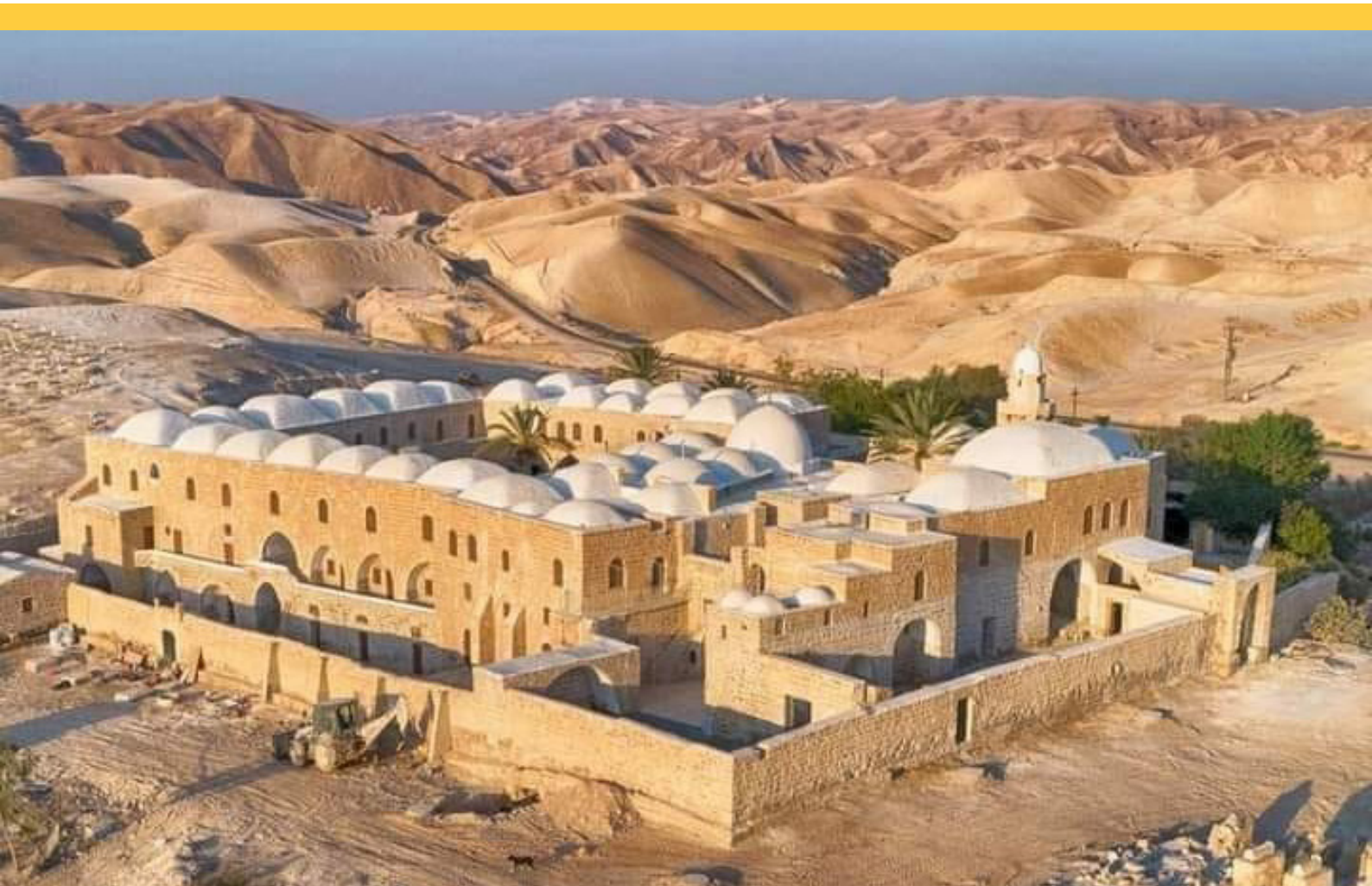




The Policy and Governance of Endowment Land Administration in Palestine

Report Update



AMAN
Transparency Palestine



The Coalition for Accountability and Integrity (AMAN)

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2022

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► Executive summary


The historical context of the Waqf (endowments) system is important in discussing it. The social, economic and other services provided by endowments benefited the whole society in general and the vulnerable groups in particular. The social solidarity institutions do not only provide help to the needy and carry out provisional relief programs to bridge certain gaps that may cause a defect in the socio-economic system of the society. They are linked to a sound intellectual tenet established in the Holy Quran and the Prophet's Sunna. This principle provides that humans need each other to achieve the goal of the human collective. This clearly reflects the individual responsibility towards the group, to achieve civic peace that ensures sustainability of life and preservation of human dignity. Ibn Khaldoun described this as the attribute of humanity that expresses the human civility. In brief, it transforms the experience of volunteerism from individual conduct to an institutional experience, provides it with social, legal and administrative resilience and enables it to be continuous and sustainable through what we call governance, with its integrity, transparency and accountability. This report examines the transparency, integrity and accountability in the process of managing Waqf (endowed) properties and their related investments within the framework of a set of relevant indicators, and examines the legislative and institutional framework that governs the process of managing and investing endowed properties.

The report adopts a descriptive analytical approach, through collecting and identifying relevant information from different sources. It reviews the pertinent studies, including relevant AMAN reports, such as "Managing Public Resources and Natural Wealth and the Government's Integrity". The report examines the indicators of integrity of the staff and officials and the principles of transparency in managing the relevant businesses. It examines the efficiency of the accountability systems in managing endowed properties, and analyzes the information, data and indicators to reach conclusions that identify challenges and issues that face the endowments administration in Palestine. It also provides applicable recommendations and proposes lobbying and advocacy mechanisms for adoption and implementation.

The report is divided into four parts. Part One addresses the legislative regulatory and institutional framework, while Part 2 discusses the integrity, transparency and accountability in endowed land administration. Part 3 analyses the data and provides conclusions, while Part 4 includes the recommendations.

The report identified a set of conclusions that include acknowledging some improvements in some aspects of the institutional and organizational environment, but not sufficient to reach optimal management and organization. Moreover, it concluded the lack of a clear written public policy towards managing the endowments. Regarding the legal framework, the legislative environment is not homogenous, with various sources and different historical and intellectual backgrounds. In terms of jurisprudence, it has not kept abreast with recent developments. There is not a unified Palestinian endowments law that identifies the rights and obligations of all parties, which makes it difficult to manage, invest and keep them according to the desired standards of integrity, transparency and accountability.

Regarding integrity, and at the administrative and financial levels, the employees are subject to similar laws as other public employees. The endowment administration is also subject to similar laws, with one exception, that their revenues are not transferred to the Treasury. The General



Administration for Endowments has no written and adopted bylaws on the mechanisms of setting policies and plans, or making decisions. Furthermore, the Endowments Department does not function in accordance with Law No. (8) For 2014 and Regulation No. (5) For 2014 on Public Procurement, but a committee on investing Waqf properties carries out the procurement process.

Regarding transparency, the selection of beneficiaries is documented in paper and electronic forms, while the endowment lands have not been fully identified because the land settlement process has not been completed. Moreover, no website exists for the Ministry or the Department to inform the citizens of relevant information. No financial reports about the revenues and profits of endowed properties are released, and no identification of encroachments on endowments. There are no procedural manuals for the General Administration for Endowments and no clear investment strategic plan.

Regarding accountability, there is no external auditor for the Department's operations and accounts. The Department did not fully implement the recommendations of the State Audit and Administrative Control Bureau (SAACB). It implemented 35% partially and only 6% fully, while it did not implement 59%, according to SAACB 2020 report on the follow-up of the implementation of the recommendations. To advance the endowment sector, particularly the endowed properties, there is a need for a national policy developed and supervised by all stakeholders. Such a policy shall identify the relation between the endowments institution and the state institutions, the way it manages the endowments, the Palestinian legal framework that regulates their operations, benefiting from the successful experiences of other Arab countries in managing endowments, taking into consideration SAACB recommendations because of their utmost importance in protecting endowed properties in general.

In terms of integrity, it is necessary to apply a system that prevents conflict of interests at the Badal Al-Mithl committee and the supervision committee over leasing and investing endowment properties and all relevant parties, and to comply with the relevant Council of Ministers (COM) decisions. The Ministry of Endowments and Religious Affairs (MERA) must train the staff at the Department of Endowed Properties on the Code of Conduct of the Public Employees, the Civil Service Law, the Penal code, the Anti-Corruption Law and the instructions and mechanisms of reporting cases of corruption in leasing or investing endowment properties. It is important to involve parties from outside the Ministry in membership of committees, to put in place written and approved manuals and systems about the mechanisms of developing plans and policies and means of decision-making.

In terms of transparency, the report recommends developing a strategic investment plan, completing the process of identifying and registering the endowed properties as soon as possible, stressing that the Ministry should publish the information about endowment properties, investments and budgets to inform the public. MERA shall develop procedural manuals of the departments that work on endowment properties.

Finally, regarding accountability, the report recommended that MERA report to COM on a quarterly basis about the endowments' budget, revenues and investments. MERA must appoint an external auditor and put in place the necessary legal framework that bridges the gaps in leasing agreements and contracts.

► Introduction

Many countries have endowed properties. However, the Islamic nation may have given endowments (waqf) special attention and regulation. At the religious level, the act of endowment gives the Muslim the blessing and reward (thawab) from God. On Earth, it has an impact on social, economic and cultural development. The Islamic jurisprudence elaborately addresses waqf at all administrative and economic levels and has provisions relevant to integrity, transparency and accountability. In modern times, this has evolved and become a requirement of good governance of endowments, since they are part of the public funds under the state's supervision. The different Islamic rulers from the successive eras, since more than 1400 years ago, have been attentive to the endowments of Palestine.

Currently, the endowment administration is the responsibility of MERA, and this requires strengthening its integrity, transparency and accountability, which constitutes the pillars for good governance and against corruption. This report examines the integrity, transparency and accountability environment in managing endowments and related investments using a set of indicators, and the legislative and institutional framework for the endowments' management and investment.

This report adopted a descriptive analytical approach. It collected and identified relevant information from various sources, reviewed studies on the topic, including relevant AMAN reports such as "Managing Public Resources and Natural Wealth and the Government's Integrity". The report also examined the indicators on the integrity of the staff and officials and on transparency in managing the relevant businesses. It examined the efficiency of the accountability systems in managing endowment properties, and analyzed the information, data and indicator results to reach conclusions that identify challenges and issues that face the endowment management in Palestine and provides applicable recommendations and proposes lobbying and advocacy mechanisms for adoption and implementation. The first draft report shall be discussed at a workshop with stakeholders to incorporate the outcome of the discussions accordingly.

The report is divided into four parts. Part 1 addresses the legislative regulatory and institutional framework, while Part 2 discusses the integrity, transparency and accountability environment in endowed land administration. Part 3 analyses the data and provides conclusions, while Part 4 includes the recommendations.

► Foreword

To address the endowment (waqf) system it is important to understand its historical context. The social, economic and other services of the waqf benefited the whole society in general and the vulnerable groups in particular. The social solidarity institutions provide assistance to the needy and carry out provisional relief programs that bridge certain gaps in the socio-economic system of the society. Moreover, they are linked to a sound intellectual tenet established in the Holy Quran and the Prophet's Sunna. This principle provides that humans need each other to achieve the collective human goal. This clearly reflects the individual responsibility towards the group, to achieve civic peace that ensures sustainability of life and preservation of human dignity. Ibn Khaldoun described this as the attribute that manifest human civility. In brief, it transforms the experience of volunteerism from individual conduct to an institutional experience, provides it with social, legal and administrative resilience and enables it to be continuous and sustainable through governance that comprises integrity, transparency and accountability.

The endowment is defined as, "prohibiting any human to own the property and donate the yields to the poor in bulk or spend them on one form of charity"¹. This definition does not keep abreast with modern developments. It provides that the endowment must be immovable property, which makes many people refrain from endowing. There is a need to reconsider this definition and adopt another definition from the Islamic jurisprudence that better conforms with the purpose of endowment, such as defining waqf as, "prohibiting the consumption of money and keeping it for the concurrent use in a form of charity". It is a perennial charity so long as the capital survives, either by natural means or deliberately by virtue of the endower's will. In fact, this definition includes the eternal endowment of real estates and endowment for the whole lifetime of the endowed funds, as agreed among the four Islamic schools of thought. This definition also includes the temporary endowment upon the will of the endower, known among the followers of the Malki school of thought. This includes forms of endowment known in modern time, such as the endowing the financial right with commercial value (وقف الحقّ المالي المتقوم) and the benefits endowment (وقف المنفعة). The financial right with commercial value, such as copyrights and benefits such as benefits of leased assets constitute money according to Islamic Law (Shari'a), as is the case with the people who consider benefit as money, or as evident in the modern collective legal opinion (fatwa) that considers the intellectual property money with commercial value².


In Palestine, endowments have exceptional circumstances because of the unstable political conditions since more than a century ago, because of the changes in the regulations, legislations and institutions that managed the endowments, which may be classified according to the following criteria³:

1- The party to whom the waqf was endowed: The Ottoman Law of Justice and Equity distinguished between two types of waqf: the family waqf (Ahli or tharri), which is specifying the endowment for own descendants, or a certain part of the descendants, such as the Nimer tharri waqf in Nablus. The second type is the charitable waqf, which is an eternal endowment to a certain party, such as to orphans, or general for all types of charity.

1 The Law of Justice and Equity, Article 1

2 Monzer Qohf, The Islamic Waqf Evolution, Administration and Development 2000 (الوقف الإسلامي تطوره، إدارته، تنميته), Damascus, Dar Al-Fikr, 1st Edition, P. 154.155.

3 AMAN, Integrity, Transparency and Accountability in Managing Waqf Property in Palestine, 2013, Report Series No. 73, P. 2-3.

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- 2- The party that manages the waqf: The Ottoman Awqaf administration system applicable in Palestine distinguished between the endowment managed by a governmental department, which is mostly the charitable endowment, and the waqf managed by an ordinary person called the waqf manager, whom the endower identifies and is usually a descendant (tharri) waqf.
 - 3- The legal status of the endowed land that is divided into two types: The true (sahih) waqf, which is endowed land that is a true property, and the incorrect (ghair sahih) endowment, which is endowed Miri land, which the state owns but the individuals only have the usufruct rights.

This case of incorrect waqf must be reconsidered from a legal perspective, since it is important to preserve and invest those endowments properly. This topic should be scrutinized and the concerned parties must take the necessary measures to put things on the right track.

The endowments in Palestine do not consist of lands and buildings only. Palestine, like other countries in Greater Syria, is rich in all forms of endowments. Some of them attest to the major role that the Awqaf institution has once played in developing the Arab society in Palestine. The endowments are mostly Islamic Waqf since the days of Caliph Omar Ben Khattab. However, the occupation and the damage it afflicted since the British Mandate until today aimed at destroying this institution to prevent it from providing a haven and a resort to the Palestinian society. Michael Demper explained the situation of the Palestinian Waqf: The Israelis seek to destroy the Waqf, confiscate it and dissolve their supervision committees. They enacted unfair laws to legitimize encroachments, such as the infamous Absentee Property Law, which aims at confining and confiscating waqf, and plays a crucial role in transferring Islamic waqf into Jewish properties⁴. The study⁵ of the Economic policy department at the Palestinian Economic Council for Development and Reconstruction (PECDAR) on the endowment economies in the Palestinian Authority (PA) territories stressed “the importance of Awqaf and their role in development and asserted the need to make effort and move forward in parallel with what the donors provide to finance our development and reconstruction programmes. Furthermore, the state of Islamic Waqf reflect the dire condition and neglect that the departments of endowed properties have suffered from throughout the different eras in Palestine”.

The conclusion is that the endowments constitute a permanent economic and social institution that produces financial yields and has a positive social impact if properly managed at the legislative and administrative levels.

4 Michael Demper. Israel's Policy Towards Islamic Endowments In Palestine, 1992, Beirut, Institute of Palestine Studies, P. 60-75.

5 Shtayyeh, Mohammad Et al, The economies of Islamic Waqf in the Palestinian Authority Territories, (2000), An analytical study of the Economic Policy Department, PECDAR, P3.

► Part 1: The legislative, organizational and institutional environment

First: The legal and legislative framework

The legal and legislative framework of Waqf is rich and overlapping in Palestine, since it has been subject to many legal systems during the past centuries. It was subject to the Ottoman laws, which stem from the Islamic Shari'a, including The Ottoman Courts Manual (Majallat Al-Ahkam Al-Adliya), which addressed the endowments and the endowers in Articles (1319), (1661), (1662) and others, in addition to the Ottoman Land Law For 1858 and other laws. The British Mandate issued The Decree of Palestine Constitution in 1922, with Article (42) that asserted that all Ottoman legislations published as of 1 November 1914 were applicable until cancelled or amended with a legislation enacted according to that Law. The Presidential Decision No. 1 For 1994 of the PA did the same, providing that all laws, regulations and orders issued before 5/6/1967 would be applicable⁶.

The most important applicable legislations that regulate Waqf at the substantive, administrative and procedural levels in the West Bank and Gaza Strip are:

First: The laws:

- 1- The Ottoman Courts Manual (Majallat Al-Ahkam Al-Adliya), which constitutes a major reference in the absence of a civil law. It has several articles on Waqf⁷.
- 2- The Ottoman Land Law For 1858, which is a substantive law.
- 3- The Law of Charitable Waqf No. (57) For 1959, applicable in the West Bank.
- 4- The Landlord and Tenants of Waqf Properties Law No. (5) For 1964. This law excluded the leased Waqf properties for constructing buildings on them from the protection provided in the Landlords and Tenants Law No. (62) For 1953 and its Amendments, which prevents the landlord from raising the rent and fixing the lease term. To maximize the benefit from the above-mentioned Landlord and Tenants of Waqf Properties Law, the Palestinian legislature must amend it to extend protection to all Waqf properties, irrespective of the type of lease. This shall enable raising the rent and fixing the lease term⁸.
- 5- The Law on Awqaf and Islamic Affairs and Holy Sites No. (26) For 1966 and its Amendments⁹: This law provides for forming a council for Awqaf and Islamic Affairs and Holy Sites consisting of the Minister and the Deputy Minister of Endowments, a representative of each of the ministries of Interior, Education, Public works, and Media with a clear mechanism. The council shall also include five members from stakeholders. The purpose is to expand the circle of Waqf policy makers, put in place controls that ensure no manipulation of endowments and guarantee that the council carries out its goals and policies¹⁰.
- 6- The Shari'a Procedural Law No. (31) For 1959 and its Amendments, applicable in the West Bank but not in Gaza Strip. Article (2) of this law identified the mandate of the Shari'a courts. It includes deciding on all Islamic Waqf matters that include establishment, conditions, custody, swapping, internal management, transfer of waqf land tax and waqf yields of the two leases and linking them

6 See Presidential Decision No. (1) For 1994 on: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=966>

7 See Majallat Al-Ahkam Al-Adliya at: <https://maqam.najah.edu/legislation/158/>

8 The Independent Commission for Human Rights, A report on Islamic Waqf in the West Bank, Ramallah, 2002, Legal Papers Series,(30), P. 20. It should be noted that this law is applicable in West Bank only.

9 See the Law on Awqaf and Islamic Affairs and Holy Sites No. (26) For 1966 and its Amendments on: <https://muqtafi2.birzeit.edu/muqtafi2/transform/fulltext/L2RiL211cXRhZmkvYWNOL3htbC8xOTY2L2xhd19LaW5nXzE5NjYtMDYtMDVfYXlvMjZfMTk2Ni54bWw>.

10 The Independent Commission for Human Rights, A report on Islamic Waqf in the West Bank, previous source, P. 18.

to لمقاطعة . It also includes cases of disputes between two Waqfs, or the correctness of Waqf and the consequent rights established with a special customary practice¹¹.

7- Decision By Law No. (22) For 2018 on the Preservation of State Land. Article (8) of this decision by law provides that Waqf properties shall be subject to protection from encroachments like state land, and made them part of the mandate of regular courts in this respect.

Second: The Regulations and bylaws

The Regulation on Awqaf and Islamic Affairs No. (142) For 1966 and its Amendments required registering Waqf estates, their leases and the revenues of family endowments (Tharri waqfs).

Third: The Council of Ministers (COM) decisions

- 1- COM Decision No. (08/21/ق.أ/و.م) For 2004 on removing the encroachments of the local councils on waqf properties. This issue is still pending and the decision not fully implemented as of the day of preparing this report.
- 2- COM Decision No. (09/21/ق.أ/و.م) For 2004 under the supervision of the Ministry of Finance (MOF), to lease waqf properties for the ministries and government institutions. According to this decision, MOF was designated to oversee signing the leasing contracts of waqf properties between MERA and other ministries and government institutions.
- 3- COM Decision No. (10/21/ق.أ/و.م) For 2004 on forming a special ministerial committee to study the possibility of fixing the rent of waqf properties.
- 4- COM Decision No. 11/21/ق.أ/و.م) For 2004 on regulating the registration of waqf lands. According to this decision, the Land Authority was designated to conduct a renewed registration of waqf land. Despite this decision, the process of renewed registration of those lands has not been completed, noting that some waqf lands are in Area (A), and a renewed registration is possible for them.
- 5- COM Decision No.(12/21/ق.أ/و.م) For 2004 on the need for MERA to submit its annual report on the waqf property budget to COM. According to this decision, MERA was required to submit an annual report on waqf property budget to COM by 31 December every year.
- 6- COM Decision No.(04/08/ق.أ/و.م) For 2005 on the waqf revenues at MERA. This decision designated the Minister of Endowments and the Minister of Finance to examine the mechanisms and means of conducting a process of separation between waqf revenues and other financial revenues at the Treasury, and developing a mechanism to verify the legal aspects of spending waqf funds.
- 7- COM Decision No. (13/21/ق.أ/و.م) For 2004 on forming a higher council for waqf land. According to this decision, the Minister of Endowments and Religious Affairs shall chair the Higher Council for Waqf Land and COM shall issue the relevant regulations. Those regulations have not been issued yet, and the council, which should include, in addition to MERA, representatives of the relevant ministries, the local community and experts as necessary, has not been formed.
- 8- COM Decision No. (02/45/ف.س.و.م) For 2013 on forming a central tenders committee to invest waqf properties. This decision established a special tenders committee to invest waqf land, chaired by the Minister of Endowments and with the membership of the head of the investment and projects unit, director-general for financial affairs at MERA, a representative of the Central Tenders Committee at the Ministry of Public Works and the director-general of the general supplies or a person who represents him in MOF operations in his absence.

11 AMAN, Integrity, Transparency and Accountability in Managing Waqf Property in Palestine, previous source, P. 4.

Second: The institutional and regulatory environment

Historically, endowments were considered non-governmental institutions, or civil society organizations in the real sense, that are independent from the ruling authority and its influence and hegemony, through its social, economic, educational, health and other roles. This situation lasted until colonialism and occupation came to our country following World War 1, and the emergence of the nation-state, which annexed the Waqf to the executive branch, in an attempt to contain the civil society, which had provided the Waqf system with power and sustainability¹². In Palestine, because of the specificity of the Palestinian cause, and the different administrative systems that were and still are applicable on endowments in the Palestinian Territories, the endowed properties were attached to MERA during the Jordanian Rule of the West Bank. The regulations and laws that regulate it were issued, most notably the Law on Awqaf, Islamic Affairs and Holy sites No. (26) For 1966 and its Amendments, which attached the Waqf property to the Council of Awqaf and Religious Affairs, consisting of the Minister of Endowments and Religious Affairs as chair, and the membership of the Deputy Minister, and representatives of each of the ministries of Education, Media and Interior, in addition to five members from concerned parties. The council has the following mandate¹³:

- 1- Formulate the public policy towards the endowment funds, religious affairs and the Holy Sites.
- 2- Set up the necessary plans to invest endowment funds and achieve the goals provided in the law.
- 3- Swap waqf estates and arrange the captive (hikr), when there is a legal reason with the permission of the Shari'a Court.
- 4- Approve the leases of endowed estates that are longer than three years and approve construction of endowment buildings.

The Palestinian COM issued the decision to form the Higher Council for Waqf Land according to a specific regulation. However, this council has not been formed as of the date of writing this report, because COM did not issue the regulation of the Higher Council¹⁴.

To overcome the absence of a council, invest endowments and manage the relevant tenders, the Minister of Endowments requested COM to issue a decision to form a special committee for endowment properties investments. Decision No. (6) For 2013 formed the central tenders committee for investing endowment properties. The committee was formed in accordance with the structure identified in the decision. It developed the terms of the endowment property investment tender document, applied on the parties that wish to invest¹⁵. However, this committee suffers from some shortcomings, such as failure to advertise procurement processes on the portal of public procurements, and using traditional ways in procurement, although the Higher Public Procurements Council must monitor such matters that fall within its mandate¹⁶. It is noted that SAACB is not an observer member of this committee to strengthen integrity and transparency in its operations.

To enhance the role of MERA in managing the endowments, the following administrations were introduced with specific functions:

- 1- The General Administration for Endowments, responsible for managing endowments.
- 2- The General Administration for Engineering and Construction.
- 3- The Investment and Projects Unit.

12 Ibrahim Al-Bayyumi Ghanem, *The Awqaf, The society And Politics in Egypt*, (2016), P. 479.

13 The Jordanian Official Gazette, Issue No. 1926, P. 992, 5 June 1966.

14 COM Decision No. (13/21/ق.أ/9,م) For 2004 to form the Higher Council for Waqf Land.

15 Interview with Ahmad Hajj, Director of Endowment Properties on 30/05/2022.

16 Interview with Naser Khatib, Chair of the Central Tenders Committee on 26/05/2022.

The competent courts

The Shari'a Court is the competent court on Waqf cases according to the Shari'a Procedural Law No. (31) For 1959 applicable in the West Bank, and the Shari'a Procedural Law No. (12) For 1965 applicable in Gaza Strip, in addition to regular courts, to which the Shari'a courts sometimes refer some cases during their court proceedings¹⁷. The Shari'a court system reports to the Supreme Judge Bureau, which still operates according to the legislations that were applicable prior to PA inception. So far, no special Palestinian laws or legislations were issued, except for some decisions and regulations issued by COM and the Bureau, which the report shall not discuss.

Patterns of managing endowments

In Palestine, the state manages waqf through MERA, in a manner similar to several Arab and Islamic states. This pattern was adopted after the emergence of the nation-state, which shifted the waqf administration from the waqf supervisor to the state's executive branch.

Despite the administrative and economic disadvantages of this pattern, Jordan was able to develop it by establishing the Council for Endowments, Religious and Holy Sites Affairs, hence diversifying the parties that oversee and manage from inside and outside the government, which gave the Jordanian experience an advantage in this respect¹⁸.

The Jordanian Ministry of Endowments enjoys financial and administrative autonomy because of the nature of the endowment it manages and supervises. This autonomy is enshrined in Article (107) of the Jordanian Constitution, which provides that, "The organization of the affairs of Moslem Waqfs and the administration of their financial matters, among other matters, shall be regulated by a special law". This autonomy protects the endowments from vanishing or melting into the state property, and protects them from encroachment, swapping and change. Moreover, this autonomy protects the Waqf establishment from being deprived from the state's financial and administrative support, which other state institutions receive. This requires that the Waqf establishment develops itself, rehabilitates its staff, and ensures adequate financial resources to carry out its functions, benefiting from its relation with the government and its supervision, without relinquishing its autonomy. The success of the Jordanian experience is evident in comparison with the experiences of other countries in which the government is fully and directly responsible for managing and supervising the endowments. This reflects the society's awareness of the importance of endowments, engaging them in managing it and the government's role in putting in place the suitable legislations, monitor, supervise and participate in the management process through the Awqaf Council¹⁹.

17 Decision By Law No. (22) For 2018 on the Preservation of State Land, Article (8) provides that waqf properties are subject to protection from encroachments just like state property, and constituted part of the mandate of regular courts in this regard.

18 See Mahmoud Ahmad Mahdi, *The Waqf System in Modern Practice*, 1423 (المعاصر في التطبيق المعاصر Hijri), The Islamic Development Bank, P.124. The Council was established in accordance with Law No. (32) For 2001 and its Amendments. The link is: <https://t.ly/zWMO>

19 Ibid, P. 135.

Independent endowment commissions

The special experiences of endowment administration include those of the countries that set up independent endowment commissions, such as Sudan and Kuwait. This is an advanced administrative pattern compared to other countries, and generally aims at liberating the endowments from the negative government's bureaucracy, and advancing endowments to achieve both religious and developmental goals at all levels²⁰.

The Sudanese experience

The Sudanese Endowments Commission succeeded in accomplishing significant achievements, such as compounds, malls and others in a short period. It shifted from being a burden on the state resources and budget to become an effective party that contributes to social development. The main factor behind this success is the political will that introduced legal and administrative reforms, which had an impact on activating the popular contribution and mobilizing waqf resources²¹.

The adopted administrative structure of the Commission had a direct impact on its success, as it gave investment the priority, and included in its structure an endowment holding company responsible for investments. It was free from bureaucracy, centralization and administrative disorder, but at the same time, it maintained the Shari'a and jurisprudence basis that regulate the Waqf. To achieve its goal, the Commission developed strategic plans for horizontal and vertical development. It raised awareness, encouraged studies and research and conducted relevant local and international conferences and seminars²².

The Kuwaiti experience

The institutional development of the endowment sector in Kuwait is not the responsibility of one institution, but rather a network of institutions, namely²³:

1- The Endowments General Secretariat: This governmental body enjoys relative autonomy in decision-making according to the Kuwaiti government administrative bylaws and regulations. The institution is managed by the Endowments Affairs Council, headed by the Minister of Endowments, and with the membership of each of the secretary-general of the Endowments General Secretariat, Deputy Minister of Endowments, Director-General of the Social Security Institution, Director-General of Zakat house (Alms), a representative of each of MOF and investment promotion corporation and three experts appointed by COM.


2- Specialized endowment funds: This institutional framework was developed to celebrate the year of Endowments, in which new endowments are established for several purposes, each specialized in one purpose. The funds cover several aspects including the Holy Quran, persons with disabilities and special needs, cultural and scientific development, family care, environment, health development and mosque care. Groups of five to nine citizens selected by the Chair of the Higher Council for Endowment Affairs manage each fund. It is possible to add representatives of the government if necessary. A board with a two- year renewable term is established to manage the fund. Those endowment funds comply with the regulations of the specialized government agencies, and cooperate with them for the public benefit. The fund may have joint enterprises with the government within its specialization.

20 Ibid, P. 136.

21 Ibid, P. 137.

22 Ibid, P. 137-138.

23 Mahmoud Ahmad Mahdi, The Waqf System in Modern Practice, نظام الوقف في التطبيق المعاصر, previous source, P. 137.



The Kuwaiti experience is characterized by its openness to the civil society. It gave the civil society an active role and enabled it to contribute to managing the endowments at the economic level, though attracting new endowment resources, and at the social level through directing the revenues. It may also establish such enterprises with not for profit associations, without contravening with the activities of those associations in any manner that may lead to negative competition. Despite the funds' autonomy, and the specialization of each fund in one aspect, however those funds may develop joint ventures to achieve public benefit. to meet the needs of eligible parties in an effective and efficient manner, meeting the desired goals and objectives²⁴.

²⁴ Ibid, P. 137.

► Part 2: Enhancing the integrity, transparency and accountability environment in the endowment and administration

Integrity, transparency and accountability constitute a requirement and an outcome of the contemporary financial and administrative systems that aim at improving the performance of public, private and non-governmental institutions. Hence, the endowment officials must make use of those modern standards and systems that aim at controlling the administration, organization and investment of endowments to achieve optimal outcome at all levels and alleviate risks, particularly in investments. The ultimate aim is for endowments to play their developmental role that serves the society at the socio-economic level in accordance with the Shari'a, legal and administrative rules that govern them.

First: Integrity in managing endowments

Integrity is the set of values related to the conduct of the officials and the staff, such as honesty, fidelity, and loyalty at work, heeding on public interests, declaring any conflict of interests between personal and public interests and declaring the financial status before assuming public positions²⁵. The staff at the Department of Endowed Properties must refrain from receiving any financial amounts, such as bribes from any source in return for any action that may affect the public benefit (the waqf interests) or lead to wasting endowments' money. There is a need for a written code of conduct that governs the professional conduct of the staff as well as written manuals that guide the staff in their transactions and operations.

1- Code of conduct:

The staff of the Department of Endowed Properties are bound by a special code of conduct of MERA. However, they have not received any training on that code so far²⁶. This reveals that the staff neither received copies of the code nor received any training on it. Furthermore, there is no mechanism to adopt the code. The annual staff performance evaluation does not include compliance with the code, and officials are not held accountable for violating its provisions.

2- Awareness-raising and training

Regarding awareness and training programmes for the staff, the director of the Department of Endowed Properties said that the staff did not receive sufficient awareness raising on the legal provisions of the Civil Service Law, the Penal Code or the Anti-Corruption Law concerning abuse of public positions and other forms of corruption. It is worth noting that awareness is not restricted to staff at the Department of Endowed Properties, but it is also important to raise the awareness of the public about the importance of endowments in economic development and in reducing the burden on the state budget. It is also important to encourage people to endow their money, and to raise their awareness about the need to preserve endowments and report any encroachment since it is public money. Awareness shall not be restricted to mosque imams, but several means should be used to this end²⁷. properties and encouraging reporting, no instructions or mechanisms to promote reporting corruption are in place²⁸. In an interview with the Director-General for Complaints and Reports at the

25 AMAN, Integrity, Transparency and Accountability in Combating Corruption, Edition No. 4, P. 53.

26 Interview with Ahmad Hajj, Previous source.

27 Ibid.

28 Telephone interview with Akram Atawneh, Director for Legal Affairs at MERA on 1/6/2022.

Regarding instructions or mechanisms of reporting corruption in leasing and investing endowment Anti-Corruption Commission (PACC), he indicated that PACC has no complaints or reports currently²⁹.

3- The applicable financial and administrative systems at the Department for Endowed Properties

Article (3) of the Law on Awqaf and Islamic Affairs and Holy Sites No. (26) For 1966 provided that the Ministry has an independent financial and administrative system. However, as of the date of writing this report, no special financial system has been developed for MERA. Hence, it applies the same financial system as other PA ministries until such a system is put in place. MERA also applies the same laws of public supplies, tenders and government works. Its employees are subject to the Civil Service Law and receive their salaries from the Treasury.

MERA budget is prepared according to MOF instructions on budget preparation, with one exception, that its revenues do not enter the unified account of the Treasury but are used to cover the operational costs. Spending is made according to the approved budget.

Regarding the public procurement of supplies, general services and non-engineering services, when the amount exceeds US\$50,000, procurement must be made through the central tenders committee. If the amount exceeds US\$ 0.5 million, the purchase is made through the Tenders Committee at the Ministry of Public Works, in accordance with Decision by Law No. (8) For 2014 and Regulation No. (5) For 2014 on Public Procurement. However, the Department of Endowed Properties does not operate according to the above-mentioned Decision and Regulation, but the Endowments Investment Committee implements the procurement process³⁰.

Nasser Khatib believes that the shortcomings of the Endowments Investment Committee include their failure to advertise their procurements on the single public procurement portal and continue to use conventional methods in their procurement processes³¹.

The 2019 SAACB Annual Report pointed out the following comments regarding the applicable administrative and financial regulations at the Department of Endowed Properties³².

1- Around 50% of MERA accounts receivables are due on government institutions. Several government institutions use endowment properties without leasing contracts, and some leasing contracts of endowments are expired, but the government institutions use them without renewing the contracts, which wastes the value of the lease for MERA and reduces the endowments' revenues.

2- Cheques from tenants are not deposited immediately at the bank, but kept in a vault at the directorates until their maturity date. Some bouncing cheques have not been collected at several directorates as of 30/11/2018 with values of 190,084 Jordanian Dinars (JOD), US\$ 11,174, and 45,171 Israeli Shekels (NIS). This reveals poor follow-up that may lead to loss of cheques and depriving MERA from their values.

3- At the administrative level, there is poor coordination with the competent departments at the Land Authority to obtain new land registration documents, and update the information on the endowed

29 Interview with Issam Abdul Halim, Director-General for Complaints and Reports at ACC, on 22/6/2022.

30 Interview with Nasser Khatib, previous source.

31 Ibid.

32 SAACB, Annual report, 2019, Ramallah, Palestine. P. 71-72.

lands and properties subject to settlement at the Land and Water Settlement Authority. MERA directorates do not notify the General Administration for Endowments of the new data it receives about the endowed lands and properties, to enter that data properly into the electronic system with clear numbers of land lots and parcels, and according to the new settlement and parceling data. This may lead to conflicting information, especially with the new numbers.

4- Plans and policies that regulate the work of endowment administration

The General Administration for Endowments has no written and adopted bylaws on the means to formulate policies, take decision and develop plans. Plans, projects and policies are developed at the department and submitted to the Minister to take the appropriate measure³³.

SAACB Annual Report for 2018 commented that MERA did not form a committee to develop its strategic plan. Moreover, no operational plans for the administrations, including the Endowment Administration have been developed, and there were no documents that included MERA plans to manage and develop the endowments property system³⁴. MERA had no clear investment plan to manage the endowment funds, contribute to their growth and make use of their yields. MERA does not classify the investments properly³⁵.

5- Conflict of interests

There is no clear mechanism for MERA staff to prevent conflict of interests, such as the members of Badal Al-Mithl committee and the supervision committee over leasing and investing endowments, since the members of such committees must declare any personal interests or relationships with the applicants who wish to benefit from endowments. However, this was addressed by rejecting any application submitted by any employee at MERA or any person with a direct relation with any official at MERA. Following COM Decision No. (1) For 2020 on declaring conflict of interests³⁶, MERA is compliant with this decision and implements it on endowed properties and others³⁷.

6- Financial Status Declarations

The employees of the Endowments Administration are subject to the provisions about employees in the Palestinian Anti-Corruption Law. Inquiring about the staff's compliance with submitting financial status declarations indicated that all the employees who are subject to the law have filled the declaration form, including the members of the supervision committee over leasing and investing endowments, financial directors and members of the tenders and procurement committees³⁸.

7- Receiving gifts

Inquiring about the existence of a system or procedures that regulate the process of receiving gifts indicated that there is a special regulation to this end in line with COM Decision No. (10) For 2019 on gifts³⁹.

8- Rent values of endowments

The Mithl committee at MERA directorate at the governorate level determines the value of the rent of endowments. The committee consists of the Endowments director, the directorate's accountant

33 Interview with Ahmad Hajj, previous source.

34 SAACB Annual Report, 2018, Ramallah, Palestine, P.122.

35 SAACB Annual Report, 2019, previous source, P. 71.

36 Interview with Ahmad Hajj, previous source.

37 Interview with Tahrir Khalaileh, Director for Administrative Control at the Internal Control Unit on 22/6/2022.

38 Ibid.

39 Interview with Tahrir Khalaileh, Director for Administrative Control, previous source.

and the head of the properties section at the directorate. It submits its recommendation to the Supervision Committee, which determines the rent according to the market prices, the applicable badal al-mithl and the nature of the project that would be built over endowed land, noting that the Endowment committee does not take a price lower than that determined by Al-Mithl Committee. Applications of the government departments and NGOs that wish to build public facilities, such as hospitals or schools, are given more lenient treatment than those that are strictly aimed at profit⁴⁰.

Second: Transparency in the Endowments Administration

Principles of transparency: It is the need to have clear procedures taken at all the levels by the officials in the state administration upon managing public affairs and public funds⁴¹. Transparency has several indicators, most notably to enable citizens to exercise the right to access public information, make available to the public clear documents about the goals, philosophy and programmes of the institution, and inform them on how they can obtain its services and how it provides them.

Upon applying those principles on the operations of the Endowments Administration, the following may be observed:

1- The citizens right to access information

Each ministry must have its own active website. MERA website is inactive⁴² and not used. Regarding the Department of Endowed Properties, it does not have a website of its own, but has MERA Facebook page through which it is possible to communicate with them electronically⁴³.

Hence, the citizens cannot obtain information through the website. Regarding information on the Endowment Administration, the Director of Registration and Documentation at this Administration pointed out that no accurate or complete information exists to inform the public, especially about endowment lands, because the process of identification and settlement of those lands is not complete so far. Hence, no final and reliable figures and areas exist. Consequently, PECDAR study on endowments conducted towards the beginning of the millennium is not accurate⁴⁴.

2- Identifying the endowment properties.

As mentioned above, the endowment lands are not identified because the process of land settlement has not been completed, but it is documented, noting that endowment properties include buildings and shops, many of which are not registered at the official departments, such as the title deeds department and the financial department so far. A committee was formed since 2013 to this end, but has not completed its mission so far for several reasons, including lack of resources, the fact that some estates and lands are in Area (C) and the failure of some local councils to pay their financial dues to complete the process of identification and registration⁴⁵.

Hence, no accurate and comprehensive database of those properties exists, which leads to inaccuracy and hinders smooth access⁴⁶. This hinders developing accurate investment plans, which prevents the optimal use of resources.

40 Ibid.

41 AMAN, 2016, Integrity, Transparency and Accountability in Combating Corruption Previous source, P. 60.

42 During the period of preparing this report, the researcher tried to enter (Pal-wakf.ps), but to no avail.

43 Interview with Ahmad Hajj, previous source.

44 Interview with Mahmoud Abed, Director of Registration and Documentation at the General Administration for Endowments on 22/5/2022. See SAACB Annual Report, 2019, P. 71.

45 Ibid.

46 SAACB Annual Report, 2019, P. 71.

3- Documenting the selection processes in official records.

The selection processes are documented in paper and electronically in official records properly signed⁴⁷.

4- Documenting and identifying encroachments

No accurate and comprehensive identification of the encroachments on endowments exists. No regular reports exist, neither from the occupation nor from the citizens, or the official institutions or NGOs, which leads to lack of clear and accurate information⁴⁸.

5- Financial advances and liabilities

No clear methodology exists at MERA to follow up defaulting parties, which leads to loss of revenues. Moreover, large discrepancies exist in the accounts receivables of 2015, 2016, and 2017, and incompatibility between the statements of the directorates and the Ministry's accounting software (BISAN), in addition to inaccuracy of the opening balances of the accounts receivables in the financial records between the end-of year and beginning of the year for 2015, 2016, and 2017. This reflects weak review and follow-up of MERA reports. There is an unsettled advance with a value of 800,000 JOD transferred from the endowments' revenues account without recording it as account receivable, and this affects the accuracy of the financial data of endowments⁴⁹.

6- Procedural manuals

No procedural manuals explain the procedures of the Department of Endowed Properties. No awareness publications or manuals explain to the public the procedures they should follow if they wish to benefit from endowment properties or make a new endowment; they have to get the explanations directly from the responsible employee⁵⁰. Such manuals are useful to document the procedures, policies and mechanisms followed in carrying out the Administration's operations, plans and programmes. Written manuals are permanent and not affected by the structural changes or changes in staff.

7- Automated system

There is no modern automated system like other public or private institutions. The Administration, MERA and the concerned departments have no active website, and no technology used in archiving. Moreover, the General Administration for Endowments did not fully enter all the endowed property data on the system and no tests are made for the electronic system of endowed properties to verify its accuracy and the extent to which it meets the goals of the institution in registering, managing, monitoring and archiving the endowed property data. There are no adopted policies and procedures for the Department of Endowed Properties or Information Technology (IT) Department from the senior management, and the IT department is organizationally linked to the General Administration for Administrative Affairs⁵¹. The above-mentioned report includes many comments related to information technology.

47 Interview with Ahmad Hajj, previous source.

48 SAACB Annual Report, 2019, previous source, P. 71-72.

49 Ibid, P. 71.

50 Interview with Ahmad Hajj, previous source.

51 SAACB Annual Report, 2018, previous source, P. 121-124.

Third: Accountability in the Endowments Administration

The accountability system: It is the duty of employees in official positions to submit regular reports about work progress in their institution, to explain their decisions and policies, and their responsibility for those decisions. They should submit progress reports that reflect the positive and negative aspects⁵². Accountability has several indicators, most notably availability of an organizational structure that reflects that the lower bodies report to the higher bodies and are subject to their monitoring, frequency of regular meetings, availability of inspection, effective complaints system and active community accountability.

1- Monitoring and supervising the financial and administrative affairs

The General Administration for Endowments is directly responsible for following up this matter in coordination and cooperation with the competent authorities at MERA and according to the powers granted to them by virtue of the relevant applicable laws.

SAACB Annual Report for 2019 identified the following shortcomings in this regard:

- 1) The number of employees at the Endowments is not commensurate with the total size of endowments in directorates, and not distributed over those properties properly, which may lead to poor follow-up and supervision.
- 2) The necessary documents of leasing agreements and contracts are incomplete, and follow up of expired contracts and agreements is poor at the directorates level, which hinders benefiting from those endowed properties for the public good, the ultimate goal of endowments.

Regarding the party that approves leasing or investment recommendations, it is the Endowments Investment Committee, chaired by the Minister, who has the final say⁵³.

Regarding verifying that the beneficiaries are compliant with the terms of endowment, the Director of the Department of Endowed Properties asserted that the Department is responsible for verification, but provided no further details on the adopted mechanisms⁵⁴.

2- Administrative and financial control

The current system in the Palestinian public institutions provides for two parties of administrative and financial control, one internal and other external. SAACB is one of the parties that carry out the external audit. Regarding endowments, the Endowment Administration must be subject to this control. SAACB addressed the matter in its annual reports. For example, SAACB 2014 Annual Report addressed the performance of public institutions, including the above-mentioned administration⁵⁵. The 2018 Annual Report audited information technology⁵⁶, and 2019 Annual Report⁵⁷, which is a performance report, and 2020 Annual Report⁵⁸, which addressed the use of e-mails. It is worth noting that the researcher tried to communicate with the concerned parties at the Endowments Administration several times, to discuss the above-mentioned SAACB reports, particularly that of 2019. However, the attempts did not result in any personal interview, even by phone or through the e-mail. Consequently, the comments were included as published in the above-mentioned reports.

52 AMAN, 2016, Integrity, Transparency and Accountability in Combating Corruption, previous source, P. 64.

53 Interview with Ahmad Hajj, previous source.

54 Ibid.

55 SAACB: Annual Report 2014, P. 153-155.

56 SAACB: Annual Report 2018, previous source, P.121-130

57 SAACB: Annual Report 2019, previous source, P. 71-72.

58 SAACB: Annual Report 2020, previous source, P. 195.

SAACB Director-General Jaffal Jaffal⁵⁹ said that SAACB intended to prepare a performance report on the Endowment Administration, particularly in Jericho. On its official website, SAACB has a report entitled, "Monitoring the Implementation of 2020 Recommendations"⁶⁰, which addressed the recommendations of 2018 SAACB Annual Report to the Endowment Administration. It pointed out that only one recommendation had been implemented, constituting 6%, while other recommendations were partially implemented, constituting 35%, and all the rest, 15 recommendations that constitute 59% were not implemented⁶¹.

Regarding internal control at MERA, and like other Palestinian ministries, MERA has special departments for administrative and financial control and internal accountability. However, there is no external auditor. There is an internal control department or unit that prepares general risk reports every four years. The Department of Endowed Properties is the main theme of certain reports in certain periods, in an irregular manner, and depending on need. The unit director expressed his satisfaction with the unit's performance in general, since the concerned parties⁶² have adopted many of its recommendations, either fully or partially, since its establishment in 2012. Only a few recommendations have not been implemented as it turns out upon comparing the first risk assessment report of 2012 with the subsequent reports.

Examples include the recommendation on the lack of a clear plan at the Endowment Administration, which was partially implemented, the failure to separate between the work of the Endowment Administration and the supervision committee, and the issue related to the control over the supervision committee through the control reports over this committee. The problem related to the database of the Endowment Administration was resolved, as it was considered insufficient and access to it was not easy. Regarding identifying the endowments, and matching the documents with reality on the ground, the problem still exists, although a small part was resolved in the areas in which the settlement work has been completed, such as Salfit. Regarding the preservation and archiving methods, the Director-General of Internal Control at MERA said that the problem has generally been resolved, and that there is paper and electronic archiving and saving. As for endowment deeds, they are preserved in this manner at MERA and at the Supreme Judge Bureau. Finally, regarding the overlapping authorities between the Investment Unit and the Endowment Administration, the Director-General for Internal Control said that the Investment Unit is not active currently and has no director, and MERA is in the process of appointing one. Furthermore, there is a COM decision that provides for forming a special tenders committee for endowment investments to resolve the previous problem related to authorities⁶³. However, SAACB 2019 Annual Report said that this has not been implemented and there were several problems in investment.

On the other hand, the Administration does not use the modern investment tools that conform to Islamic Shari'a, called the Islamic financial products, which are playing a major role in the economy at large. When asked about the reasons for not using those products, the Director-General of the Endowment Administration said that the Islamic financial institutions operating in Palestine were not cooperative⁶⁴.

59 Interview with Jaffal Jaffal, SAACB Director-General on 30/6/2022.

60 See Monitoring the Implementation of 2020 Recommendations 2020 تقرير متابعة تنفيذ التوصيات للعام 2020 on: <https://www.saacb.ps/BruRpts/Recommendation2020SAACB.pdf>

61 Ibid, p. 33-39. It includes details about those rates and the afore-mentioned recommendations.

62 AMAN, Integrity, Transparency and Accountability in Managing Waqf Property in Palestine, Previous source, P. 14.

63 Telephone interview with Khaled Khalaf, Director-General for Internal Control at MERA, on 14/06/2022.

64 Interview with Mahmoud Hamad, Director-General of the Endowment Administration at MERA, on 30/06/2022.

Moreover, restricting the definition of Waqf to immovable properties and estates, rather than adopting the jurisprudence that allows for endowments of cash money, constitutes another big hurdle that impedes modern investment. The applicable law dates back to 1966 and requires amending or adopting a new law, as is the case in Jordan, where the legislative development constituted a direct reason for increasing the size and diversity of investments. Moreover, there is no evaluation of the endowment properties as fixed assets, neither as book value nor as fair value, and this affects the correctness of MERA financial reports and reveals a lack of sufficient follow-up of the endowments properties⁶⁵.

3- Endowment revenues

They are treated in a similar manner as all other government institutions, in terms of spending procedures and revenue collection⁶⁶, taking into consideration the specificity of the MERA, in accordance with Law No. (26) For 1966, which provides for establishing, under the Council's supervision, a central fund for the revenues of all the endowments and Islamic affairs, from which the authorized expenditures would be paid in accordance with the annual budget. Accordingly, MERA opened bank accounts at the Arab Islamic Bank and the Palestinian Islamic Bank, at which all the endowment revenues are deposited, the charity waqf and 10% of the tharri waqf, for which MERA takes responsibility and manages. Their annual value ranges between JOD 1.5-2 million, and they are not sent to the Treasury and are not subject to MOF control⁶⁷.

4- Encroachments against endowments

The encroachments against endowments vary between individual encroachments of citizens and those of the local councils, in addition to the Occupation's violations. According to SAACB Annual Report of 2019⁶⁸, encroachments neither are documented nor identified, which raises questions about the reasons for such negligence, if it exists, by those responsible for endowment affairs, particularly the legal parties. An interview with the Director-General for Legal Affairs at MERA revealed that many lawsuits are filed at the competent Palestinian courts against citizens, institutions, relevant state institutions or local councils. Some cases were settled with some government departments resolving some issues. He also asserted that MERA works closely with lawyers inside the Green Line, together with the lawyers of the Wall and Settlements Commission to follow up the Occupation's encroachments against endowments and file lawsuits at the competent courts. However long litigation procedures impede achieving tangible positive results⁶⁹.

5- Financial advances and accounts receivables

SAACB Annual Report for 2019 revealed that the measures that MERA took to collect and record the due accounts receivables, amounting to 5,286,281 JOD as of 31/12/2017 were insufficient. There is no regular follow-up or notifications for defaulting institutions to ensure they pay their outstanding amounts. MERA does not verify the accounts receivables of the instalments of the key money in its books, which makes collecting the full amounts of MERA accounts receivables hard⁷⁰.

65 SAACB Annual Report, 2019, previous source, P. 71.

66 Interview with Ahmad Hajj, Previous source.

67 AMAN, Integrity, Transparency and Accountability in Managing Waqf Property in Palestine, Previous source, P. 15.

68 SAACB 2019 Annual Report, previous source, P. 72.

69 Telephone interview with Akram Atawneh, Director-General for Legal Affairs at MERA, on 1/6/2022.

70 Monitoring the Implementation of 2020 Recommendations Report, previous source, P. 34-37.

6- Digitization

SAACB Annual Report for 2019 pointed out the lack of an automated or electronic system that links all the directorates with the General Administration for Endowments, which leads to inaccurate exchange of data and information among the directorates and the Ministry, and affects access to information. Moreover, the existing system of documenting endowment properties is poor. It is inefficient and ineffective in providing the required reports and segregated data according to need. It is unable to meet the work needs including registering and documenting the previous contracts and clarifying all the endowment properties, and this leads to poor follow-up with the tenants and the investors⁷¹.

Regarding information technology, SAACB Report for 2018 pointed out several defects in the electronic environment, such as the lack of a network for registering and identifying endowment properties, as there was one appliance only, which raises the risks according to the pertinent applicable standards⁷².

SAACB Report for 2020 also asserted those risks, as it pointed out that in general, MERA did not use e-mails in its official correspondence, which led to the possible loss of data, and constituted a high risk⁷³.

7- Reporting

The Director of the Department of Endowed Properties pointed out that there were quarterly, semi-annual and annual reports submitted upon request to the competent authorities, but those are not annual reports⁷⁴. The Director-General of Financial Affairs at MERA asserted that, adding that those reports are submitted upon the request of the competent authority⁷⁵, and through the Minister's office, despite COM Decision No. (12\21\ ق.م.و \ أ.ق.) For 2004, which required MERA to submit an annual report on the budget of endowment funds before 31/12 of each year.

8- Complaints

The presence of a specific system to receive and follow up complaints constitutes an important tool of accountability. This led COM to issue Decision No. (8) For 2016 on the complaints system, procedural manual and the special forms, called the automated complaints system. The complaint is either submitted to the General Administration for Complaints at COM or at the complaints sections in the different governorates, according to competences⁷⁶.

The Department of Endowed Properties and MERA in general receive complaints through this system and through MERA complaints unit⁷⁷, which reports directly to the Minister. Furthermore, no accurate statistics exist about the number of submitted complaints, which are generally few. The reason is that the complainants address their complaints directly to the concerned parties⁷⁸.

71 SAACB Annual Report, 2019, previous source, P. 72.

72 SAACB Annual Report, 2018, previous source, P. 121-130.

73 SAACB Annual Report 2020, previous source, P. 195.

74 Interview with Ahmad Hajj, previous source.

75 Interview with Luqman Helou, Director-General of Financial Affairs at MERA, on 30/5/2022.

76 Article (1) of the special procedural manual of the complaints

77 Telephone interview with Murad Amer, Director of MERA Complaints Unit, on 15/6/2022. It should be noted that he quit his position several months ago and the position is vacant so far.

78 AMAN, Integrity, Transparency and Accountability in Managing Waqf Property in Palestine, Previous source, P. 13.

► Conclusions and recommendations

Conclusions

• The Institutional framework

- 1- Some aspects of the institutional and organizational environment improved, but not sufficiently to the optimal condition in management and organization, compared with the Kuwaiti, Sudanese or Jordanian experiences.
- 2- No clear- written and announced- public policy for managing the endowments file exists.
- 3- The different decisions of the government reveal a desire to control the revenues of the endowment properties.
- 4- The number of employees who supervise the endowment properties is insufficient compared with the overall size of properties.
- 5- There are several shortcomings in the electronic environment, most notably the lack of use of e-mails in official correspondence.
- 6- The Internal Control Unit requires mores support, especially in competent staff.
- 7- The Shari'a courts report to the Supreme Judge Bureau, which still operates in accordance with the legislations that were applicable before PA inception. So far, no Palestinian laws and legislations were issued except for some decisions and regulations issued by COM and the Bureau.

• The legislative framework

- 1- The legislative framework is overlapping and incoherent because of the various sources and the cumulative historical and jurisprudential backgrounds. Moreover, it has not kept abreast with new developments (administratively and technically) and substantially (with the evolution of relevant jurisprudence).
- 2- The lack of a unified Palestinian law on endowments and the relevant rights and obligations of all parties. This makes it difficult to manage, invest and preserve them in accordance with the desired standards of integrity, transparency and accountability.
- 3- The Jordanian laws were developed after 1967, overcoming the many gaps in the previous Ottoman or Jordanian laws. Examples include the definition of Waqf, to which a new term was added, "the cash endowment". A new amendment was issued to the investment system of the endowment funds for 2020. This defined the cash endowment as "the seizure of money and placing it under the custodianship of the Ministry as a general custodian of endowments to speculate with those funds, invest them and distribute the profits according to the terms of the endower"⁷⁹. This is in line with the definition of the endowment in the Jordanian Civil Law For 1976, which stems from the Maliki School of Shari'a. This asserts the need for developing a modern Palestinian law that keeps abreast with modern

⁷⁹ Jordanian News Agency on 8/6/2020 <https://petra.gov.jo/Include/InnerPage.jsp?ID=150646&lang=ar&name=news>.

developments and asserts that the Islamic jurisprudence has room for such development. This may encourage investing in endowment properties and encourage endowers to endow their money.

- 4- The Landlords and Tenants Law needs amending and developing. COM has drafted the Landlords and Tenants Law through a special legal committee in 2015. However, this decision by law has not been issued so far, although it would address several issues in the applicable legislations and laws.
- 5- The issue of the captive endowment properties constitutes a major issue in Palestine, because of the legislative confusion over this subject and its negative economic impact, mostly on the endowments and their administration. This is evident in the number of cases at the competent courts and the nature of their decisions, which urged PA to try to prevent the captive system in accordance with the old legislative system.

- **Integrity**

- 1- The employees fill the financial status declaration form.
- 2- Administratively and financially, the employees are subject to the same conditions as government employees, and the Administration for Endowments is subject to them with one exception related to revenues, which are not sent to the Treasury.
- 3- The employees are subject to the Code of Conduct of the Public Employees but they have not received the necessary training, and there is no special code of conduct for the staff of the Administration for Endowments.
- 4- The Code of conduct has not been properly distributed to the staff and they have not received proper training. No mechanism is used to adopt the Code and impose compliance with its provisions in the annual performance evaluation of the employees or hold the officials accountable for its violation.
- 5- The employees did not receive the appropriate training on the laws that regulate their work or the Anti-Corruption Law, including the instructions and mechanisms of reporting corruption.
- 6- Regarding tenders, the Administration for Endowments has shortcomings in the use of technology in advertising, as it does not publish its advertisements on the public procurement portal and continues to use traditional methods.
- 7- The General Administration for Endowments has no written and adopted regulations about the mechanism of developing policies and plans and making decisions.
- 8- No clear mechanisms are in place to prevent conflict of interests.
- 9- No system or procedures regulate receiving gifts.
- 10- The Department of Endowed Properties does not apply the Decision By Law No. (8) For 2014 and Regulation No. (5) For 2014 on Public Procurement. The Department has a committee to invest endowment properties that carries out the procurement processes.




- **Transparency**

1. The party that approves leasing applications is the supervision committee on property, which submits its recommendations only to the Minister.
2. The process of selecting the beneficiaries is documented in paper and electronic records.
3. The endowment lands are still not identified because the settlement process is not completed yet.
4. No active website for MERA or the Department is available to inform the staff or the citizens of the information they need.
5. The Department has no accurate and documented information about the endowment properties and endowment deeds, particularly the areas of endowment lands, since there is no published registry of this information.
6. No reports have been published on the revenues of the endowment properties and their profits, with large discrepancies in the records of the accounts receivables for 2015, 2016 and 2017.
7. The encroachments against the endowment properties have not been identified.
8. There are no procedural manuals for the General Administration for Endowments.
9. There is no clear investment strategic plan.
10. No advanced automated system exists to work with advanced technology and contribute to the effectiveness of the Administration.
11. The supporting documents for the leasing agreements and contracts are incomplete.
12. The procedures at MERA to collect and record the accounts receivables and outstanding amounts are insufficient.

- **Accountability**

- 1- There is no external auditor to audit the Department's work and accounts.
- 2- There is no financial auditor from MOF as required in the Public Financial System.
- 3- Generally, the recommendations of SAACB have not been adopted; 35% have been partially implemented and 6% only fully implemented, while 59% of the recommendations have not been implemented, according to the report on monitoring the implementation of recommendations for 2020.
- 4- The endowment properties continue to be subject to internal and external encroachments.
- 5- The surplus of revenues at the Administration is not transferred to the Treasury.

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- 6- MERA does not submit any regular administrative and financial reports to COM.
 - 7- The automated complaints system and the complaints unit at MERA require activation and greater attention because of their impact on the accountability system.
 - 8- The government does not pay the accounts receivables of the Department properly, and the Administration does not follow the matter up properly, especially some rent payments.
 - 9- SAACB is not represented as an observer at the tenders committee of the endowment properties.

The report of the Internal Control Unit on risk assessment

- 1- The lack of a clear work plan has been partially resolved.
- 2- The problem of the database has been partially resolved.
- 3- In general, the endowment properties are not identified.
- 4- To resolve the issue of overlapping powers between the Investment Unit and the General Administration for Endowments, COM decided to form a special tenders committee for investing endowment properties.

Recommendations


To advance the endowments sector, particularly the endowment properties, a public national policy developed and supervised by all the stakeholders is required. Such a policy defines the relationship between the endowment institutions and the state institutions, and identifies the mechanisms of managing endowment properties as well as the Palestinian legal framework that regulates their operations.

• The institutional framework

1. Engage SAACB as an observer at the committees of the General Administration for Endowments.
2. Develop the political will to benefit from the successful experiences of other Arab countries in managing the endowments, such as Kuwait, Sudan and Jordan, and replicate it in Palestine. The Kuwaiti experience of actively engaging the civil society in managing the endowments has been particularly successful.
3. Adopt SAACB recommendations because of their extreme importance in protecting endowment properties in general.

• The legislative framework

- 1- Issue a unified law for endowment property management applicable in both the West Bank and Gaza Strip; issue the necessary regulations, bylaws and instructions that meet the Palestinian needs and specificities; keep abreast with the modern developments and interpretations, particularly in investment methods and the types of funds to be endowed, and replace the Landlords and Tenants Law.

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- 2- Until the Palestinian legislations that regulate the endowments are enacted, it is imperative to speed up applying the provisions of the applicable legislations, such as forming the Endowments and Religious Affairs Council for managing the endowment properties, in accordance with the Jordanian Law No. (26) For 1966, and issue the special regulation to establish the Higher Council for Endowment Lands, in accordance with COM Decision No. (13\21\ ق.أ.م) For 2004.
 - 3- The Palestinian legislature must amend the Landlords and Tenants Law to optimize benefit from it, so that protection covers all endowment estates irrespective of the method of leasing, so that it would be possible in all cases to raise the rent and fix the lease term.
 - 4- Enact and issue Palestinian laws that regulate the relationship between the Shari'a courts, the Supreme Judge Bureau and the General Administration for Endowments.

- **Integrity**

- 1- Activate the system to prevent conflict of interests at the Badal Al-Mithl Committee, the supervision committee over renting and investing endowment properties and any other relevant party, and comply with the relevant COM decisions.
- 2- MERA must train the staff of the Department of Endowed Properties on the Code of Conduct for Public Employees. It must also train the staff at the General Administration for Endowments and raise their awareness towards the legal provisions related to abuse of public position and other forms of corruption in the Civil Service Law, the Penal Code and the Anti-Corruption Law.
- 3- Activate compliance with COM decision on receiving gifts at the General Administration for Endowments.
- 4- MERA shall develop instructions and mechanisms of reporting corruption in leasing or investing endowments and encourage reporting.
- 5- MERA shall engage external parties in the membership of Badal Al-Mithl committees to ensure their impartiality, and ensure the presence of a valuation committee for evaluating the Key money, since its members have experience and are more capable of evaluation.
- 6- Develop appropriate solutions and mechanisms to dispose of the revenues of the endowment properties that are not transferred to the Treasury.
- 7- Use modern technology and the public procurement portal to advertise tenders to publicize to the largest possible audience.
- 8- Develop written and approved manuals and systems on developing plans and policies and making decisions.
- 9- Develop an effective mechanism to follow up and collect the accounts receivables.




• Transparency

- 1- MERA must publish regular financial and administrative reports that include reliable information about the endowment properties.
- 2- MERA must enable public access and publish data on endowment properties, investments and budgets.
- 3- MERA must document and register all title deeds of endowment properties inside Palestine, or those registered and documented from outside Palestine, and identify the lost endowments and the endowments that the Israelis had stolen since the land was occupied in 1948.
- 4- Provide MERA website with sufficient information about endowment properties.
- 5- Raise public awareness about the mechanisms of benefiting from endowment properties.
- 6- MERA must adopt modern accounting systems for the revenues and expenditures of the Islamic endowments inside Palestine and issue annual accounting reports.
- 7- Activate MERA website and create a special page for the Department of Endowed Properties using advanced systems.
- 8- Adopt a computerized complaints system.
- 9- Control the accounts, especially the accounts receivables.
- 10- Develop an investment strategic plan.
- 11- The Department must complete the process of identifying and registering the endowment properties as soon as possible.

• Accountability

- 1- Activate the complaints unit at MERA on cases related to endowment properties.
- 2- Activate the internal control unit at MERA and provide it with specialized staff.
- 3- Submit regular quarterly reports about endowment properties, their revenues and investments to COM.
- 4- Appoint an external auditor to endowed properties.
- 5- Have a financial auditor from MOF.
- 6- Rehabilitate and develop the capacities of MERA staff through conducting specialized training courses on managing and investing endowments and provide the specialized departments with the sufficient number of employees.

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- 7- Lay the necessary legal foundations to bridge the gaps in the leasing agreements and contracts.
 - 8- Implement SAACB recommendations on issues related to accountability.
 - 9- Take the necessary measures that ensure protecting endowed properties from encroachments.
 - 10- Develop a special financial system for endowments' revenues that is subject to external auditing.
 - 11- Rectify any shortcoming in the electronic environment, adopt e-mails as an official mode of correspondence and adopt an effective computerized complaints system.
 - 12- Develop the procedures of collecting accounts receivables and outstanding amounts for the Department of Endowed Properties and document them properly.

► Resources and references

First: Primary sources

- 1- Majallat Al-Ahkam Al-Adliya (The Ottoman Courts Manual), www.maqam.najah.edu
- 2- The Ottoman Land Law For 1858 www.maqam.najah.edu
- 3- The Law of Charitable Waqf No. (57) For 1959, applicable in the West Bank.
- 4- The Landlords and Tenants Law for Endowed Estates No. (5) For 1964 www.maqam.najah.edu.
- 5- The Law on Awqaf and Islamic Affairs and Holy Sites No. (26) For 1966 and its Amendments <https://muqtafi2.birzeit.edu>
- 6- The Shari'a Legal Procedures Law No. (31) For 1959 and its Amendments, applicable in the West Bank www.maqam.najah.edu.
- 7- Decision By Law No. (22) For 2018 on preserving state land.
- 8- The Regulation on Awqaf and Islamic Affairs No. (142) For 1966 and its Amendments required registering waqf estates and leasing them and the revenues of Tharri waqf.
- 9- COM Decision No. (08/21/ق.أ/و.م) For 2004 on removing the encroachments of the local councils on waqf properties.
- 10- COM Decision No. (09/21/ق.أ/و.م) For 2004
- 11- COM Decision No. (10/21/ق.أ/و.م) For 2004 on forming a special ministerial committee to study the possibility of fixing the rent of waqf properties.
- 12- COM Decision No. (11/21/ق.أ/و.م) For 2004 on regulating the registration of waqf lands.
- 13- COM Decision No. (12/21/ق.أ/و.م) For 2004 on the need for MERA to submit its annual report on the waqf property budget to COM
- 14- COM Decision No. (04/08/ق.أ/و.م) For 2005 on the waqf revenues at MERA.
- 15- COM Decision No. (13/21/ق.أ/و.م) For 2004 on forming a higher council for waqf land.
- 16- COM Decision No. (02/45/ف.و.س.م) For 2013 on forming a central tenders committee to invest waqf properties.

Books

- 1- Ibrahim Al-Bayyumi Ghanem, The Awqaf, The society And Politics in Egypt, (2016), Edition 1.
- 2- Shtayyeh, Mohammad Et al, The Economies of Islamic Waqf in the Palestinian Authority Territories, (2000), An analytical study of the Economic Policy Department, PECDAR.
- 3- AMAN, Integrity, Transparency and Accountability in Combating Corruption, Edition No. 4
- 4- Michael Demper. Israel's Policy Towards Islamic Endowments In Palestine, 1992, Beirut, Institute of Palestine Studies.
- 5- Mahmoud Ahmad Mahdi, The Waqf System in Modern Practice, (1423 Hijri), The Islamic Development Bank,
- 6- Monzer Qohf, The Islamic Waqf Evolution, Administration and Development , (2000), Damascus, Dar Al-Fikr, 1st Edition.

Reports

- 1- AMAN, Integrity, Transparency and Accountability in Managing Waqf Property in Palestine ,2013, Report Series No. 73
- 2- The Independent Commission for Human Rights, A Report on Islamic Waqf in the West Bank, Ramallah 2002 Legal Series (30).
- 3- State Audit and Financial Control Bureau Annual Report, 2014.
- 4- State Audit and Financial Control Bureau Annual Report, 2018.
- 5- State Audit and Financial Control Bureau Annual Report, 2019.
- 6- Monitoring the Implementation of 2020 Recommendations, 2020
- 7- State Audit and Financial Control Bureau Annual Report, 2020.

Interviews

- 1- Interview with Ahmad Hajj, Director of Endowment Properties on 30/05/202
- 2- Interview with Naser Khatib, Chair of the Central Tenders Committee on 26/05/2022
- 3- Interview with Issam Abdul Halim, Director-General for Complaints and Reports at ACC, on 22/6/2022.
- 4- Telephone interview with Akram Atawneh, Director for Legal Affairs at MERA on 1/6/2022.
- 5- Interview with Tahrir Khalaileh, Director for Administrative Control at the Internal Control Unit on 22/6/2022
- 6- Interview with Mahmoud Abed, Director of Registration and Documentation at the General Administration for Endowments on 22/5/2022
- 7- Interview with Luqman Helou, Director-General of Financial Affairs at MERA, on 30/5/2022
- 8- Telephone interview with Khaled Khalaf, Director-General for Internal Control at MERA, on 14/06/2022.
- 9- Interview with Mahmoud Hamad, Director-General of the Endowment Administration at MERA, on 30/06/2022
- 10- Telephone interview with Murad Amer, Director of MERA Complaints Unit, on 15/6/2022
- 11- Interview with Jaffal Jaffal, SAACB Director-General on 30/6/2022

Websites

- 1- <http://muqtafi.birzeit.edu/pg/getleg.asp?id=9663>.
- 2- <https://maqam.najah.edu/legislation/158/>.
- 3- <https://www.saacb.ps/BruRpts/Recommendation2020SAACB.pdf>.
- 4- <https://muqtafi2.birzeit.edu/muqtafi2/transform/fulltext/L2RiL211cXRhZmkvYWN%20L3htbC8xOTY2L2xhd19LaW5nXzE5NjYtMDYtMDVfYXlvMjZfMTk2Ni54bWw5>.
- 5- <https://petra.gov.jo/Include/InnerPage.jsp?ID=150646&lang=ar&name=news>.

AMAN
Transparency Palestine



AMAN was established in 2000 as a civil society organization that seeks to combat corruption and promote integrity, transparency and accountability in the Palestinian society. The Coalition was first formed by an initiative from a number of civil society organizations working in the field of democracy, human rights and good governance. In 2006, the Coalition was accredited as a national chapter for Transparency International.

AMAN is a Palestinian think tank and a specialized body providing knowledge on corruption at the local and regional level through producing specialized reports and studies. The periodic publications include: The annual Integrity and Anti-Corruption Report, the annual Palestinian Integrity Index and the National Integrity System studies and reports, in addition to the Coalition's continued contributions to produce reports and studies on the status of corruption in the Arab region.

As part of the global anti-corruption movement - and of international alliances and partnerships with relevant specialized coalitions and organizations - AMAN plays a key role in the transfer and contextualization of necessary international knowledge and tools to combat corruption in all sectors.

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