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Waqf governance in the Republic of Guinea: legal framework, issues, challenges and way forward

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Abstract

Purpose – The purpose of this paper is to seek to establish an effective governance framework for waqf (Islamic endowment) in the Republic of Guinea that would assist in enhancing socio-economic activities and eradicating poverty in the country.

Design/methodology/approach – It examines key governing features within the said country's waqf legal framework and undertakes a comparison with other countries' legal frameworks. This paper also examines waqf-related legal references of Guinea and other countries and analyses relevant online sources such as journal articles, research papers, webpages as well as informal discussions with persons informed on the subject matter within and outside the Republic of Guinea.

Findings – This paper identifies a number of prevailing issues affecting the development of the institution of waqf in the Republic of Guinea and, thereafter, proposes key reformatory measures. These include the passing of general codified legislation that comprehensively governs waqf affairs in the country and the setting up of a dedicated supervisory entity and competent managerial bodies to ensure the smooth and effective operation of the institution in the country.

Originality/value – This research proposes an innovative and befitting governance framework for waqf operations in the Republic of Guinea. These recommendations, if correctly adopted, would ensure the viability and efficacy of the institution of waqf in the Republic of Guinea and would lead to socio-economic development, as has been the case in other nations. Moreover, other countries with underdeveloped waqf governance systems could also model their waqf operations based on these recommendations, as they are most likely already encountering or going to encounter identical issues in this particular field.

Keywords Republic of Guinea, Socio-legal perspective, Underdeveloped countries, Waqf legal framework, Waqf governance, Waqf IDB Guinea

Paper type Research paper

Introduction

Islam made its way into Guinea from the Arabian Peninsula via the Mali Empire. Guinea was a part of the said empire before the French invasion in the late 19th century (Sawe, 2017; Lumen, 2020). The prominent Islamic jurisprudential school, the Mālikī *madh-hab*, prevailed



in Guinea, as it did in Nigeria, owing to the presence of Muslim traders, scholars and clerics that arrived in the region from Arab countries and other earlier Islamic empires and dynasties, such as the Ottoman, Mamluk and Almoravid, where the said *madh-hab* was widespread at the time (Amuda *et al.*, 2015). Consequently, since those times, the Islamic principles that applied in Guinea, particularly in relation to religious practices such as waqf (Islamic endowment) and zakat (alms giving) have been that of the Mālikī *madh-hab*.

Looking into the opinion of classical scholars on issues pertaining to waqf operations, although no one *madh-hab* is considered superior or an authority over the other, it is worth noting that the Mālikī School stands out from amongst the existing *madh-habs* in that its views on waqf are generally considered more appropriate or suitable for our current times. One example of this is its recognition of temporary waqf. Although this particular stance is considered a minority view, the implications and benefits attached to it are significant in that it ultimately allows for willing and able individuals to contribute their wealth for a defined period of time – as opposed to indefinitely – to benefit the community. This would increase the waqf avenues for existing and potential waqf beneficiaries as, generally, more people would be inclined to bestow their properties to members of the community on a temporary basis.

In addition, the jurist that the Mālikī *madh-hab* is attributed to, Imam Mālik ibn Anas, was himself one of the first proponents of cash waqf from the generations following Prophet Muhammad (SAW) and his noble companions. This was contrary to the earlier prevalent view that waqf properties should be restricted to intangible goods such as lands, houses, etc. (Ahmad, 2015). This view also enables a larger pool of individuals, including those with limited means, to contribute – financially or otherwise – to waqf initiatives and obtain a share in the religious reward (*ḥasanāt*). These examples – among others – give us an idea of the peculiar differences between the Mālikī *madh-hab* and others about aspects of waqf operations.

Coming back to Guinea, in contemporary times numerous well-to-do individuals in the country with noble intentions have taken the initiative to construct – either individually or collectively – charitable properties such as mosques, orphanages and farms. In addition, a number of waqf projects have been carried out through key collaborative efforts between the government of Guinea and the Islamic Development Bank (IsDB), such as its financing of US \$56m for the development of the country's health-care infrastructure during the Ebola outbreak in 2016 and its financing of US\$16.25m intended to enhance the country's rice production to promote its self-reliance (IsDB, 2016, 2019).

Despite all this, waqf affairs in Guinea are not subject to a comprehensive governing framework that effectively upholds and manages the practice. This has exposed waqf properties in the country to loss, theft, mismanagement, unlawful settlements and forfeitures, and left them to the mercy of corrupt officials and other predators. Accordingly, the beneficiaries of such honorable establishments have been deprived of the fruits from trees that were principally planted for their benefit.

In examining the issues pertaining to waqf in Guinea, the study seeks to answer the following questions:

- Q1. Is there a law governing waqf affairs in Guinea?
- Q2. Are there bodies currently in place to govern the affairs of waqf in the country?
- Q3. What are the core governance issues within the relevant legislation and governing bodies that are impeding the development of waqf in Guinea?
- Q4. What are the solutions to counter the core governance issues relating to the development of waqf practice in Guinea?

To address these concerns, the study will first identify the relevant waqf laws and governing bodies supervising waqf affairs in the country and also pinpoint the judicial bodies responsible for resolving waqf-related disputes. This state of affairs will be further explored by comparison with various other countries' relevant waqf legal documents, by analysis of online materials and through academic conversations. After identifying the features of the aforementioned governance framework, the pertinent issues and challenges related to the governance of waqf in Guinea will be discussed. Finally, several recommendations will be proposed as a way forward for the practice of waqf in the country.

Through the adoption of this study's recommendations, the Republic of Guinea – as well as other countries that have underdeveloped waqf governance frameworks – would actualize an increase in the standard of living and development within the community, which would in turn create the space necessary for maximum productivity and ultimately bring about societal peace and harmony.

Literature review

At this point, it is important that we take a step back and momentarily explicate the notion of waqf in terms of its origins, scholarly understanding and evolvement over the years. This would give the reader the opportunity to better understand the subject matter that is to be discussed in greater depth.

Waqf (also written as wakaf or wakap) literally means to stop or preserve something. In the technical or Islamic sense, it is defined as the act of dedicating or transferring the ownership of an immovable or movable asset or of usufruct to Allah to generate a recurring benefit to a defined segment of the community (Sabit, 2004). It is interesting to note that the word "waqf" was not used to describe the noble practice during the time of the final Messenger of Allah, Muhammad (SAW).

Nonetheless, there are a number of *ḥadīths* (prophetic traditions) that scholars have relied on to indicate the Sharī'ah's recognition of the practice. One of these is the *ḥadīth* in which the Prophet's companion Abu Hurayrah (may Allah be pleased with him) reported the Prophet (SAW) as having said that: "All of a person's deeds come to an end when they die except for three things. . ." One of the three exceptions he mentioned is "*ṣadaqah jāriyyah*" (continuous charity) (Muslim, 1992).

Another frequently cited *ḥadīth* relates a question posed to Prophet Muhammad (SAW) by 'Umar (may Allah be pleased with him) about a piece of land he had recently come to own in Khaybar (an oasis in modern-day Saudi Arabia). He sought the advice of the Messenger of Allah (SAW) how best to use the land, to which the Messenger (SAW) responded: "If you like, you can make the land inalienable and give its fruits in charity" (Al-Bukhārī, 1422H, no. 2737). This *ḥadīth* laid the cornerstone of waqf practice.

Relying on the aforementioned *ḥadīth* and others, scholars have differed in opinion on various aspects of waqf. In regards to its duration, the majority, excluding the Mālikīs, are of the view that a waqf must be perpetual (Al-Kāsānī, 2010). In terms of what constitutes a valid waqf subject matter, the Shāfi'ī and Ḥanbalī *madh-habs* are of the view that it must be a real property while the Ḥanafī and Mālikī *madh-habs* accept cash as a valid subject matter (Ibn Qudāmah, 2013). The Islamic Fiqh Academy in its fifteenth meeting (statement no. 140) justified its support of the latter view, stating that it more accurately aligns with the Sharī'ah's objective of encouraging more people to contribute to waqf initiatives, creating economies of scale effect. And so, since getting a larger audience to participate/invest in waqf activities ultimately fulfills the Sharī'ah objective of *maṣlahah mursalah* (public benefit), cash/corporate waqf is deemed permissible (Kuran, 2001; Tahir and Mohammad, 2011).

We learn from this brief historical examination that there is no consensus amongst Muslim scholars regarding what constitutes a waqf apart from the fact that it is the act of dedicating a certain legal property to Allah to curb or enhance a societal affair.

Moreover, various models and instruments have been introduced to enhance the implementation of waqf. Kuran (2001) reports that the practice, which began even before the era of Prophet Muhammad (SAW), only reached its full potential during the Ottoman Empire, accounting for over one-third of the Empire's total revenue. One of the main reasons for its prevalence is the fact that during this time cash waqf was officially recognized as a legitimate waqf asset as opposed to the former predominant position that saw its practice limited to immovable assets such as land (Tahir and Mohammad, 2011; Ambrose *et al.*, 2015). This is considered just one of many other developments in the operation of waqf.

Other evolutionary practices have seen legislators allowing waqf institutions to purchase and trade assets under their own name as well as combine the charity-oriented institution of waqf with profit-oriented instruments, such as *mudārabah* and *mushārahah*, creating multiple sustainable streams of income that fulfill the expected undying and non-decaying nature of waqf establishments. All these are examples of the extent to which the institution could be advanced with the help of an accommodative governing framework.

Waqf governing law(s) in selected countries

This section of the literature review delves into the existing governing framework of waqf in various countries. To ensure a fruitful discussion of the subject, the study has limited the number of countries whose waqf governance framework will be analyzed and compared with that of the Republic of Guinea and has also limited the elements examined within those governing frameworks. The countries examined are Nigeria, Turkey, Kuwait and Malaysia. The reason these countries were selected over others is because they share a great deal of similarity with Guinea and/or their waqf system is of high relevance to the discussion on developing an effective waqf governance framework in Guinea.

Nigeria, for instance, has a lot in common with Guinea in terms of its Islamic history, geographical location, social circumstances and customary practices. The remaining countries, namely, Turkey, Kuwait and Malaysia – as well as Nigeria – have components within their waqf governance frameworks that are worth looking into to derive vital lessons. The specific governance elements in those countries' waqf governance frameworks that will be examined are the waqf governing law(s) and bodies, managing bodies and, finally, the available legal recourse.

In all of the countries analyzed, it is seen that the institution of waqf or trust is fundamentally recognized by the constitution. For example, the 1999 Constitution of the Federal Republic of Nigeria places waqf matters under the purview of the Shariah Appellate Courts in the country. In addition to the constitution, there is also the Companies and Allied Matters Act 1990 (CAMA, 1990) that regulates all legally registered entities, such as corporations and trusts. Waqf assets/establishments fall under the category of trusts that are managed as waqf. Apart from these two federal laws, state governments have also introduced enactments to facilitate the governance of their waqf affairs. A few examples of this would be the Zakat and Endowment Board Laws of the states of Zamfara and Niger, among others.

This approach is also found in Malaysia where the constitution renders waqf as an Islamic matter that falls under the purview of the state governments (article 74 (2) and (3) and List II (State List), Ninth Schedule, Federal Constitution of Malaysia). By virtue of this power, Malaysian states have introduced laws to govern their waqf affairs, e.g. Wakaf (State of Selangor) Enactment 2015, Johor Waqf Enactment Act (no. 5) and Perak Control of Wakaf Enactment 1951 (no. 8).

Operating in contrast to state level governance of waqf are countries such as Turkey and Kuwait, which have, besides recognizing the institution of waqf/trust in their respective constitutions, enacted waqf legislations at the federal level. While in the former it is the Foundations Law 2008, in the latter it is the Emir's Royal Ordinance 1993. Hence, in summary, it may be noted that all four countries have introduced laws that specifically address waqf-related matters either at the federal or state level.

Waqf governing bodies in selected countries

Over and above the legislative acts, the countries have set up waqf administrative bodies either in the form of federal entities, state entities or semi-independent bodies to enforce their waqf laws. In Nigeria, the earlier stated CAMA 1990 introduced a federal commission to oversee the affairs of all organizations including Islamic trusts. Apart from the said commission, specific states have also established dedicated waqf commissions for a more precise form of governance. An example of this would be the Sokoto State Zakah and Waqf (Endowment) Commission (known as SOZECOM). Similarly, in Malaysia, the task of governing waqf matters has been delegated to the state religious councils (referred to as Majlis Agama Islam) by the state governments. These councils are required to take up the role of waqf governor and *mutawalli* (trustee or manager) over all assets that are declared as waqf (Alhabshi, 1987).

Alternatively, Turkey has implemented a less institutionalized form of waqf governance by establishing a semi-independent body known as the Foundations Council. The individuals that make up the said Council vary between those jointly appointed by the President and Prime Minister, persons from various foundations and members of the General Directorate of Waqf. This General Directorate of Waqf is a separate entity that leads the Foundations Council in its governance operations. Karacan (2011) points out that the Foundations Law 2008 conveys certain responsibilities to the said Directorate, such as the reviving of dysfunctional foundations and the granting of financial and educational assistance to those in dire need of it.

Turkey's semi-independent governing body system is like that of Kuwait, which instituted the Kuwait Awqaf Public Foundation (KAPF) as its waqf governing body. Section 6 of the previously mentioned 1993 Royal Ordinance, which recognizes waqf operations in the country, also vests the KAPF with the highest authority to decide on matters relating to waqf. One feature that stands out about the KAPF's board is its comprehensiveness that is manifested by its formation of well-structured standing committees, namely, the Sharī'ah Committee, Investment and Development of Waqf Resources Committee and Strategic Planning Committee. Collectively, they oversee waqf affairs in the country and advance waqf initiatives across the globe to ensure that they operate in a smooth and effective manner as decreed by the aforementioned Ordinance (Section 10) (Ahmad *et al.*, 2015).

Waqf managing body in selected countries

Furthermore, regarding the body or bodies appointed to manage waqf affairs, the available literature indicates that most jurisdictions have left the management of waqf assets to the founders themselves. In other words, waqf founders – or the trustee(s) they appoint – are the default managers of waqf assets. However, there are a number of jurisdictions that have legislated the interference of their waqf governing bodies in instances where a waqf asset becomes futile or inoperative. Kuwait's KAPF (pursuant to section 3 of the Royal Ordinance 1993) and Turkey's Foundations Council are two examples of such governing bodies (Karacan, 2011). Another approach that is espoused by the KAPF in Kuwait (under section 3 (3) of the Royal Ordinance 1993) and various states in Nigeria (in accordance with section

592 of CAMA 1990) is that which recognizes the default managerial charge of waqf founders but at the same time offers an avenue for waqf founders to resort to for managerial guidance and assistance.

However, as highlighted earlier, the governance and management of waqf in Malaysia is quite distinct from that of the above-mentioned countries in that all waqf affairs are by default dealt with by each state's religious council pursuant to the state enactments. While the earlier-mentioned states have adopted a more passive approach by setting up a management team that only gets involved in an individual's waqf initiative under special circumstances, the state governments of Malaysia have given their state religious councils the more assertive role of assuming responsibility over all assets declared as waqf.

Court with jurisdiction to hear waqf cases in selected countries

The final aspect of the selected countries' waqf governance framework that was looked into was the legal recourse offered to waqf stakeholders in legal disputes. Existing research shows three major kinds of legal recourse made available to waqf disputing parties: Shari'ah courts (as in the case of Nigeria and Malaysia), civil courts (as in the case of Turkey) and specific Shari'ah departments/tribunals in civil courts (as in the case of Kuwait). It must be added, however, that although these are considered the default courts to hear cases on waqf, there have been instances where court jurisdictions have overlapped. Examples of this can be found both in Nigeria and Malaysia. [Oseni \(2012\)](#) highlights this issue in Nigeria, stating that there have been cases that led to jurisdictional conflicts between the Shari'ah Courts of Appeal that adjudge waqf cases and the Civil Courts that adjudge land cases.

The apparent overlap in jurisdiction over cases involving lands that are waqf has been quite problematic, as was demonstrated in the case of *Alhaji Saidu Maje v Da'u Dillalin Shanu* Appeal No. CA/K/142/S/2005, among others. Comparably, there have been instances in Malaysia where the civil and Shari'ah courts have locked horns over waqf-related cases that were jurisdictionally made complicated with the involvement of non-Muslim parties or court orders over lands, such as the cases of *G Rethinasamy v Majlis Ugama Islam, Pulau Pinang* and *Anor* [1993] 2 MLJ 166, and *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman and Ors* [1992] 1 CLJ, respectively ([Abdul Hamid, 2003](#)).

Having looked into and outlined the available pieces of literature on waqf governance and operations in various countries, the study has found a lack of literature discussing the effectiveness of the waqf governance framework in Guinea. Hence, the study aims to fill the gap in the literature by way of, firstly, laying out similar aspects of Guinea's waqf governance framework. Second, it will constructively point out the main issues and challenges with Guinea's waqf governing framework. Finally, it will propose a waqf governance framework – based on insight gained from other countries – that is most effective and befitting to the local circumstances of Guinea.

Legal framework of waqf in the Republic of Guinea

Before expounding on the governance framework that individuals and institutions operating waqf establishments are required to comply with in the Republic of Guinea, it should be noted that the state's secular constitution does not give religious practices any special legal status. This would explain the absence of any overt mention of waqf in the constitution. Nonetheless, as the majority of the population (85%), including the current President, His Excellency Alpha Condé, profess the religion of Islam, the said religion can be seen to have great influence on local customs ([Sawe, 2017](#)). Hence, by the term "legal framework of waqf" mentioned in the heading, the study is basically referring to all acts and

statutes passed by legislators, legal rulings by members of the judiciary as well as legally recognized and upheld customary practices that are legally relevant and applicable to entities engaged in the practice of waqf in the country.

Governing laws

As of now, there is no dedicated law governing waqf operations in Guinea. As such, waqf establishments customarily operate in accordance with the rulings of the Maliki *madh-hab* for the reasons mentioned earlier. Nevertheless, specific legislation has been introduced in Guinea to solely govern the affairs of an institution called Waqf IDB Guinea; a waqf facility created by virtue of a collaborative effort between the Guinean government and IsDB for the execution of specific waqf projects. The legislation referred to is “Law No. 97/037 An Relative à L’Institution Caritative Waqf” (herein referred to as Waqf Law 1997), which recognizes and protects Waqf IDB’s presence and efforts in the country and “Acte De Waqf 1998” (herein referred to as Waqf Act 1998), which was introduced by the “Accord Initial 1998” (herein referred to as 1998 Accord) to specifically govern the operations of Waqf IDB Guinea.

Governing bodies

Since 2007 Islamic matters in the country have been under the purview of the Secretariat General of Religious Affairs. The said entity mainly functions as a body that promotes peace amongst religious groups in the country. The said Secretariat General is considered to be on the same level with other ministries (i.e. cabinet level) ([Bureau of Democracy, Human Rights and Labor, 2009](#)). El Hadj Mohamed Al-Amine Diallo, who is the current director of zakat and waqf under the said secretariat, mentioned that waqf affairs were managed under three distinct directorates created by the 2009 Secretary General of Religious Affairs, Prof Dr Koutoub Sano. The said directorates were, first, the national directorate of economic affairs relating to zakat and waqf, secondly, the general directorate of national zakat funds and, finally, the general directorate of national waqf funds.

The Secretary General appointed in 2017, El Hadj Abdul Karim Dioubate, successively reduced the division of waqf directorates to the general directorate of national zakat and waqf funds and the directorate in charge of economic and social affairs. By virtue of the 2017 set-up, it is understood that waqf operations in the Republic are generally overseen by both these directors as it is a matter that falls within the ambit of both directorates. However, it must be noted that the directorates under the said Secretariat do not have any enforcement powers over waqf-related persons in the country. This is due to the absence of a specific legislation that provides a definite set of guidelines that must be abided by.

With regard to the entity that governs the affairs of Waqf IDB Guinea, by looking into the Waqf Law of 1997 one may deduce that the General Assembly and Central Bank of the Republic play a major role in governing its waqf affairs. While the former body has been given the authority, pursuant to section 16 of the said Act, to look into the reports prepared by the appointed members, the latter has been given the power, pursuant to clause 18 of the same law, to set up an accounting plan that the said entity must follow.

Furthermore, beyond the Central Bank and the General Assembly, Waqf IDB Guinea has had a dedicated governing body. What started off as a management committee that was collectively formulated by IsDB and the Guinean government was later upgraded by the 2007 amendments to the 1998 Accord to become a full board of directors (BOD) (referred to as “conseil d’administration”). This body has since been in charge of overseeing the development and “safeguarding the interest of waqf” as well as ensuring the success of its activities (article 1, 2007 amendments, 1998 Accord).

Thereafter, the established BOD, consisting of members from the Guinean Government, the IsDB and other appointed local personnel, was made the body with authority to appoint members of the executive organ, which has since been the institution's innovation and development arm.

To sum up, while the bodies generally administering the affairs of waqf in the Republic are the aforementioned two directorates under the General Secretariat of Religious Affairs, the bodies given the authority to govern the affairs of Waqf IDB Guinea are the General Assembly, the Central Bank and, mainly, the BOD.

Managing body

As previously highlighted, due to the absence of a single codified law for all waqf establishments, we refer to the customarily upheld Mālikī position, which, together with all of the other major *madh-habs*, holds the view that anyone who is sane, mature, of age and trustworthy may assume the trustee/manager position of a waqf (Mughniyya, 2020). Furthermore, according to the Mālikī School, in situations where a founder does not appoint a manager, the trusteeship over the waqf asset would be assumed either by the beneficiaries (if they are quantified, i.e. a family/specific waqf) or the religious head of state (if it is a general waqf) (Zarqānī, 1990).

It is worth reiterating that neither of the directorates previously mentioned under the Secretariat General of Islamic Affairs has been conveyed any legal authority to assume the management of assets declared as waqf in the country. This is unlike the position in Malaysia where an asset that is declared as waqf in any of the 14 states of the Federation is automatically deemed an irrevocable property to be managed by the religious authorities (known as the State Islamic Religious Council) of the respective state where they are so declared (Saad *et al.*, 2017).

In relation to Waqf IDB Guinea's waqf establishments, article 1 of the 2007 amendments to the 1998 Accord stipulates that waqf established by the said institution shall be managed by the executive organ of the entity under the supervision of its BOD. This is as opposed to the previous position that set up a management committee to manage its waqf affairs. Hence, it is understood that the said institution has in place a dedicated management team to ensure the effective operation of the entity.

Court with jurisdiction

Legal action that may be taken against a person or entity that wrongfully trespasses upon, occupies and/or confiscates a waqf asset is referred to none other than the secular civil courts and tribunals. This is by virtue of the constitution, which has solely vested the said courts and tribunals with the authority to settle civil and criminal disputes. However, it must be added that civil court judges often call upon Shari'ah scholars in the country to testify as expert witnesses when clarification is needed on issues, such as waqf, that are relevant to Islamic affairs.

It is interesting to note that in the 2007 amendments, prior to the amendments in 2013, the management committee did not have an appointed legal adviser. Fortunately, article 3 of the 2013 amendments finally included a legal adviser as a core member of the executive organ. This particular adviser is expected to provide legal advice to the institution as well as defend it and its members when legal disputes arise against them.

Issues and challenges

Upon highlighting the main governing and managing framework in Guinea, this section will now discuss the major issues impeding the development of the institution in relation to the

legal framework. From the above discussion, a number of shortcomings within Guinea's framework may already be pinpointed.

Absence of general codified waqf law

To begin with, it is apparent that the absence of a dedicated and codified law governing the creation and operation of a waqf so as to revolutionize the practice has negatively impacted the institution as a whole. As highlighted in the earlier sections, the only acts that have been introduced in the Republic are Waqf Law 1997 and Waqf Act 1998; however, as also mentioned, the dominion of these legislations does not go beyond the operation of Waqf IDB Guinea. This makes it clear that despite the many productive and accommodating amendments made to the 1998 Accord (particularly in 2007 and 2013), it can be seen that their limited application has precluded waqf assets across the country from its benefits and, consequently, obstructed them from realizing their true potential.

The director of zakat and waqf in Guinea mentions that the absence of a legislative body of work translates into a lack of seriousness toward or insufficient recognition of waqf operations in the country. This is considered true as a legal text serves as the basis for the enforcement of legal repercussions or punitive measure to dissuade potential offenders from violating waqf assets. Thus, it can be seen that the absence of a bedrock that enacts adequate protection measures for relevant waqf parties leaves waqf properties exposed to abuses, which in turn puts off would-be donors and participants and undermines beneficiaries of waqf-related properties.

As mentioned earlier, some countries have created dedicated regulatory frameworks governing the operations of waqf properties. In Nigeria, for example, although there only exists a general law that governs the affairs of all corporations and trustees (known as CAMA 1990), a number of states, such as Zamfara (Zamfara State Zakat and Endowment Board Law 2000), Niger (Niger State Zakah and Endowment Board Law 2001) and Sokoto (Sokoto State Zakat and Waqf (Endowment) Commission (SOZECOM)) have taken a step further and introduced specific legislations or commissions to administer waqf operations in their respective states. The said states have greatly benefited from their legal set-up despite there being still areas within their laws that require updating.

Therefore, it is clear that the lack of a legitimate legislative document has been a major setback to the development of the institution of waqf in Guinea.

Absence of a dedicated and independent waqf governing body

Another hindrance to Guinea's waqf governance framework is the nonexistence of a committed and consolidated governing body. As mentioned earlier, the main bodies generally overseeing the operation of waqf in the country are the two directorates under the Secretariat General of Religious Affairs. Although members in the respected bodies might be competent to oversee or supervise waqf matters, the simple problem is the fact that these bodies have not been bestowed with a legislated responsibility to ensure compliance in the operation of waqf and advancement of its cause in the country. Therefore, it seems that the said directorates merely hold a passive advisory role.

In contrast, the Waqf Act 1998 has set up a BOD to oversee Waqf IDB Guinea's waqf affairs. This means that any waqf created by the said institution will fall under the purview of the BOD. Furthermore, the Waqf Law 1997 provides additional supervisory powers to the Central Bank and the General Assembly. These vital components have proven to leave little room for encroachment over waqf assets and infringement of the related parties' rights.

In Nigeria, the oversight of all corporations and trusts has been conferred to a dedicated body referred to as the Corporate Affairs Commission. The said body has the sole authority

to define the parameters by which waqf establishments registered as trusts may operate in the country. Similarly, in other countries such as Turkey and Kuwait, dedicated institutions have been set up to oversee waqf affairs. As mentioned earlier, in the former it is the Foundations Council led by the General Directorate of Foundations (GDF) while in the latter it is the Kuwait Awqaf Public Foundation (KAPF). The respective bodies are required to comply with the outlined rules.

In the case of Guinea (apart from Waqf IDB Guinea), it is noted that such an authority does not exist. As a result, the practice is impeded from functioning at its full capacity.

Absence of dedicated and qualified waqf managers

In all of the earlier mentioned countries and states, it can be seen that some kind of body was set up to manage waqf founded by members of the community. The two that stand out are KAPF in Kuwait and SOZECOM in Nigeria's Sokoto State. The two bodies have structured their institutions in such a way that most – if not all – relevant fields of expertise, such as legal, financial and Shari'ah, are present within them (Ahmad *et al.*, 2015). These kinds of structures have allowed for the development of waqf from all aspects and have extended the scope of innovation in the respective areas.

Unfortunately, potential waqf founders in Guinea are left to their own resources to manage their waqf assets. The sole criteria that trustees or managers are customarily required to have are sanity, adulthood, maturity and trustworthiness. No form of expertise in any field relevant to waqf development has been set to qualify a person to hold a managerial position. This clearly indicates that potential waqf founders from the general public do not have any established vehicle where qualified and dedicated persons are available to execute their intended waqf projects.

In addition to this, as mentioned by Amuda (2016), it is difficult for a single individual in countries, such as Nigeria and Guinea, that suffer from high rates of poverty to found their own waqf. Furthermore, even in instances where a group of persons comes together to form a waqf, the lack of managerial expertise would make the success of such ventures unlikely.

Thus, it may be seen that the non-availability of an end-to-end management team is a major discouraging factor for prospective founders looking to contribute to the development of the institution of waqf in Guinea. The exception to this rule is Waqf IDB Guinea, which has its own executive body dedicated and vested with the responsibility to manage waqf established by the said institution.

Inefficient legal recourse

Legal disputes in any jurisdiction are inevitable. Therefore, it is incumbent upon regulators to ensure that they have set up adequate avenues for conflicting parties to claim their rights and honor their obligations. In a country like Nigeria, legal disputes over waqf assets are settled in the respective state's Shari'ah Court of Appeal, pursuant to the country's constitution. This is especially important in a country that is secular because, as has been established in numerous case laws, civil judges are not equipped with the Shari'ah knowledge necessary to understand the nuances of Islamic law (specifically in relation to waqf affairs).

However, it seems that one failing of Nigeria's constitution is that it does not provide a clear distinction between the jurisdiction of Civil Courts over land matters and Shari'ah Courts over waqf matters. As a result, there have been instances of conflicting jurisdiction between the respective courts in legal disputes involving waqf land (Oseni, 2012).

Another secular state that has adopted a rather different approach is Turkey. It differs from Nigeria in that civil judges in its single court system are required to refer to an

established law that governs the operation of foundations and covers at least the essential – if not all – aspects related to waqf activities. Therefore, it seems that there is little room for confusion even though civil judges hear cases involving foundations/waqf matters. In a state like Kuwait, in contrast, special departments within the civil courts have been set up to deal with disputes over waqf.

The position in Guinea is similar to that of Turkey as in both of the countries disputes over waqf assets are heard in civil courts by civil judges. This stance, in particular, as is the case in Turkey (with the GDF) and Waqf IDB Guinea (with its legal adviser from its executive organ), would not amount to a problem if there existed appointed legal representatives to represent waqf establishments in legal settings. However, as has been made clear by now, there is neither a general statute for civil judges to refer to nor dedicated legal practitioners for waqf entities and their participants/beneficiaries in courts. This renders them susceptible to being underrepresented in court disputes.

Furthermore, the courts are often faced with a backlog of complex cases that may take months or even years to settle. The countless strict protocols of the court system further contribute to the delay of rights being granted to aggrieved waqf stakeholders (Rashid, 2011). Therefore, it may be said that the legal recourse that is currently offered to waqf establishments and their beneficiaries in the Republic of Guinea is inadequate.

Way forward

This research has outlined a number of recommendations that could be followed:

Codified governing law

This is considered the first step toward the development of the legal framework of waqf institutions in the nation. As highlighted earlier, there exist two laws governing Waqf IDB Guinea; the Waqf Law 1997 that legitimizes its operations in Guinea and the 1998 Accord that polices its affairs. However, as has been made clear, these acts do not apply to the other waqf properties or establishments throughout the country.

A codified law essentially offers legal recognition to the institution and indicates a sense of commitment to potential participants. Furthermore, the legal elements within the laws that govern the operations of waqf properties are always a major concern to local and foreign donors or investors. Policies related to the establishment of waqf, the qualification and composition of its members as well as the legal status given to them – amongst other regulations – more often than not play a significant role in either attracting or repelling potential stakeholders, namely, donors, investors, collaborating organizations and others.

A clear indication of this was IsDB's request that the government of Guinea draft an accord that would unambiguously outline the responsibilities of the Guinean Government in its collaborative "Waqf IDB Guinea" project. Both the Waqf Law of 1997 and Waqf Act 1998 were birthed from this arrangement.

In addition, interested parties would want to ensure that effective and efficient legal recourse is readily available and that adequate punitive measures have been put in place to address violations when they take place. Therefore, depending on the level of comprehensiveness of such a legislation, the institution of waqf in Guinea – as has been the case in other countries – would greatly benefit from it.

Dedicated governing/supervisory body

This is the next crucial component to the development of the institution in Guinea. Based on the findings on the waqf projects that have since been introduced by Waqf IDB Guinea, it is apparent that the setting-up of a supervisory body (a BOD) to oversee the waqf initiatives of

Waqf IDB Guinea's managing team has instilled a sense of accountability in the eyes of its members in charge of project development, finance and heritage and others. In addition to the BOD, Central Bank and General Assembly, an advisory commission was also set up to consult both the BOD and management committee on different aspects of its waqf affairs.

This is as opposed to other *awqāf* (pl. of waqf) in the country that are still exclusively overseen by the directorates under the Secretariat of Religious Affairs. These bodies, as mentioned earlier, do not have any real authority to supervise waqf assets founded by members of the community. The kind of bureaucracy involved, although initially intended to support waqf institutions and safeguard the interest of their beneficiaries, may end up becoming a deterring factor if not limited so as to allow waqf establishments to operate independently and expeditiously in terms of their operational flow and management team employment (Günay, 2008).

In countries such as Turkey and Kuwait, the governing bodies operate as legal entities that are semi-independent from the government. Article 30 of the KPF/IRTI draft Waqf Law 2014 introduced by KAPF and the Islamic Research and Training Institute (IRTI) (through the IsDB) requires the supervisory bodies to respect the independent nature of waqf establishments and only interfere in instances where there is a dire need, such as to offer financial or administrative support and ensure compliance with regulations. Hence, there is clearly a significance for there to be a supervisory body that operates as an ambassador and guardian for waqf establishments in a country.

Effective and competent managing body

Another element that is crucial for the success of the institution is the setting up of a managerial body that is strong in numbers, diverse in fields of expertise and competently qualified (Karim, 2009). Turkey and Kuwait are two countries that have ensured that their managerial bodies are at least semi-independent from the government so as to ensure minimal bureaucracy and maximum efficiency (Günay, 2008; Ayedh, 2018).

In Guinea, the management of waqf assets has simply been left to their founders or whomsoever they appoint. This factor, as highlighted earlier, repulses potential individuals that perhaps have the economic resources and good intentions but are – more often than not – unqualified to ensure the productive management and usage of waqf assets so as to enhance the practice and achieve their intended objectives. Therefore, it is highly important that the general public be offered an avenue, similar to that of Waqf IDB Guinea, through which their philanthropic aspirations could be achieved.

Additionally, where there is a lack of expertise within the management team in certain areas of development, the appointed managing body could consult foreign experts to seek their expert advice. KAPF did so early in the 1990's when they consulted the United Nations Educational, Scientific and Cultural Organization (UNESCO) for guidance on how to preserve their historical sites (Mohsin *et al.*, 2016). Waqf IDB Guinea also did so to construct their "Cite Waqf City" project (Guinee7, 2016). This would not be possible in the absence of a unified, codified law that adopts key aspects from the Waqf Law 1997, Waqf Act 1998 as well as other countries' waqf regulations that have appointed a specific waqf management body that is equipped with the means to manage waqf assets, keep records of all waqf-related affairs and uphold transparency policies.

The effectiveness of the waqf management body could be ensured by adopting four measures: proper division and dedication of tasks, providing effective training and adequate allowances to members of the management team, setting up a research and development team and finally, recruiting talent.

Proper division and dedication of tasks

This point was directly inspired by Kuwait's 1993 Royal Ordinance that called for the creation of three standing committees within KAPF that were dedicated with the task of handling distinct but inter-related aspects of waqf operations, namely, Shari'ah Affairs, Investment and Development of Waqf Resources and Strategic Planning. This particular structure, as mentioned by [Khalil et al. \(2014\)](#), caused the waqf income realized by KAPF to increase by over 400%, over a period of 16 years, from its 1994 income of US\$373m.

Furthermore, [Afadli \(1998\)](#) writes that the investment committee was further divided into three specialized fields: real estate, direct long-term and financial investments. This subdivision had since 1994 significantly increased the market value of waqf investments from around US\$46m to roughly US\$970m.

Therefore, it goes without saying that there is a dire need for the establishment of multiple highly focused and well-structured committees, similar to that of Kuwait's, that would dedicate their full attention to specific and crucial areas whose development would guarantee the advancement of waqf properties.

Effective training and decent allowances and incentives

As mentioned earlier, it is essential to ensure that a competent team is set up to manage (in case a *mutawalli* (manager) is not appointed) *awqāf* established by individuals within the country. This could occur by way of developing measures requiring potential candidates to undergo a qualification test to determine whether or not they are suitable for a position in the management team.

For persons without any background looking to venture into the field of waqf, modules could be developed for such candidates to attend prior to sitting for the assessment test at the end of the term. They would either be awarded the qualification certificates needed to be considered for a place in the waqf management team or have to take the test again. This would leave little room for nepotism and other forms of biased appointments.

Moreover, to maintain the efficiency of the appointed team members, it is highly important that adequate incentives be provided to the said management committee, such as decent salaries as well as regular, dynamic human development programs and training in fields relevant to waqf development. An example of such initiative can be found in the earlier-mentioned KPF/IRTI draft Waqf Law 2014 that has, as a means of motivating its managing personnel, allowed for waqf founders to set the compensation of their trustees based on the performance of the projects they engage in.

The neglect of such mechanisms would, as pointed out by [Huda et al. \(2017\)](#), eventually result in the derailing of focus and demotivation of the appointed managers that would look for additional – if not alternative – opportunities to make ends meet.

Research and development team

Despite the huge amount of benefits that foundations/waqf entities have realized in countries such as Kuwait, Turkey and Nigeria, it may be said that waqf has yet to play a similar role in the development of Guinea. One of the many reasons for this state of affairs is the lack of studies and data collected on the subject matter. Currently, there are neither institutions dedicated to conducting studies on waqf nor consolidated databases that collect information on waqf establishments in the country. Even organizations like Waqf IDB Guinea that have accounting members within their executive organ do not have dedicated and specialized researchers within their core executive team. The significance of such members on the team is that they would be focused on studying existing operational models

in other countries as well as exploring newer initiatives and mechanisms that could be adapted to enhance the practice of waqf in the country.

Again, looking into KPF/IRTI's draft Waqf Law 2014, it is noted that it is important to establish teams that are given the tasks of forging relations with other local and international organizations and of making relevant information about waqf available to the general public. This would not be possible unless, as listed in the said draft law, managing members conduct surveys and studies, write literature and organize local and international conferences and seminars that address pertinent issues related to waqf development.

Therefore, with the staunch support of the government, through its relevant agencies, as well as local and international organizations, students and professionals would be encouraged to contribute to the literature and come forward with action plans for the development of waqf in the Republic.

Talent recruitment

Another component within the managing body that is of grave significance is the talent recruitment department. Waqf IDB Guinea has already put in place a scholarship program through which it sponsors the higher education of bright students to universities inside and outside the country. The same tool may be used by the talent recruitment team through bonding the sponsored students to serve within the waqf development sector for a period of time upon completion of their degrees.

Furthermore, through the same program, systems could be put in place to attract students into specializing in fields necessary for the development of waqf, such as law, finance, accounting, civil engineering, architecture, crop science and other areas. Another vital field of education that is highly relevant to the development of the institution would be information and communication technology (ICT), as it is needed to develop advanced, technologically based platforms that would ensure the transparency of the practice.

As for persons looking to directly take part in the projects of the management team, three to four months' internship programs would be the most effective tool to evaluate the merit or utility of the participants. At the end of the term, each participant would either get an offer to continue working as an employee on assigned projects or have to look elsewhere for job opportunities. In exceptional cases, such as when further evaluation is required, their terms could be extended.

In sum, regulators would need to invest significantly in developing an effective management body so as to intensify research and attract talent that would revolutionize the practice of waqf in the country.

Efficient and well-equipped legal recourse

In relation to the legal remedies offered to relevant waqf parties, the Republic of Guinea, being a secular state, may choose to adopt one of the following two measures. The first – and perhaps ultimate – solution would be, as suggested by [Rashid \(2011\)](#), to establish a tribunal that specifically deals with waqf-related cases. The established tribunals would consist of official members with the relevant qualifications to ensure that cases are “tried by judges who are specialized in this field” ([Kunhibava, 2006](#)).

India could be seen as a live example for this approach. The secular southern Asian country introduced its very own Waqf Act 1995. Pursuant to subsections 83 (1) and (5) of the said Act, state governments may establish waqf tribunals and convey to them full civil court powers. This allows such legal bodies to deal with cases in their entirety, i.e. from the initial court proceedings to where rulings are issued and damages are awarded to the relevant parties. Furthermore, what is considered notable about India's waqf legal recourse is the fact

that these waqf tribunals have the authority to deal with all forms of civil disputes. This is unlike the situation in Nigeria with the Sharī'ah courts, which, despite being given jurisdiction over waqf cases, are not given dominion over waqf-related cases in which the subject matter in dispute is land. It would seem, however, that family, commerce and land were understood by the drafters of India's Waqf Law 1995 to be interrelated when it comes to waqf disputes and were, hence, unified under a single judicial body.

The second proposition, which is essentially the fallback option, would be for civil court judges to call upon Sharī'ah personnel to offer their expert opinion on the subject of waqf or for regulators to develop and enhance the proposed governing waqf law to such an extent that it gives the civil court judges a clear understanding as to how disputes involving waqf were intended to be dealt with. Taking lessons from Nigeria once again, we learn that the failure of the constitution to clearly distinguish and divide the scope of matters that fall under the Civil and Sharī'ah Courts has caused major disputes (Oseni, 2012).

Therefore, clarity and precision within the waqf governance framework are essential for mitigating confusion and disputes between all interested parties. Key elements of that framework are the governing and managing body or bodies, registration and recordkeeping policies, the black-letter laws/principles and values, and the judicial body that resolves disputes involving waqf establishments.

Conclusion

In conclusion, the waqf management team overseen by a dedicated body and led by an executive team would consist of project developers, Sharī'ah, finance and accounting experts, government personnel, researchers and reviewers. Each of these organs would have a vital role to play for the thorough development of the waqf institution. Furthermore, with the adoption of technological advancements into the waqf operational system, the registering and progress tracking of waqf projects would be much more convenient for managers, regulators and, especially, founders and beneficiaries. Finally, with the establishment of a tribunal consisting of persons specialized in waqf-related matters, the resolving of waqf disputes would substantially be expedited. Consequently, with the incorporation of the mentioned policies and the support of the government, waqf in the Republic of Guinea would be bound to flourish and bring about immense socio-economic benefits.

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