

Criminal Protection of Waqf Real Property: A Study of Various Crimes

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Abstract:

Waqf is regarded as a means of drawing closer to Allah, the Almighty. Its manifestations have expanded to include waqf institutions, which have undergone significant development. This has prompted the Algerian legislator to enact laws regulating the management of waqf property and, consequently, to ensure its protection, as stipulated in Article 52 of the 1996 Constitutional Amendment.

The criminal protection of waqf property refers to addressing all acts of infringement that may affect it, whether committed by third parties or resulting from natural causes. The responsibility for monitoring such property has been entrusted to the Waqf Administrator (Wakil al-Awqaf). This study aims to examine in depth the legal provisions enacted by the legislator to protect waqf institutions and properties, while highlighting the need to impose stricter penalties on perpetrators of crimes against waqf. It does so by presenting the various offences committed against waqf property and emphasizing the necessity of adopting specific legislation for the protection of waqf real estate.

Keywords: Waqf property; criminal protection; crime; criminal policy.

Introduction:

The Islamic waqf is regarded as a means of drawing closer to Allah, as waqf property constitutes charitable projects and righteous deeds that benefit people in this world while earning reward for the donor in the Hereafter. Consequently, such property requires an authority to preserve it or an administration to oversee its management and ensure its beneficial use.

A review of the period during which the country was under colonial rule reveals a significant marginalization of the legal frameworks governing waqf. Waqf rights were disregarded, and many traditional endowments were dismantled.

This led to a decline in the role of waqf within society and the loss of numerous waqf properties dedicated to charitable and social purposes. Moreover, the absence of clear legislation protecting waqf ownership contributed to the spread of corruption and the exploitation of these properties, leaving adverse social and economic consequences for the country.

Accordingly, following independence, it became necessary to reconsider the legislation governing waqf in order to restore the status of these properties and strengthen their role in

community development. This prompted the Algerian legislator to enact laws regulating the administration of waqf property and to ensure its criminal protection, particularly following the explicit adoption of Article 52 of the 1996

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Constitutional Amendment, which recognized waqf property and the property of charitable associations and affirmed the necessity of their protection by law.

Criminal protection of waqf real property refers to addressing all acts of infringement that may affect such property, whether committed by third parties or resulting from natural causes. The responsibility for monitoring waqf property has been entrusted to the Waqf Administrator (Wakil al-Awqaf), pursuant to Article 11 of Executive Decree No. 98/381, which lays down the conditions for the administration, management, protection, and operation of waqf property.

The importance of this topic lies in examining the policy adopted by the legislator to protect waqf real property, particularly in view of its positive contribution to community development, state financing, its preservation, and its allocation to its legitimate purposes.

This study also aims to examine in depth the legal provisions enacted by the legislator to protect waqf institutions and waqf real property, while drawing attention to the need to impose stricter penalties on perpetrators of crimes against waqf.

In order to examine this subject, the following research question is posed: To what extent has the criminal policy established for the protection of waqf property in Algeria been successful? Through this research paper, I will attempt to answer the above research question by highlighting the role of the Algerian legislator in protecting waqf property through an examination and analysis of the provisions of the Code of Criminal Procedure and other legislation governing waqf. To achieve this objective, the paper is divided into two sections. The first is entitled "The Concept of Criminal Protection of Waqf Real Property," while the second is entitled "Criminal Prevention Measures Against Various Forms of Encroachment upon Waqf Real Property," through an examination of the various offences affecting waqf real property. This study adopts both the analytical and inductive methods.

1. The Concept of Criminal Protection of Waqf Real Property

The Algerian legislator has criminalized all acts that infringe upon waqf property in view of its religious nature and special significance. Since most disputes concern endowed real property, the legislator has provided it with distinctive legal protection based on the provisions of both the Penal Code and the Waqf Law.

Criminal protection is reflected in special legal procedures aimed at safeguarding waqf assets. These properties are granted a distinct procedural status, meaning that, in certain cases, exceptions to ordinary procedural rules may be applied in order to ensure the protection required for such property, thereby affirming its importance and its vital role in society. Accordingly, it is necessary first to identify the type of real property covered by criminal protection before examining the offence of encroachment upon real property.

1.1. The Type of Real Property Covered by Criminal Protection

Two opinions exist in this regard. The first maintains that the protection provided under Article 386 of the Penal Code applies only to movable property and therefore does not extend to real property by allocation

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However, a decision of the Supreme Court, issued on 17 October 2000³ by the Misdemeanours and Contraventions Chamber, clarified that the protection prescribed by the aforementioned article also extends to real property by allocation, which is temporarily designated for a specific purpose.

In contrast to the first view, the second opinion holds that the protection provided by Article 386 extends to real property by allocation because such property is originally movable in nature and may be detached from its owner. By contrast, real property by nature, characterized by its permanence and the impossibility of being moved or separated from its location, remains subject to the jurisdiction of the civil courts in cases of encroachment and therefore falls outside the scope of application of the aforementioned article.

This view is based on the interpretation that, in drafting Article 386, the Algerian legislator intended to fill the legal gap left by Article 350 of the Penal Code, which criminalizes only the misappropriation of movable property, thereby leaving real property by allocation without legal protection. Accordingly, this interpretation justifies extending the criminal protection established under Article 386 to real property by allocation in order to strengthen the legal protection afforded to this category of property and prevent the exploitation of legislative loopholes.

Accordingly, under the provisions of the Algerian Civil Code, real property ownership includes both ownership of the corpus and the right of usufruct. Such ownership grants its holder three principal powers: the right to use, ⁴the right to exploit, and the right to dispose of the property. On the other hand, the Algerian Constitution classifies real property ownership into three categories: private real property, national property, and waqf property.⁵ Based on this classification, the subject matter and nature of ownership are determined according to the category to which it belongs. Within the framework of this study, the focus is on national waqf property as the category of real property covered by criminal protection, in view of its importance within the legal and social system and its role in promoting the public interest.

A review of Article 23 ⁶of Law No. 90-25⁷ containing the Land Orientation Law demonstrates that the criminal protection provided by the Penal Code extends to waqf property. This is evident from the interpretation of that provision, which confirms that waqf ownership constitutes a distinct and independent category, separate from both public and private ownership. This special classification highlights the unique role of waqf property within the legal system and justifies its inclusion within the scope of criminal protection to safeguard it against any form of encroachment or violation.

The criminal protection established under the Penal Code, which extends to the various forms of ownership, therefore encompasses waqf ownership as well, on the basis that it constitutes an independent category distinct from both public and private ownership. Furthermore, pursuant

to Article 31 of the Land Orientation Law, waqf property is defined as real property voluntarily endowed by its owner.

An examination of the legal provisions of the Penal Code relating to the protection of real property in its various forms demonstrates that such protection extends to waqf ownership. This reflects the legislator's recognition of the importance of waqf property and its distinctive role. Accordingly, waqf property has been made subject to the same criminal safeguards applicable to real property, while taking into account its special nature as an independent category of ownership alongside public and private property.⁸

1. The Basis for Criminalizing Encroachment upon Waqf Property

The Algerian legislator addressed the offence of encroachment⁹ upon waqf property in Law No. 91-10,¹⁰ establishing a clear legal framework for waqf property by defining its legal status and laying down the general rules governing its organization, thereby emphasizing the importance of its protection. Article 36 of this Law confines the offence of encroachment upon waqf to cases involving the unlawful exploitation of waqf property, such as acts of fraud, forgery, or the concealment of documents relating to waqf. This provision reflects the legislator's commitment to preserving the sanctity of waqf and protecting it against all forms of encroachment.

However, it is noteworthy that the wording of this article is general and does not specify the penalties applicable to the offence of encroachment upon waqf. Instead, it refers the applicable sanctions to the provisions of the Penal Code. A review of the latter reveals that the penalties prescribed for these offences are not described using the same terminology as that employed in Law No. 91-10, with the exception of the offence of forgery. The remaining offences involving encroachment upon waqf are classified under the heading of "abuse of office." This raises questions concerning the clarity of the applicable penalties and their adequacy in ensuring the legal protection of waqf property and preventing encroachments upon it.

Like other criminal offences, the offence of encroachment upon waqf real property is based on three essential elements. The legal element consists of the statutory provision defining the criminal act and prescribing the penalties applicable to its perpetrator. Pursuant to Article 386 of the Algerian Penal Code, any person who unlawfully seizes real property belonging to another, either secretly or by fraudulent means, is punishable by imprisonment for a term ranging from one to five years and a fine ranging from 2,000 to 20,000 Algerian dinars. The legislator has also provided for aggravated penalties in specific circumstances, increasing the punishment to imprisonment for a term ranging from two to ten years and a fine ranging from 10,000 to 30,000 Algerian dinars where the unlawful seizure is committed at night, through threats of violence, by aggravated means such as climbing or breaking in, by several perpetrators acting together, or through the use of a visible or concealed weapon during the commission of the offence. This legal framework reflects the Algerian legislator's determination to combat offences involving encroachment upon waqf real property and to ensure the protection of waqf ownership by prescribing clear and stringent penalties intended to deter such offences and preserve the sanctity of waqf property.

The material element of the offence consists of conduct that violates the law and constitutes the essence of the crime. It is manifested through a tangible act committed by the offender, resulting in harm to others, whether directly or indirectly, regardless of whether the perpetrator acts as a principal offender or as an accomplice.¹¹

Pursuant to the aforementioned article, and as affirmed by a decision of the Supreme Court issued in 1989¹², the establishment of the offence of encroachment upon another's property requires the following elements:

- Unlawful seizure of real property belonging to another: This act must be committed through the use of force and without the consent of the property owner.
- Commission of the act secretly or by fraudulent means: The seizure must occur without the knowledge or consent of the owner. This requirement is not limited to the original owner of the property but also extends to persons who are expected to have knowledge of the administration or management of the waqf property.¹³

Based on the foregoing, the material element of the offence of encroachment upon waqf consists of two fundamental components that combine the criminal act itself with the surrounding circumstances. This reflects the seriousness of this category of offences and highlights the necessity of providing adequate legal protection for waqf property.

The mental element of the offence of encroachment upon waqf is represented by criminal intent, namely the offender's awareness of the constituent elements of the offence and the intention to commit it. For this element to be established, the offender must have a clear intention to seize or take possession of another's property while being aware that the property is in the possession of the claimant. It is also required that the offender possesses criminal capacity, meaning that he or she has the full will to carry out the criminal act. Accordingly, the mental element constitutes an essential basis for determining criminal liability, as it reflects the offender's intent and demonstrates the degree of awareness of the unlawful acts committed.¹⁴

2. Criminal Prevention Measures Against Various Forms of Encroachment upon Waqf Real Property

The criminal protection afforded to waqf real property takes various forms under both the Penal Code and the Waqf Law. These forms of protection may be classified into two main categories. The first consists of criminal protection directed at waqf contracts, documents, and records. This protection concerns offences involving the manipulation or forgery of waqf-related documents and contracts, thereby ensuring the integrity of waqf property and safeguarding it against legal or criminal infringements. The second category consists of criminal protection afforded to the waqf property itself. This protection covers offences involving direct encroachment upon waqf property, such as unlawful interference with endowed land or buildings. These measures reflect the legislator's commitment to ensuring the protection and continuity of waqf property. The following discussion examines some of these forms of protection in greater detail.

2.1. Criminal Protection of Waqf Contracts, Documents, and Records

Waqf contracts, documents, and records constitute essential elements in ensuring the security and integrity of waqf ownership. Accordingly, the Algerian legislator has established specific

criminal protection for these documents in order to preserve waqf rights and prevent any infringements that may affect them. This protection encompasses several aspects designed to safeguard the rights associated with waqf.

2.1.1. The Offence of Forgery

The law imposes severe penalties for any form of forgery involving waqf documents, such as the preparation of forged contracts or the unlawful alteration of original documents. These penalties reflect the legal protection afforded to waqf property by ensuring that the powers and authority of those responsible for its administration remain unaffected. Forgery undermines the legal validity and credibility of official waqf documents, thereby threatening the stability of the waqf system and exposing it to manipulation.¹⁵

The legal basis for the offence of forgery of waqf documents is found in Article 36 of the Waqf Law, which imposes legal sanctions upon any person who exploits waqf property by concealed or fraudulent means or who conceals or forges waqf contracts or any related documents or records. This provision is complemented by the provisions of the Penal Code, which define the criminal acts and prescribe the applicable penalties, thereby establishing a legal framework for the protection of waqf property and the integrity of its documentation.

With regard to the material element of the offence of forgery, several essential components must be established:

- The subject matter of the forgery: This consists of a document containing a false statement concerning a particular fact. In cases involving waqf, the document may include contracts, records, or deeds relating to waqf ownership. The document must be in written form, whether handwritten or prepared using a typewriter.¹⁶
- Alteration of the truth: This element consists of falsifying the facts contained in the document. Forgery is established whenever the truth is wholly or partially altered in the contents of contracts, documents, or records. Such alteration may also involve attributing the document to an authority that did not issue it or to persons who did not sign it, thereby casting doubt upon its authenticity.
- Methods of forgery: These include the means by which the contents of a document are altered, whether through modifying the text or manipulating the original information. Such methods may include forging signatures, altering dates, or making unlawful amendments to the original text.
- The harm resulting from the offence of forgery: Harm constitutes the central element of the offence of forgery and exists where a right or legally protected interest has been impaired. In the absence of such harm, the act may not constitute a criminal offence even if all other elements are present. The harm need not be substantial; it is sufficient that the injured party suffers an adverse effect. Such harm may be material, such as the loss of money or financial value, or moral, such as damage to reputation or honour.¹⁷

The emphasis placed on the element of harm reflects the importance of protecting individual rights and legally protected interests and underscores the necessity of an effective legal system to combat forgery and preserve the integrity of documents and contracts, particularly those relating to waqf. From the foregoing, it is evident how the material element of the offence of

forgery concerning waqf real property is constituted, thereby highlighting the necessity of maintaining the authenticity of waqf-related documents and contracts in order to ensure the stability of the waqf system and protect it against legal infringements.

This analysis demonstrates that the offence of forgery of waqf documents requires the existence of clear material elements involving the alteration of the truth in documents relating to waqf ownership, together with the occurrence of harm to a legally protected interest, whether material or moral.

Forgery of documents is an intentional offence requiring the offender's deliberate intention to alter the truth while being aware that the alteration concerns a document relating to waqf ownership. In such circumstances, the offender intentionally commits the material element of the offence. For example, where one person requests another to forge a document containing specific information and the accused records information different from that requested, the act constitutes forgery. Likewise, forgery may occur where a person records information in a document and attributes it to another authority while including information contrary to the truth.¹⁸

The emphasis on criminal intent in the offence of forgery reflects the importance of awareness and intent in the commission of criminal acts, as criminal intent constitutes one of the essential elements of criminal liability. It serves to determine the seriousness of the conduct and reinforces the need to protect legal rights, particularly those relating to waqf ownership.

It should be noted that criminal intent is divided into two principal forms:

- General intent: This is the common element found in all criminal offences, including forgery. It requires that the offender be aware of the acts being committed and possess the conscious will to violate the law. In the offence of forgery, it is sufficient that the offender intends to commit the prohibited act itself without the need to establish any particular motive for achieving a specific result.
- Specific intent: This form of intent is confined to offences involving a higher degree of seriousness or requiring a particular purpose. In such cases, the legislator requires the offender to possess a specific criminal purpose. Specific intent therefore requires a particular motive and the desire to achieve a specific result through forgery, such as harming waqf rights, altering facts relating to waqf ownership for personal gain, or causing harm to others.

The distinction between general and specific intent in the offence of forgery demonstrates that specific criminal intent increases the gravity of the offence, as it reflects the offender's conscious purpose of harming legally protected rights and interests, particularly those associated with waqf ownership. This underscores the importance of protecting waqf property against such offences in order to preserve the stability of the waqf system and safeguard both public and private property benefiting from strict legal protection.¹⁹

The Algerian legislator has prescribed severe penalties for the forgery of official documents and records. These penalties vary according to several factors, most notably the status of the offender and the nature of the forged document. The legal provisions governing forgery distinguish between misdemeanours and felonies, reflecting the legislator's intention to punish

offenders according to the seriousness of the offence and the legal significance of the forged document.

- Where the forgery concerns waqf contracts, documents, or records, Articles 214 and 216 of the Algerian Penal Code prescribe severe penalties. A public official who commits forgery of documents relating to waqf is punishable by life imprisonment. This aggravated penalty reflects the seriousness with which the legislator views forgery committed by a public official who is in a position to abuse his office by manipulating official waqf documents. Where the offender is an ordinary individual, the penalty consists of imprisonment for a term ranging from ten to twenty years, together with a fine ranging from 100,000 to 2,000,000 Algerian dinars. This distinction between penalties applicable to public officials and ordinary individuals demonstrates the legislator's recognition of the gravity of forgery involving waqf documents, particularly because such documents concern property and assets of significant religious and social value.
- Where the forgery concerns private documents that do not possess the official character of administrative records, Article 220 of the Penal Code provides for imprisonment ranging from one to five years and a fine of between 20,000 and 100,000 Algerian dinars. In addition, the court may impose supplementary penalties within its discretionary authority, including the deprivation of one or more of the rights listed in Article 14 of the same Code, which relate to the offender's professional or social activities. The court may also prohibit the offender from residing in a particular place for a period ranging from one to five years.

This distinction between penalties demonstrates that the Algerian legislator treats forgery of official documents relating to waqf ownership as a felony because of the serious consequences such conduct may have for waqf property, thereby warranting severe punishment. Conversely, forgery of private documents constitutes a misdemeanour punishable by lighter sanctions. This, however, does not diminish the importance of protecting private documents but rather reflects the legislator's graduated approach to imposing penalties according to the nature and legal significance of the forged document.

The significance of this distinction in penalties lies in the Algerian legislator's commitment to combating forgery firmly and effectively. It reflects the legislator's awareness of the dangers posed by the manipulation of legal documents, which may prejudice the fundamental rights of individuals and institutions, particularly those relating to waqf ownership. It also demonstrates the legislator's determination to protect waqf property against encroachments and fraudulent practices that may undermine the religious and social values associated with it. Accordingly, this criminal framework contributes to maintaining the stability of the waqf system, safeguarding individual rights, and emphasizing the necessity of imposing deterrent penalties proportionate to the seriousness of the offence and the nature of the document involved.²⁰

2.1.2. The Offence of Concealment

The concealment of waqf contracts, documents, or records constitutes an offence that poses a serious threat to society, as it may result in significant adverse consequences. The degree of

seriousness of this offence varies from one legal system to another. Under Article 36 of the aforementioned Law, any exploitation of waqf property by concealed or fraudulent means, whether committed directly by another person or through the concealment or forgery of waqf contracts, documents, or records, constitutes a criminal offence punishable in accordance with the provisions of the Penal Code.

Like other criminal offences, the offence of concealment requires the existence of its three constituent elements. The material element consists of the offender's concealment of contracts, documents, or records relating to waqf ownership. It is important to distinguish between the offence of concealment under Article 36 of the Waqf Law and that provided for in Article 387 of the Penal Code. While Article 387 applies only where the concealed property is derived from a prior criminal offence, whether a misdemeanour or a felony²¹, the offence of concealment relating to waqf ownership, as provided by the Waqf Law, is limited to the concealment of documents relating to waqf, regardless of their source.

With regard to the mental element, concealment is an intentional offence aimed at unlawfully appropriating property. Criminal liability cannot be established unless there is a connection between the act and its result. Criminal intent in this offence consists of general intent, requiring both knowledge and will. The offender must know that the property or documents concerned are connected with a prior offence; the absence of such knowledge negates criminal intent. The offender must also be aware of the legal characterization of the property, as it is insufficient merely to know that property is being appropriated—the offender must know that it belongs to another. The element of will requires that the offender deliberately intends to violate the law by concealing the true legal status of the waqf property. Consequently, a person may be held criminally liable for concealing waqf contracts, documents, or records only where the act is committed intentionally and with a clear intention to conceal the true ownership of the waqf property.²²

With reference to Articles 387 and 388 of the Penal Code, the Algerian legislator has prescribed various penalties for the offence of concealing stolen, misappropriated, or otherwise unlawfully obtained property derived from a felony or misdemeanour. These penalties include both ordinary and aggravated sanctions. Under Article 387 of the Penal Code, a person convicted of concealing property obtained through a felony or misdemeanour is liable to imprisonment for a term ranging from one to five years, together with a fine. As for the aggravated penalty, the legislator has provided that the punishment for concealment shall correspond to the penalty prescribed for the principal offence from which the concealed property originated. Thus, where the original offence constitutes a felony, concealment is likewise punishable as a felony. Where the principal offender is liable to the death penalty, the person concealing the property obtained from that felony is instead punishable by life imprisonment, together with a fine. In addition, the court may deprive the offender of one or more of the rights provided for in Article 14 of the Penal Code for a period ranging from one to five years.

2.2. Criminal Protection of Waqf Real Property Itself

This form of protection concerns direct infringements upon the endowed property itself. It will be examined through two offences: the offence of demolishing, damaging, or desecrating places of worship, and the offence of exploiting waqf property by concealed or fraudulent means.

2.2.1. The Offence of Exploiting Waqf Property by Concealed or Fraudulent Means

Article 36 of the Waqf Law, read together with Article 18 of the same Law, provides that the beneficiary of endowed property is entitled only to the proceeds generated by that property and must exploit it in a manner that does not cause its deterioration. Accordingly, where the beneficiaries comply with the provisions of this article, their use of the endowed property is considered lawful and valid.

Conversely, where waqf property is exploited by fraudulent means, such conduct constitutes an unlawful encroachment punishable under Article 36 of the same Law, which refers the applicable sanctions to the Penal Code. The mental element of this offence consists of the offender's intention to commit the act while being aware of the nature of the property being exploited and deliberately engaging in concealment or fraudulent conduct. Furthermore, the exploitation referred to in the above-mentioned provision constitutes an unauthorized disposition of waqf property and therefore amounts to an infringement upon it. Accordingly, the same penalties prescribed under Article 386 of the Penal Code, previously discussed in relation to the offence of encroachment upon waqf property, are applicable.

2.2.2. The Offence of Demolishing, Damaging, or Desecrating Places of Worship

The right to freedom of worship and the protection of places of worship constitute rights safeguarded by law and public order through legal provisions that criminalize infringements against them and prescribe deterrent penalties. Like other legal systems, the Algerian legislator has emphasized the necessity of protecting such places from damage or violation. This is reflected in Article 8 of the Waqf Law, which provides that the demolition, destruction, or desecration of places of worship constitutes an offence punishable under the Penal Code.

The material element of this offence consists of acts of demolition, destruction, or desecration. Demolition or destruction involves causing physical damage to buildings designated for religious worship. Desecration refers to the defilement of such places, whether by the presence of dirt or waste, such as depositing garbage within places of worship, thereby creating unpleasant odours that prevent worshippers from performing their religious duties. Desecration may also take the form of any statement or act intended to insult or demean religion.

The subject matter of the offence consists of places of worship, namely locations designated for the performance of religious rites and ceremonies intended to draw believers closer to Allah, the Almighty.²³ It should be noted that the Algerian legislator has not confined the offence to any specific type of place of worship but has extended its scope to all places designated for religious worship, including mosques, churches, and other places of worship belonging to all religions.²⁴

The offence further requires the existence of criminal intent. The offender must be fully aware of the acts committed and possess a clear intention to carry out the criminal conduct, that is, a deliberate intention to violate the sanctity of places of worship and to insult or damage them.²⁵

With regard to the applicable penalty, Article 160 bis (3) of the Penal Code prescribes the following sanctions for this offence:

- Imprisonment: The offender is punishable by imprisonment for a term ranging from one to five years. This penalty reflects the seriousness with which the Algerian legislator regards offences affecting the religious sanctities of society, in view of the grave harm such acts may inflict upon social stability and peaceful coexistence.
- Fine: The legislator also imposes a fine ranging from 20,000 to 100,000 Algerian dinars, reflecting the importance of deterring such offences through financial sanctions proportionate to the seriousness of the criminal conduct.

It may therefore be concluded that these penalties are both severe and deterrent, reflecting the Algerian legislator's determination to protect places of worship and preserve their status within society. The sanctions imposed for these offences are consistent with the broader criminal policy aimed at combating attacks against public and religious institutions and ensuring respect for the sanctity of places that constitute important religious and cultural symbols.

Conclusion

Following this study, it may be concluded that the criminal protection afforded to waqf real property forms part of the broader legal protection granted to real property in general. It is noteworthy that the Algerian legislator has confined the criminal protection of waqf property primarily to Article 386 of the Penal Code, which governs offences involving encroachment upon real property. It is also evident that the legislator has increased the financial penalties applicable to offences involving real property in general so that they correspond to the material value of such property. However, it should be emphasized that the sanctity and significance of waqf property extend beyond its monetary value and therefore cannot be measured solely in financial terms.

This study has led to a number of findings, the most important of which are the following:

- The Algerian legislator, in Article 386 of the Penal Code, emphasizes the offender's intention to unlawfully deprive another person of ownership and to assume the appearance of the owner. It also considers concealment and fraud to be constituent elements of the offence, whereas they would more appropriately be treated as aggravating circumstances.
- It is apparent that the legislator has accorded waqf property the same level of protection as other forms of real property by refraining from prescribing specific and more severe penalties for offences against waqf property that would have a stronger deterrent effect.
- The Algerian legislator classifies forgery of official documents relating to waqf ownership as a felony, whereas forgery of private documents is classified as a misdemeanour.
- The Algerian Penal Code does not contain explicit and specific legal provisions dedicated to the protection of waqf real property.
- The Algerian legislator has not given sufficient attention to the role of waqf in promoting social solidarity and economic development.

- There is a lack of precise legal regulation governing certain acts that may adversely affect waqf property, with such acts merely being referred to in scattered legislative provisions.

Accordingly, the study proposes the following recommendations:

- To introduce a provision into Law No. 91-10 on Waqf stating that waqf is governed by a special legal regime, thereby distinguishing it from public and private property.
- To amend Article 386 of the Penal Code by replacing the phrase "owned by another" with "in the possession of another," on the basis that possession constitutes the foundation for the transfer of ownership.
- To reconsider the existing shortcomings relating to the legal regulation of certain acts that may affect waqf property in all forms of encroachment, instead of merely referring to them in dispersed legislative provisions.

¹ Presidential Decree No. 96-483, promulgating the text of the Constitutional Amendment, issued on 26 Rajab 1417 AH, corresponding to 7 December 1996, Official Gazette, No. 76.

² Ordinance No. 66-156, containing the Penal Code, dated 8 June 1966, published in the Official Gazette, No. 49, issued on 11 June 1966.

³ Supreme Court Decision, Misdemeanours and Contraventions Chamber, Case No. 221966, issued on 17 October 2000.

⁴ Ahsan Bousqiaa, *The Penal Code in Light of Judicial Practice*, 2nd ed., منشورات بيروت (Beirut Publications), Lebanon, 2006, p. 180.

⁵ Leila Zerrouki, *Real Property Disputes*, 1st ed., Dar Houma for Printing, Publishing and Distribution, Algeria, 2002, pp. 89–90.

⁶ Article 23 of Law No. 90-25 containing the Land Orientation Law provides:

"Real property, regardless of its type, shall be classified into the following legal categories: national property, private property, and waqf property."

⁷ Law No. 90-25, dated 18 November 1990, containing the Land Orientation Law, published in the Official Gazette, No. 49, issued on 18 November 1990.

⁸ Omar Hamdi Bacha, *Real Estate Judiciary*, 1st ed., Dar Houma, Algeria, 2003, p. 103.

⁹ Jubran Massoud, *Al-Ra'id Dictionary*, 7th ed., Dar Al-Ilm Lil-Malayeen, 1992, p. 125. Linguistically, the term "encroachment" (ta'addī) denotes disobedience or exceeding prescribed limits. It is said that a person encroached upon his neighbour, meaning that he wronged and oppressed him, acted unjustly towards him, slandered him, or exceeded the proper limits.

¹⁰ Law No. 91-10, dated 27 April 1991, relating to Waqf, published in the Official Gazette, No. 21, issued on 8 May 1991.

¹¹ Abdel Qader Awdah, *Islamic Criminal Legislation*, n.p., Dar Al-Kutub Al-Ilmiyyah, Beirut, n.d., p. 12.

¹² Supreme Court Decision, Case No. 97152, issued on 17 January 1989, *Judicial Journal*, 1989.

¹³ Zuhdi Yakan, *The Provisions of Waqf*, 1st ed., Al-Matba'ah Al-Asriyyah, Beirut, n.d., p. 758.

¹⁴ Ahsan Bousqiaa, *The Penal Code in Light of Judicial Practice*, 1st ed., منشورات بيروت (Beirut Publications), Lebanon, 2005, p. 188.

¹⁵ Khalil Ahmad, *Crimes of Document Forgery*, 2nd ed., Modern University Office, Alexandria, 2008, p. 13.

¹⁶ Leila Tounsi, *Criminal Protection of Real Property Ownership*, Dissertation submitted for the Higher School of the Judiciary, No. 15, 2007, p. 37.

¹⁷ Ahsan Bousqiaa, *Concise Treatise on Special Criminal Law*, Vol. 2, 1st ed., Dar Houma for Printing, Publishing and Distribution, Algeria, 2013, p. 411.

¹⁸ Fadhel Khammar, *Crimes Against Real Property*, 1st ed., Dar Houma, Algeria, 2006, p. 112.

¹⁹ Youssef Mostafli, *Conviction and Acquittal in Document Forgery*, Dar Al-Kutub Al-Arabiyyah, Egypt, 2009, p. 55.

²⁰ Ahsan Bousqiaa, *Concise Treatise on the Penal Code*, op. cit., p. 413.

²¹ Mohamed Sobhi Nejm, *Commentary on the Algerian Penal Code: Special Part*, 2nd ed., Office of Algerian Publications, Algeria, 2002, p. 124.

²² Mohamed Sobhi Nejm, op. cit., p. 126.

²³ Leila Yahiaoui, *The Protection of Religious Sanctities in Non-Islamic States*, Master's Dissertation in Sharia and Law, Faculty of Social and Islamic Sciences, Hadj Lakhdar University, Batna, 2010, p. 125.

²⁴ Abdelkarim Saltania, Seif Eddine Aoun, and Lotfi Mahmoudi, op. cit., p. 54.

²⁵ Ammar Al-Fadhel, op. cit., p. 86.