



ALGERIAN *HUBŪS* AND ITS DEVELOPMENT STAGES (FROM PRE- OTTMAN RULE TO POST-INDEPENDENCE ERA)

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ABSTRACT

This research seeks to illustrate chronologically the major historical development stages of the Algerian *Hubūs* system. Most *Waqf* institutions in Algeria share a similar historical development pattern with other Islamic countries. The development of *Hubūs* in Algeria will be divided into four main periods; the pre-Ottoman Caliph period; during the Ottoman Caliph period; French occupation period; and lastly the period of modern Algerian state. The aim is to boost knowledge and augment researchers' thoughts regarding the practice of *Waqf* in Algeria since limited studies have addressed this issue in the context of Algeria. This study implements library research, and a conceptual approach as the method of analysis. Furthermore, the researchers assessed a significant body of relevant studies written on several aspects of the *Hubūs* history in Algeria, to provide readers and scholars with lessons from *Waqf* institutions in Algeria throughout four different stages in history. While the *Hubūs* institution performed a pivotal role in many societal segments of Algerians' life during the two first stages, it has witnessed a massive deterioration in term of its impact during the post Ottoman era, especially during the French colonization period. The destructive consequences of the colonial period extremely hampered the efforts of the new Algerian state regaining the glorious role of *Waqf* institutions. The results shows that *Waqf* is one of the immutable national values in Algeria,

and that has played a significant socio-economic role once recognized as the backbone of the economic system. Additionally, it emphasized the development of the *Hubūs* system in Algeria, which offers a platform that facilitates understanding its status in the community, which suggests lessons to be learnt from and considered for the development of *Waqf* institutions. This study offers a discussion on the historical development phases of *Hubūs* system in Algeria. Additionally, this study recommends that there is a need for more investigation on Algerian *Waqf* institutions. The results of this research may have some substantial suggestions for sustainable development in Muslim nations. As well, it gives a platform which facilitates the understanding of Algerian *Waqf* institutions, and solutions for the existing obstacles in this topic.

Keywords: Algeria, *Hubūs* system, *Waqf* institutions, Sustainable Development.

INTRODUCTION

Before the advent of Islam, the practice of *Waqf* was established. But *Islam* was the first religion to create a detailed regulatory structure that facilitates, directs, protects, and encourages the growth of the *Waqf* institution (Ismail Abdel Mohsin, 2013). Everything that the West later developed in this area is derived from *Waqf*. The idea of endowment of property of permanent nature by a Muslim as a permanent charity was established by the Prophet (*Sal-Allāhu 'alayhi wa sallam*). The people of the central Maghreb, where Algeria is situated, have been very keen to develop *Waqf* since the arrival of Islam.

The term *Waqf* is derived from the Arabic root verb *Waqafa* (keeping or holding), which means the confinement of a certain object that is kept in a safe way. *Waqf* (pl. *Waqāf*) linguistically means *Man'* (prohibition, prevent, stop) (Ismail Abdel Mohsin, 2009; Raissouni, 2001; Rashid, 2002). The word *Habs* (pl. *Hubūs* or *Ahbās*) is another synonym of *Waqf*, which is terminology used widely in North Africa (Powers, 1989; Singer, 2008).

The definition of *Waqf* for the *Mālikīyyah* (followed Madhhab in Algeria) was provided by *Sheikh Al-Dardir*, who considered *Waqf* as to contain *al-Manfa'ah* (utility) owned, even a rented properties, and devotes his income, such as money, to a beneficiary for a certain period of time as stipulated by the donor (*Wāqif*) (Al-Sāwi, 1995), *Imām Mālik* also agreed on both movable and immovable assets as a subject matter of *Waqf* even if it is cash *Waqf* (Mohsin et al., 2016). Algerian law defines *Waqf* as the act of endowing an asset on a perpetual basis, and prohibiting it from ownership and acquisition, while the revenues or usufruct generated by them are channeled to the poor or to any of the benevolent aspects. *Waqf* differs from the ordinary *Ṣadaqah* by its repetitiveness of the benefits that

come out of it. Thus, any form of *Ṣadaqah* that makes repeated payments to its objectives or beneficiaries is *Waqf*.

This paper attempts to describe chronologically development stages of *Ḥubūs* in Algeria, by examining the historical and the legal aspect, and presents the most important regulations related to *Awqāf* in Algeria.

LITERATURE REVIEW

The Algerian *Awqāf* shares practically the same historical development trend with most Islamic countries. This development can be divided into four major phases: The Pre-Ottoman rule period; during the Ottoman rule period; the French colonialism period; and lastly the period after Algerian independence.

The Algerian *Awqāf* in Pre-Ottoman Rule

The Algerian experience in the field of endowments is rich with a historical extension, where the origins of endowments in Algeria (the Central Maghreb as it was called) go back to the Islamic conquest of Northern Africa, led by *Al-Fatih 'Uqba Ibn Nāfi'*¹. Algerians were enthusiastically speeding to dedicate a paramount portion of their wealth for the constructions of Islamic infrastructure such as mosques and *Zawāyā* (Islamic schools), in addition to the dedication of agricultural lands and orchards to use their revenues for sponsoring these religious and educational institutions, they were doing so to follow the companions trace (may Allah be pleased with) (Koudid, 2014).

The *Rustumiyah* state was established in the year 162 AH, in the city *Tibhart* (Taret)² as the first formal Islamic state in Algeria. Another example of the Islamic cultural richness was during the *Hmmādi* State in Bougie (Béjaïa)³ which was established in 405 AH (1014). The capital city of the state was among the most important cities in the North African coast due to its geographical location in addition to its position as a commercial zone that links North Africa with Europe (Cheriet and El-Mili, 1985).

In addition to the two previous states, many Islamic states such as *Zayyāniyyin*, *Murābitīn* and *Muwahhīdīn* contributed extremely to building the mosques and *Zawāyā* (Islamic schools) that enriched the Islamic civilization in Algeria. This is achieved mainly due to the marvellous role played by the *Waqf* system (Cheriet and El-Mili, 1985).

¹ 'Uqba Ibn Nāfi' *Al-Fibri Al-Qurashi* (622-683) was an Arab general and one of the most prominent leaders of the Islamic, he led the Muslim conquest of the Maghreb (North Africa).

² Is a major city in central Algeria, lie south-west of the capital of Algiers, and about 150 km from the Mediterranean coast.

³ Is a Mediterranean port city on the Gulf of Béjaïa in Algeria; Béjaïa is the largest principally Kabyle-speaking city in the Kabylie region of Algeria.

According to (Mesdour, 2008) *Waqf* was one of the existing religious practices in Algerian society, starting from the beginning of the ninth century AH. Their numbers increased to form a strong social and economic system, as some historical documents testify to that, among them is the document dated in 906 AH (1500), which records the *Quranic school* of *Sidi Abi Madian* as a *Habs* in Tlemcen, with more than 23 properties. Additionally, in the year 640 AH (1534), 100 hectares were estimated as *Awqaf* of *Abdullah Saffar* Mosque in Algeria, as well to a record that documents the *Awqaf* of the Great Mosque in Algiers, which dated in 947 AH (1540).

However, (Koudid, 2014; Mesdour, 2008) argue that the political instability and the repeated attacks of European fleets on the Algerian coasts, before the rule of the Ottoman Empire, contributed to the extinction of most documents, especially those related to endowments.

The Algerian *Awqāf* during The Ottoman Rule

As a result of sectarian coexistence peacefully between the *Ḥanafī* conception, adopted by the central authority which took the responsibility of policy issues of legitimacy and doctrine and *Mālikī* conception, who took over local affairs. The period of Ottoman empire rule in Algeria was marked by the spread and reproducibility of endowments in different parts of the country since the end of the 15th century (1519) until the beginning of the 19th century (1830).

Mesdour (2008) confirmed that in the year 1750, the endowments contracts have increased twelve times compared to 1600, which makes this period as one of the most important periods in terms of many endowments in Algeria. During this golden stage, the *Waqf* system witnessed a fundamental development, particularly in terms of the variety of its beneficiaries and the socio-economic aspects covered by its revenues.

The Structure of The Administrative Body of Algerian *Awqāf*

Ottoman authorities made several legal and administrative reforms that enhanced the management and the control tasks, by establishing the administrative body of *Awqāf*, whose functions are to maintain and promote *Waqf* properties, collect their revenues and distribute them according to the terms and conditions of *Waqf* (Benazzouz, 2011), as it was composed of (see Figure. 1):

(1) *Bāshā* or *Dāy* (The ruler) is the highest authority in the administrative body structure and is authorized to appoint two judges (*Muḥtāḥ Ḥanafī* and *Muḥtāḥ Mālikī*), the treasury manager (*Bayt Al-Mālījī*), and *Nāzīrs* (managers) of the important institutions (Saādallah, 1985).

(2) *Bayt Al-Mālji* (The treasury manager) monitors the progress of the financial process of the *Anqāf* institutions and reports yearly to the ruler about the financial and administrative status of each institution.

(3) *Al-Majlis Al-'Ilmi* (Board of executives) is *Shari'ah* and legal authority headed by two judges (*Mufti Hanafi* and *Mufti Māliki*). They both supervise all the *Anqāf* affairs such as: registering and approving of new *Anqāf* properties, solving *Shari'ah* issues related to the management and development of *Anqāf*, evaluating the performance and the financial reports submitted by *Nāzirs* (managers) and prosecuting them in case of fraud (Benazzouz, 2011).

(4) *Jamā'at Al-'Udul* (Representatives of civil society) is a group of personnel who have a wide and good reputation in the society. They are appointed by *Al-Majlis Al-'lmi* (the two Muftis), while their function is to assist *Nāzirs* as well as performing external auditing on the financial outcomes of the *Anqāf* properties.

(5) *Sheikh Al-Balad* (The local representative of the state) should have broad knowledge about the public and private properties ownership. His major role is helping the board of executives in checking the location and borders of *Anqāf* lands to approve and document them properly.

(6) *Nāzir* (The trustee) is the first responsible of any institution of *Anqāf*, his duty is to administer and to develop it, to reach their main target (socio-economic role).

(7) *Dābit Al-Hissābāt* (The auditor) is responsible for controlling the revenues and expenditures of each institution and registered in official registers.

(8) *Al-Kātib* (The underwriter) He serves as the secretary of the trustee (*Nāzir*) and assists him in performing certain tasks, particularly in preparing the reports to the board of executives and regulates the institution contracts.

(9) *Wākil* (The agent) is responsible for the direct management of *Waqf* properties. The agent's duty is to safeguard the *Waqf* property and is entitled to appoint the necessary staff such as workers (*Shumās*), *waqf* guards and the seasonal workers to fulfill the tasks assigned to them.

(10) *Shāwsh* (The maintenance worker) is the person who oversees the protection of the *waqf* facility and doing daily services, such as cleaning works.

(11) The *Waqf* guard secures *Anqāf* by patrolling properties; inspecting buildings, prevents losses and damage by reporting irregularities; informing violators of policy and procedures.

(12) *Al-Ummāl Al-Mawsimyyūn* (Seasonal workers) are a group of laborers who work only in certain seasons, such as harvest and planting periods.

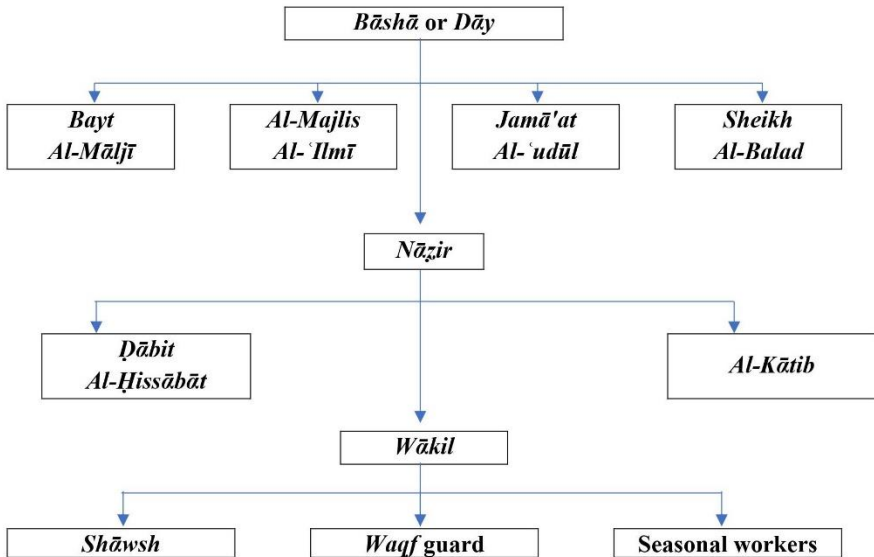


Figure. 1: The structure of the administrative body of Algerian *Awqāf* during Ottoman rule period.

Indeed, during the period they ruled northern Africa (particularly in Algeria), the Ottomans made a significant contribution to the development of the Islamic *Waqf* system by implementing this specific organizational framework that managed the entire development processes of *Awqāf* assets.

The institution of Algerian *Awqāf*

During the Ottoman era *Hubūs* in Algeria spread on several charities, and was categorized as follows:

Formal (Hanafi) Awqāf institutions

Institution of *Subul Al-khayrāt*: this institution with a charitable purpose was established by *Sha' bān Khūjah* in 999 AH (1584) for the benefit of the followers of the *Hanafi* School of thought in Algeria (Aqeel, 2011; Saādallah, 1998; Saidouni, 2012). In addition, this foundation was charged with the management and maintenance of eight mosques⁴ properties including the most reputable

⁴ *Jam' Sfer, Jam' Dār al-Qāḍi, Masjid Kajāweh, Jam' Sha' bān Bāshā, Jam' al-Shebārliyah, Masjid Ḥusn Dāy, Masjid Ali Khūjah.*

mosque called “*Al-Jam‘ Al-Jadīd*”, built-in 1070 AH (1660) and became the headquarters of *Sheikh Al- Abnāf* (Aqeel, 2011; Devoulx, 1870).

It was designed to promote the public welfare of the society through financing public projects such as reforming roads, irrigation canals, the construction of mosques, learning institutes and purchasing books and endowing them for the seekers of knowledge, relief to the victims of natural disasters and assisting people with disabilities.

Moreover, the institution was managed by a board that consists of twelve members, including (1) eight elected advisers, (2) the trustee (*Nāzir*) selected by the ruler (*Bāshā*). (3) The agent (*Wakil*) and (4) the underwriter (*Al-Kātib*) who regulates the institution contracts, the agent, and the underwriter all of whom are often among the scholars. Adding to (5) the maintenance worker (*Sbāmsb*) who oversaw protecting the buildings of this institution (Saādallah, 1998).

The properties of *Subul Al-khayrāt* foundation were estimated to be 331 properties (three-quarters of formal endowments) (Saidouni, 1981), which included around 92 grocery shops, eight of which were exploited by the Jews, and this is a reference to the tolerance of Islam and fairness among its citizens. The total revenues of this foundation were estimated at around 4455 Riyals annually. In addition to other incomes from stores, hotels and bathrooms constituting around 320 Riyals annually (Aqeel, 2011).

Institution of *Bayt Al-Māl* (Treasury): *Bayt al-Māl* is considered one of the ancient traditions of Islamic administration in Algeria, which was supported during the Ottoman ruler (Saidouni, 1986). It oversaw supporting the wayfarers, orphans, the poor, and prisoners. Also, it was responsible for the booty that belongs to the state. On the other hand, it has undertaken the task of establishing public facilities such as roads, bridges, and the construction of places of worship such as mosques and *Zawāyā* (Islamic schools) (Saādallah, 1998). It is worth mentioning that this endowment foundation played a crucial role in developing ruined properties and keeping the orphans' properties productive. This can be viewed as an investment strategy that aims at better utilization of factors of production.

The institution of *Bayt Al-Māl* was entrusted with vacant properties, which did not have heirs, so they were placed under the public treasury as a property of the Muslim community, and it took over the settling of estates and preserving the wealth of the dead among the poor and wayfarers and give some alms to the needy, and these tasks have become the main role of this foundation specifically in the late Ottoman period.

It should be noted that this institution was autonomous from *Al-baylkek* (the general administration), but it was obliged to pay an estimated monthly

contribution of 700 francs to the state treasury. In addition, it was responsible for covering her own expenditures, and ensure the payment of the salary of the institution manager (*Bayt Al-Mālījī*), and his assistants: the judge (*Wakīl*), two notaries known as (*Al-dū*) who do the registration process, as well as some scholars (Saādallah, 1998; Saidouni, 1986).

Institution of *Al-Anjāq*⁵: this institution was so named because its incomes were directly spent on soldiers and the maintenance of barracks. Each of the seven barracks in the city had their own endowments and the military resides in those barracks benefited directly from their incomes (Aqeel, 2011; Ben-Hamouh, 2000). Their properties were homes composed of small rooms for between 200 and 300 soldiers or large rooms for between 400 and 600 soldiers (Ben-Hamouh, 2000).

However, the soldiers got their salaries directly from the ruler (*Bāshā*) and *Waqf* revenues were spent on something else such as gifts. It should be noted that *Waqf* agents (*Wakīl*) are appointed by the residents of the rooms (soldiers) and without the intervention of the ruler (*Bāshā*). This reflects the consultative process of the decisions in the *Anjāq* Endowment Foundation (Ben-Hamouh, 2000).

Institution of *Ahbās Al-Uyūn wa Al-Turqāt* (public utilities): many properties were endowed inside and outside Algiers city to spend on public facilities such as roads, tunnels, streams canals, and fountains. These facilities had many endowments, agents (*Wukalā*) and maintenance workers (*Shunāsh*) known as '*Umnā*' *Al-Turuq wa Al-Svāqī* (the agents of roads, streams, and springs). They were selected and supervised directly by the local authorities (Ben-Hamouh, 2000; Saidouni, 1986).

Through an urban approach, it can be said that this institution played an important role in the management and development of the urban fabric of Algerian cities (Benyoucef, 2001).

Popular (Mālikī) Awqāf Institutions

Anqāf Al-Haramayan Al-Sharifayn (the two Holy mosques): it was established long time ago before the Ottoman ruling of Algeria, it is considered as the oldest endowment foundation in Algeria, and its endowments revenues were devolved to the poor of the two holy mosques in Mecca and Medina, sometimes through overland with a convoy of pilgrims and sometimes by sea in the beginning of every two years, where it reaches the Algerian agency in Alexandria in Muslim or Christian ships, and from there to the *Al-Haramayan Al-Sharifayn* (Maghli, 2001; Saādallah, 1998).

⁵ *Anjāq* plural of *Wajq* in the Ottoman language means soldier.

This shows the respect and the status of the holy lands in the souls of the Algerians, who had endowed many of their properties which made it in the forefront of charitable institutions in terms of the number of the *Waqf* belonging to it and the charitable works it provided as subsidies to people of the Two Holy Mosques, also reflects the richness and enormity of the *Anqāf* properties to the extent that their revenues went beyond the scope of Algeria (Mesdour, 2008).

In the other hand, this institution was responsible for spending on three other mosques in the city of Algiers, where it was supervising and governing about 75% of all religious endowments (has gained most endowments in Algeria) including 840 houses, 258 shops, 33 depots, 11 bakeries, 6 mills, hotel, 82 rooms, 57 orchards, 62 estates (day'a), 4 café, 3 Turkish bath (*hmmām*) with totality of 1357 properties in addition to 201 other 'nā' (Income from rent) (Ben-Hamouh, 2000; Saādallah, 1998; Saidouni, 1981).

Anqāf Al-Jam' Al-Kabir (the Great Mosque): this mosque was known with its important roles in the Ottoman era judicially, religiously, educationally, socially, and politically, to the extent that it covered the activities of all the other mosques which were built by the Ottomans governors, which exceeded more than a hundred Mosques in the late of sixteenth century (Devoulx, 1870). It was the second-largest *Mālikī Anqāf* after the two holy mosques, with more than 550 waqf assets including 125 houses, 39 orchards, 19 farms, 3 furnaces in addition to 107 other 'nā' (Income from rent) from different sources (Saidouni, 1986; Temimi, 1980).

It should be mentioned that the Great Mosque administration was independent, and the rental incomes of its *Waqf* helped a lot in performing and financing multiple functions and activities. The historical documents record more than 60 employees in this institution, including 1 *Nāzir*, 3 *Wakils*, *Almuftī*, 2 Imams, 19 Teachers, 18 Muezzin, 8 *Ḥaṣābin* (Quran readers) and 13 *Qayyiman* (simple workers) (Devoulx, 1870; Maghli, 2001; Temimi, 1980), who were paid a monthly salary from the revenues. Furthermore, the revenues were spent on maintenance and the functioning of the services, while the surplus was directed to create extra *Zāwiya* for mosque in 1039 AH (1630-1629) (Saādallah, 1998; Saidouni, 1986).

Anqāf Al-Anliyā' and *Al-Murābitin*: the main mission of these *Anqāf* was represented in the payment of educational institutions or religious costs, while the surpluses were directed to charitable and social activities, such as distributing charity among the needy, caring for orphans, burying the poor Muslims (Maghli, 2001).

These different independent institutions are related to *Zawāya* and *Al-Adriha* (Tombs) of people who founded them in their lives, their numbers

reached 19, 18 in Algiers city, and the tomb of *Sīdī Ben ‘alā’l Aghūt* in the big Kabylie region (Saidouni, 1986). The most famous of these institutions, those that refer to the tomb of *Sīdī Abderrahmane Tha‘lbi*, which has around 72 properties, and the tomb of *Sīdī ‘umar Al-tansī*, which has around 30 properties, including 09 houses, 14 shops, 2 depots, 3 furnaces (Ben-Hamoush, 2000), in addition to *Zāwiya Al-Ashrāf*⁶ which was erected in 1121 AH (1709) by *El-day Mohammed Baqtāsh*, and had a special agent supervising it known as *Naqīb Al-Ashrāf* (Saidouni, 1981).

Awqāf Al-Andalusīn (Andalusians People): after the plight of the Andalusians, who fled to the Maghreb and settled in the coastal cities and joined the war against the Spaniards. The foundation of Andalusia people was established in 1033 AH (1622-1623) after the encouragement of the authority (Maghli, 2001), as it constructed a cultural educational center including a mosque called *Zāwiya* of the Andalusian in the same year, on the ruins of a store, its ownership contract dates from 980 AH (1572) (Ben-Hamoush, 2000).

Some new arrivals from Andalusia possessed many lands in Algeria, and they endowed numerous endowments inside and outside the city. These *Awqāf* were allocated to spend on worship and helping the poor among the Andalusians arrivals. Studies mentioned that Andalusia endowments exceeded 40 properties (35 shops and 18 houses), in addition to the allocation of the equivalent of 61 different incomes, which was overseen by an agent called “*Wakīl Al-Andalus*” (Aqeel, 2011; Saidouni, 1981).

The Algerian *Awqāf* during the French Colonialism

Since the beginning of colonialism, the French authorities realized that *Hubūs* system, is one of the major problems that posed a serious hindrance that could impede the execution of its colonial policies in the one hand, and conflicting with its economic principles on the other hand, which is aimed at imposing a full control over the state and abolish the Islamic national identity of the Algerian people. This because *Awqāf* gave a kind of independence from the French administration, so it was faced with filtering and confiscating seizing by the French army (Bouchaala, 2010).

According to (Ben Aoun, 2017; Bouchaala, 2010), the French colonialist leaders worked hard to take control over education religious institutions that played a crucial role in enhancing the cultural awareness of people, through confiscating and plundering its *Awqāf* in various ways, Therefore, a lot of decisions and decrees states were adopted to strip the immunity of the *waqf* properties and seize them for the benefit of colonialists.

⁶ Ashraf are the people from the descendants of the Prophet PBUH.

In addition, (Ben-Hamoush, 2000; Mesdour, 2008; Powers, 1989) confirmed that a series of legislations, decrees and decisions was issued by the French colonial authorities, that aimed to dismantle *waqf* institutions to facilitate the control of their properties, confiscation it and transferring their ownership to the colonial system, as the following:

- Decree of “De Bourmont”⁷ was the first French resolution on September 8, 1830, which indicated that, the French authorities have the right to the acquisition of the property of the previous Ottoman administration and its staff, because it takes the management of the country, as well as the formal (*Hanafi*) *Anqāf* institutions.
- On December 07, 1830, General “Clauzel”⁸ issued a decree authorizes the Europeans settlers to own the *Hubūs* properties (has been fully implemented in Oran and Annaba), and the dissolution of *Anqāf Al-Haramayan Al-Sharifayn*, claiming that their revenue is spent on foreigners, in addition to fining anyone who does not declare what he has of *Anqāf*.
- Ben Aoun (2017) said that this sparking outrage and condemnation of the scholars, clerics, and dignitaries Algiers who saw in this decision a clear violation of the fifth item of the delivery statement of Algiers Treaty (4 July 1830). There was at the forefront of protesting *Sheikh "Ibn Al-Annabi"*⁹ who opposed the seizure of the *Anqāf* the two Holy mosques at that time.
- On October 25, 1832, the French administration launched the *Waqf* Properties plan, it was a plan prepared by the General Manager of the Estate Gérard Dan, according to which the French Civil Savings can monitor, supervising and controlling all *waqf* institutions in Algeria.
- On September 7, 1835, the Governor-General decided providing for the appointment of an observer responsible for collecting revenues and expenses, assisted by *Wakil* of the Two Holy Mosques, as well as to inventory the endowment books and their accounting records, and compare the amounts recorded there with the cash in treasury.

⁷ Marshal Louis-Auguste-Victor Count de Ghaisnes de Bourmont (1773-1846), French Minister of War, and the commander of the Invasion of Algiers in 1830.

⁸ Bertrand Clauzel (1772-1842), French General, replaced the Legitimist Marechal de Bourmont as head of the invasion of Algeria.

⁹ Mohammed bin Mahmud bin Mohammed bin Hussein (1775-1851), *Al-Muġī Al-Ĥanaġī*, was exiled from Algeria because he opposed French colonialism.

Maghli, (2001) and Mesdour (2008) stated that during the first five years of the colonialism, the number of *Awqāf* properties abused, controlled and occupied by French authorities amounted to 2000 properties, spread over 200 institutions of *Waqf*, including 27 mosques and 11 *Zāwiya* (Islamic schools).

Table 1: Annual expenses (in French Francs) of some *Awqāf* institutions for the period (1936-1941), as mentioned in the report of *Blondel* the Finance Director dated on 30/09/1842

Years	<i>Awqāf Al-Haramayan Al-Sharifayn</i>	Institution of <i>Subul Al-khayrāt</i>	<i>Awqāf Al-Andalusyīn</i> (Andalusians People)
1936	10,5701.15	9,750.40	-
1937	109,895.99	13,341.27	3,970.80
1938	109,937.25	13,903.70	3,973.00
1939	143,068.62	12,192.70	4,141.24
1940	166,495.25	12,712.00	3,384.20
1941	177,268.91	10,615.55	2,775.20
Total	812,367.17	72,515.62	18,244.44

Source: (Saidouni, 1981)

Table 2: Annual surplus (in French Francs) of some *Awqāf* institutions for the period (1936-1941), as mentioned in the report of *Blondel* the Finance Director dated on 30/09/1842

Years	<i>Awqāf Al-Haramayan Al-Sharifayn</i>	Institution of <i>Subul Al-khayrāt</i>	<i>Awqāf Al-Andalusyīn</i> (Andalusians People)
1936	107,462.96	10,019.33	92.22
1937	111,038.46	13,408.04	3,988.50
1938	127,895.65	13,989.25	4,098.54
1939	131,941.13	14,393.78	4,063.98
1940	167,585.44	15,715.66	4,017.85
1941	178,815.19	14,447.19	2,823.10
Total	824,738.83	81,973.25	19,979.19

Source: (Saidouni, 1981)

Table 3: Number of Algerian endowments as mentioned in the report of Blondel the Finance Director dated on 30/11/1842

Cities	Agricultural lands and orchards	Buildings and real estate	Total
Algiers	1,764	34	1,798
Annaba	60	15	75
Constantine	1,276	416	1,692
Oran	109	23	132
Total	3,209	488	3,697

Source: (Maghli, 2001; Mesdour, 2008)

Moreover, (Ben Aoun, 2017) said that a report by General “Bugeaud”¹⁰ on March 23, 1843, stated: "that the expenses and income of religious institutions shall be joined to the French government's budget". French authority issued decision aimed at the introduction of *Awqāf* in the scope of doing trade and exchange real estate to facilitate its possession for settlers and newcomers Europeans.

- The decision of October 1, 1844, stipulated for the lifting of the immunity of *waqf* and they became subject to the provisions of real estate transactions, and this decree enabled Europeans to control over half of the agricultural land on the outskirts of major Algerian cities.
- Decree issued on October 30, 1858, has expanded the previous resolution, where endowments became subjected to the laws of property ownership implemented in France and allowed the Jews and some Muslims to possess it.
- Another decision has been called the Act of “Warnier¹¹” dated on July 26, 1873, which aimed at the liquidation of the endowments, religious institutions and thus eliminated endowment in Algerian society under these decrees in a row by the colonial administration.

The Algerian *Awqāf* After Independence

After the independence of Algeria and the departure of the French colonial authorities in 1962, the new state tried to develop a strategy that aimed to

¹⁰ Thomas Robert Bugeaud, marquis de la Piconnerie, duc d'Isly (1784-1849) was a Marshal of France and Governor-General of Algeria.

¹¹ Auguste Hubert Warnier (1810-1875) was a French medical doctor, journalist, politician, and deputy of Algiers, who spent most of his career in Algeria.

recuperate the *Awqāf* properties and reestablish the role of *Waqf* system to play a supportive role in the reconstruction of the state.

The Development of Algerian *Awqāf* Legislations After Independence

The different ideological and political trends adopted by the successive authorities in Algeria resulted in contradictory legislations that caused the continuous decline of *Awqāf* properties, especially in the first three decades. The development of *Awqāf* legislations in Algeria can be divided into two main stages:

1) Before the Constitution of 1989

Due to the great legal vacuum encountered by Algeria After independence, Law No. 62/157 was issued on December 31st, 1962, which outstretched the legitimacy of French laws in the Algeria except those affecting national sovereignty. Through that, *Hubūs* was not included in the affairs of the State, which affected negatively their situation (more specifically the absence of maintenance and care for whatever left) (Mesdour, 2008).

Moreover, French law was applied in dealing with *Hubūs* properties tightening its role to deal with religious purposes for instance Mosques, Quranic schools, and places of worship by restricting the *Waqf* rules.

The exit of *Pieds-Noirs*¹² led to massive looting in the private properties that were under their control. This situation forced the Algerian authority to promulgate the Decree No. 63/388 dated on October 1st, 1963, allowed the nationalization of agricultural lands that belonged to moral and natural persons, including *Awqāf* lands, where the state became the owner of two million hectares of agricultural land (around 2000 farms) (Maghli, 2001).

To redress the situation, Decree No. 64/283 was issued on 10 Jumādā al-ʿUlā 1384 AH corresponding to September 17th, 1964, involving the *Hubūs* properties system as a result of the minister of religious *Awqāf* proposal. Nonetheless, this decree was not known field application and endowments was still the same as the colonization times¹³.

The Charter of the Agricultural Revolution issued in pursuance by the Order No. 71/73 dated on 20 Ramadān 1391 AH corresponding to November 8th, 1971. This charter aimed at nationalizing all unexploited agricultural lands

¹² A person of European origin who born and lived in Algeria during French rule, especially one who returned to Europe after Algeria was granted independence.

¹³ The Department of Religious Endowments, *Awqāf* property in Algeria, Nouakchott: Symposium on the Development of Islamic Endowments and Growth, The Publications of the Islamic Development Bank in cooperation with the Secretariat of Endowments, 2000, pp.34, 35

and then distribute them to those who are ready to cultivate, based on its motto “*land is for those who served it*”, even though it has excluded *Waqfs* lands from nationalization, but the application of it was not as stipulated, most of *Waqfs* lands was annexed to the national fund of the agrarian revolution. This aggravated the situation of *Awqāf* properties, even those that were known after independence and survived from being looted and lost during the colonization (Koudid, 2014; Mesdour, 2008).

The status of Algerian *Awqāf* did not seem to see any positive sign through these times, despite the issuance of Law No. 84/11 on the Family Code dated on 9 Ramadān 1404 AH corresponding to June 9th, 1984, who did not make any change about the management and organization of the *Awqāf* properties, but instead pointed to the general concepts about the *Awqāf* in eight articles¹⁴ (from article 213 until article 220).

This phase witnessed a massive extinction of *Awqāf* properties due to the socialist political agenda adopted by the Algerian state and many *Awqāf* land faced an extensive misappropriation and abuse in addition of being transferred to illegal owners.

It is also clear that the *Awqāf* properties were ignored even after the independence, which had a negative impact on its continuity and suffered mostly from the demise especially, full established properties due to natural effects and the lack of maintenance, and above all this the loss of *Waqf*'s documents and contracts, which complicated the process of its retrieval.

2) After the Constitution of 1989

The political radical change that occurred in 1989 led the authorities to recognize private ownership. The Constitution of February 23th, 1989 was the first step in fact to protect the *Waqf* Properties, article 49, chapter IV, part one, stated that “*Waqf properties and charitable associations' properties are recognized by the law*” this is the first time after independence that *Awqāf* properties gained constitutional protection (Mesdour, 2008).

This procedure is considered the starting point towards the revival of *waqf* institution, which was followed by several orders, decisions, decrees, and laws. This made retrieving the status of *waqf* gradually possible in the Algerian society, and the following are some of what have been issued:

¹⁴ The Department of Religious Endowments, *Awqāf* property in Algeria, Nouakchott: Symposium on the Development of Islamic Endowments and Growth, The Publications of the Islamic Development Bank in cooperation with the Secretariat of Endowments, 2000, pp35

- Law No. 90/25 on the Land Orientation issued on 1 Jumādā al-ʿŪlā 1411 corresponding to November 18th, 1990, categorized lands property in Article 23 into three categories: public, private and *Waqfs* properties. In addition, Article 31 provided a general definition of *Waqfs* properties, while Article 32 stipulates that the management of these properties is subject to a special law.
- Law No. 91/10 dated on 12 Shawwāl 1411 AH corresponding to April 27th, 1991, relating to *Amqāf*, which is the most relevant law that provided thorough regulations about *Waqfs* properties, in fifty regulatory laws.
- Executive Decree No. 98/381 dated on 12 Sha'bān 1419 AH corresponding to December 1st, 1998, which defined the conditions and terms of *Amqāf* properties management and its governance and protection. It includes forty articles in the various provisions, divided into five chapter.
- Ministerial Decision No. 29 dated on 05 Dhū al-Qi'dah 1419 AH corresponding to February 21st, 1999, that ordered for the establishment of *Amqāf* 's Commission, under the authority of the Minister of Religious Affairs and *Amqāf*, and define its main tasks and functions (management, governance, investment, and protection of *Amqāf* properties).
- Joint Ministerial Decision No. 31 dated on 14 Dhū al-Qi'dah 1419 AH corresponding to March 2^{sd}, 1999, which aim for the establishment of *Amqāf* Properties Central Fund, under the double supervision of the Ministry of Finance and the Ministry of Religious Affairs and *Amqāf*.
- Decision dated on 05 Muḥarram 1421 AH corresponding to April 10th, 2000, that fixing the modalities of regulation of the revenue and expenditure of *Amqāf* properties.
- Law No. 01/07 dated on 28 Šafar 1422 AH corresponding to May 22^{sd}, 2001, that modified and complemented the Law No. 91/10, which clarified the conditions and terms of exploitation, investment, and development of *Amqāf* properties.
- Law No. 02/10 dated on 10 Shawwāl 1423 AH corresponding to December 14th, 2002, that modified and complemented the Law No. 91/10, which modified some concepts and definitions about Algerian *Amqāf*.
- Joint Ministerial Instruction No. 06/01 dated on 20 Šafar 1427 AH corresponding to March 20th, 2006, which clarified how to settle the

status of realty public *Awqāf* properties that are in the possession of the State.

- Executive Decree No. 14/70 dated on 10 Rabī' al-Thani 1435 AH corresponding to February 10th, 2014, that determined the rental's conditions and terms of *Awqāf*/lands intended for agriculture.
- Executive Decree No. 18/213 dated on 9 Dhū al-Ḥijjah 1439 AH corresponding to August 20st, 2018, which determined the exploitation's conditions and terms of *Awqāf* properties destined for the realization of investment projects.

Mesdour (2008) argued that legislative activity in the field of *Awqāf* knew a quantum leap, through these laws, resolutions and other legislation and regulations, especially after the constitution of 1989 which boosted the prestige of *Waqf* in Algerian law, after a long way of looking for a law that guarantees and encourages the development of *Awqāf* to serve the nation.

It is remarkable that, the Algerian legislator gives a high level of elasticity to *Wāqifin* (founders) to endow their properties, which reflects the intention of the government to extend the scope of *Waqf* system to achieve greater contribution in Algerian community.

The Structure of The Administrative Body of Algerian *Awqāf*

The properties of Algerian's *Awqāf* and all matters relieved are under the direct control of the Ministry of Religious Affairs and *Awqāf*, the central administration in the ministry, which is managing by the minister of religious affairs and *Awqāf*. This central administration is based in Algiers, the capital.

Accordance with the provisions to the Executive Decree No. 05/427 dated on 5 *Shammāl* 1426 AH corresponding to November 7th, 2005, modifying and completing the Executive Decree No. 146/2000 dated on 25 Rabī' al-'Awwal 1421 AH corresponding to June 28th, 2000, the Ministry of Religious Affairs and *Awqāf* consists of; (1) the General Secretariat: assists by two directors of studies, to which is attached the postal and communications office, (2) *Divan* (Chief of Staff): assists by five research and synthesis officers, which oversees assisting and preparing the work of the minister, (3) The General Inspectorate, that all its operations are determined by the executive decrees, (4) the following Directorates; (1) Directorate of religious guidance and Quranic education, (2) Directorate of *Awqāf*, *Zakāt*, *Hajj* and *'Umrāh*, (3) Directorate of Islamic Culture, (4) Directorate of training and improvement, (5) Directorate of means management, (6) Directorate of Legal Studies and Cooperation.

Each of the directorates listed above is responsible for specific activities and has a range of sub-directories dealing with specific issues and operations.

Since this study focuses on Algerian *Awqāf* properties, the emphasis will be placed more on the tasks and operations of Directorate of *Awqāf*, *Zakāt*, *Hajj* and *‘Umrah* (the highest *Waqf* body at the level of the Ministry), Conferring to Article 3 of Executive Decree No. 05/427 dated on 5 Shawwāl 1426 AH corresponding to November 7th, 2005, it will be responsible for the following tasks; (1) The search, registration and counting of *Awqāf* properties, (2) The supervision of the collection and distribution of *Zakāt* resources and the determination of their methods of disbursement, (3) the preparation of programs for the management, investment and development of *Awqāf* properties, (4) Follow-up the collection of the resources of *Awqāf* properties and determination of the means of disbursement, (5) Improvement of the financial and accounting management of *Awqāf* properties and *Zakāt*, (6) The development of programs to raise awareness and encouragement for the act of constituting *Waqf* and the *Zakāt* duty, (7) Preparing transactions and agreements relating to *Awqāf* properties and ensuring the follow-up of their implementation, (8) Ensuring the integrity and honesty of the secretariat committee of *Awqāf* properties, (9) Supervising the preparation and organization of the *Hajj* season, (10) Ensuring the integrity and honesty of the national secretariat committee for *Hajj*, (11) Ensuring the follow-up work of tourist agencies operating in the field of *Hajj* and *‘Umrah* and evaluating them.

According to the same Article the Directorate of *Awqāf*, *Zakāt*, *Hajj* and *‘Umrah* has four sub-directorates (Two of them oversee *Awqāf* affairs) which are (1) Sub-Directorate of the enumeration and registration of the *Awqāf* properties, (2) Sub-directorate of *Awqāf* properties investment, (3) Sub-directorate of *Zakāt*, (4) Sub-directorate of *Hajj* and *‘Umrah* (see Figure 2).

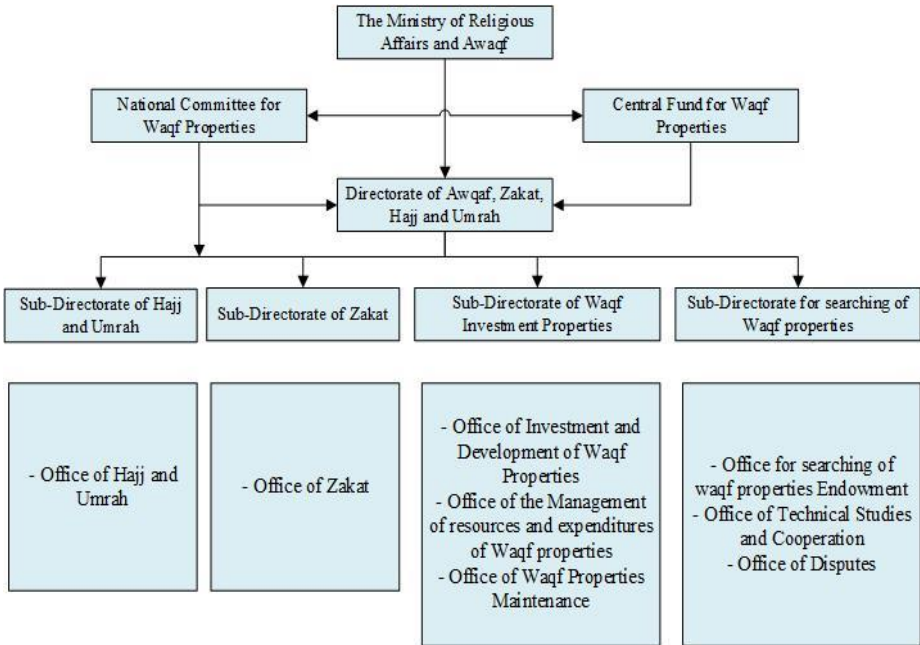


Figure 2: Central Structure of the Algerian *Awqāf* Management.

There are 58 Directorates of Religious Affairs and *Awqāf* (DRAA) based in each of the 58 provinces of the country. They are a small version of the ministry, in which they have small offices and departments representing specific responsibilities devoted by the ministry. They oversee the management of, *Zakāt* assets, *Awqāf* properties, *Hajj* and *Umrah* matters and other religious matters.

There is a separate department at each DRAA dedicated to the collection, disputes, management, and investment of *Awqāf* properties. All these DRAAs are directly linked with the main directorates located in the capital and Ministry of Religious Affairs and *Awqāf*.

FINDINGS AND DISCUSSION

This study implemented library research, to critically analyses the historical and the legal aspect of *Hubūs* in Algeria in four main periods; the pre-Ottoman Caliph period; during the Ottoman Caliph period; French occupation period; and lastly the period of modern Algerian state. It also highlights the practice of several *waqf* institutions that existed there, as well as their developments and impacts on the society life.

It is clearly observed that *Anqāf* is one Algeria's immutable national values, and it has played a major socio-economic role once recognized as the of the economic system's backbone. Furthermore, it emphasized the growth of the Algerian *Hubūs* system, which provides a platform for understanding its status in the community and suggests lessons to be learned from and considered for the development of *Waqf* institutions.

While the *Hubūs* institution performed a pivotal role in many societal segments of Algerians' life during the two first stages, it has witnessed a massive deterioration in term of its impact during the post Ottoman era, especially during the French colonization period. The destructive consequences of the colonial period extremely hampered the efforts of the new Algerian state regaining the glorious role of *Waqf* institutions.

The uncertainty and absence of clarity of the *waqf* related laws in Algeria: a careful reading and in-depth research in Algeria's legal system reveals that the majority of the *waqf* related laws are characterized by uncertainty and absence of clarity. Furthermore, most *waqf* related laws are out of date and do not keep up with innovative management and investments *Anqāf* methods. It is also worth noting that the Algerian's *waqf* system was heavily focused on the lease formulas, which had a negative impact on the development and investment of *waqf* properties, as well as exposing them to depreciation and then extinction (masdur and Mansuri, 2021).

Lack of coordination between *Waqf* institutions and civil society institutions: in fact, several civil institutions and associations have appeared in Algeria, to heal the rift caused by the decline of the *waqf* institutions role in society. Nevertheless, there is a clear schism and lack of coordination between charities and *waqf* institutions in Algeria to achieve common socio-economic development goals. As a result, efforts were dispersed, and the societal impact was reduced. This point raises several concerns about the efficacy of the Algerian's *waqf* institution considering the current direct ministerial supervision based on the decision's centrality (Mansuri, 2013).

The state's direct intervention in *waqf* affairs: subjecting all *Anqāf* properties in Algeria to the centralization of the Ministry of Religious Affairs and *Anqāf* (Qasmi, 2019) stifles the growth of this industry. This involvement reflected a static stereotype of the *Anqāf* among the community, as well as contributed to weakening the trust factor, reducing contributions to the *waqf* sector, and reducing Its impacts in the society (Laallam et al., 2021).

CONCLUSION AND RECOMMENDATIONS

This study focused on issues related to the Algerian *Hubūs*. It provided also some issues related to development of the legal aspect of *Anqāf* in Algeria. In fact,

waqf has historically provided religious, social, and economic assistance. However, for several reasons, *waqf* has become underdeveloped and has lost its original role in Muslim societies as well as Algeria. The researchers discover a significant gap between applications and legislation in the field, raising several questions about the factors that prevent the *waqf* industry in Algeria from performing its intended role in developing the Algerian society.

The weak legal structure that Algeria provides for the *waqf* contributes to the deterioration of the *Awqāf*. Since this research shows that the articles of the *waqf*'s law are insufficient, it is needed to review and update in the light of contemporary developments in the *Awqāf* sector in general and in the governance of *Waqf* institutions. This paper also recommends developing an accounting system and using modern technological means to improve transparency, which is one of the most important elements in the requirements for a good governance of *Waqf* institutions. Additionally, this study finds that Algeria opts for a vertical model of managing and administering the *Awqāf*. This leads to slow decision-making and hinders the spirit of motivation, creativity, and innovation.

Finally, the researchers suggest to academics and experts to investigate more in aspect of *Waqf*'s law in Algeria and provide practical recommendations to assist development of *Waqf* revival process in Algeria. Moreover, this paper suggests that the studies on the Algerian *Awqāf* should be characterized by realistic perspective while attempting to benefit from world leading experiences.

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