

AWQAF

Refereed Biannual Journal Specialized in Waqf and Charitable activities

Chief Editor

Acting Secretary General

Saqr A. Al-Sajari

Managing Editor

Director of Studies and External Relations Department

Lina Faisal Al-Mutawa

Editorial Advisor

Dr. Tarak Abdallah

Editorial Secretary

Reham Ahmed Bokhowah

Editorial Board

Dr. Issa Z. Shaqra

Dr. Mohammad M. Ramadan

Dr. Ouidad Laidouni

Dr. Essa S. Alqadomy

Dr. Eman Saad Almulla

The views and opinions expressed in this journal are those of the authors and do not necessarily reflect the views and opinions of the magazine or Kuwait Awqaf Public Foundation.

AWQAF journal is listed in EBSCO directory in three languages.

Deposited at KAPF Department of Information and Authentication under number (19) on 27/11/ 2022

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 (ongoing charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."

[Narrated by Muslim]



Project of AWQAF journal

AWQAF Project 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 Muslim nation. The history of Islamic world countries also reflects on Waqf rich experience in devising a societal involvement which encompasses almost all diverse walks of life and helps primarily in developing solutions for emerging human difficulties. During the decline of the Muslim nation, Waqf provided shelter and support for a significant share of the innovations that Islamic civilization was famed for and secured their passing from one generation to another.

Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its material competencies and investing its genuine perceptions that culture makers' cherish in a spirit of scholarly innovation to arrive at fully comprehensive developmental models deeply rooted into the values of righteousness, virtue and justice.

Based on this conviction, AWQAF Journal embarks upon achieving a mission that would enable Waqf to assume the real and befitting standing in the Arab and Islamic field of thought. It therefore seeks to emphasize Waqf as a discipline those remotely or greatly interested in Waqf to uphold a scientific trend towards developing Waqf literature and link it to comprehensive social development considerations.

Since the basic concept of waqf is related to volunteering, such a requirement cannot prosper unless Awqaf Journal becomes concerned with the social work which is directly related to community issues, social work, volunteering and other relevant issues which, when combined together, accept that reaction between the state and the society and the balanced partnership in making the future of the society and the role of the NGOs in this effort.

AWQAF Journal Objectives

- Reviving the culture of Waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization grew into until recent times.
- Intensifying the discussions on the scientific potentials of Waqf in modern societies through emphasis on its modern structures.
- Investing in current Waqf projects and transforming them into an intellectual and culture-based product for deliberation among specialists. This is hopefully expected to induce interaction among researchers and establish a linkage between theory and practice of the tradition of Waqf.
- Promoting reliance on the civilizational repertoire in terms of social potential resulting from a deeply rooted and inherent tendency towards charitable deeds at the individuals and nation's behavior levels.
- Strengthening ties between the Waqf school of thought, voluntary work and NGOs.
- Linking Waqf to other areas of social activities within an integrated framework to create a well-balanced society.
- Enriching the Arab library on this newly emerging topic, i.e. Waqf and Charitable Activities.

An Invitation to All Researchers and interested People

AWQAF Journal would naturally aspire to accommodate all the topics that have a direct or indirect relationship to Waqf such as charitable activities, voluntary works, community and development organizations, and reaches out to researchers and those interested in general in interacting with it; in order to meet the challenges that obstruct the march of our societies and peoples.

The journal is pleased to invite writers and researchers to contribute in one of the three languages (Arabic, English and French) to the material related to the objectives of the journal and Waqf horizons in the different sections such as studies, book reviews, academic dissertations abstracts and coverage of seminars and deliberations the ideas published on.

Materials intended for publication in AWQAF Journal should observe the following:

- The material should not have been published in any journal (electronic or printed)
- The material should abide by the academic ethics related to documenting the references and sources, together with conducting an academic handling.
- A research should fall in (4000 to 10,000) words, to which a summary of 150 words in both Arabic and a foreign language should be attached. Researches meant for publication shall undergo a secret academic refereeing.
- A researcher should attach the form of Work Originality to his research.
- An article should fall in 2000 - 4000 words.
- The Journal receives book's presentations and here priority is given to modern publications. The revision should fall in 500 to 1000 words. The presentation should include the main points about the book, for example the author, publisher, year, version, along with laying stress on the presentation, analysis through scientific method, interest in the essence of the book and its chapters, and assessing it in the light of other relevant works.
- The Journal receives coverages of seminars and conferences, provided that a report should mention the organizing body, the subject of the seminar, place and date of the seminar, the major axes, survey of the researches submitted with their main ideas. There should be a stress on the recommendations of the seminar, together with indicating the activities conducted on the sidelines of the seminar (if any).
- Materials sent to the Journal are not returnable if published or not.
- The Journal is authorized to re-publish the material wholly or separately, either in the original language or translated. This is carried out without referring to the researcher for permission. The researcher is entitled to publish his work in a book or any other form after it appears in the Journal on condition that a note concerning its previous publication should be indicated.
- Material appearing in the Journal expresses the attitude of its author and does necessarily reflect the attitude of the Journal.
- Researchers shall receive a financial remuneration for their researches, articles and other relevant works approved for publication according to the applicable rules in this regard, in addition to 20 offprints.
- Failure to comply with the academic ethics made deliberately through literal borrowing of sections and paragraphs from different sources on the Internet or otherwise without indicating this, the internal rules of the Journal will stop their contributions to the Journal in the future.
- The researcher is empowered to deal with his research after it appears in the Journal provided a note should be sent to the Journal to this effect
- The Journal reserves the right to publish the material as per its plan.
- Any material published in AWQAF Journal expresses the opinions of the authors and not necessarily those of journal publisher.
- All correspondence should be sent to:

AWQAF Editor in Chief,
P.O.BOX 482 Safat, 13005 Kuwait
Tel: (00965) 22065756 Fax: (00965) 22542526
E-mail: awqafjournal@awqaf.org
<https://www.awqaf.org.kw/AR/Pages/AwqafJournal.aspx>

Contents



Foreign Section Editorial

- * **Bimaristans of America: The Other Side of the Health System in the USA.** 8

Articles in English

- * **Contemporary Islamic Models in Economic Practice of Waqf (The Case of Jordan) Prof. Muḥammad Muwaffaq al-Arnā' ūṭ**
(Translated by Dr. Hossam Sabry)..... 15

Articles en Français

- * **Waqf et développement social ; L'expérience du Koweït**
(Dr. Ali Zumai) 29

Arabic Section Editorial Research

- * **The Accounting System in Endowment Establishments in the Kingdom of Saudi Arabia: An Exploratory Study.**
(Dr. Sultan bin Ayed Al-Buqami - Ms. Alia bint Muhammad Hassan) 16
- * **The jurisprudential reference for the provisions of the endowment in Algerian legislation.**
(Dr. Thubih Sufyan) 74

- * **Endowments and endowment banks in Ibn Battuta's journey (Critical reading)**
(Dr. Abdullah bin Nasser Al-Sadhan) 142

Essays

- * **The desired women's roles in management and supervision of the endowment: a theoretical vision.**
(Dr. Reham Ahmed Khafagy) 182

Book Review

- * **The endowment in Nizwa and its impact on cultural and social life during the period (4-12 AH / 10-18 AD).**
(Written by: Khalid bin Mohammed Al-Rahbi - Presentation: Imad bin Jassim Al-Bahrani) 198

News and Coverages

- * **Announcement of the thirteenth Kuwait International Endowment Research Competition.** 202
- * **The launch of the Kuwait Grand Competition for memorizing and reciting the Noble Qur'an (the twenty-fifth) under the slogan “25 years of care and transcendence”** 204
- * **Signing a joint cooperation (protocol) between the General Secretariat of Awqaf – Kuwait and SAEF Foundation for the Development of Endowments Kingdom of Saudi Arabia.** 206
- * **Announcing the names of the winners of the fifth Kuwait International Story Writing Competition for children in the field of endowment and charitable and voluntary work in 2022.** 207
- * **Al-Madinah Al-Munawara Conference for Endowments.** .. 208
- * **Inauguration of the Center for Endowment Studies in the State of Qatar.** 209

Editorial



Bimaristans of America

The Other Side of the Health System in the USA

With the spread of the COVID-19 pandemic at the beginning of 2020, a difficult picture was revealed about the health situation in many countries including the United States of America, through an increase in the number of confirmed cases of COVID-19 and related deaths, especially within specific ethnic segments like those of African and Latin origin. This issue brought back the debate in America about the foundations of social justice, discrimination against ethnic minorities, and the consideration of priority in the health system. Despite America's leadership in the field of biomedical research and advanced medical technology, it faces an issue in lack of insurance coverage for middle and lower-class families – fifty million people, 16% of the population are not insured. With the rise of new technology and expensive medicine, high healthcare costs are also an issue, in addition to a large deficit in the number of specialised doctors and nurses (an estimated 139,000 doctors by 2033) ⁽¹⁾.

The average annual spending on health in America per capita exceeds all other industrialised countries (\$11,945)⁽²⁾, reflecting the social, legislative

(1) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4180988/>

(2) [https://www.healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries-2/#GDP%20per%20capita%20and%20health%20consumption%20spending%20per%20capita,%202020%20\(U.S.%20dollars,%20PPP%20adjusted\)](https://www.healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries-2/#GDP%20per%20capita%20and%20health%20consumption%20spending%20per%20capita,%202020%20(U.S.%20dollars,%20PPP%20adjusted))

and even cultural composition of American society. On one hand, we find the remnants of historical racism towards minorities that lack a lot of the components of health care in a country that is considered the most advanced economically and scientifically. On the other hand, we discover that the American health sector is based on a legislative and procedural composition different from the traditional perception of the public and private sectors followed by most countries of the world, through the presence of non-profit health institutions – a milestone in the health system. The United States of America acts in part of a third sector (along with the private and public sectors) that represents a significant force in American society, characterised by an important contribution of charitable donations in financing the health sector. In 2020, an amount of \$42.12 billion was directed to the health sector from the total donated amount being around \$471 billion, in addition to the amount of \$93 billion shared by the “Society Benefit” bank with \$48 billion and the “Humanitarian Services” bank with \$45 billion to account for many health issues⁽¹⁾.

Non-profit organisations and endowments are some of the legal formulas widespread in the United States and it is not surprising that the health sector benefits from this formula through the tax advantages granted by the American system to provide reasonable services. Statistics for 2022 indicate that there are 6,093 hospitals in the United States, with a very small percentage of them being public hospitals (207, i.e.: 2%). The rest are divided into two categories. The first category consists of non-federal psychiatric hospitals which are non-governmental, and for-profit, estimated at around a number of 635 hospitals (10% of the total). The other category, which is predominant in terms of number and geographical distribution, includes community hospitals, of which there are 5,139 hospitals (84% of all hospitals in the United States of America)⁽²⁾.

Community hospitals are defined as non-federal hospitals that provide standard health services in urban or rural areas. Community hospitals are divided into three categories: firstly, governmental or public and affiliated

(1) Giving-USA-2021-Snapshot.pdf

(2) <https://www.aha.org/infographics/2020-07-24-fast-facts-infographics>

with the state or localities which are 951 in number, being 19% of all community hospitals; secondly, private, for-profit hospitals, which are 1,228 in number, making up 24% of all community hospitals; and thirdly, the largest category is made of 2,960 non-profit or endowment community hospitals, at 54%⁽¹⁾.

Based on statistical data, hospitals that are classified as non-profit represent 48.5% of all hospitals in the United States. Accordingly, we can say that the current American health system depends largely on a model similar to that of the Bimaristan formula emerging in the experience of Muslim societies over many centuries. What is important to us here is not to emphasise the precedence of Muslims or to use terminology to create nostalgia for an ancient past but to focus on the elements of civilizational empowerment used by countries in the twenty-first century and to shed light on three main issues:

- 1) The first issue is related to the importance of the role of the voluntary or non-governmental organisations in contributing to tackling the challenges in society. Muslim countries should maximise this role directly through legislation and tax incentives to create a motivating environment for volunteer work. This involves the private sector and voluntary efforts working strategically on issues related to solving problems in society, using strategies that balance between the responsibility of the state in regulation and oversight, and partnership with other social forces. An integrated vision is what allows the organisation of the affairs of society, meeting its needs, addressing its challenges, and bypassing unilateral visions to solve its problems. In this context, the importance of the experience of people confirms the role of volunteering, such as in the form of waqf (the endowment model), in providing solutions that are built from within a local community, to contribute to redirecting part of the national wealth in a voluntary and conscious manner to serve societal priorities such as education and health.
- 2) The second issue is related to the importance of the health field. It

(1) <https://www.aha.org/infographics/2020-07-24-fast-facts-infographics>

goes without saying, the advancement of the health field is essential in building a strong society free of disease and health challenges, allowing its members to work and innovate. It is recognised that there are high costs for any health system seeking to achieve its goals⁽¹⁾, especially with the development of medical technology, automation systems, accelerated mechanisation, and the use of information systems, in addition to the costs of patents and pharmaceutical industries. Hence, concentrated efforts and a variety of means that enable the provision of the health field are required.

The voluntary involvement of institutions and individuals is important in raising the quality of the health system to meet the needs of individuals and groups. Encouraging legislation can facilitate the involvement of those able to support the health sector, whether through tax exemptions or by raising the societal value of volunteering. Volunteering in the health sector is not limited to the financial situation despite its importance, but also the volunteering of time, experience and effort in the same direction should be encouraged.

- 3) The third issue is related to the limits of the impact of volunteering and its contribution to society. It should be noted that volunteering cannot in any way be the only solution to what the health field needs in any country, regardless of the degree of its contribution. The balance in social control of aiding the sectors can be a visualisation into the balance of the society itself. Just as the idea of a state providing the needs of individuals from cradle to grave has failed, it is not possible to imagine a society's foundation based exclusively on volunteering. The public and private sectors, as well as volunteering efforts, play different roles and need to be integrated in a way that helps society achieve its balance⁽²⁾. In accordance with this framework, volunteering efforts are encouraged to be present in endowment hospitals alongside public and private hospitals, and their competition should be in accordance with the law and community service.

(1)

(2)

In the forty-third issue of the Awqaf magazine, a group of researchers participated in topics related to developing the efficiency of endowment institutions in economic, structural, and legal aspects, and proposals to improve the social role of waqf.

Dr. Sultan bin Ayed al-Baqami and Prof. Alia bint Muhammad Hassan propose in their research, *The Accounting System in Waqf Institutions in the Kingdom of Saudi Arabia: An Exploratory Study*, the interest of waqf institutions in applying accounting practices and systems, and the challenges that these facilities face in the application. The research combines a descriptive approach to the accounting field and its basics, and field analysis using a sample of basic parties using the accounting system of endowment institutions in the Kingdom of Saudi Arabia. The study concludes that it is necessary to take advantage of international accounting standards applied in business institutions. The research recommends improving the accounting system for endowment establishments while considering their nature, and developing a comprehensive accounting standard for endowment establishments to ensure transparency, accountability, control, and adherence to accounting standards.

Dr. Zabih Sufyan takes a look into, in his research titled *The Jurisprudential Reference to Waqf Rulings in Algerian Legislation*, the extent of the impact of taking the jurisprudential rulings related to waqfs from several schools of thought on the consistency of legal texts. The research attempts to address the areas of conflict between the legal texts, concluding that the legislator's failure to rely on a specific jurisprudential school of thought in endowment law does not fundamentally affect the consistency and integrity of the endowment legislative system, and the existence of its pitfalls - in which the Algerian legislator fell. While detailing the various issues, the researcher recommends that a legislative effort and a jurisprudential vision is required to remove the conflict between the legal texts related to waqf issues.

Dr. Abdullah bin Nasser Al-Sadhan derives in his research, *Awqaf and Endowment Banks in Ibn Battuta's Journey - Critical Reading*, from travel literature a way to identify the general features of the environment in which

endowments exist, using the models of endowments and endowment banks that Ibn Battuta mentioned in his book, *A Gift to Those Who Contemplate The Wonders of Cities and The Marvels of Travelling*, during his trips throughout the Islamic world. The researcher concludes with several observations related to the endowments Ibn Battuta mentioned, pointing out some inaccuracies in addressing the endowments and the method of codification in which the journey took place, with an emphasis on the importance of encouraging students to look into travel literature and to clarify historical facts about endowments and endowment banks throughout the centuries, to identify major historical trends of the waqf system.

As for Dr. Reham Khafaji, she writes in her article, *Women's Desired Roles in Management and Oversight of the Endowment: A Theoretical Vision*, about her concern with women's roles in the field of endowment management. She examines the effects of women carrying out active administrative tasks at the present time, and the authenticity of their participation in the endowment's supervision. The researcher discusses the challenges of endowment management, and the foundations of women's roles, and defines their features in connection with its development, commitment to institutional values, standards of efficiency and professionalism, and the strengthening of the organisational structure of the endowment.

Dr. Ali Al-Zumaea shares in the French section his research, *Waqf and Activating the Energies of Society: Kuwait's Experience*, in which he analyses the waqf field in its modern phase based on the Kuwaiti experience, shedding light on the aspirations of a generation of pioneers who firmly believed in the social and economic capabilities of the waqf institution and its impact on Islamic countries. The researcher presents a deep insight into the experience of the Kuwait Awqaf Public Foundation since its establishment in 1993 AD, reviewing its strengths as well as the weaknesses and challenges it faced, according to a rational, analytical approach aimed at integrating waqf for sustainable development based on the elements of self-reliance of Muslims.

In the English section, the research of Dr. Muhammad Muwaffaq al-Arnaout is based on the principle that a successful endowment is essentially a successful economic investment of endowed assets for the specific purposes of the endowment. His research, *Contemporary Islamic Models in the Economic Practice of Waqf: The Case of Jordan*, relates to the Jordanian experience by reviewing its historical development and its structural and legal changes in supporting the economic and social structure to achieve the goals of the waqf. The researcher presents an example of the Endowment Property Development Corporation and its breakthrough in the development of waqf assets supervised by the Ministry of Endowments. The researcher recommends there to be more efforts in Jordan, pointing out that the development that took place at the beginning of the twenty-first century with the establishment of the Foundation for the Development of Endowment Funds, could have been greater if it had administrative and financial flexibility or independence to its own system.

In the books section, the researcher Imad bin Jassim Al-Bahrani reviews the book, *The Waqf in Nizwa and its Impact on Cultural and Social Life During the Period Between The 4th Century AH (10th AD) and the 12th Century AH (18th AD)* by Khaled bin Mohammad AlRahbi. The book discusses the history of endowment in Oman, specifically in the city of Nizwa, and the different aspects of endowments and their management. The book also deals with the impact of endowments and their contributions to the culture and social life in the city of Nizwa during that historical period.

The Editorial Family.



Articles in English

Contemporary Islamic Models in Economic Practice of Waqf (The Case of Jordan)

Prof. Muḥammad Muwaffaq al-Arnā' ūṭ*

Translated by
Dr. Hossam Sabry

ABSTRACT

Despite the relatively modern experience of Jordan in codifying waqf and administering its assets inherited from the Ottoman era and the subsequent position after the establishment of the Emirate (1921 A.D.) and transformation into a constitutional kingdom with a dedicated law for waqf, this experience has recently witnessed some outstanding developments which stood out from the rest of the Arab and Muslim world. These developments could be discerned in terms of the most important aspect of waqf; namely, the best utilization of its assets to ensure more significant benefits in line with the stated objectives; openness to the private sector; and making the best use of the ideas and wealth of individuals in the main fields of waqf, particularly, the field of education.

(*) Professor of Modern History, Al al-Bayt University, the Hashemite Kingdom of Jordan

In a previous study, we highlighted the participation of individuals in developing the public higher education⁽¹⁾ through new endowments with an aim to establish novel academic programs, provide financial grants for related disciplines, and issue new academic journals. The present study, however, mainly focuses on the economic dimension as the key to any success or failure of endowments. Moreover, it introduces one of the most successful experiences in this field, namely, the Department of Awqaf Properties Development. Although it is still relatively young (2003-2007), this department has deservedly attracted much attention.

Given that any successful endowment is a profitable economic investment of endowed assets for the stated purposes, it is indeed of great significance to shed light on such promising experiences throughout the Muslim world. This revalidates and reaffirms an undeniable principle that the economic component ensures waqf continuity and efficacy in securing the intended benefits for those in need.

Legal and Institutional Position of Endowments in Jordan

Waqf affairs were still regulated in accordance with the waqf management system of the Ottoman Empire of 1280 A.H./1863 A.D., even after the establishment of Emirate of Trans Jordan in 1921 A.D. under the British Mandate. The First Organic Law of the Emirate of Trans Jordan, issued in 1928 A.D., stated that the organization of the affairs of Muslim endowments and the administration of their financial aspects, among other matters, shall be regulated by a particular law. However, the issuance of waqf law was delayed until the declaration of the Hashemite Kingdom of Jordan on May 25, 1946. Based on the Organic law of 1928, not the later constitution of 1946 issued on December 12, 1946, the waqf directorate was established, the general director was appointed, and the Higher Council of Awqaf was set up. Following the unification of the West Bank within Jordan's territory in 1951 A.D., the scope of the waqf directorate has been growing exponentially to include a lot of historical endowments in Palestine, namely in Jerusalem and the Old City of Hebron, Al-Khalil in Arabic, along with

(1) Muḥammad Muwaffaq al-Arnā'ūṭ, "Ba'd al-taṭbīqāt al-'ilmīyah al-mu'āshirah lil-waqf fi al-jāmi'at; Jāmi'at al-Yarmūk namūdhajan," in *Awqaf Journal*, 7 (Kuwait 1427/2004), pp. 83-92.

its suburbs⁽¹⁾.

In 1962, the new waqf law was issued to replace that of 1946 with its amendments. Four years later, Law No. (26) of 1966 was passed and remained in effect for some forty years, until 2001. By virtue of this law, the waqf directorate transformed into an independent ministry. Later on, the waqf law was renamed in the fourth amendment in 1968 as Law of Awqaf, Islamic Affairs and Holy Places to reflect the broad scope of responsibilities entrusted to this ministry.

Article (3) has defined various goals and objectives of the ministry. Among these objectives comes the necessity to develop charitable endowments, encourage and promote Waqf philanthropist deeds, and consolidate the true meanings of Islamic Waqf and its role in economic and social development.

Article (4) states that the Ministry of Awqaf and Islamic Affairs and Holy Places is a legal person, having a financial and administrative independence. However, the Islamic endowments have yet to fully exploit this specific article, as will be shown later.

On the other hand, Article (5) pointed out the organizational chart and structure of the ministry, consisting of (the council of Awqaf and Holy Places and Affairs, the Secretary General, and the Executive Office). Article (6) detailed the structure of the Council of Awqaf, with the Minister being the head of this council. It consists of the Ministry Secretary general and a representative from different ministries, including the Ministry of Interior, Ministry of Education, Ministry of Public Works and Housing, and Ministry of Information, in addition to five members chosen on merit. Article (7) defined numerous tasks of the council, including:

(1) For more information on the historical and legal development, see : ‘Abd al-Salām al-‘Abbādī, “Idārat al-Awqāf al-Islāmīyah fī al-mujtama‘ al-mu‘āşir fī al-Urdun wa-Filasṭīn” in *Ahamīyat al-awqāf al-Islāmīyah fī ‘ālam al-yawm* (Amman - London: Mu’assasat Āl al-Bayt & Mu’assasat al-Imām al-Khū‘ī al-Khayrīyah, 1996), pp. 257-89; ‘Abd al-Fattāḥ Ṣalāḥ, “al-Tajribah al-waqfīyah fī al-Mamlakah al-Urdunīyah al-Hāshimīyah in *Awqaf Journal*, 2 (Kuwait 1423/2002), pp. 109-34..

- Develop necessary plans to invest endowed funds and achieve the goals stated by the law.
- Replacement of endowed real-estate properties and arranging for *hikr* (long lease right) if legally appropriate.
- Approving long term lease for more than three years and sanctioning buildings on endowment lands.
- Concluding interest-free financial contracts related to the endowment projects with the approval of the prime minister.
- Choosing Sharī‘a-compatible banks and financial institutions to deposit the endowment funds.

On the other hand, Article (6) indicated that the cabinet might develop a special system for endowment upon the recommendation of the council of Awqaf. However, this never materialized. Instead, the same civil service system applicable to government employees was adopted in terms of appointing the employees of the Ministry of Awqaf, fixing their salaries, and determining the procedures for promotion and transfer. This had some deleterious consequences on the endowments in recent years, as will be discussed later.

In addition, Article (8) stipulated the exemption of all transactions and properties of waqf from various kinds of taxes and duties. Article (9) provides that: “Under the supervision of the Supreme Endowment Council, a central fund is established for all endowment imports and for the payment of authorized expenditures.”

Later, the Civil Code No. 43 of 1976 was issued and contained some articles regulating endowments. These articles included very important conceptual, procedural, and organizational provisions with far-reaching effects.

For instance, Article (1236) clarified that waqf has its legal personality acquired by virtue of its deed of the constitution. It enjoys a separate financial liability that accounts for any expenditures made in accordance with its specified conditions. In addition, Article (1237) declared that any change in the stated conditions or beneficiaries of waqf needs to be attested by the competent court as per the legal rulings. More importantly, Article (1247)

stated that without prejudice to the conditions stipulated by the endower, the Ministry of Awqaf and Islamic Affairs and Holy Places is entrusted with overseeing the charitable endowments, administering its affairs, and spending its revenues for the beneficiaries stated by the endower.

It is worth considering that most of the objectives stated by Law No. (26) have exclusively linked endowments with a specific field, namely, mosques. Consequently, whenever there is a mention of the ministry in Jordan or any other country, it is automatically associated with mosques. In terms of education, it mainly focused on religious education, where the ministry of endowments took up the responsibility of building religious institutes and Qur'ān schools. Beyond that, the Ministry is responsible for spreading Islamic culture and preserving Islamic heritage, revealing the role of Islam in the elevation of mankind, and bringing Muslims closer to their faith. As for the primary objective after which the ministry was named, a scant mention was made regarding the maintenance, development, preservation, and management of mosques and awqaf funds. This does not expressly state the minister's responsibility in demonstrating the role of endowment in fulfilling its objectives, particularly achieving the social and economic development.

Against this background, establishing the Department of Awqaf Properties Development was a real milestone. This department was primarily concerned with the development of the endowed assets as the key to success and continuity or failure and disruption of endowment projects. It is worthy of consideration that Law No. 26 of 1996 stipulated the financial and administrative independence of the ministry of Awqaf; however, it burdened it with many targets requiring a huge amount of money. Unfortunately, the revenues of the ministry covered only 15% of the total expenditures. Actually, most of these expenditures had nothing to do with endowments in the strict sense. Given this abnormal situation, a dire need arose for potential means to enable the ministry to achieve its targets. In this vein, the Jordanian Muqarada Bonds Law No. 10 of 1979 was enacted, by virtue of which the ministry became entitled to issue profit-and-loss sharing bonds to cover its project expenses. These

bonds were deemed more suitable than interest-based loans. In 1982 the Jordanian government gave the ministry the freedom to spend its revenues on investment projects while the former paid the remuneration of the employees, who were thousands in number, along with any other expenditures necessary to fulfill the stated targets⁽¹⁾.

In fact, endowment assets (buildings & land plots) managed by the ministry were not few. They would yield higher revenues if properly invested. When the government entitled the ministry to spend its revenues on investment ventures, it had been in possession of 4500 land plots; 2007 of which were dedicated to mosques; 288 for residential and business purposes; 219 for arable lands; and 362 for investment⁽²⁾.

In line with this approach the ministry began to take certain steps to invest its assets. This yielded more revenues which were allocated to fulfil the primary objectives of endowments. One of the main ways of investment was the facility of diminishing lease by which the ministry could rent its endowed lands out to private sector investors to establish some malls in return for a fixed annual rent provided that the ministry will eventually become the owner of such malls after a given date (about 20-30 years). Additionally, the ministry received a one-million-dinar loan from the government and established some investment projects in some cities (Amman, Irbid, etc.). In so doing, the ministry earned a 10% return on investment. In another endeavor to secure greater profits, the ministry implemented a large-scale afforestation of endowed unused lands to be invested in different projects⁽³⁾.

In the same vein the ministry adopted the model of partnership-based investment to exploit its unused assets. It concluded the first partnership with the private sector in downtown Amman to invest a plot of land of 6,019 square meters.

(1) Muḥammad ‘Alī Luṭfi, Aḥmad Sa‘īd Bayyūḍ, *tajribat al-Urdun fi Idārat wa-Tathmīr Mumtalaḳāt al-Awqāf* (Jeddah: The Islamic Development Bank, 1410/1989). Pp. 314-17.

(2) Ṣalāḥ, “al-Tajribah al-waqfiyah,” *op. cit.*, p. 123.

(3) *Ibid.*; see also; Bayyūḍ, *tajribat al-Urdun*, p. 316.

The design of this new project consisted of two underground floors dedicated to commercial warehouses covering 12000 m² in addition to four underground floors serving as car parking and maintenance services area over 24,000 m². The next ten floors were supposed to house a shopping mall and offices over 600,000 m². The total space of this building was expected to be 96,000 m² with a total cost of 125 million Kuwaiti dinar. In 1985 this project was available for private sector investments, however, it was disrupted due to certain reservations about its design as being no longer fit with the commercial downtown. Consequently, the ministry had to reconsider its design and reoffer it to investors. Seemingly, a probable reason for freezing this project is the constant change of the minister; each newcomer to this office had a totally different vision.

This disruption in the ministry's endeavor to invest the endowment assets was a result of the lack of effective tools for investment, insufficient expertise and inability to adapt to market changes. During the next five years (1983-2002), the ministry carried out some investment projects with a total cost of about five million dinars. However, most of those projects arguably had no economic feasibility due to a protracted recovery period of twenty years, such as Al-Iman Building in Aqaba and Sahab Commercial Complex. Moreover, the return of some projects covered only 5% of their total cost. As a result, the ministry's revenues were very low compared to the huge amount of endowment assets which yielded only 1.2 million dinars per year.

Against this backdrop, endowment experience has undeniably borne fruit in recent years in our present-day Muslim world, especially in some Gulf countries. It has been taken for granted that a new waqf law is urgently needed to replace the outdated one of 1966. Consequently, the new endowment law of 2001 was passed, taking into consideration the new perspectives of waqf, its significance and its different institutions. A remarkable aspect of the new law was its clear-cut definition of endowments which distinguished them from other charities and activities dominantly undertaken by the ministry. According to article (3) of this law, endowments may include the following:

- A. Lands, properties and funds endowed to permanent and continuous beneficiaries.
- B. Muslim cemeteries dedicated to burials, whether they are still in service or not.
- C. Mosques and their attached areas.
- D. Islamic monuments and heritage, such as ancient mosques and shrines.

In addition, Article (5) stipulated the responsibilities shouldered by the ministry in terms of waqf and endowments. It is now entrusted with the task of promoting and encouraging charitable waqf dedicated to multiple beneficiaries; preserving, administering and investing Awqaf funds; and spending revenues on the stated beneficiaries. Article (31) elaborated on this aspect, where it provided that the ministry is entitled to establish specific programs for the beneficiaries of waqf in order to adequately spend any revenues as per the conditions stated by the donors. Such revenues could be spent on for different entities, including mosques, health care institutions, education and for the needy. There needs to be a general program and plan for public endowments while a high priority is given to the funding of investment projects.

Based on the foregoing, it is evident that the enactment of this law has charted a new course for endowments in Jordan. Despite the significant resources available to the ministry, endowment investments have not been that fruitful over the last decades. The total value of projects undertaken by the ministry over a twenty- year period (1983-2001) did not exceed five million dinars. Taking this into consideration, we can conceive the significant shift brought about by this law. This is specifically materialized when the Awqaf Properties Development Department was established in 2002. It started its activities in early 2003 as a department affiliated with the Ministry of Awqaf, Islamic Affairs, and Holy places to serve as the investment arm of the Ministry. As a consequence, the value of projects has doubled ten times in five years to reach 50 million dinars (about 750 million dollars).

The most crucial element of this new experience is the underlying philosophy upheld by this department, the objectives it set for itself, and

the means it employed to achieve a remarkable transformation and restate the great significance of the economic component of waqf as instrumental in achieving such objectives.

Awqaf Properties Development Department

Pursuant to Article (26) of the Jordanian waqf Law No. (23) of 2001, Awqaf Properties Development Department was established in 2001 as a fully financially and administratively independent corporation responsible for the development and investment of endowment properties in the best feasible way. It endeavors to grow the revenues as much as possible to contribute to the societal development by helping the needy, patients, and students and maintaining mosques along with other activities of public benefit. In so doing, this department sticks to the conditions set by the donors.

Evidently, such aspiration is dependent on a thorough understanding of the significance of waqf as a developmental tool of the economy and the broader society in addition to the existence of an effective institution capable to materialize it. This fact is reflected in the organizational structure of this institution under the management of a distinguished general manager with established experience in the construction and investment business. Headed by the minister of Awqaf, the board of directors comprises twelve members representing both public and private sectors with proven expertise in investment and is responsible for developing its public policies. The general policies of this department can be summarized as follows:

1. Raising awareness of waqf and its role in the society and encouraging people to support it with cash and in-kind donations.
2. Making the best possible use of the endowment funds and properties by investing in economically feasible projects.
3. Adhering to the conditions stipulated by the donors.
4. Maintaining, preserving and developing the endowment properties.
5. Consideration of the wide scope and coverage of proposed projects to include different parts of the kingdom.
6. Promoting investment projects in partnership with the private sector.

Modes of Investment

The launch of Awqaf Properties Development Department came at a time when Jordan saw a new economic boom, given the expansion in local and regional investments in residential projects and commercial malls. Consequently, property prices have reached unprecedented levels. Given the distinctive location of the endowment lands on the outskirts of Amman, the department employed a variety of investment modes, including:

1. Carrying out small self-financed investment projects.
2. Carrying out investment projects funded by Islamic financial institutions such as Islamic Development Bank and Orphans Fund Development Corporation.
3. Concluding long-term leasing contracts with private sector investors to establish investment projects based on B.O.T financing.
4. Using the revenues to purchase new properties for further investments.
5. Cash waqf.

Department Achievements

1. Self-Financed Projects

During 2003-2005, the corporation carried out ten investment projects (administrative offices and warehouses) with a total cost of 4 million dinars (about 6 million dollars) in different cities, including Amman, Zarqa and Northern Shuneh. One of the huge projects executed by the end of 2007 was the construction of Al Yarmouk Mall I, II, and III with a total cost of 2 million, 400 thousand and 500 thousand dinars respectively.

It is worth noting that the corporation diversified its investments in this specific area where it built some residential apartments in the neighborhood of Jabal Al Hussein in the capital city of Amman at the cost of 220 thousand dinars.

2. B.O.T projects in partnership with the private sector

This represents one of the biggest successes the corporation had in this field. The BOT model was used in concluding contracts with famous investors of the private sector to build malls and residential complexes on endowment lands in Amman. By so doing, the corporation became able to get a decent rent return and acquires ownership of facilities after 20-25 years. Undoubtedly, this model can generate huge revenues that can be used for a lot of charitable purposes.

Foremost among those projects was the construction of Istiklal Mall in Jabal El Nozha, Amman. It was erected on a plot of endowment land covering 15 dunams. The Jordanian investor built a mall of 40,000 square meters at a total cost of 20 million dinars (about 30 million dollars). This mall consisted of 200 stores serving as shopping centers, restaurants, entertainment facilities and sports halls, in addition to a parking area accommodating 600 cars. According to the agreement concluded with this investor, the corporation gets an annual rent of 75,000 dinars and becomes the sole owner of this mall after 25 years (including the construction period). The mall was officially opened for business in July 2007 and provided employment for approximately 1500 people.

This remarkable success encouraged the corporation to sign three more agreements with three investors to execute three projects at a total cost of 25 million dinars (about 40 million dollars) as follows:

- Signing a contract with a Kuwaiti investor to build some villas in Al Swaifyeh neighborhood in Amman. A plot of land of ten dunams was allocated for this project which cost 4 million dinars (about 6 million dollars). The contract stipulated that the investor pays an annual rent of 160,000 dinars for these villas. Eventually, the entire project shall pass into the ownership of the corporation after 25 years (including the construction period).
- Signing a contract with a Jordanian investor to build apartments and administrative offices in Al Swaifyeh with a total cost of 2.5 million dinars (about 4 million dollars). Land of 2.25 dunams was allocated for

this purpose provided that the investor pays 82,000 annually until the corporation acquires ownership of this project after 20 years.

- Entering into an agreement with a firm to establish a mall on 20 dunams of land in Hijar Alnawabelseh neighborhood. The total cost amounted to 15 million dinars (22.5 million dollars). By virtue of this agreement, the investor pays one million dinar per year, and the entire project will be the sole property of the corporation after twenty years.
- Concluding an agreement with an investor to build a trade center (warehouses and offices) in Bayader Wadi as-Seer neighborhood of Amman at a price of 2.5 million dinars. The investor shall pay an annual rent of 67,000 dinars for twenty years before the ownership is transferred into the corporation.

In addition, several other major contracts with local and regional investors are in the pipeline and hopefully will be concluded within weeks.

- Trade center of Amman (Saqq Al Sail - Quraish Street) over 30,000 square meters. This project was offered for investment in 1985, 1999 and 2004. Finally, a contract was signed on 22/5/2008 with Greater Amman Municipality, by virtue of which the latter is to build this trade center at a total cost of 8 million dinars in addition to paying an annual rent of 130,000 dinars from the third year. The property title will be transferred to the corporation after 25 years (including two years of construction)
- Russeifa Mall was built on 55 dunams of land. The total cost amounts to 20 million dinars, while the annual rent is 200, 000 dinars. The corporation acquires ownership of this mall after twenty years.
- Building a school by a Jordanian investor (the owner of Modern Arab Academy School) on three dunams of land in downtown Amman (behind Alrai newspaper building) with a total cost of 1.6 million dinars. The contract stipulated that the investor pays an annual rent of 50,000 dinars provided that the ownership will eventually pass into the corporation after twenty-two years (including two years of construction).

On the other hand, the corporation reconsidered the position of its endowment lands rented as one-story warehouses for a nominal return. A

prime example is the plot land of 220 square meters in Irbid (the second largest city in Jordan). In August 2006, the corporation concluded a BOT contract with a Jordanian investor to construct a four-story commercial building totaling 1000 square meters. The building design consisted of a ground floor for stores followed by three other floors featuring administrative offices. As stated in the contract, the annual rent is 6500 dinars, and the ownership is to be transferred to the corporation after 25 years from the effective date. An additional provision was made by virtue of which the investor shall reach a settlement with the existing tenants. Moreover, the contract gives priority to the investor in running this property after the 25-year period for a reasonable return.

This new project, scheduled to be inaugurated in 2008, is of particular significance. It charts the course for similar projects to better make use of certain endowment lands occupied by single-story warehouses and presently yielding very nominal returns. It will be more feasible and economical to use such assets in constructing multi-story buildings to generate huge revenues for the corporation and the endowment beneficiaries.

3. Land Purchases and Trade

Given the encouraging investment atmosphere in recent years and the continuously rising land prices, the corporation decided to take this step and paid half a million dinars in 2006 to purchase its first plot of 40 dunams in Umm Quseir, near Amman airport. In 2007 the general manager of the corporation estimated that the price of this land amounted to one million dinars.

Future Prospect

Despite this great success in the recent few years compared to the earlier contracts, even greater success could have been achieved if this waqf corporation enjoyed more flexibility or financial and administrative

independence. As earlier noted, the law entitled the cabinet, upon the recommendation of the council of Awqaf, to develop a special system for endowment. Unfortunately, this had never materialized; rather, the same civil service code applicable to government employees was adopted for the purposes of hiring, fixing salaries, promoting, and transferring of staff, etc. This code does not allow for attractive remuneration to recruit highly qualified professionals. Given the low salaries paid to the holders of master's and PhD degrees, there is a reluctance to join this corporation, in addition to a high employee turnover rate. Undoubtedly, this state of affairs could inevitably have far-reaching effects on the corporation.

Moreover, the waqf corporation requires a special care from Greater Amman Municipality. Actually, the municipality does not take into consideration the fact that this institution needs to increase its revenues through various projects and partnerships with the private sector to cater to the needs of different groups of the population. Put differently, the municipality should give priority to this corporation in its new mapping of Greater Amman, particularly in terms of street layouts, distribution of residential and commercial blocks, etc. This undoubtedly will empower the corporation, helping it increase its financial resources and serve the public interests. For instance, the corporation set great store on the plot of land in Hajar Alnawabelseh neighborhood. However, it was extremely endangered by the redesigning of the city layout in 2006, but the timely warning and urgent campaign by the corporation to save it.



Articles en Français

Waqf et développement social ; L'expérience du Koweït

Dr. Ali Zumai*

RÉSUMÉ

Despite the relatively modern experience of Jordan in codifying waqf and administering its assets inherited from the Ottoman era and the subsequent position after the establishment of the Emirate (1921 A.D.) and transformation into a constitutional kingdom with a dedicated law for waqf, this experience has recently witnessed some outstanding developments which stood out from the rest of the Arab and Muslim world. These developments could be discerned in terms of the most important aspect of waqf; namely, the best utilization of its assets to ensure greater benefits in line with the stated objectives; openness to the private sector; and making the best use of the ideas and wealth of individuals in the main fields of waqf, particularly, the field of education.

Ce texte est en fait une analyse du secteur des awqaf dans sa phase

(*) Fondateur et président du conseil d'administration de la Fondation Nahud pour les études sur le développement, ali.alzumai@nohoudh.com

moderne mettant en relief les aspirations d'une génération de pionniers qui croyaient fermement aux possibilités socioéconomiques de l'institution waqf et de ses retombés sur les pays islamiques. C'est un témoignage très important de l'une des personnalités qui ont contribué de près à l'élaboration de l'expérience du Secrétariat général des Awqaf du Koweït (SGAK) depuis son fondement en 1993. L'auteur, Dr. Ali Zumai qui occupa en 1996 la position de Ministre des Affaires Islamique et des Awqaf du Koweït, et qui a servi aussi comme Ministre de la planification, et Ministre du développement administratif, explore l'expérience du SGAK et dresse une représentation de ses points forts mais aussi de ses faiblesses, selon une approche progressiste qui vise l'intégration des awqaf au sein d'une formule de développement humain et durable, basé sur des éléments endogènes.

ABSTRACT

This text is in fact an analysis of the awqaf sector in its modern phase highlighting the aspirations of a generation of pioneers who firmly believed in the socio-economic possibilities of the waqf institution and its impact on Islamic countries. This is a very important testimony from one of the personalities who have contributed closely to shaping the experience of the Kuwait Awqaf Public Foundation (KAPF) since its founding in 1993. The author, Dr. Ali Zumai who occupied the position of Minister of Islamic Affairs and Awqaf of Kuwait in 1996, and who also served as Minister of Planning, and Minister of Administrative Development, explores the KAPF experience and draws a representation of its strengths but also its weaknesses, according to a progressive approach which aims to integrate the awqaf within a formula of human and sustainable development, based on endogenous elements.

الملخص:

هذا النص هو في الواقع تحليل لقطاع الأوقاف في مرحلته الحديثة ، حيث يسلط الضوء على تطلعات جيل من الرواد الذين آمنوا إيماناً راسخاً بالإمكانيات الاجتماعية

والاقتصادية لمؤسسة الوقف وتأثيرها على الدول الإسلامية. وهذه شهادة مهمة للغاية من الشخصيات التي ساهمت بشكل وثيق في تشكيل تجربة الأمانة العامة للأوقاف بدولة الكويت منذ تأسيسها سنة 1993 م. ويقدم الدكتور علي الزميع، الذي شغل منصب وزير الشؤون الإسلامية والأوقاف في الكويت سنة 1996 م، والذي شغل أيضًا منصب وزير التخطيط ووزير التنمية الإدارية، رؤية عميقة حول تجربة الأمانة العامة للأوقاف، مستعرضاً نقاط قوتها وكذلك مكامن الضعف وما واجهته من تحديات، وفقاً لمنهج تحليلي يهدف إلى دمج الأوقاف في رؤية متكاملة لتنمية مستدامة قائمة على استيعاب عناصر القوة الذاتية للشعوب الإسلامية.

INTRODUCTION

Le Koweït a connu un remarquable travail au niveau des awqaf depuis le début les années 90, ce qui avait conduit à la création du Secrétariat général des Awqaf du Koweït en 1993. Nous estimons que l'expérience koweïtienne en matière de waqf nécessite un effort d'évaluation afin de soutenir son développement, d'autant plus que ce symposium "Waqf et mondialisation" est organisé en coopération de trois institutions compétentes en matière de waqf à savoir la Banque Islamique de développement, une banque Internationale, l'Université Zayed une institution académique, et le Secrétariat général des Awqaf.

Pour profiter de cette opportunité, nous essayerons dans cet article de présenter les fondements de l'expérience de l'État du Koweït en ce qui concerne l'usage des Awqaf pour le développement du potentiel social à travers les thèmes suivants :

1. Le waqf dans l'histoire musulmane et son importance pour la communauté.
2. Pourquoi le Koweït ?
3. Évaluer l'expérience.
4. Quel avenir pour les awqaf ? (Vers une plus grande activation du rôle des awqaf dans la société).

1. Le Waqf dans l'histoire islamique et son importance pour la communauté:

L'histoire a prouvé le grand lien entre le waqf et le développement. La plupart des grands travaux de développement et de civilisation enregistrés durant l'histoire islamique dans ses époques florissantes dans divers domaines étaient liés aux Awqaf. Nous mentionnons ici les faits suivants :

- Le waqf et la zakat sont considérées parmi les modèles de développement les plus importants qui peuvent jouer un rôle majeur dans la réalisation d'un processus de développement durable car ils sont liés à la culture et aux valeurs de la société.
- Le Waqf est une formule islamique authentique qui découle des objectifs de la charia et met en évidence l'interaction entre les valeurs religieuses et les fondements de développement durable.
- Tout au long de l'histoire islamique, le waqf a été la principale formule pour créer une interaction et une intégration entre les initiatives gouvernementales et civiles à travers la création d'institutions soutenues par des fonds et des efforts bénévoles.
- Le waqf offre une réelle opportunité pour renforcer la cohésion de la communauté musulmane et de consolider ses différents groupes.
- La mobilisation des potentiels à travers des projets de waqf conduit à une rationalisation des dépenses publiques.
- Les institutions waqf constituent un système d'assurance sociale capable d'anticiper l'émergence des besoins.
- Le waqf fournit un niveau minimum de stabilité financière pour un certain nombre de domaines importants du développement social.
- Le waqf offre une forme efficace d'assurance sociale par le biais d'une épargne de dotation pour les personnes qui souhaitent assurer leur progéniture.

La réalité des sociétés islamiques contemporaines, indique que les courants conservateurs dominent une grande partie de l'arène islamique et rejettent le développement et le changement, y compris à propos des fonctions et du rôle du waqf dans la société. En même temps, nous constatons l'émergence d'une nouvelle tendance avec des propositions intellectuelles, politiques et jurisprudentielles répondant aux exigences d'un projet civilisationnel. Sur ces bases, le waqf apparaît comme l'un des principales forces soutenant le développement et le changement.

2. Pourquoi le Koweït ?

La gestion des awqaf dans diverses payses du monde arabe et islamique était - jusqu'à récemment - traditionnelle en termes de d'investissement des actifs des awqaf dans l'immobilier, ou en termes de dépenses des revenus pour les mosquées, les affaires religieuses et l'aide aux pauvres. En contrepartie, les dotations jouent, dans les pays avancés non musulmans, un rôle important dans les domaines de la science, de l'éducation, des arts et même dans le domaine politique (par exemple The National Endowment for Democracy aux États-Unis).

Depuis la moitié du XXe siècle, le Koweït a connu un mouvement social parmi les plus marquants de ce qu'ont connu les pays arabes et islamiques, avec la floraison d'idées et de débats autour de thèses, soutenues tant par des institutions et personnalités officielles que populaires, valorisant une construction d'un projet civilisationnel islamique qui répond aux exigences du développement et du changement de la société.

En conséquence, au début des années 90, un mouvement favorable à l'activation du rôle du waqf, est clairement manifesté, et avait réussie à transformer le mode de gestion des actifs des awqaf de son modèle traditionnel sous la tutelle d'un département du Ministère des Awqaf et des Affaires islamiques, en un organisme indépendant capable d'utiliser les revenus générés dans des domaines qui répondent aux besoins de développement de la communauté, et font ainsi tester les idées et

programmes de cette tendance intellectuelle centrée autour d'un islam social, et en même temps encourager les méthodes d'investissement de actifs waqf en dehors des domaines traditionnelles (mosquées, pauvres) pour toucher diverses demandes et diffuser une culture moderne des awqaf dans la communauté. Conséquences de cette tendance grandissante, l'attention aux awqaf grandit à l'intérieur du Koweït où plusieurs institutions de la société civile ont commencé à créer des awqaf à des fins ajustées à leurs objectifs et à leurs activités, mais aussi à l'échelle de l'Organisation de la Conférence Islamique (l'actuelle Organisation de la Coopération Islamique) qui a choisit le Koweït pour coordonner les efforts de vivification des Awqaf au Monde Musulman.

Ainsi, le choix de l'expérience koweïtienne contemporaine comme modèle à suivre et à étudier, était dû à sa nouveauté intellectuelle et institutionnelle, entant qu'initiative moderne qui visait à relancer le rôle des awqaf dans le développement social, à ses résultats tant positifs que négatifs, et à la diversité des défis rencontrés, et parce en fait il s'agissait de l'expérience institutionnelle pour la vivification des awqaf durant la fin du vingtième siècle.

3. Évaluer l'expérience koweïtienne en matière de waqf :

Le waqf est un mouvement communautaire supporté par un environnement intellectuel et juridique qui a des effets directs sur le développement religieux, social et politique de la communauté musulmane, il est donc important méthodologiquement d'étudier le waqf non entant qu'institution isolée, mais plutôt en tant qu'activité citoyenne volontaire partie intégrante d'une société civile, et ayant des effets directs sur la société.

Le Secrétariat général des Awqaf du Koweït (SGAK), a été créé en 1993, et malgré sa nouveauté, elle a réussi, dans un temps record, à faire valoir l'importance d'intégrer les awqaf dans le développement socioéconomique. Ce qui a valu au Koweït de jouer un rôle de modèle et de coordonner les efforts des pays islamiques pour incorporer les awqaf dans les stratégies

socioéconomiques. D'autre part, il est important d'évaluer l'expérience du SGAK au niveau de l'apport des awqaf à la société civile et analyser les différentes forces sociales qui soutiennent le développement et le changement dans le cadre du projet civilisationnel islamique.

De ces points de vue, nous entreprenons une évaluation rationnelle de l'expérience du SGAK à travers les éléments suivants :

3/1 la stratégie du SGAK.

3/2 les obstacles rencontrés par cette expérience.

3/3 Vers une évaluation exhaustive de l'expérience des awqaf koweïtienne.

3/1 La stratégie du SGAK.

Depuis sa création par le décret Émirien 257 en novembre 1993, le SGAK a tenu à définir sa vision stratégique et sa mission d'une manière qui soit à la mesure de l'importance de ce secteur dans lequel il opère, considérant les awqaf comme une formule de développement efficace. En 2003 cette stratégie a été modifiée dans une direction plutôt procédurale et s'est éloignée en fait de ce qui faisait la singularité de l'expérience Koweïtienne en matière du rôle des awqaf et de ses impacts sur le développement socioéconomique.

La stratégie de 1997 :

En octobre 1997, un document intitulé "la convention stratégique" a été publié, précisant la mission de la SGAK à savoir "Consolider les awqaf en tant que formule de développement efficace dans la structure institutionnelle de la société, activer la gestion de ses ressources afin d'atteindre les objectifs fixés par des fondateurs, développer la société, et affirmer l'orientation civilisationnelle du monde musulman contemporain".

Le SGAK a procédé à la prise d'un ensemble d'arrangements exécutifs nécessaires pour créer une atmosphère propice à la réalisation de cette mission stratégique. Parmi les plus importants de ces arrangements figuraient :

- La constitution de "fonds waqf" une formule organisationnelle censée avoir une relative indépendance vis-à-vis de la structure administrative du SGAK, et spécialisée dans la collecte de nouveaux fonds, et la réalisation d'activités de développement dans le domaine choisis par les fondateurs intégrés aux besoins et priorités de la société tant au niveau des institutions officielles, que populaires. Pour préserver l'indépendance de gestion, chaque fonds est doté d'un conseil d'administration dont la majorité appartienne à la société civile. L'idée principale est d'assurer la contribution des forces civiles de la société dans la réalisation d'un rôle des awqaf et la coordination entre les efforts officiels et populaires conformément aux règles légales, les données actuelles, et les futures aspirations.
- La collecte de nouvelles awqaf et réussir à convaincre de nouveaux fondateurs, à travers les activités des fonds et la contribution des représentants de la société civile pour la promotion des besoins de la communauté et les exigences de son développement.
- La création du "Fonds Waqf pour la Coopération Islamique" et le transfert d'une partie des ressources allouées par le budget du Ministère des Awqaf et des Affaires Islamiques au même Fonds, devraient assurer cette mission de coordination pour valoriser le rôle du waqf sur la scène internationale, et soutenir la politique étrangère de l'Etat. Cette expérience a déjà commencé dans quelques pays comme les Etats Unis d'Amérique, l'Inde et le Bahreïn.
- Réformer la gestion des awqaf pour dépasser un modèle traditionnel qui a prévalu depuis longtemps, où le waqf était soit sous la tutelle des ministères des affaires islamiques, où dépendait de courants ou de symboles politiques. Cette réforme administrative est perçue comme la clé de cette nouvelle vision développementaliste des awqaf.

Ainsi définie, la stratégie du SGAK a eu des effets sociaux visibles dont les plus importants sont :

- Proposer une pensée religieuse renouvelée, civilement compatible avec son temps et exprimant la communauté en général et non un groupe, une pensée ou un programme spécifique.

- Activer les initiatives civiles dans le processus de développement et réduire l'hégémonie administrative gouvernementale.
- La participation active de la société civile à la gestion des awqaf.
- La collection de nouveaux awqaf.
- L'Organisation de la Conférence Islamique adopte officiellement cette vision et confie à l'Etat du Koweït la responsabilité de coordonner à une échelle internationale les efforts pour vivifier le rôle des awqaf dans les stratégies de développement. Dans cette direction, des programmes de transfert de l'expérience Koweïtienne en matière de waqf aux autres pays arabes et islamiques. A une échelle internationale la même expérience, Le Groupe de la Banque Islamique de Développement (BID) avait créé La Commission Internationale du Waqf (CIW) qui devrait propager les valeurs de développement liées aux awqaf, et encourager sur cette base l'institution de projets au niveau du monde islamique.
- L'intensité des réalisations institutionnelles axées sur les valeurs institutionnelles et non sur les formes institutionnelles.
- La continuité dans les actions reliées aux awqaf.
- Un travail intellectuel visant à cibler le changement relié aux valeurs des enseignements et pratique religieuses et leurs rapports possibles au concept waqf.
- La créativité et les innovations dans la pensée, la jurisprudence et les systèmes de gestion.
- L'équilibre entre originalité et renouvellement.
- L'importance de l'initiative individuelle dans la gestion d'un système institutionnel centralisé.
- Une démarche scientifique quant à l'approche académique du thème waqf, notamment à partir de la publication du premier "Thésaurus du Waqf".

L'application de la stratégie du SGAK a été aussi critiquée dans les domaines suivants :

- Un intérêt quasi exclusif pour les awqaf sous la tutelle de l'administration officielle, et une absence de rapports avec les awqaf indépendantes et celles sous une forme d'administration individuelle ou civiles qui réussissent le plus à diffuser valeurs sociales des awqaf.
- Cette stratégie concentrait ses efforts dans la mise en œuvre de projets sous la direction directe du SGAK, au lieu de soutenir les programmes de fonds déjà créés et de leurs fournir l'environnement approprié à leur développement et d'activer leur mouvement dans la communauté. Cette manœuvre avait engendré une confusion administrative interne au niveau des instances du SGAK quand la mise en œuvre de la même stratégie.

La stratégie du SGAK en 2003 (changer de cap ?)

Six ans après la publication de la première stratégie du SGAK, la gestion des awqaf retourne au modèle traditionnel sans pouvoir atteindre l'objet d'un développement et d'une réforme totale. C'est ce qu'a exprimé la publication d'une nouvelle stratégie Juin 2003 AD, qui définissait la vision du secrétariat en : "leadership dans le développement et la préservation des awqaf, l'efficacité dans la distribution de ses bénéficiaires (rentes) conformément aux objectifs légitimes, grâce à une structure institutionnelle avancée, et une communication avec une communauté de soutien"

Dans le cadre de cette nouvelle stratégie, les principales observations sur la performance du SGAK pourraient être concentrées autour des éléments suivants :

- L'absence de la dimension intellectuelle dans l'orientation du mouvement du SGAK :
 - Cette nouvelle stratégie adopte le slogan « waqf en croissance », qui à notre avis, n'implique pas nécessairement, en tant qu'axe stratégique, un intérêt pour le rôle sociétal et développemental des awqaf, mais plutôt à diriger ses rentes vers les objectifs traditionnels qui prévalaient à l'époque où le waqf ne jouait pas un rôle dans la société, et les pratiques ont prouvé la limitation de cet usage.
 - Cette vision est basée essentiellement sur des normes d'efficacité

institutionnelle, et n'inclut pas les normes d'efficacité sociétale et de développement soit des awqaf ou du SGAK. Ce qui remet en cause la possibilité d'atteindre les objectifs annoncés sur la base d'une "communauté solidaire".

- En détaillant la matrice des valeurs -qui fonde le principe de « waqf en croissance », on remarque un accent très prononcé sur les normes institutionnelles sans mettre en évidence aucune signification sur les normes sociétales vers lesquelles le SGAK doit orienter ses activités, son capital humain et l'usage des awqaf au profit de sa stratégie pour la communauté.
- L'absence d'une relation entre le SGAK et la large communauté dans le processus de développement à travers les awqaf, a fini par créer une situation où certains mouvements, courants intellectuels et l'administration gouvernementale religieuse contrôlent la gestion des affaires religieuses, alors que dans l'Islam il n'y a pas de sacerdoce ou d'autorité pour une administration religieuse indépendante. Cette situation avait conduit à créer un environnement favorable pour l'apparition de phénomènes sociaux négatifs, dont les plus importants sont : le monopole du religieux par certaines forces, une séparation entre le religieux et le social, l'aliénation et l'inclination à la violence et au terrorisme.
- La tendance qui prévaut actuellement dans la gestion du SGAK est de réduire le niveau d'ambition stratégique dans les programmes visant la relance du rôle de développement des awqaf et l'activation de la contribution de la société civile dans ce domaine, et par conséquent, ramener le waqf au stade traditionnel limitant son apport à certains domaines essentiels financer les lieux de cultes, ce qui le fera stagner et entrer au fil du temps dans l'oubli et la négligence.
- Le manque de compatibilité entre les orientations officielles et stratégiques du SGAK d'un côté, et les aspirations de la société civile ainsi que les exigences de la croissance de ses rôles de l'autre.
- La stratégie du SGAK envers la communauté n'avait pas aidé à favoriser l'établissement de nouvelles awqaf. Institutionnellement le SGAK devrait fonctionner comme une entreprise qui, via la promotion

de ses services, cherche à convaincre ses clients (donateurs) pour enfin gagner leur confiance et assurer leur satisfaction.

- Les difficultés rencontrées au niveau de la structure administrative SGAK pour réussir sa mission stratégique, essentiellement concernant le travail des fonds de waqf spécialisés avait conduit à un ralentissement notable des activités des awqaf dans la société et avait fini par une quasi incapacité du SGAK à activer de nouveau le rôle du waqf au sein de la société civile. Les conséquences de cette démarche sont telles que le SGAK se trouve dans une situation où les dispositifs de gestion à faible efficacité, conduisent à un rétrécissement de son champ d'action et l'apparition de nouveau concurrent autour dans le domaine des awqaf.
- L'incapacité à développer des relations interactives positives entre le SGAK et les institutions officielles traditionnelles liées aux awqaf qui existaient avant 1993, et qui se sentait visées et négativement évaluées depuis la création du SGAK et son expansion.
- La suppression du Fonds Waqf pour la coopération islamique, qui assurait la coordination et la coopération entre le Ministère des Awqaf et des Affaires islamiques, le SGAK, la Maison de la Zakat, le Ministère de l'information et le Ministère des affaires étrangères pour soutenir la stratégie koweïtienne à l'étranger sous la tutelle des awqaf qui assuraient la continuation des ressources nécessaires et contribuent promouvoir l'expérience koweïtienne avec une diffusion et une reconnaissance internationales.

3/2 les obstacles rencontrés par l'expérience des awqaf koweïtienne :

Un certain nombre d'obstacles ont rencontré l'expérience contemporaine des awqaf gérée par le SGAK depuis le début de sa création. Ce sont des obstacles prévisibles qui nécessitent un travail de recherche, d'analyse, de soutien et même de défense afin qu'elle puisse répondre à ses défis et progresser vers la réalisation de ses objectifs et la confirmation de la réalisation de sa mission stratégique.

Nous estimons que parmi les obstacles les plus importants rencontrés

par l'expérience du SGAK figurent les suivants :

- Le sentiment de nombreux mouvements politiques islamiques que cette nouvelle institution (le SGAK) a proposé de nouvelles dimensions intellectuelles et institutionnelles pour l'activité islamique, et qu'elle a commencé à attirer de nouvelles dotations et personnalités de la société civile, ce qui menace non seulement les programmes et projets de ces mouvements islamiques, mais même leurs ressources financières et humaines, et c'est ce qui peut déclencher une situation de concurrence défavorable entre ces partis.
- Même les courants intellectuels politiques libéraux ont vu cette nouvelle vision stratégique concernant les awqaf comme un danger pour leur idéologie et leurs programmes politiques, car elle pourrait réussir à faire vivifier le waqf en tant qu'institution de développement basée sur les fondements légitimes tout en répondant aux besoins de la société et les exigences de l'époque dans laquelle nous vivons, et ainsi donner une légitimité aux courants idéologiques concurrents.
- L'incompréhension par les organes officiels de la philosophie développementaliste des awqaf, ce qui a conduit à un manque de compatibilité et d'harmonie entre les attitudes et les tendances des responsables et des dirigeants de nombreux organes officiels de l'État et les superviseurs des affaires islamiques et le SGAK, notamment en ce qui concerne le développement des institutions de la société civile à travers la formule waqf et lui donnant l'opportunité d'atteindre ses objectifs. Cette absence de synchronisation a conduit à une instabilité dans l'expérience waqf selon les responsables politiques et administratifs, chacun dans son secteur, et le changement dans la hiérarchie administratives.
- L'influence politique officielle et populaire sur l'expérience du SGAK en l'absence de clarté et d'immunité judiciaire.
- L'absence de législation, car aucune législation relative aux awqaf n'a encore été promulguée pour combler ce vide et assurer une garantie juridique aidant son développement.
- L'incompatibilité entre le mécanisme et des critères de sélection des

dirigeants du SGAK, et les exigences d'activation du rôle des awqaf dans la société, la nature des awqaf, et le lien avec la communauté des fondateurs.

3/3 Vers une évaluation exhaustive de l'expérience des awqaf koweïtienne:

L'expérience du SGAK s'est basée sur une pensée intellectuelle qui a réussie à propulser le mouvement des awqaf au premier plan de la scène sociale au Koweït, et avait proposer des formules nouvelles et innovantes pour développer et activer le potentiel des awqaf, ce qui a qualifié le Koweït de jouer un rôle de catalyseur à l'échelle du monde musulman. Cependant, la même expérience a fini par se limiter aux activités procédurales loin de ses bases intellectuelles qui promouvaient l'apport des awqaf à la société, et ainsi finir par entraver ce mouvement.

4. Quel avenir pour le SGAK ? (Vers une plus grande activation du rôle des awqaf dans la société) :

Sur la base de cette évaluation, nous estimons que le SGAK doit réussir sa transformation de son état actuel qui manifestement jouent à l'encontre de la vivification des awqaf pour redevenir un catalyseur, un motivateur et un partisan d'un rôle socioéconomique du waqf. Ainsi, on peut dire que l'expérience du SGAK a atteint un stade où il est devenu nécessaire de saisir les caractéristiques de son avenir, que nous soulignons ainsi :

- Affirmer l'intérêt de toutes parties concernées à poursuivre un mouvement de renouvellement de la pensée développementaliste islamique et à éviter l'impasse de la stagnation qui n'aboutit qu'à la régression et à la floraison des pensées négatives. L'institution qui administre les awqaf devrait accorder un intérêt manifeste à la réforme intellectuelle et l'innovation afin de développer et activer le rôle des awqaf dans la société.
- Il y a une nécessité pour une coalition entre les awqaf gouvernementales, civiles et conjointes pour les transformer en une force financière civile

qui cherche à accélérer le développement de la société.

- En conséquence, le développement des activités des awqaf devrait être centré sur l'implication de la communauté dans la gestion des affaires religieuses et de développement, et reformer la pensée religieuse à propos de de gestion des institutions islamiques.
- La promulgation d'une loi réglementant les dispositions relatives aux dotations au niveau de l'État, et non d'un règlement interne ou d'un règlement du SGAK, en gardant à l'esprit que la seule législation réglementant les dotations à ce jour est l'arrêté royal du 5 avril 1951 relatif aux dispositions légales des dotations. L'objectif de la promulgation de cette loi est de trouver un cadre législatif qui organise les affaires des awqaf et lui assure une protection intellectuelle, politique et administrative.
- Un effort au niveau du Conseil des Ministres est nécessaire pour élaborer une stratégie claire et contraignante pour toutes les parties afin d'assurer la compatibilité et l'harmonie entre les stratégies des secteurs gouvernementaux concernés par le volontariat et toutes les formes caritatives au niveau local et international, qui sont :
 - Les institutions du secteur des Awqaf et des affaires islamiques (sous la tutelle du Ministre des Awqaf et des Affaires Islamiques), à savoir: le Ministère des Awqaf et des Affaires Islamiques, le SGAK et la Maison de la Zakat (un règlement officiel a déjà été publié en le passé pour coordonner les relations entre ces institutions).
 - Le secteur qui supervise les institutions de la société civile intéressées par le volontariat et la création de nouvelles awqaf civiles (soumis à la tutelle du Ministre des Affaires Sociales et du Travail).
 - Le secteur de la coopération islamique internationale, auquel participent les institutions du secteur des affaires islamiques, le Ministère des Affaires Étrangères, le Ministère de l'Information et certaines ONG sous la tutelle du ministère des Affaires sociales et du Travail.
 - L'intérêt des responsables des awqaf et des affaires islamiques et des responsables des institutions sous leur tutelle à développer des

relations interactives positives entre les institutions de ce secteur, ce qui conduit à donner une impulsion à leurs programmes respectifs et soutient le mouvement de relance du rôle des awqaf en soutenant des programmes de travail dans d'autres institutions du secteur des affaires islamiques.

- Il y'a une nécessité pratique que la philosophie d'action au SGAK devrait se concentrer sur la question du changement, car il manque maintenant la vision, les systèmes, les politiques, les modèles et les structures qui répondent aux exigences d'activation du rôle des awqaf de toutes sortes et à toutes fins.
- Le SGAK devrait cesser d'exécuter les projets sous sa gestion directe, a quelques exceptions près, selon le besoin urgent qui se pose en raison de la non-adoption de ces projets par les fonds et les waqf civiles qui devrait les administrer.
- Développer l'administration des awqaf pour être géré comme une institution indépendante et d'une manière différente du système d'administration gouvernementale afin que le waqf joue efficacement son rôle de développement. Le rôle des organismes officiels doit être concentré dans la supervision, l'organisation et le soutien.
- Se référer aux institutions de la société civile - y compris fondateurs ainsi que les bénéficiaires des dotations, qu'ils soient des institutions ou des groupes sociaux la - afin de connaître leurs avis, leurs évaluations et leurs propositions pour le développement de l'activité des awqaf. Cette pratique assure un environnement transparent et de confiance, et par la une source forte de renouvellement de la pensée dans ce domaine.
- Relancer le système des fonds de dotation selon une vision qui découle de l'objectif réel de sa mise en place, qui est d'activer la contribution des forces de la société civile, à travers la participation réelle de ses représentants à la gestion des fonds. Cette approche contribuera à la réalisation des objectifs reliés à la relance des awqaf et assurer la cohérence entre le travail de développement volontaire officiel et populaire, ce qui garantit l'implication du plus grand secteur possible de mouvements et d'associations.

- Promouvoir la création de nouvelles awqaf civiles avec des buts et objectifs innovants et novateurs en adéquation avec les besoins de la communauté et les exigences de son développement, et assurer la participation réelle des représentants de la communauté dans la mise en œuvre des programmes et activités financés par ces dotations.
- La relance du Fonds Waqf pour la Coopération Islamique - qui avait été précédemment annulé - et l'activation de son mécanisme de gestion par la coordination et la coopération entre le Ministère des Awqaf et des Affaires Islamiques, le SGAK, Bait Al-Zakat, le Ministère de l'Information et le Ministère des Affaires Étrangères affaires, et en transférant les ressources allouées par l'État à cette fin à une dotation qui garantit un financement continu de ces programmes au lieu d'être gaspillés par des dépenses annuels.
- Renouveler la gestion des awqaf en réorganisant le SGAK et ses systèmes de d'administration en fonction de situation actuelle, et en le dotant d'un leadership et de cadres spécialisés qui croient en l'importance de raviver le rôle du waqf dans le développement de la société civile et dans le processus de développement social.
- Ouverture du mouvement des awqaf koweïtien au monde, ce qui finit par engendrer divers résultats positifs, notamment :
 - S'engager dans des partenariats mondiaux pour atteindre des objectifs humanitaires communs dans les domaines de secours, de la recherche scientifique et d'autres domaines bénéfiques pour toute l'humanité.
 - Une ouverture intellectuelle islamique et humaine qui enrichit le mouvement de renouveau de la pensée islamique des awqaf.
 - Adopter des projets waqf conjoints avec d'autres parties de dotation en dehors du Koweït.
 - Améliorer la perception des non musulmans à propos du monde musulman et combattre les stéréotypes et les clichés, en proposant un mécanisme de développement humain et durable (waqf) à l'ère de la mondialisation et de la révolution des communications.
 - Échanger entre les différentes parties des informations et des expériences d'une manière qui enrichit la pratique waqf. Dans

plusieurs pays développés, nous constatons que les awqaf se tiennent derrière les grands édifices civilisationnels tels que les universités et les centres de recherche. C'est aussi ce qu'avaient les musulmans, à commencer par l'expérience Al-Azhar Alsharif et ses awqaf qui ont été préservées au cours des siècles, l'Université du Caire, le Demerdash Hôpital, et de nombreuses institutions culturelles et sociales soutenues par des dotations en Occident et en Turquie. Ainsi, il est plus approprié pour nous dans un échange académique de bénéficier des moyens par lesquels les pays développés activent le rôle de leur Awqaf dans leurs sociétés.

Conclusion

Nous croyons que le SGAK a joué un rôle important, qui est de remuer intellectuellement et institutionnellement l'eau stagnante auquel le waqf s'est attribué durant une longue période de notre histoire, et que cette expérience - avec ses avantages et ses inconvénients - devrait nous conduire à aspirer à de nouvelles visions des awqaf vue comme l'une des forces de changement dans la société, tant sur le plan intellectuel qu'institutionnel.

Une nouvelle ère de réflexion et d'initiatives sociétales institutionnelles doit être lancée qui non seulement assimile l'expérience passée, mais surtout transcende la réalité vers de nouveaux horizons larges à la mesure de l'avenir auquel nous aspirons.