fathers and children, or does it conform to the rule: ‘the binding after pronouns of conjunction applies to the last item? According to Ibn Noujaim in Al Ashbah in the Waqf, it binds the last item especially, according to the rule, and he was answered at length by which we cannot go into here.

The net-result: There is some disagreement as to whether the conjunction applies to all or to the last item.

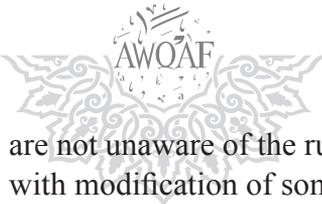
In Al Isaaf, following Hilal, it is a condition to all items bound by a conjunction, and this is quite explicit in Nasihi’s words, namely, “if he says: it is incumbent upon my child, and my child’s child, the males, he says it is to his child’s males, and his child’s child, males and females alike.

Don’t you see that if he said, to my child, and my child’s child, the poor (I give) who are poor from the males and females’ children.”

And there are essays he quoted in Tanqih, and he expatiated on it, using quotes and sayings.

The net-result is that there are two opinions upon this, the more recurrent and explicit one is it is binding all conjoined items, and they have elicited from the rule in accordance with evidence, as it is affirmed that if there occurs an evidence that the binding or adjective refers to all the conjoined items, then it applies to all, otherwise Hilal and Al Isaaf’s author and Nasihi

(1) Ahmed Ben Mohammed ben Ismail Tahtaoui (1231 A.H.). See Al Jawahir Al Modia (64/2)



are not unaware of the rule concerning adjective and binding, as in Tanqih, with modification of some phrases.

Rule 29: Any vocal or adverbial evidence indicating that the adjective, or the pronoun, or the exception to all the conjoined items should be applied to all. As in Tanqih, p. 36.

Commentary: The founders' words are built upon what is commonsense to them, as in Al Ashbah where it is stated that "tradition rules."

Rule 30: Any waqf classified as 'then' three bellies, is classified after what bellies follow.

As in Tanqih, p. 138.

Commentary: the forms of classified waqf are three:

First, classification with 'then', as when saying, "upon my child, then his child's child.

Second, as when saying, "belly after belly, after mentioning bellies.

Third, on the closer and closer.

As in Al Isaaf, too.

Rule 31: Anyone taking the share of his father or mother in accordance with dictates of the founder is equal to the dead in that category, otherwise the one taking his share in person has priority over the one benefiting in accordance with the dictates of the founder.

As in Tanqih, p. 146.

Commentary: If it is stipulated that he who dies childless his share reverts to the one closer in his class, and there is no one befitting that description, his share reverts to the yields of the waqf, as in Tanqih, p.150.

Rule 32: Any waqf not classified in terms of bellies his yields are divided equally between his people, as in Tanqih, p. 153.

Commentary: the essence of waqf lies in the division of the yields between those deserving the waqf on equal terms, as long as preference is no condition. Any waqf whose founder has not stated preference as its principle is divided equally, as in Tanqih, p. 129.



Rule 33: generality in waqf-distribution is an uncontroversial argument.

Tanqih, p. 142.

Commentary: generality in waqf-distribution is an assumption, as when the founder says: “he who dies of the waqf people, his share reverts to the one pertaining in his class.”

“Who” includes all the members of the class, the ones getting their share and the ones being deprived.

Rule 34: If a question is the subject of controversy, we opt for the majority of opinions.

As in Tanqih, p.157.

Rule 35: As long as it is possible to refer a word to the condition, nothing is modified in favor of another.

Likewise in Tanqih, p. 116.

Rule 36: Any yields deriving from the very waqf, the beneficiaries can claim no right to them, but become part of the waqf itself.

Likewise in Al Isaaf.

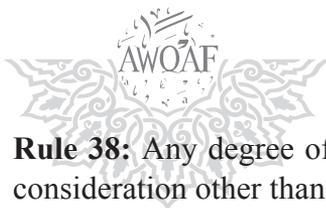
Commentary: the meaning here of the yields resulting from the very waqf, as for example when the remaining of a place is sold on its condition.

Someone might say, the yields resulting from trees designated for the waqf when they are cut down, the beneficiaries can lay no claim to them, but they are restored to the waqf, for they are themselves a waqf, and here the reasoning is the same.

The evidence here is what Al Isaaf’s author said: “any yields deriving from the very waqf...” This should be taken down.

Rule 37: Any kin relation on both sides is given precedence over kin relation on one side when there is equity between the two.

Likewise in Tanqih, p. 114.



Rule 38: Any degree of relation designated by the founder is taken into consideration other than the degree of hereditary relation.

Likewise in Tanqih, p. 125.

Commentary: degree and class refer to equity in relation to the founder, likewise in Tanqih, p. 122.

Rule 39: The intent of founders is taken on in its specific nature.

Likewise in Al-Khairia and Tanqih, p. 127.

Commentary: the meaning here is that the intent of the founder specifies his general conditions.

Like if he said, “for all who died and left a child, his share is for his child,” after saying, “children of males without females”

“All who died,” is general specifying “children of males without females” in accordance with the founder’s intent, which is depriving females’ children, otherwise rulings would favor the inclusion of the latter. Because it is general, and what is general gets precedence, and since it is last, and, as you know, we comply with the last.

Rule 40: The child of a person who dies before the waqf is established is not entitled to the yields of the waqf.

Unless the founder say, for his children and the children of his children, in addition to the first personal pronoun; namely, for my child and (the child of my child,) and their children, then they can benefit from the waqf.

However, if he says, for my child and their children, then they cannot benefit from the waqf, for no one can be entitled to the waqf unless he adds his children; namely, the children of the dead to himself. Think.

Likewise in Al Isaaf and Tanqih, p. 119.

Commentary: we can identify three types of disrupted waqf:

First, waqf disrupted in the beginning:

Like when he said, my land is a charity endowed upon what child I may have, and he does not have a child, the yields are distributed to the poor, and when he has a child the yields go to the child.

Second, waqf disrupted in the middle:



As when he endowed his waqf upon Zaid and Omar and Bakr, and after them upon their children, and after them upon Khalid and his children, and If zaid and Omar die without leaving any children, their shares go to the poor, and hence the waqf is disrupted in the middle.

And if Bakr dies without leaving any son then the waqf goes to Khalid, and all the yields go to him.

Third, waqf disrupted at the end:

Like when he endows his waqf upon his child, and the child of his child, and his lineage, and if they are all extinct, it is endowed upon the poor, then everyone is extinct, it goes to the poor.

The disrupted may be disrupted in all the yields, or in part of them, as in the two above examples; Think, Tanqih, p. 155, with some modi.

Rule 41: Any categorically general contrasting with the specific should be complied with.

Likewise in Tanqih.

Commentary: If the founders says, “in accordance with the rule set above,” is it general in all the earlier rules, or specific to some rules?

According to Al-ramli, it is general.

However, according to Al-sharbali and his group, it is specific.

Still, the majority of scholars opt for the latter, as in Tanqih, p. 140, with some modification.

Rule 42: Any waqf set for residence and exploitation, then it is used for exploitation.

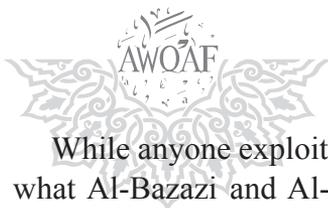
As in Tanqih, p. 157.

Rule 43: The founder’s words are to be taken into account, though they may be ambiguous.

As in Tanqih, p. 124.

Rule 44: Anyone residing in waqf cannot exploit it.⁽¹⁾

(1) Tanquih (180/1)



While anyone exploiting a waqf cannot reside in it, in accordance with what Al-Bazazi and Al-Khassaf stated, Ibn Humam in Al Fath and Ibn Noujaim in Al Bahr.

Al-shornoubolali quoted Aalil ben Alaa and opted for it.

As in Tanqih, he opted for the former. Think.

Rule 45: Like bequest law, entitlement to the waqf cannot be nullified.⁽¹⁾

As in Al Khania and was mentioned by Abou Sooud in Al Ashbah.

Commentary: what is meant here by their saying, “entitlement cannot be nullified,” is that it cannot be nullified by affirming that he is not entitled to the waqf. However, if he says, “what I deserve of the waqf, someone else deserves it through what I know of him, and I must affirm it, then he is taken by his word as long as he lives.

If he dies, the waqf reverts to what the founder has stipulated, as the footnote to Abou Sooud’s Al ashbah points, as quoted by Imam Al-Khassaf.⁽²⁾

If the fiduciary is dead, does the waqf revert to the fiduciary or the waqf?

Apparently, it reverts to the waqf, and anyone seeing that it should be pronounced, should prove it here.

Rule 46: Waqf cannot be divided.⁽³⁾

As in Al Isaaf, Al Bahr, Al Fath, and most books of the doctrine.

Commentary: What is meant here is that waqf cannot be divided in such a way as to be owned.

As the division of the waqf lands between those entitled to them, or those renting them by the permission of its fiduciaries in such a satisfactory way through relay and alternation, this is permitted, as in Al Isaaf, Kgayria, Al-shalabi’s fatwas and Tanqih (p.177.)

(1) See Ghamz Oyoun Al Basair (360/3)

(2) Ahkam Al waqf, p.139.

(3) See Tabyin Al Hakaek (327/3) ; Rawdato Talibine (361/5)



Rule 47: Kings and princes' waqfs conditions are not taken into consideration.

Abu Sooud's fatwas, the Sultanate's mufti, said explicitly, 'for they are derived from the treasury.' As in Tanqih, p.191.

Rule 48: As long as one of the waqf people can be appointed as fiduciary, a foreigner cannot be designated.

As in Dhour Al Mokhtar and Tanqih, p. 191.

Commentary: If the judge appointed a foreigner although one of the waqf people is available it is valid, though he might be sinful. As in the footnote to Al Ashbah.

Al-Tahtaoui said in the footnote to Dhour after quoting Abu Sooud, "I say: as our scholars have affirmed, he has the right to appointment, they affirmed that he cannot appoint anyone as fiduciary except the fittest among the kin relations close to the founder.

If he appoints someone else, then he will contradict what is dictated, then he is deposed, and there is no preference between the texts.

What is given priority here is that 'what' is specifying the first phrase, the supervision goes absolutely to the judge. Unless there is any close kin relation to the founder meriting supervision, nothing is modified of it."

Rule 49: Appointing the fiduciary upon the waqf and his surrender is invalid.

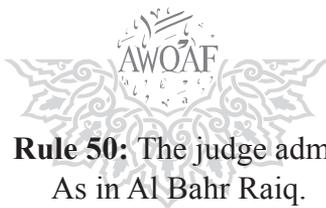
As in Al Bazzaria, Al Imadia, Jamia Al Fosoulayn, and Al Hanouti.

Al Hanouti further added, "and amongst it believing, for believing is confirmation."

The same is true in Khair Ramli's Fatwas, this should be remembered.

Commentay: the fiduciary cannot depose the renter without a specific purpose, as in Dhour and Tanqih, p.210.

Commentary: guarantees cannot be held through the yields of the waqf, just as if the persons deserving the waqf ask from the fiduciary guarantees from what yields he possesses, just in all trusts, as in Al Khania and Tanqih, p. 211.



Rule 50: The judge administers the waqfs in accordance with a purpose.

As in Al Bahr Raiq.

Commentary: the waqf should be administered for what is for the best, even if the judge deposes the entrusted fiduciary for a purpose, the deposition is valid, as in Jamii Al Fosoulin.

What we can deduce here is that the non-conditioned person can be appointed fiduciary, if he accepts without being paid from the founder, and when the one entrusted with the waqf turns it down, if that is for the benefit of the waqf, as in Al Biri's footnote to Al ashbah.

In Al-Hasiri's Hawi, "if there is no one from the close kin relations to be entrusted but with a salary, and there is someone else who can be netrustrusted without being paid, it is up to the judge to see what is more rightful and better."

As in Tanqih, p. 192, with mod.

Conclusion

On replacement

If the waqf is occupied, it cannot be replaced except on certain matters.

He said in Al Ashbah, "replacing occupied waqf is not permitted, except on certain matters:

First: if that is stipulated by the founder.

Second: if it is seized by a person who has let water overflow it till it becomes like a sea unfit for agriculture. Then it is estimated and out of its price a land is bought.

Third: It is denied by the seizer and there is no evidence; this was stated in Al Khania.

Fourth: A person may wish to have it and give in its stead something more productive and better, this is permitted, according to Ibn Youssef, and can be the subject of Fatwa, as in Qyarii Al Hidayah's fatwas. Over.

The scholar Al Biri said, "I have not seen anyone opting for what is more productive, and it is obvious that the matter is up to the contemporary jurists." Over.

It may have gone into ruin, and here replacement is permitted by the rightful judge.



It is stated in Al Isaaf, “if a land is barren, useless, the fiduciary raises the matter to the above-mentioned judge.”

He also said, “if he has not stipulated replacement, he pointed in Al Siar that only the judge is entitled if he sees any good in that. It should be linked to the first judge mentioned in the saying of the prophet, peace upon him, “One judge is in heaven, and two in hell...” The former is characterized by scholarship and good conduct; so that there is no nullification of Muslims’ waqfs, as is happening nowadays.” Over.

Here the founder’s conditions are not taken into consideration, whether they are of replacement, or not, or whether the waqf is transmitted; for this goes against the grain of what the founder stipulated, as stated earlier; the above-mentioned judge has the right to replace him then if that is for the good of the waqf.

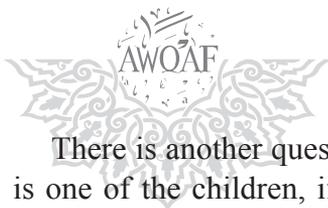
To sum up: the waqf should be administered in such a way as befits its good management.

Still, there is a condition we should mention as far as the replacement of the earlier occupied waqf. The question was mentioned in 935 A.H. prohibiting replacement without the sultan’s decree, so that it has become invalid without it, as quoted in Tanqih from what Abu Sooud said. This should be remembered.

I said, there is in the sultanate’s mufti Ali Afandi’s fatwas what corroborates this fact, in the book on waqf and the types of replacement where he stipulated all questions on the possibility of replacement upon the fulfillment of the conditions: by the governor’s permission and the sultan’s order.

The question is as follows: after Zaid replaced the endowed property of which he is the fiduciary, when the conditions of replacement are available, for a property owned by Omar, and in accordance with the permission of a governor or a Sultan’s order, another governor says: I am not satisfied with such a ruling, does the second governor have the right to nullify the earlier replacement?

Answer: no.



There is another question concerning replacing a house: can zaid, who is one of the children, if the conditions for replacement of the endowed house are available, replace a house which is stipulated to be entrusted upon the children and their residence quarters, for a house owned by Omar, and with the permission of the governor and the Sultan's order.

Answer: no.

Therefore, it is bound by the governor's permission and the Sultan's order. Hence, it is a condition as we have seen in the light of what Abu Sooud Afandi stated earlier.

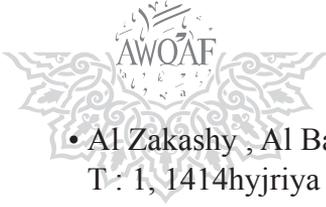
This is all I have succinctly gathered of some of the waqf rules, and great prayers and blessings upon our prophet, his family and companions.

This treatise comes to its conclusion in the early days of Di AL Qiada 1287 A.H. by the poor one, Mahmoud Al-hamzaoui, Grand Mufti of Damascus, may God forgive him, his parents and all Muslims.

Amen

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Book Review



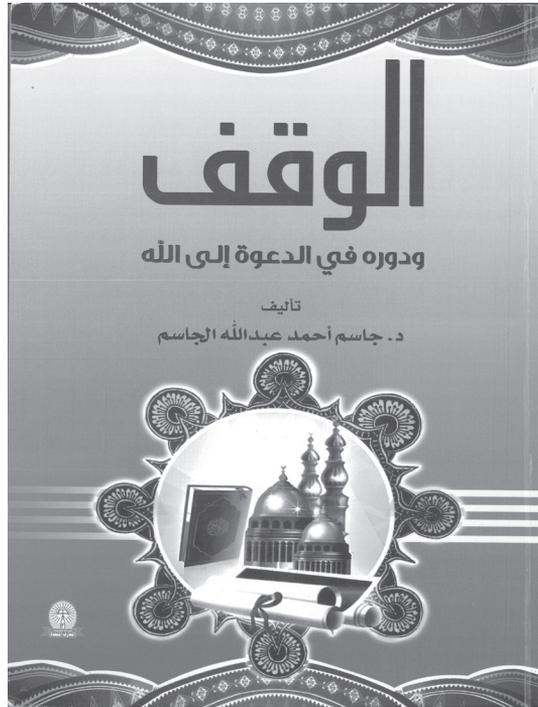
Waqfs (or, Pious Endowments) and their Role in the Da`wa (Invitation to the Way of Allah)

A Dissertation submitted in fulfillment of the Requirements of the Doctoral Degree
By Dr. Jassim Ahmed Abdellah Al-Jassim

Umm Darmān University

Ussūl Deen (or, the Theoretical Foundations of Religion) Faculty
Department of the *Da`wa* (Call to Allah) and Islamic Culture

Reviewed by Loubna Saliheen



In his book titled *Of the Role played by Waqfs in the Da`wa* (Invitation to the Way of Allah), the researcher deals with the importance of *Waqfs* and their age-old heritage. The *Waqf*, it is argued is as old as the (Canonical) Laws which had preceded Islam. With the advent of Islam, *Waqf* was consecrated. Islam thus established its fundamentals and organized its operation in ways which guaranteed its harmony with the rules underlying inheritance shares and the lofty aims of the *Shari`ah* (or, Revealed Law). It also showed how *Waqfs* could be benefitted from in promoting the *Da`wa* (or, Invitation to Allah's Way), which is one of the mightiest ways to get closer to Allah and one of the most venerable missions. The purpose is to widen benefit from pious endowments and make them serve the *Du`āts* (people engaged in the *Da`wa* to Allah, Glory and Majesty be to Him) or to provide venerable services for the benefit of people –whether these services are religious, social, economic, or political.

The research was originally submitted by the researcher in fulfillment of the requirements of the doctoral degree from *Umm Darmān* University, *Ussūl Deen* (or the Theoretical Foundations of Religion) Faculty, the Department of the *Da`wa* (Call to Allah) and Islamic Culture. The research consists of four main parts, a conclusion, a section devoted to the main outcomes and recommendations, and an index. At the outset, the researcher presents an introduction which highlights the significance of the topic and the rationale for choosing it. It also furnishes a good survey of previous studies to ensure greater benefit from them.

The researcher has pointed out the significance of undertaking research in this area and asserted that it is aimed at proving a presumed relation between *Waqf* and the Call to Allah. The assumption has a legal fundament in the Noble *Qurān* and the *Sunnah* (or, Tradition) of the Prophet, along with the practices and deeds of the Companions (May Allah be pleased with all of them) and the Worthy Ancestors.



In his survey of previous studies in the area, the researcher has pointed to a number of studies, including the following, for example: *Dirāssat Mabāhit Al-Waqf* (A Study of the Researches undertaken in relation to *Waqfs* (Pious Endowments or Trusts));⁽¹⁾ *Majallat Al-Waqf Al-Mu'athirrah fy Ad-Da`wa Ila Allah* (Areas of Pious Endowments which exercises an influence on the Call to the Way of Allah),⁽²⁾ *Al-Waqf wa atharuhu fy Nashr Ad-da`wa* (*Waqfs* and its Impacts on the Dissemination of the Call to Allah and the Efforts expended by the Kingdom of Saudi Arabia in this Respect),⁽³⁾ and *Suwar min `Alāqat Al-Waqf bi-da`wa Ila-Llāh Ta`āla* (Aspects of the Relation between Pious Endowments and the Call to Almighty Allah: a Comparison between the Past and the Present);⁽⁴⁾ *Majallat Al-Waqf Al-Mu'athirrah fy Ad-Da`wa Ila-Llah Ta`ala* (Areas of Pious Endowments which influence The Call to Almighty Allah).⁽⁵⁾

- (1) Mohammed Zaid Al-Abiany Bek, *Kitāb Mabāhit Al-Waqf* (A Book on the Researches undertaken in relation to *Waqfs*), Second Edition, Ali Sukkar Printing House, 1330 A.H corresponding to 1912 A.D.
- (2) Professor Mohammed As-Sayyid Ad-Dassūqy, *Majallat Al-Waqf Al-Mu'athirrah fy Ad-Da`wa Ila Allah* (Areas of Pious Endowments which influence on the Call to the Way of Allah), a research submitted to the First *Waqfs* Conference in the Kingdom of Saudi Arabia, organized by *Umm Al-Qura* University, in cooperation with the Ministry in charge of Islamic Affairs, *Waqfs*, and Guidance in the Holy *Makkah*, during the month of *Sha`bān*, 1422 A.H.
- (3) Dr. Abderrahim Ibn Mohamed Al-Mafdawy, *Al-Waqf wa atharuhu fy Nashr Ad-da`wa* (*Waqfs* and its Impacts on the Dissemination of the Call to Allah and the Efforts expended by the Kingdom of Saudi Arabia in this Respect), a research submitted to the First *Waqfs* Conference in the Kingdom of Saudi Arabia, organized by *Umm Al-Qura* University, in cooperation with the Ministry in charge of Islamic Affairs, *Waqfs*, and Guidance in the Holy *Makkah*, during the month of *Sha`bān*, 1422 A.H.
- (4) Dr. Khalid Abderrahman Al-Qoraishy, and *Suwar min `Alāqat Al-Waqf bi-da`wa Ila-Llāh Ta`āla* (Aspects of the Relation between Pious Endowments and the Call to Almighty Allah: a Comparison between the Past and the Present), a research submitted to the First *Waqfs* Conference in the Kingdom of Saudi Arabia, organized by *Umm Al-Qura* University, in cooperation with the Ministry in charge of Islamic Affairs, *Waqfs*, and Guidance in the Holy *Makkah*, during the month of *Sha`bān*, 1422 A.H.
- (5) Dr. Moqtadah Hassan Ibn Mohammed Yāssin, *Majallat Al-Waqf Al-Mu'athirrah fy Ad-Da`wa Ila-Llah Ta`ala* (Areas of Pious Endowments which influence The Call to Almighty Allah), a research submitted to the First *Waqfs* Conference in the Kingdom of Saudi Arabia, organized by *Umm Al-Qura* University, in cooperation with the Ministry in charge of Islamic Affairs, *Waqfs*, and Guidance in the Holy *Makkah*, during the month of *Sha`bān*, 1422 A.H.

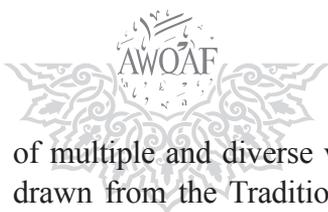
In his study plan, the researcher has divided the research into four sections, followed by a conclusion, an index, acknowledgements and expressions of consideration. In the first section, which is titled “An Introduction to *Waqfs* Provisions/Ordinances in the Islamic *Shari`ah* (or, the Revealed Law), the researcher presents a prefatory section and three research areas, as well as a historical survey of pious endowments as they had been prior to the advent of Islam and as they actually were during the era of Islam.

In the prefatory section, the researcher highlights the deep-rooted history of *Waqfs*, stating that pious endowments were not limited solely to temples and sacred ritual venues, which benefited from the endowments and the money generated by their fruits, but also extended to cover all kinds of charities.

The researcher asserted that one of the most salient proofs in support of the fact that previous nations had known pious endowments before the advent of Islam resides in the pious endowments set up by Ibrahim Al-Khalīl, the Father of Prophets (Peace and blessings be upon him), as historians have pointed out. Some of these endowments are still in existence: one such is the Holy *Ka`bah*, which was built by Ibrahim (Peace be upon him) to serve as a refuge and a place of forgiveness.

He also states that the mosques were among the most notable charitable institutions which people used to vie with one another in order to build for the sake of Allah. Other charitable institutions included schools, hospitals, Muslim Orders’ houses, hospices, *Zawāyah* (small cupolaed mosques with hospices attached to them), pilgrims’ homes, water-wells, as well as different social institutions which provided a whole range of services.

In the first research section, the researcher has provided a definition of *Waqf*, established its legitimacy, shown how it is concluded, and dwelt on the wisdom behind it. He defines the term in language. Besides, he shows how it has been defined by *Hanafid*, *Mālikite*, *Shāfi`ite*, and *Hanbalite* jurists. He also clarifies the relation between linguistic and legal definitions. With regards to the legitimacy of *Waqfs*, he has established it by means



of multiple and diverse verses drawn from the *Qurān* and *Hadīth*-sayings drawn from the Tradition of the Prophet. He also surveyed a number of pious endowments set up by the Noble Companions –notably, Aby Bakr As-Siddīq, Omar Ibn Al-Khattāb, Othmān Ibn `Affāne, Ali Ibn Aby Tālib, Az-Zubair Ibn Al-`Awwām and others (May Allah be pleased with all of them).

Concerning the conclusion of the *Waqf* (compact), the researcher has shown the difference between *Aqd* (contract) and *Tassreef* (disposal of usufruct). He defines *Aqd* in language and in usage and compares and contrasts the two terms. He also enumerates the validity conditions of the contract –notably, an utterance, a deed, and the act of setting down everything in writing. He concludes the first research section in the first part by considering the wisdom underlying the legitimacy of *Waqfs*, which he enunciated in thirteen different advantages and merits: the preservation of property from loss; *Waqf* as a donation procure benefits that are not found in other charities; it is a means to satisfy the needs and wants of people in society; it is a means to draw ever so near Allah; it is a way to meet the needs of the poor and the destitute; the memory of the person that has set up the pious endowment is kept alive and the beneficiaries continue to invoke the Almighty on his behalf.

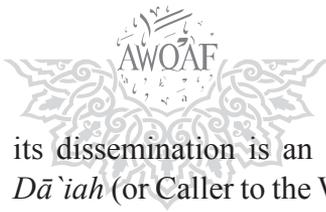
In the second thematic section, the researcher takes up the main pillars and terms of *Waqfs*. He defines *Rukn* (pillar) in terms of language and usage and identifies four such pillars: *Al-Wāqif* (the person or entity setting up the pious endowment); *Al-Mawqūf* (the tied up property); *Al-Mawqūf `alayh* (the person, the entity or the cause for which the pious endowment has been set up); and *As-Sīghah* (the formula). He categorizes pious endowments and enumerates the requirements which the pious endower should have, defining in the process *Ahliyah* (eligibility or qualification), in language and in juristic usage. He then turns to the terms which should feature in *Sīghat Al-Waqf* (the pious endowment formula). And he does the same with the beneficiaries and the requirements they should meet. In this connection, the researcher explains some of the conditions/terms that the endowers stipulate when they set up their endowments –such as *Ziyādah*

wa Nuqssān (addition and reduction); *Idkhāl wa Ikhrāj* (bringing in and taking out); *I`tāa`wa Hirmān* (bestowal and deprivation); *Ibdāl wal Istibdāl* (exchange and substitution). He then sets out to cite the requirements which the *Waqfs* trustee should meet and the duties of the *Waqfs Nādhir* (superintendent) should fulfill towards the pious endowment, the endower, and the beneficiaries.

In the third thematic section, the researcher deals with the entitlement to *Waqf*, as well as its types (charitable or popular). In this respect, he puts forward another typology of pious endowments, premised on differences in terms of consideration, namely:

1. Types of endowments made considering the categories of recipients and beneficiaries;
2. Types of endowments made taking into account the activities involved;
3. Types of endowments made considering their nature;
4. Types of endowments set up in view of their legitimacy;
5. Types of endowments made with time-span in view;
6. Types of endowments set up with the ideas of continuity/permanence or suspension in mind;
7. Types of endowments made with particular focus on the entity/person setting them up.

The second part of the book deals with *Waqfs* and its influence on the *Da`wa* (the Call to the Way of Allah). This part consists of a prefatory section and five research sections: in this section, the researcher outlines the opinions of scholars regarding the *Da`wa*, notably those of *Sheikh Al-Isslām*, Ibn Taymiah (May Allah have mercy on him) and Sheikh Mohammed Al-Ghazāly (May Allah have mercy on him), and other scholars. He then considers the provisions of the *Da`wa* –notably whether



its dissemination is an individual duty or a collective one—defines the *Dā`iah* (or Caller to the Way of Allah), his qualities, the methods and styles of conveying the *Da`wa*, and the means utilized in conveying it.

In the first research section, which is devoted to pious endowments established for mosques, the researcher shows the role played by the mosque in the invitation to the Way of Allah and the specificity of the mosque as an effective tool used in the *Da`wa*. He then considers the impacts of the mosque on Islamic education and training, the scholarly influence of the mosque as a corner-stone in civilization-building, and the influence exercised by scholars and *Du`āts* on the mosque.

The second research section deals with pious endowments set up to support scholarly institutions. The researcher elaborates the stand of Islam on scholarship, citing knowledge acquired from the Holy *Qurān*, the enlightening Prophet's Tradition and the *Hadith*-sayings uttered by the Messenger of Allah (Peace and blessings be upon him), and the heritage bequeathed by the Worthy Ancestors (May Allah be pleased with all of them) showing the merits of knowledge. The researcher points to the many contributions made by pious endowment for the purpose of laying the foundations of a rich and diverse culture in Islamic societies. He also demonstrates the influence of institutions of learning on the Call to the Way of Allah.

In the third research section, the researcher sheds light on the role of *Waqfs* in supporting the health-care institution, as elaborated on the basis of Islamic medical theory. The latter is premised on the foundational idea which consists in honoring man, preserving his integrity, repelling all harm likely to undermine that integrity, fostering wholesomeness (by considering it as a blessing), recommending medical treatment and healing, promoting the permanence of good health, caring for food and nutriments, emphasizing the role of cleanliness and care for the self, and establishing a balance between bodily needs and spiritual ones in order to straighten human life. By way of example, the researcher cites a number

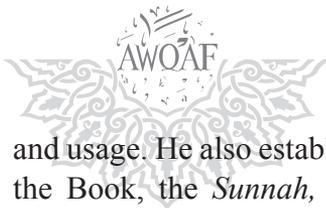
of leading health-care institutions and centers, namely *Ahmed Ibn Tolon Hospital; Al-`Adadhy* in Baghdad, the Great *Nury* Hospital in Damascus, and several similar institutions.

Pious endowments set up to support *Jihād* (or, Holy struggle) in the Way of Allah constitute the subject matter of the fourth research section. After a prefatory section, the researcher takes up the issue of *Jihād* showing its significance by means of evidence drawn from the Book and the *Sunnah*. He discusses the standing of *Jihād* in the Way of Allah, as well as its goals, by showing the various stages that the Holy Struggle for the Sake of Allah had gone through. He analyses the wisdom behind gradualism observed in the legislation pertaining to the struggle in the Way of Allah. Finally, he dwells on the relations between *Waqfs* and *Jihād* by highlighting the clear role played by the former in developing action in the area of the Islamic *Da`wa*. Pious endowments have actually paved the way for *Du`āts* and *Mujāhids* to disseminate Allah's religion and to enlighten people about its ordinances.

In the fifth research section, the researcher takes up the issue of the preparation and training of *Du`āts*. Following a prefatory section, he describes Islamic *Waqfs* and the institutions established to train *Du`āts*. He discusses cultural knowledge needed by the *Dā`iah* (Caller to the Way of Allah) and the appropriate means to train *Du`āts* and follow up on their work.

In the third part of the book, the researcher deals with the investment methods adopted by Islamic *Waqfs*. He has divided the part into a prefatory section and three research sections. In the preface, he outlines the legal regulations governing the investment of *Waqf* property/money and discusses the legal, economic, and social characteristics of the *Waqfs* Institution.

In the second research section, which is titled "Old Investment Models," the author defines *Istibdāl* (exchange or substitution) in language and usage and outlines the terms and conditions of *Istibdāl*. He then takes up the term *Ijārah* (letting a property on lease) defining it in terms of language



and usage. He also establishes its legitimacy by considering evidence from the Book, the *Sunnah*, and *Ijmāa`* (Consensus). He likewise discusses validity requirements for *Ijārah*, the provisions governing the lease of *Waqf* property, the persons and entity entitled to act as lessors, the persons qualified to serve as lessees, as well as the *Waqf* property lease period. In this section also, the researcher defines *Hikr* (or, ground rent) in language and legal usage and outlines its terms and types. And in the fourth sub-section of the research section, he defines *Muzāra`ah* (or, crop-sharing) in language and usage. He establishes its legitimacy, discusses its pillars and terms, and describes the activity of crop-sharing on *Waqf* lands. In the last sub-section, the researcher takes up *Mussāqat* (sharecropping contract over the lease of a plantation, limited to one crop period), defining its linguistic and usage terms. Besides, he establishes its legitimacy and cites the terms of such types of contract as applicable to *Waqf* lands.

In the third thematic section of part three, the researcher deals with the models adopted in the investment of *Waqf* money/property. He describes *Shirkah* (commercial enterprise or partnership) in terms of language and usage. He establishes its legitimacy discusses its types and categories, as well as various types of partnership contracts, and *Mudārabah* (or, silent partnership). He then moves on to consider the *Istissnā`* model (or, manufacturing partnership) in language and usage, describes *Istissnā`* contract and *Waqf* lands, dwelling on the partnership between the *Waqf* (institution) and the builder on *Waqf*-held lands. He likewise considers *Al-Bay` At-Ta`jeery* (lease with an option of sale).

In the fourth part of the book the researcher gives some model examples of *Da`wa* Institutions whose actions are backed up by the *Waqf* Institution. This part consists of a prefatory section and five research sections. In the five sections the author focuses on a set of *Da`wa* institutions where *Waqf* plays a crucial *Da`wa* role, through the support it furnishes to actions undertaken by the members of these institutions in the framework of the Call to the Way of Allah.

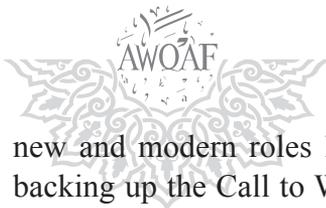
In the first research section he thus cites *Al-hay'ah Al-Khayriah Al-Isslamiah Al-'Alamiah* (the World Islamic Charity Authority), describing its platform, aims, and strategies, as well as examples of *Waqf* property held by this organization. In the second research section, he considers *Jam'iat Ihiā' At-Thurāth Al-Isslāmy* (the Islamic Heritage Revival Association), describing its mode of operation, its multiple committees, the impacts of *Waqfs* on the Invitation to the Way of Allah, and examples of *Waqf* property applied to the backing of the Call to Allah.

The third research section is devoted to *Jam'iat Al-'Awn Al-Mubāshir* (Direct Assistance Association—the Committee on the Muslims of Africa). He describes its organizational chart and geographical offices, discusses the role played by *Waqf* in sustaining the Call to the Way of Allah within this association, and furnishes examples of pious endowments within the association, and the overall impacts of Islamic *Waqfs* on Direct Assistance Association.

Lajnat At-Ta'reef bil-Isslām (the Committee for the Dissemination of Knowledge about Islam) constitutes the focal point of the fourth research section which describes the goals of the committee, its management, and its divisions. Concrete examples showing how *Waqfs* serves the *Da`wa* action within the organization are also provided.

In the fifth research section of part four, the author deals with *Lajnat As-Sanābil Al-Khayriah* (the Grain-spike Charitable Committee). He considers the relation between *Waqf* and the *Da`wa* to Allah within this organization and gives examples of pious endowments set up for the purpose of promoting the *Da`wa* and allowing it to achieve its goals.

The conclusion of the book reflects the efforts expended by the researcher in highlighting the roles played by *Waqfs* in the *Da`wa* to the Way of Allah. In it he also presents the results of the research and makes some recommendations which, he thinks, would benefit researchers, scholars, and specialists, alike. The researcher also exhorts specialists to think about



new and modern roles likely to be played by *Waqfs* for the purpose of backing up the Call to Way of Allah. These roles may be played through institutions, companies, as well as influential and effective media covering the Islamic world for the purpose of serving the ends of the Islamic *Da`wa*.

The indexes that the researcher provides at the end of his work cover the following: *Qurānic* verses, *Hadīth*-saying, prominent figures, references, and themes to facilitate ready access to any of them.

News & Coverages



The Waqfs Secretariat carries out its 2014-2015 Qetāf (Harvest) Project-Plan in Switzerland, France, and Tunisia.



In cooperation with the Jeddah-based Islamic Development Bank, the Waqfs General Secretariat carried out the 2014-2015 Plan pertaining to Qetāf Project for the transfer and exchange of Waqfs experiences.

The project is one of 16 Waqfs projects proposed by the coordinating countries, by virtue of a resolution of the Sixth Conference of the Waqf Ministers representing Islamic countries, which was held in the Indonesian Capital, Jakarta, in 1997. Qetāf Project is one of the projects put forward by the State, in a bid to coordinate the efforts expended by Islamic countries in the area of pious endowments/trusts across the Islamic World.

The Waqfs General Secretariat organized the 25th Conference on Qetāf Project in Switzerland, under the title: “the Role of Pious Endowments in the Development of Islamic Minorities in Europe,” in cooperation with the Islamic-European Charity Organization and the Waqfs Institution in Switzerland. The Waqfs General Secretariat was represented by Mr. Jarrah Az-Zaid, Administrative Coordinator at the Research and Foreign Relations Directorate.

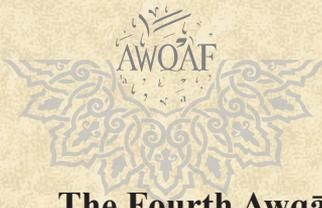
The Conference focused on important and purposeful topics in the area of pious endowments, in the presence of scholars, experts, specialists, and workers serving in various and multiple Waqfs Institutions in Europe. The aim was to acquaint the participants with modern concepts and contemporary applications as they relate to the development of Waqfs Institutions for the purpose of benefiting Muslims expatriate communities in Western countries.

The Waqfs General Secretariat also organized the 26th Conference pertaining to Qetāf Project in the French city of Mulhouse, in cooperation with the Alsace Muslim League, under the title: “A Modern Perspective on Charitable Action: Management and Investment: the Waqfs Institution as a Model.” The Waqfs General Secretariat’s delegation was led by Mr. Mohammed Abdellah Al-Jalahma, Vice-Secretary General in charge of Waqf Banks, and the presence of the Division Chief of Awqāf Journal, Mr. Abdellah Sālim. The Conference in France provided an opportune occasion for specialists to exchange views and expertise and to transfer successful models as developed by Waqfs Institutions in several Islamic, Arab, and Western countries. These successful Waqfs management and investment models will certainly prove to be of benefit in the area of charitable work and contribute markedly to the foregrounding of the role played by pious endowment in the advancement of societies.

Held in the Republic of Tunisia on February 9-13, 2015, the 27th Conference focused on the present topic: “The Management of Private Pious Endowments for the Purpose of Promoting Development and Sustainability.” The Waqfs General Secretariat was represented by Mr. Mansūr As-Saq`aby, Director in charge of the Research and Foreign Relations Management. The conference served as a venue for presenting local and international experiences in the area

of the management and development of pious endowments and trusts. These issues were dealt with in light of various themes, including sustainability, Waqf development, the devising of specific competitive and development strategies apt to serve the management of Waqfs Institutions.

The Research and Foreign Relations Management at the Waqfs General Secretariat seeks to increase coordinated State projects after having studied and gained knowledge about incipient scientific and research requirements, as proposed by the various entities within the Waqfs General Secretariat, and having considered the suggestions and proposals emanating from various institutions and organizations interested in Waqfs affairs. Formal adoption of the projects occurs after due approval by the Executive Council of the Islamic Countries' Waqfs Ministers' Conference.



The Fourth Awqāf Journal Conference in Kuala Lumpur



In cooperation with its strategic partners, the Jeddah-based Islamic Development Bank and the World Islamic University, the Waqfs General Secretariat organized the Fourth Awqāf Journal Conference, under the title Waqfs Governance, in the GW Marriott Hotel in the Malaysian Capital, Kuala Lumpur, on March 11-12, 2015, under the gracious patronage of former Prime Minister, Tun Abdellah Ahmed Badawy.

The Waqf General Secretariat's delegation was chaired by Dr. Abdelmuhssin Al-Jār Allah Al-Kharafy, Secretary General of the Waqf General Secretariat. The Conference was also attended by Mrs. Imane Al-Humaidān, Vice General Secretary in charge of Management and Supporting Services and the chairperson of the Preparatory Committee of the Fourth Awqāf Journal Conference, as well as the members of the committee.

During the conference, Awqāf Journal sought to intensify discussion on good governance of pious endowments by means of laws and regulations, policies, operational mechanisms, and the organizational chart of the Waqf Institution, along with rigorous specification of prerogatives and responsibilities and the activation of monitoring apparatuses, according to a new and modern approach designed to guarantee the principle of transparency and compliance with Shar` (Canonical Law) and legal provisions.

The sessions of the Fourth Awqāf Journal Conference were inaugurated by Mrs. Zuleekhah Qamar-Eddine, Director of the World Islamic University. The conference focused on the role of governance in developing and enhancing the performance of the Waqf Institution, be it governmental or popular, on the necessity of non-discrimination between the holders of similar legal positions, on the importance of bolstering the trust vested by society in Waqfs by means of open and frank declarations, transparency, and other instruments which foster trust and enhance active monitoring and control of Waqf activities within the Waqfs Institution.

Discussion of Waqfs governance highlighted the importance of internal and external control of Waqfs Institutions and the regulation of relations binding the authorities in charge of pious trusts in governmental institutions and their peer non-governmental institutions. It also explored ways and means of activating control of administrative affairs pertaining to governmental and non-governmental institutions.

On the side-line of the Conference the Waqfs General Secretariat launched the Pious Endowment Guiding Code, in the presence of His Excellency, the Ambassador of the State of Kuwait in Malaysia, Mr. Saad Abdellah Al-Assussy. On the occasion, Mr. Secretary General of the Waqfs General Secretariat stated that the Guiding Code to Waqfs takes into account denominational and legislative diversity within Islamic countries and develops the Waqfs legislations therein. He also pointed out that the Research and Foreign Relations within the Waqfs General Secretariat is currently elaborating a special Code which takes into account Muslim minorities in Non-Islamic countries.



**The Waqfs (or, Pious Endowments) General Secretariat
organizes the 21st Waqf Meeting: the Sīrah An-Nabawiah
(or, the Prophet's Biography) under the Patronage of Waqfs.**

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حفظه الله

تقديم الأمانة العامة للأوقاف
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الأمانة العامة للأوقاف

Under the noble patronage of His Highness, Prince Nawāf Al-Ahmad Al-Jābir As-Sobah, the Waqfs General Secretariat organized the Twenty-First Waqfs Meeting, under the title As-Sīrah An-Nabawiah (The Prophet's Biography) under the Waqfs Care in the Court-yard Marriott Hotel in December 2104.

His Highness deputized the Minister in charge of Waqfs and Islamic Affairs, Ya`cūb Abdlemuhssin As-Sāni`

The Twenty-First Meeting comprised an exhibition especially dedicated to the Majma` As-Sīrah An-Nabawiah Complex, a project which is being built under the supervision of the Waqfs General Secretariat. The complex is

intended to showcase the splendid life and conduct of the Lord of Creation, the Chosen Prophet (Peace and blessings be upon him) from the time of his birth up to the time of his death. In terms of design, the Noble As-Sīrah An-Nabawiah Complex will match the greatest world museums. The museum consists of several theme-based rooms featuring Al-Hijrah An-Nabawiah (the Noble Prophet's Migration); the Ghazawāt (or, the main battles) he engaged in; his social life; and his noble possessions.

The Twenty-First Waqfs Meeting also discussed “the Services rendered by Waqfs to the Prophet's Biography and Conduct” and showed the experiences of several neighboring countries in the area, including that of the Kingdom of Saudi Arabia. The Meeting also presented “Modern Experiences of the Sīrah An-Nabawiah,” as expounded by a number of lecturers, including Dr. Khalid Abul-Khair, the director of the film titled, *Hijra Ghayyarat At-Tāreekh* (a Migration which changed History) and Dr. Mustapha Ammar, a researcher and Head of the Manuscripts and Documents Department, at the Madīnah Al-Munawwarah Study and Research Division.

The Twenty-First Waqfs Meeting ended its proceedings with a concluding conference: “A Future-oriented Vision of the Role played by Waqfs in serving the Sīrah An-Nabawiah.” A tribute was paid to all the members of staff and the committees which had striven to highlight the role played by the Waqfs Secretariat in serving pious endowments and benefactors.



AWQAF DEED

In recognition of the waqf thought and philosophy in establishing the projects and extending social services in the framework of sustainable and self-supported system, KAPF established AWQF journal deed. Therefore, this journal will not depend on pricing its issues, rather it seeks to realize the aims and objectives for which it was created. It seeks to provide the journal free of charge to all waqf-related research, concerned people and research centers.

On the other hand, KAPF is on the lookout for financing AWQAF through soliciting contributions, whether in the form of subscriptions, fixing an issue price or otherwise in an attempt towards authenticating the journal and enabling it to approach waqf as a specialty. This is meant to quality waqf to take part in social development by bearing part of these responsibilities in extending vital developmental services.

Deed purposes:

The purposes can be put down as follows:

- Contributing to upgrading waqf researches so that the journal might rank with the prestigious refereed journals.
- Laying emphasis on the typical dimension of waqf, together with identifying its characteristics and the role entrusted to it.
- Advocating methodology in approaching issues based on the link between present and future, and therefore boosting thought in practical models.
- Linking its subjects to the waqf concerns in the entire Islamic world.
- Providing the greatest number of researches, universities and research centers with this journal free of charge.
- Encouraging efficient people to specialize in waqf-related issues.
- Establishing a network for all people interested in Islamic thought, particularly waqf thought, and facilitating communications and interaction between them.

AWQAF Nazir:

- KAPF is the Nazir of AWQAF DEED.
- KAPF is Keen to develop AWQAF and solicit contributions thereto.
- KAPF is Keen to provide all facilities for publishing the journal, attending to the staff in charge of carrying out this mission in conformance with the strategy of promoting the waqf sector advocated by academic refereed journals.