FINANCING NON-PR0FIT PROJECTS THROUGH WAQAF

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APPROVAL SHEET

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DEDICATION

This work is dedicated to Allah, the Creator and Sustainer by whose Grace I am able to conduct this research. The work is also dedicated to all oppressed and those who struggle in the cause of Allah all over the world.

DECLARATION

I hereby declare that this thesis for the award of degree of Master of Business Administration is my original research work. It has not previously presented for any degree nor concurrently submitted for any other degree. All sources of information are acknowledged by means of reference.

May, 1996 Aliyu Abubakar Tanko

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ABSTRACT

Waqaf is an Islamic financial institution in which the usufruct of property is dedicated for pious and charitable purposes. The historical development of the concept of *waqaf* is traced to the period of Prophet Muhammad (S.A.W). And the purpose of *waqaf* is to alleviate some of the social and economic problems of the general public.

In the contemporary times, *waqaf* is effectively used as a means of financial non-profit projects especially in the Gulf States and some other Muslim countries. The institution is found to be very useful in maintaining mosques, schools, hospitals and other welfare services for the benefit of the general public. It was also responsible for many other social activities such as digging wells for the benefit of the rural populace.

Although there is no available record showing the total sum of *waqaf* funds, the activities of institutions of *waqaf* in some of the Muslim countries have shown that it controls substantial amount of funds both in cash and kind.

Another form of charitable institution is that of English Trust. The two are similar in nature but the motive and conditions governing their operations are different. While the Islamic *waqaf* is guided by the teachings of Islam and has to be compatible with Shariah, the English Trust is based on secular considerations.

The finding of this research with respect to prospect of

Waqaf in Nigeria suggest that it can be developed without encountering much problem. From the assessment of the historical background and currant practices of the Muslim Society, it has become clear that the people are used to giving out property in the form of *sadaqah* (charity) yet the idea of institutionalised *waqaf* in the way it exists in other Muslim countries is not assimilated. Therefore it is recommended that extensive public mobilisation programmes must be made to enlighten the society. Furthermore, this study provides some broad guidelines for the introduction of institutionalised *waqaf* in Nigeria.

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CHAPTER ONE

FINANCING NON-PROFIT PROJECTS THROUGH WAQAF

1.1 General Introduction

Literally the word *waqaf* is translated as endowment or foundation. However, in its technical usage, it is interpreted as an Islamic financial institution in which the usufruct of a property is dedicated for pious and charitable purposes. This necessarily involves the transfer of the corpus of the property from the personal ownership of the founder (technically known as *waqif*) to that of Allah (Most Exalted) in whose service the *waqaf* has been made. It is also a requirement that such transfer of ownership should be perpetual and irrevocable.[1]

From the foregoing discussion, it clearly appears that *waqaf* has got two interrelating elements. On the one hand, it relates to economic and financial issues such as ownership and property. While on another sphere, *waqaf* is required to serve certain pious purposes. This should not be surprising since Islamic way of life recognises no distinction between worldly and spiritual affairs. Both are supposed to be dedicated for the sake of God.

The western economic system is basically divided into private and public sectors. In addition to these Islamic economic system has developed another category called

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[1]A.A. Islahi "Provision of Public Goods: role of voluntary (waqaf) sector in Islamic history." ( ) p.4.

voluntary sector. The latter includes economic activities such as *sadaqat* (charity), *Hibah* (gift), *Wasiyyah* (will) and *waqaf*. This means that *waqaf* constitutes part of the voluntary sector within the overall economic life of the society.[2]

By and large, *waqaf* is classified into two categories, namely: (a) private *waqaf* dedicated for the benefit of certain individuals or family; and (b) public waqaf intended to serve the general interest and welfare of the society.

Here it is appropriate to make a comparative assessment of the western system. The Islamic concept of *waqaf* may be compared to the western institution of trust. The idea of transferring the legal ownership of a person to someone called *trustee* who should hold the property for the benefit of a third party known as *beneficiary*, was known in the West since the Middle Ages. Generally speaking, the Western system of trust is also divided into two - private trust and public (or charitable) trusts. In addition, the system is now developed to the level that it now supports the scientific research and philantrophic activities of western countries.

Meanwhile, one has to recall that *waqaf* was known and practiced by Muslims long before the Middle Ages. In fact, the bulk of principles regulating the administration of *waqaf* were developed since the early period of Islamic history. For instance, we may trace some of the terms of making *waqaf* from the following incident that took place during the life of the

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[2]Op.cit. p.1.

Prophet (SAW). Al-Bukhari reported that Umar once went to the Prophet (SAW) and inquired what he could do with his landed property situated in Khaibar. The Prophet (SAW) advised Umar that he could *retain its corpus and give it away for charity*. Accordingly, Umar dedicated the property under the terms that it should not be sold, given out as a gift, nor bequeathed. Al-Bukhari further reported that Umar then relinquished his personal ownership over that property so that its usufruct would be used to support the poor and freeing the slaves. Umar's decision was approved by the Prophet (SAW).[3]

We may also observe that *waqaf* is one of the few institutions which has been preserved throughout Islamic history. For example, the extent to which *waqaf* had been utilised in the interest of the larger society may be seen in the light of the following long report made by the famous Muslim explorer, Ibn Battutah, during the second half of the 14th century A.D. He narrated what he saw in Damascus as follows:

> *Awqaf* in Damascus are in such a large number that their kinds and purposes cannot be counted. There are *awqaf* for those who are unable to perform Hajj, one who wants to perform Hajj on behalf of someone is given full expenses. There are some *Awqaf* for supporting those girls whose guardians are not rich enough to help them financially to meet their husbands. Some *Awqaf* are for freeing captives and some others for wonderers - they are provided with food, clothes, and expenses to return to their countries. There are also some *Awqaf* for the pavement of the road and foot pathing, as streets

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[3]Abu Abdullah, Muhammad b. Islmail al-Bukhari, Sahih al-Bukhari (Beirut: Darul Ma'rifah, vol.2, p.132.

> in Damascus have platforms at their two sides on which the pedestrians walk, while the riders pass in between them. And there are *Awqaf* for some other welfare purposes and good deeds.[4]

Contemporary Muslim countries have made some attempts not only to preserve the old tradition of *waqaf* but also to reorganise and institutionalise it. However, institutionalisation of *waqaf* may not be considered as a new development since it was Caliph Umar Ibn al-Khatab who first introduced a governmental department called ***Diwan al-Nafaqat*** to handle *waqaf* matters.[5] In the modern times, Turkey set up the first Ministry of *Awqaf* in 1840 and the precedent has been followed almost by all Muslim countries[6] of the Middle East and Asia. Ministries of *Awqaf* in the rich Gulf countries are responsible to manage a huge amount of property dedicated for pious and charitable purposes. And it may not be wrong to say that the impact of *waqaf* coming from these countries is being felt almost in all parts of the Muslim world.

The role of *waqaf*, as an Islamic economic institution, within the overall socio-economic system may be deduced from the types of purposes and objectives it promotes. Both classical and contemporary concepts of *waqaf* suggest that it

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[4]Ibn Battutah (d.1377 AD), Tuhfat al-Nudhar (Arabic) Cairo, Mat'bah Wadil Nil, 1287 A.H. Vol.1, p.60.

[5]Ibn Taymiyya, Majmul Fatawi (Collection of Verdicts). Published in Riyad in 1398 A.H., Vol.31, p.86.

[6]See First Encyclopedia of Islam, Leiden, E.J. Brill, 1987, Vol.8, p.1101.

serves major social purposes. *Waqaf* may be used to build places of worship, such as mosques; to maintain schools, centres of Islamic learning and research institutes; to build water resources, roads and hospitals for the people; to support the handicapped and destitute, and the like.

We may therefore draw a conclusion that *waqaf* operates to supplement the activities of the government in promoting social welfare. It can be used to help the poor and the disabled, to promote education and for various types of Islamically approved purposes.

The most important issue relating to *waqaf* nowadays is the question of supervision and management. The conventional practice in Muslim countries is assigning the responsibility to a ministry specifically established for this purpose, where government involvement is limited to certain purposes. In predominantly non-Muslim India, the government was initially reluctant to interfere with *Awqaf* affairs. However, considering the amount of public interest attached to *waqaf*, the government of India has shown considerable interest since the promulgation of Waqaf Act of 1954. Presently, there are federal and provincial ministries for the management and supervision of *waqaf*.[7]

Unfortunately, the institution of *waqaf* is yet to be developed in Africa especially in Nigeria. Given the large Muslim population and strong influence of Islamic culture in

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[7]A.A. Islahi. Op. cit., p.9.

this country, the non-institutionalization of *waqaf* is highly disappointing. It is high time that the importance of waqaf in alleviating the burden of the masses and promotion of social welfare were appreciated. The rule and regulations governing the institution and the overall operation of *waqaf* in a largely Muslim, yet heterogenous society like Nigeria should be well understood. It is with a view to making some intellectual contribution along this line that this research project is undertaken.

1.2 Statement of Problem

The issue of waqaf is no doubt a very interesting one. As a concept it is multi-dimensional. Its significance extends not only to religious but also economic and management issues. Although what resembles *waqaf* exists in the western world, *waqaf* is one of those values that is peculiar to Muslim societies. It is highly attractive and raises one's intellectual curiosity. One of the intentions of the researcher is therefore to explain *waqaf* in its multi-dimensional structure.

We have mentioned earlier that waqaf is institutionalised in several countries. One has to identify the relevant experiences of those nations in introducing *waqaf* in Nigeria. Problems and prospects associated with its practical operation need to be analysed. More importantly, the issue of *management* should be properly understood since it constitutes the biggest challenge in operating *waqaf*.

Moreover, the research has to take into account the operation of western institutions which are comparable to *waqaf*. This will help to appreciate *waqaf* as a peculiar Islamic value. Again it is on the basis of a comparative analysis that one would grasp the real nature of managerial and administrative problems facing financial, yet not profitable, organisations like *waqaf*.

The study has also to show the prospect of *waqaf* within the overall economic life of the country. Its constructive role in supplementing government activities in the field of social welfare should be explained based on reliable data.

1.3 Significance of the study

In a country like Nigeria where the bulk of the resources is in the hands of the few the need for the establishment of institution of *waqaf* cannot be overemphasized. The primary significance of this study lies therefore in the fact that it deals with the theoretical and practical aspects of *waqaf*.

Both the scholarly and wealthy sections of the society can contribute towards institutionalization of *waqaf*. The former have to explain to Muslims and non-Muslims alike that *waqaf* is a constructive institution promoting the interest of the public as a whole. The rich can play an effective role in making sure that the idea of *waqaf* becomes reality.

To that effect, the idea has to be clearly understood. Its practical operation and prospects of success should be explained. This research is therefore relevant and timely in

as much as it is intended to do so.

1.4 Objectives of the study

This study aims at achieving the following objectives:

(a) to trace the historical background of *waqaf* within the context of Islamic history, in general, and that of the Sokoto Caliphate, in particular. At the same time, to trace the historical circumstances surrounding the development of trust organisations in the western world;

(b) to determine the capacity of an institutionalised *waqaf* to contribute towards financing non-profit organisations and projects;

(c) to sensitise the general public towards embracing and practicing *waqaf* as a means of financing non-profit projects;

(d) to analyse the effects of institution of *waqaf* in financing non-profit projects in those countries where *waqaf* is properly institutionalised and operated; and

(e) to identify problems and prospects of *waqaf* institutions in Nigeria.

1.5 Scope of the study

Waqaf is a very wide topic. So it will not be practically feasible to deal with all aspects of *waqaf*. Thus this study confines itself to:

(a) discussing the ideas and principles relating to *waqaf*;

(b) making a comparative analysis of *waqaf* and its western counterparts;

(c) relating the experience of some of the Muslim countries in operating institutionalised systems of *waqaf*; and

(d) identifying ways and possibilities through which *waqaf* can be institutionalised and effectively operated in Nigeria.

1.6 Limitations of the study

As a general rule, any major research project is bound to encounter several problems and difficulties. But studying *waqaf* within the Nigerian context is found to be more challenging and more problematic. Thus this study is undertaken under a number of serious constraints. These include, among other things:

(a) lack of data at the local level since *waqaf* has not yet been developed as an institutionalized system in Nigeria; and

(b) insufficient time and funds to get data from other Muslim countries operating institution of *waqaf*.

1.7 Definition of Terms

1. WAQAF (Pl. AWQAF) - is a term in Shariah signifying detention of the corpus of a property from the ownership of a person and dedicating its income, technically called usufruct, for some pious and charitable purposes.

2. WAQIF - is a founder of waqaf property.

3. MUTAWALLI - This is a trustee, sometimes called nazir, person responsible for the administration of the waqaf property.

4. QADI (Pl. QUDAT) - i.e. a Judge of Shariah Court whose responsibilities include the supervision of administration of waqaf.

5. TRUST/FOUNDATION/ENDOWMENT - is the Western equivalent of the Islamic waqaf.

6. IBADA (Pl. IBADAT) - Islamic concept of worship which includes not only ritual acts of worship but also every lawful act in all spheres of life.

7. HIBAH - gift, the legal position of which differs from waqaf for hibah involves transfer of right of ownership to the beneficiary.

8. WASIYYAH - is known as bequest which in Islamic law, can not be made in excess of one third of one's property.

9. SADAQAH - (Pl. SADAQAT) - giving out something for the sake of Allah to a needy i.e. charity.

10. S.A.W - (Salallahu Alaihi Wasalam) - Peace be upon him. These are words which Muslims use after the mention of the name of Prophet Muhammad (SAW).

11. S.W.T. - (Subhanahu-wata'alah). These are words used after mentioning the name of Almighty Allah.

12. HIJRAH - The term used to refer to the migration of the Prophet Muhammad (SAW) and his companions from Mecca to Medinah.

13. DA'WAH - (Call to Islam) - it is generally used to refer to all efforts put towards the propagation of Islam.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

In this chapter an attempt is made to review and discuss some of the opinions expressed in some of the existing literature concerning the subject of *waqaf*.

In view of the virgin nature of this subject, particularly in this part of the globe, this study is faced with the difficulties of securing relevant literature especially those written in English.

Notwithstanding the scarcity of materials and the time constraints, an attempt is made to critically review the existing literature on *waqaf*. While reference is made to contemporary literary works in both English and Arabic, the scope of our review includes, among other things, definition, historical development and administration of *waqaf*.

2.2 Historical Development of Waqaf

For well over one thousand four hundred years ago, long before the birth of the doctrine of Trust in English law, Islamic Law recognised and developed a system of welfare known as Waqaf (plural Awqaf) which permitted an owner to give out his property to be used by beneficiaries.

Waqaf in Islam is based on authorities derived from the Qur'an and Sunnah. In Qur'an (2:211) for instance, it is provided as follows: "They will ask thee what they shall bestow in alms. Say: Let the good which yee bestow be for

parents and kindred, and orphans and the poor and the strangers; and whatever good ye do of a truth Allah knowth".[8]

Similarly, the Prophet (SAW) encouraged Muslims right from the early times of Islam to give out their property in a form of waqaf. And the institution of waqaf, as Henry Cattan has stated, was developed with Islam. In fact Cattan expressly acknowledged that "There is no evidence that such a complex system of appropriating usufruct as a life interest to varying and successive classes of beneficiaries existed prior to Islam".[9]

Furthermore, scholars consider the operation of *waqaf* in various muslim countries in the past, and how the concept helped in financing very important projects that may otherwise not be financed easily. This shows the historical significance of *waqaf* and provides a useful precedent for its reviving in our contemporary times. We may mention here what Allamah Muhammad Jawad Maghniyyah has said about *waqaf* in medieval Egypt:

> By chance I happened to read in the magazine al-Akhbar, that in the Directorate of Waqaf, Egypt is an iron vault that had remained locked for hundreds of years. The Directorate decided to open it to find out its contents. When the doors of the vault were opened thousands of deeds and agreements covered with dust and piled upon one another were found Twenty persons were appointed to study them When they started this work they came across

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[8]Qur'an 2:211.

[9]Henry Cattan "The law of waqaf" in Majid Khadduri and Herbert J. Liebesny(eds.) Law in the Middle East vol.1 (Washington, the Middle East Institute, 1955) p. 205.

> curious and amazing things: 300 deeds written with gold water, a deed executed a thousand years ago and so on. . .[10]

Then Allamah Maghniyyah relates what these historical documents say about purposes for which *waqaf* was commonly dedicated during that time. It was said:

> An immovable property was endowed for providing grass for the mule ridden in the Shaikh of al-Azhar at that time. A woman created a waqaf for 300 feddans (1 Egyptian feddans = 4200.33sq metre) for the benefit of the ulama who followed Abu Hanifah. Some Pasha endowed 10,00 feddans for covering the graves of their relatives with branches of palm and myrtle. A person endowed part of his wealth for the water carrier of the city mosque. Another created waqaf for the reciter of the Friday sermon. A lady created a waqaf for providing ropes for pails used for supplying water to a mosque. . .[11]

Similarly, as we have indicated in the previous chapter, there is an illuminating historical record about *waqaf* in Syria. This was documented in the 8th century hijjirah by the famous muslim historian Ibn Batutta. The story of Ibn Batutta's visit to Damascus was reported by Dr. Islahi. According to the report, *Awqaf* in Damascus were in very large number that their kinds and purposes could not be counted. Yet Ibn Batutta is reported to have noticed the following purposes for which *Awqaf* were specifically dedicated:

> There are Awqaf for those who are unable to perform Hajj, one who wants to perform Hajj, one who wants

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[10]Waqaf, according to five schools of Islamic Law, part 3. Published by Al-Tawhid, vol. VII, No.2, November 1990-January 1991, p.101.

[11]Waqaf according to Five Schools of Islamic Law, part 3, published by Al-Tawhid, Vol.VIII, no.2, November 1990-January 1991.

> to perform Hajj on behalf of some one is given full expenses. There are some Awqaf for supporting those girls whose guardians are not rich enough to help them financially to meet their husbands. Some Awqaf are for freeing captives and some others for wanderers - they are provided with food, clothes, and expenses to return to their countries. There are also some Awqaf for the pavement of the road and foot pathing, as streets in Damascus have platforms at their two sides on which the pedestrians walk, while the riders pass in between them. And there are Awqaf for some other welfare purposes and good deeds.[12]

If anything, all these kinds of waqaf shows how people in the past think, the kind of world they were living in and even the kind of poverty the people were living in. Although our situation today differed from that but we can at least borrow the ideas and develop something relevant to the needs of our people and society.

2.3 Conditions governing waqaf operations

In Islam, there are a number of ways in which one can extend help and assistance to others. It may be in the form of, for example, Sadaqa (charity), Hibah (gift), or Waqaf. There are considerable differences in the technical meanings of these terms. Some one may decide to give a monetary assistance to an institution without any condition, or may agree to pay the salaries of the teachers of an Islamic institution for a specific period of time. All are Sadaqah (charity) but not waqaf. alternatively, some one may decide to give out his personal car to a friend or a Qur'anic school

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[12]Provision of Public Goods: Role of Voluntary (Waqaf) Sector in Islamic History. By Dr. A.A. Islahi.

teacher thereby the donee i.e. the friend of the teacher acquiring the right of ownership of the car. This is called Hibah (gift), but not waqaf.

Then, one may ask, what are the conditions which makes a particular act waqaf. Below are some of the major conditions as have been laid down by Islamic scholars with reference to the primary sources of the Shariah.

1. The original owner of the property has to expressly declare his intention to give out such property as waqaf. This may be either oral or written. In the absence of such declaration the act may not strictly be treated in accordance with the rules and regulations applicable to waqaf.
2. The property should preferably be an immovable one. Some Islamic Scholars are of the opinion that movable cannot serve the purpose of waqaf. The reason is that movable properties lack the quality of permanence. However, there is an exception to this rule. A movable property can be subject of waqaf provided that it is permanently attached to immovable property, for example, a mosque as a waqaf with carpet.
3. Some Scholars are of the opinion that dedication of a property as waqaf must be irrevocable, unconditional and permanent. The only exception is testamentary waqaf which takes effect only upon the death of the waqif.

2.4 Classification of Waqaf

Waqaf is generally classified into two major types, i.e. the Family Waqaf and the Public Waqaf. Waqaf may be dedicated for the benefit of the family members of the waqif and after them for the needy. This type of waqaf is called Family Waqaf. And some times it is left open right from the beginning for the benefit of the general public and this is called Public Waqaf.[13]

(a) Family Waqaf: The Family Waqaf or private Waqaf (as some invariably describe it) is that type of waqaf which is regarded as the property of those who are entitled to utilise it and it profit. This type of waqaf includes those dedicated to the members of one's family, the needy, particular students, scholars etc. In this regard, one could establish a waqaf for the benefit of his children or any member of his family. It is also possible for one to establish a waqaf for the benefit of some students in the form of scholarships. The waqaf funds could also be used to sponsor the salaries and other financial obligations of teachers in certain schools.

An individual or group of people can therefore decide to pool their resources in cash or kind to form a waqaf fund, the proceeds of which may be used for the benefit of a particular group of people and/or one's family. In fact, it is even more advantageous to the beneficiary to create a waqaf for the benefit of such members of the family or group of people that one may wish to assist than to give such person huge sum of

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[13]Fiqhus Sunnah by Sayyid Sabiq vol.3 p. 378.

money. This is because when you set up a waqaf fund the benefit is a continuous one so long as that waqaf remains and is yielding fruits, while direct donation has a very short life span coming to an end as soon as the person spent it.

An example on this is where a person sets aside say three mango trees in his orchard or one hundred shares out of his one thousand shares in a particular company thereby dedicating the three mango trees or one hundred shares for the benefit of so and so person or organisation(permanently or for a specified period). By so doing, it means from the day of such pronouncement all the fruits from those three mango trees and all the dividend from the one hundred shares will now be going to people or organisation for which such dedication was made.

This kind of waqaf is called family waqaf or private waqaf because it is for the benefit of specific beneficiaries.

(b) Public Waqaf: The second category is the Public waqaf which includes things of general benefit. The public waqaf includes establishments like building of mosque, hospitals, schools, roads or cemetery and the likes. Under public waqaf general public shall derive the benefit from the waqaf without any restrictions.

In public waqaf donors may build mosques (which is the commonest form of waqaf), schools and the likes. He may also dig a well, construct a road or donate a piece of land to be used as a cemetery. The list is endless as Ibn Batutta observed when he visited Damascus.

In general, there are various kinds of waqaf which people can engage in. Dr. A.A. Islahi also gave the following as some of the different kinds of waqaf: "Places of worship, defence and fighting for the cause of Allah(jihad) help to the way fairer and road services, food and lodging for the poor, water resources, education, preaching and call to the religion, hospitals for the sick, celebration and adornment of tombs, marriage provision for the poor, release of captives, support of handicapped, inner purification centres and research institutes etc."[14]

Here we may emphasise that the community can benefit especially from public waqaf in various fields. The donors can utilise their donations for long lasting interest of the community using the institution of waqaf. For Muslim, this is a religious duty with which they can potentially solve the bulk of the social and economic problems.

2.5 Waqaf in the modern times

As we have indicated earlier, waqaf has its historical origin in the early period of Islam. It has been practiced since the time of the Prophet(SAW). However, its application did not come to an end with the passage of time. In most of the modern Muslim countries, there are ministries to which the responsibilities of managing waqaf properties is assigned by the government. For example, the Egyptian Law of Waqaf, 1946,

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[14]Provision of public Goods: Role of voluntary(waqaf) sector in Islamic history, p. 7.

provided for a Ministry of Awqaf which continues operating to date.

However, the more apparent operation of waqaf is seen in the rich Muslim Gulf States. We may consider the present application of waqaf in these states especially with specific reference to Kuwait.

The Kuwaiti government issued a new decree in 1993 establishing Kuwait Awqaf Public Foundation.[15] The new decree is based on other two decrees issued previously. The first one came in April 1951 specifying the applicable rules of Sharia concerning waqaf in Kuwait. While the second one was introduced in January 1979 establishing Ministry of awqaf and Islamic Affairs.

According to section 12 of the decree of 1993, the Kuwait Awqaf Public Foundation is entitled to a portion of the budget allocated by the government to the Ministry of Awqaf and Islamic Affairs. The functions and legal authority of the foundation have been specified under section 20 of the decree. Its responsibilities extend to all affairs of waqaf including administration, investments and utilisation of Awqaf properties strictly according to the Shariah and in the best interest of the community.

Kuwait Awqaf Public Foundation has now initiated a number of projects in various spheres of the social and religious

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[15]Decree No.257 of 1993, establishing Kuwait Awqaf Public Foundation.

life. One of such projects is designed to cover the expansion of mosques. According to a recent publication of the Ministry of Awqaf and Islamic Affairs, the Foundation takes care of 58 mosques in different parts of Kuwait. This includes expenditure for maintaining and renovating the buildings, welfare of the Imams and Quranic teachers and maintaining schools attached to these mosques.[16]

Similarly, Kuwait Awqaf public Foundation has got a project for helping disabled persons in the society. In another recent publication, issued in November 1995, the Foundation declared that it had allocated a separate fund for the relief of disabled and crippled persons.[17]

Again, the Kuwait Awqaf Public Foundation is presently running a modern medical Centre for treating children suffering from autism.[18]

From the foregoing, it is clear that Waqaf is one of the major sources of financing various types of social, religious and other welfare activities in Kuwait. However, this is not limited to this particular country. Indeed in almost all Muslim countries of the Middle East, North Africa and Indo-Pak

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[16]Al-Awqaf Fil Kuwait, Wazaratul Awqaf Washun Al-Islamiyya. 1993.

[17]Al-Amanat Al-Ammah Lil Awqaf(Kuwait Awqaf Public Foundation) Al-Sunduq Al-waqafi li-riayat Al-Muqin, Safat, Kuwait.

[18]Al-Amanat Al-Ammah Lil-Awqaf (Kuwait Awqaf Public Foundation) Markaz Al-Kuwait Littawahud, November 1995, Safat, Kuwait.

sub-continent, waqaf is being operated under Ministries established by the governments for this purpose. In the Kingdom of Saudi Arabia, for example, with the little data available to us for this study it is very clear that waqaf has continuously been applied within the Kingdom. Although there is no specific legislative enactment for this purpose at least to our knowledge, but Waqaf is generally accepted to be applicable as part of the Shariah which is the supreme law of the Kingdom. And the Kingdom too has a Ministry of Awqaf and Islamic Affairs like that of Kuwait.

Even in countries where government are either unwilling or reluctant to promote waqaf, there are awqaf organisations established through independent public initiatives. For instance, it is well known that there are a number of Awqaf Foundations run by the Palestinian Muslim Communities living in places under the Israeli authority.

2.6 Waqaf: A Conceptual Framework

A number of contemporary scholars have endeavoured to explain the conceptual definition of *waqaf*. Sheikh Muhammad Abu-Zahra, for instance, has defined waqaf as: "The non-negotiability of property ownership which is of employable value and the direction of its benefits to certain charitable purpose once and for all."[19]

This is not very different from the short, yet concise

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[19]Hassan Abdullah, "Waqf in Islamic Jurisprudence. Islamic Development Bank. Proceedings of the Seminar held 4th-16th August, 1984.

definition offered by Sayyid Sabiq who said *waqaf* is: "Detention of corpus of a property and dedicating the fruits."[20]

It is interesting to note the extent to which some modern legislations on *waqaf* relate to such scholarly opinions. Thus, the so-called muslims *Waqaf Validating Act, 1913* of India defined *waqaf* as: "The permanent dedication by a person professing the musalman faith of any property for any purpose recognised by the musalman law as religious, pious or charitable."[21]

From all these assertions, one may deduce that *waqaf* is essentially a pious act of dedication of property for charitable purposes. However, there is difference of opinion among scholars on certain aspect of *waqaf* as earlier defined. The areas of controversy are issues such as perpetuity of *waqaf* or otherwise and whether *waqaf* property can be sold and/or transferred.

It is pertinent to trace the grounds on which the scholars based their respective arguments. It seems most of these scholars argue on the basis of one tradition of the Prophet (S.A.W) which was reported in three different versions as follows:

The tradition which relates to an advice given to Caliph

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[20]Sayyid Sabiq, Fighus-Sunnah, volume 3 p.378.

[21]S.A. Hashimi, "Article on Management of Waqf: past and present." Islamic Development Bank, Proceedings of the Seminar held on 4th-16th August, 1984, p.19.

Umar R.A.) by the Prophet in connection with his land in Khayber which was called *Samagh* the Prophet advice Umar (R.A.) (Tahbis al-Asl wa Tasbil al-Samarah) as contained in (al-Mughni, vol.5, p.597).

The three versions of the same tradition were reported in Sahih Buhari in the chapter of Wasiyyah as follows:

1. Hadrat Umar acquired some land in Khaibar. He came to the Prophet and said: "I have received a land like which I never had any property before. What is your command, about it?" He said: "If you wish you may detain it (in sheita harbasta aslaha) and give in charity its usufruct (wa tasaddaqat biha). Hadrat Umar endowed it for the poor and needy, for relatives, for the manumissions of slaves in the way of Allah, for the guest and for the travellers, subject to the condition that the property would not be transferred by sale or gift, nor would it be inherited. There was no harm if the person managing it ate from it in the approved way or fed his friend but it (the usufruct) would in no case be hoarded.
2. Hadrat Umar acquired some property in Khaibar. He came to the Prophet and informed him about it. He (the Prophet) said: "If you like you may give it in charity." He, (Umar) therefore endowed it for being spent on the poor, the indigent, the relatives and the guests.
3. Hadrat Umar had endowed during the period of the Prophet (SAW) some property which was an orchard and was known as

Samagh. Hadrat Umar said: "O Messenger of Allah! I have acquired property which in my view is excellent. I intend to give it in charity." The Prophet said: "Give it in charity on condition that it would not be sold, given out nor inherited, only its fruits would be utilised." Hadrat Umar endowed it on the same conditions. The endowment was in the way of Allah and was for the manumission of slaves, and for the benefit of the indigent, the guests, the travellers and the relatives. There was no harm if the person managing it ate from it in the approved manner or fed his friend with it provided it was not hoarded.

Different scholars seems to make various interpretations to the above cited traditions. For instance, Thomas Patrick Hughes, the author of the Dictionary of Islam, is of the opinion that endowment and appropriation of property for waqaf is perpetual in nature. Accordingly, such property can neither be sold nor extinguished. But it has to be noted that this interpretation is not in conformity with the opinion of some of the classical Islamic scholars. For example, according to Imam Abu Hanifa, if a person constructs a reservoir for public use, a caravanera for travellers, a hostel on an infidels' frontier for the accommodation of muslim warriors or dedicates a land as a burying ground his right is not extinguished until the magistrate at his request, issues a decree to that effect.

This means dedication of one's property for *waqaf* purposes does not necessarily lead to an immediate extinction

of his right to deal with the property. However, there are also other scholars who hold a different opinion. Thus, the renown Hanafi jurist, Abu-Yusuf, maintains that the person's right of ownership in *waqaf* property lapses as soon as he utters a word showing his intention to dedicate the property for *waqaf* purposes. We shall discuss opinions of classical Islamic scholars on various aspects of *waqaf* in chapter four insha-Allah.

2.8 Administration of Waqaf

Concerning administration of *Awqaf*, there are a number of scholars who relate their respective impressions about it. The fact that greater attention is given to this particular issue cannot be surprising given the importance of *Awqaf* especially in those countries where the idea is deeply entrenched such as in the Middle East and Asia. This may be appreciated by considering the rate at which even the poor families take part in Awqaf. In india and Pakistan for example, the poor families that do not have the money or material to give or dedicate as *waqaf* usually manage to take say one handful of rice which is their common food and keep it aside whenever they come to prepare their meal. It is the collection of all these hand fulls that they would give out as their own contribution to the *waqaf* fund in their area at the end of a week or month which will in turn be used to finance other *waqaf* projects.

However, despite this massive popular participation in financing *Awqaf*, the ultimate outcome has not been always

encouraging. Shortcomings are almost unanimously attributed to poor management. We may see some of the observations made by some of our contemporary scholars in this respect.

Needless to say, the source of problem of mismanagement in muslim countries is hostile anti-Islamic policies pursued by governments. This was more evident during the colonial times. For example, according to Dr. Sherefat Ali Hashimi, the French colonial administration in Algeria and Morocco took over large agricultural lands dedicated by muslims population for *Awqaf* purposes. But the problem of mismanagement did not end with the collapse of colonial administration. As such Dr. Sharefat goes further to say what happened in Pakistan in the wake of large scale nationalisation since 1971. He said:

> . . . The country witnessed an era of large scale nationalisation. All the banks, insurance companies (except general insurance) and the leading industries (except textiles) were nationalized. Thus the Central government acquired ownership and control of a huge segment of the national economy. *In the same spirit and for the same purposes*, the central government also assumed management and control of *waqf* properties. Emphasis added.[22]

This means the government subjected the popular indicative to develop *Awqaf* to severe policy of nationalisation. Under such a circumstance, it is difficult to see how *Awqaf* serve the purposes designed by the Sharia.

However, this does not mean that the government cannot

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[22]Management of Waqf: Past and Present (IDB Seminar Proceedings 4th-16th August, 1984.).

make useful contributions towards the development of *Awqaf*. The point of our emphasis here is that the purpose for which the government interferes in *Awqaf* affairs should clearly be Islamic. In fact, Sheikh Aftab Husain has advised the Pakistani government to take part in the administration of Awqaf in the best possible ways. He said,

> Looking at the spirit of the waqaf there might be no escape from the conclusion that in Islamic system of government the selfless sacrifice of the citizens by endowment of their properties for charitable purposes, whether they be n the form of immoveable or moveable, business or shares, should be reciprocated at government level and for the purppse of encouraging it and thus advancing the object with which the Holy Prophet enjoined detention and tying up of property. The least that government can do and ought to do is to free such properties or other proceeds from taxation.[23]

2.9 Administration of awqaf funds

Like many other institutions involving investment of both material and human, waqaf too is associated with problems of mismanagement. The risk of falling into financial mismanagement occurs more frequently in the administration of waqaf funds. This is mainly due to ignorance about the Shariah. Some may regard waqaf as no body's personal property and abuse it. This is a common feature. But it should be noted that Shariah strongly warns individuals from mismanaging or exploiting funds dedicated for the benefit of the public.

As waqaf funds involves a lot of resources, both in cash

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[23]Classification and Condition of Awqaf (Hamdard Islamicus, Vol.XII, No.3)

development of the funds.

With the passage of time and the decline in moral standard, there arose problems of mismanagement. The volume of waqaf funds have become much larger to such an extent that it could affect the general economy of any Muslim country that operates waqaf. That is why various governments started interfering in the administration of waqaf. In fact, nationalising or confiscating the waqaf properties and converting them to state property, during the French colony in Algeria and India, are good examples of the negative interference of governments in waqaf administration.

This research is not attributing all problems of mismanagement in waqaf to the governments alone, rather, we are even advocating that governments should come into the administration of waqaf funds, provided that such participation is motivated solely by an interest to promote the public interest. This is possible where the government operates in accordance with the Shariah.

In the past, as reported by Dr. Muhammad Abdul Mannan, that financing education and research was done through the waqaf revenue along with the state expenditure. It should be noted that financing education through waqaf allowed the growth of independent research activities in Muslim societies. Even today although education is primarily financed by the state revenue in many Muslim countries the role of private

sector having its origin in the institution of waqaf cannot be ignored.

From the foregoing discussions, it is clear that for a proper and effective administration of waqaf fund, certain conditions must be satisfied. Thus, any person assigned to manage the affairs of waqaf funds should be among other things, a person of piety, transparent, honesty and have a fair knowledge of the Shariah.

2.10 Comparative Analysis of the Islamic Waqaf and the Western Trust

As we have mentioned earlier, the renown Islamic Jurist Abu-Yousef defined waqaf as transfer of corpus of any property from the private ownership of the donor permanently to ownership of Allah(SWT) and dedicating its usufruct to the benefit of the public. This may be confirmed with what western scholars say about Trust. According to Cohen J. , Trust is:

> "An equitable obligation binding a person (who is called a trustees) to deal with property over which he has control (which is called Trust Property) for the benefit of persons (who are called the beneficiaries or cestruque Trust) of whom he may himself be one...."[26]

In the light of these two definitions the following distinctions may be noted:

1. The Islamic waqaf is solely intended for the sake of Allah (SWT), this means the religious aspect is of a paramount importance, while western concepts of Trust

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[26]Cited in O. Adigun, Cases and Texts in Equity Traits and Administrationof Estates p.246..

does not necessarily require the motive to be religious. What matters is that Trust is made to the benefit of others.

2. The alienation of the right of personal ownership over waqaf property is perpetual. This is not a necessary condition under the western system.

The historical origin of waqaf goes back to the time of the Prophet Muhammad (SAW). It was never practiced before him. The Prophet (SAW) initiated it as part of the reform introduced in the social and political activities of the society. On the other hand, Trust was developed in the western countries during the middle ages as a result of problems of feudalism. During that time there were frequent wars and economic hardship therefore people resorted to vesting their properties in others, called trustees, to the benefit of their children and/or dependents. This means Trust came as a result of necessity that affected the western society at a particular historical period. The most important factor that distinguished waqaf from Trust is that, the former should necessarily be for a pious purposes. There is no way that waqaf can be dedicated for person worldly benefit, on the contrary Trust can be devised for promoting the personal interest of one or more individuals. For example, while in most of the English type of Trusts, the donors always wants the beneficiaries to know and appreciate that the Trust is

from them, in Islamic Waqaf, the donor only expects his reward from Allah (SWT). By and large, Trust is divided into charitable and non-charitable Trusts. The latter is diametrically opposed to the Islamic Waqaf.

2.11 Non-charitable Trusts:

There are different types of Charitable Trusts, for example, Secret Trust, Resulting Trust, Constructive Trust and the like.

The common feature of these types of Trusts is that they are not necessarily intended to promote public interest, in fact they operate mainly for the purpose of wealth accumulation and promotion of business, that is why, they are commonly described as private Trusts as distinct to Charitable(i.e. public) Trusts.

As to the role of Trust as a means of wealth accumulation, we may consider some institutions in Nigeria with reference to the Land Perpetual Succession Act promulgated by the Federal Government in 1958. By virtue of this Law, Trustees may be appointed by any Committee if persons bound together by custom, religion, nationality or common interest in promoting any lawful purpose. As soon as such committees of persons secured Certificate of Registration from the Federal Government they become Corporate bodies having independent legal personalities. Then such Corporate bodies can earn Land and other types of properties. According

to Olayide Adigun, that is how Clubs like Ikoyi Club Lagos, and Lebanese Club Kano(Rotary and Lion Clubs) were organised since the Colonial times. The point we should emphasise here is that the practical purpose of such Trust is accumulation of wealth on behalf of the individual business men operating behind these Corporate bodies.[27]

Trust used for promotion of business is mainly a technique of investment of capital without exposing the identity of the investors. It is widely found to be advantageous among business men to conceal an investor's holding in business by vesting interest in companies through nominees such as insurance or investment brokerage. This means that the Trustees manage the company and promote the interest of the beneficiaries who are the actual investors.

With all these, there are apparent similarities between Islamic Waqaf and the western Charitable Trust. According to Halsbury's Laws of England, a Trust is not charitable unless it is directed to the public benefit. Here the problem is to identify the criteria distinguishing a charitable trust from a non-charitable trust. The above cited source provides such criteria:

> "The purpose must benefit the community....which must be specifically of public native....., in ascertaining whether a purpose is public or private, the salient point to be considered is

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[27]Olayide Adigun, Cases and texts in Equity Trust and Administration of Estates, 1987, p. 252.

whether the class to be benefitted or from which beneficiaries are selected, constitutes a substantial body of the public, and the beneficiaries must not be numerically negligible..."[28]

Another criterion which implicitly distinguishes between waqaf and charitable Trust is that unlike waqaf, charitable Trust need not conform to a religious teachings. This is not to say that such Trusts cannot be made to promote the advancement of a religion. But the religious aspect is not independent of the secular laws of the western countries. Thus, Halsbury's Laws of England provided that:

"Not every object (i.e. Trust) which is beneficial to the community is charitable, but only those which are beneficial in a way which the law regards as charitable." (Emphasis added).[29]

This means that the purpose need not conform to religious or pious considerations. Any purpose is tolerable as far as it is within the scope of the laws of England. The reverse is the case in waqaf. The latter is to be determined solely by the Shariah which is the law of Islam.

So far, we have discussed some of the scholarly opinions about the operation of *waqaf*. Their analysis covers various issues extending from conceptual definitions to practical administration and management of *Awqaf* properties. Moreover, contemporary muslim scholars relate to use some of the

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[28]Halsbury Law's of England, third edition, para. 486, p. 207.

[29]Ibid.

important historical records about the role of *Awqaf* in the development of muslim societies, for instance a large number of *Awqaf* were dedicated to the educational institutions to meet the financial needs of both the teachers and the students. The institution of *waqaf* therefore made many muslim societies to a great extent financially independent and their educational and other social services free from government influence.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

The concept of Waqaf though as old as Islam itself, its practice in Nigeria is yet to be appreciated like what is obtained in other parts of the globe, such as Middle East and Asia. Probably it is largely due to the fact that the primary source of information on the subject remains mainly in Arabic. The methodology adopted in this study is therefore guided by the fact that the subject is new as far as Nigeria is concerned.

Descriptive approach is used with questionnaire, personal interview and documentaries as the major sources of data.

3.1.2 Justification for Adopting the Methodology

The descriptive approach is used in this study because the researcher has found it to be more relevant, due to the peculiar nature of the topic. As we all know, *waqaf* is based on the religious teachings of Islam as well as a socio-economic institution. In other words, the authority of *waqaf* is derivEd from divine sources, the validity of which is unquestionable. This means that the rules and regulation relating to *waqaf* have to be studied from the basic teachings of Islam contained in the Qur'an and the Sunnah.

However, this does not imply that one has to disregard the socio-economic significance of *waqaf*. Indeed it has to be

analysed a any other institution operating within the society. Its Islamic origin only distinguishes *waqaf* from other social economic institutions.

3.2 Data Collection Procedures

3.2.1 Questionnaire

For the purpose of this study a questionnaire was developed and administered to the general public especially those that have some ideas about the concept either in theory or have had some practical experience some where.

About one hundred copies of the questionnaire were administered out of which about 80% were completed and returned. The data gathered from the questionnaire were used for the analysis in Chapter Four.

3.2.2 Personal Interview

This is one of the primary sources of data collection because it entails face to face discussion between the research and the respondent. This method was found to be very effective and useful in the date collection and analysis.

In fact it afforded the researcher a good opportunity to meet and interview many scholars and intellectuals across the country, particularly those scholars and intellectuals that have travelled to both Middle East and Western countries.

3.2.3 Documentary

As mentioned earlier the concept is generally new in terms of practice in Nigeria. Therefore, substantial part of

the data used for this study were derived from either books or articles written by other scholars.

3.3 Method of Data Analysis

As has been indicated above, three methods are used in collecting data for this research. These include interviews, documentary and questionnaire. The advantage in using these methods is that the enable the researcher to have face to face contact with the respondents and obtain reliable information. The format used for the questionnaire and the interviews have got a peculiar utility in terms of encouraging respondent to express their respective thought and ideas.

In analysing the data, the researcher has followed the descriptive approach because it enables him to describe and interpret the data collected about the existing situations, practices and institutions.

CHAPTER FOUR

WAQF IN NIGERIA

4.1 Introduction

This chapter examines problems and prospects of waqf in Nigeria. It analyses the existing position of waqaf in this country based on data collected. These data reveal the historical experience of the people and the level of their awareness about the system. More importantly, the chapter discusses the administration of waqf, and sources of funding the institution. Since the literature on waqf in Nigeria is very scanty, the researcher has to rely on data gathered through personal inquiries and interviews conducted with some well-informed personalities in the society.

4.2 General Overview

Waqaf has been defined by the various scholars of Shariah. However, the popular definition is the one given by Qadi Abu-Yusuf, a famous Hanafi scholar. He stated, "Waqaf is taking the corpus of any property out of the ownership of oneself, transferring it permanently to the ownership of Allah, and dedicating its usufruct to others".[30]

Going by this definition it is now very clear that Waqaf when understood and applied properly it can solve most of our social and economic problems. It is a means of setting a side certain valuable things permanently or temporarily from the

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[30]Ibid.

property or wealth of a donor otherwise known as waqif for the benefit of others.

Waqaf property when donated ceases to be under the control of the donor at least for the period it is dedicated to serve as waqaf. This is as in the case of building a Mosque or school for the sake of Allah(SWT). As indicated above, one can also donate to a waqaf funds for a specific period. For instance, one may donate the proceeds of his rented estate for certain period, say, twenty(20) years. Likewise one may donate as waqaf the fruits derived from his farm, for instance for a period of fifteen(15) years. All these are acceptable as we shall see soon insha Allah.

Waqaf funds may be established by individual alone or a group of individuals except that once they are given out, then they cease to have any control over it as already indicated. For example one person may donate five(5) million Naira or U.S. dollars to be used as a waqaf fund. Or group of people may come to donate certain amount each in cash or kind to form a single waqaf fund.

Now the collection of all these funds will be used to either invest it, if it is cash, or collect the proceeds and utilise it in the manner and purpose for which it is dedicated. This means that a donor has the right to say I want my waqaf to be used in education, health care or other social activities.

Once property is given out as waqaf especially when it is given right from the beginning as a permanent waqaf, then such a waqaf cannot be sold or transferred except under certain condition provided by the Shariah. Thus, Imam Malik held that, except in the case of mosques, all other forms of waqaf can be sold, transferred, the original owner may change or may withdraw the property when doing that will be more beneficial to the people for which the waqaf was made.

Maliki scholars gave three conditions which, if satisfied, a waqaf property can be sold. First, where the waqif stipulates its sales at the time of creation of the waqaf. Here, such condition will be followed. Secondly, is where the waqaf is a movable property and is considered unfit for its prescribed purpose. Here too, it can be sold and the amount realised will be used to replace it. Thirdly, an immovable property will be sold for expansion of a mosque, road or cemetery.[31] So far, we have seen the nature and general application of waqaf under the Shariah. Now we will proceed to consider its origin.

Given the existing low level of public awareness about waqaf, one may feel some how reluctant to speculate about the practical operation of the system. However, one should not forget that almost all the essential ingredients for a

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[31]Waqaf, according to five schools of Islamic Law part 3 by Allamah Muhammad Jawad Maghniyyah p. 96.

successful application of waqf do exist in Nigeria. One can count at least on the material resources of the limited number of well to do Muslim families, more importantly, on our rich cultural heritage responsible for the survival of such Islamic values as generosity and mutual concern for several centuries. All what we need to do now is therefore fresh exploration of possibilities, planning and organisation. Once these prerequisites are erected, it will not be very difficult to introduce institution of waqf in the modern state of Nigeria. The following is an appraisal of a structural organisation designed to serve as an insight as to how waqf may be operated in this country. It consists of legal position of waqf, its administration, sources and uses of funds.

4.3 Prospects of Waqf in Nigeria

In the present Nigeria, the Muslim population still cherishes the idea of giving out property for the sake of Allah (SWT). In fact, it is with the help of individual donors that the traditional system of Islamic Education has continued to operate to date.

Even in Southern Nigeria, especially the Yoruba speaking, Western states, the Muslim population is used to contributing money regularly through mosque organisations for various purposes such as building and maintenance of mosques, building and maintenance of Islamiyyah schools, payment of Imams and teachers' salaries; such money is also used for other Da'awah

programmes.

However, the bulk of these Muslim philantrophic activities in Nigeria is not based on a system of waqaf. It is apparent that it operates simply as ordinary charity (Sadaqa). The donors of such charities do not seem to have intended to practice waqaf. But this does not mean that the people are not interested in waqaf. It simply implies that the concept of waqaf in its strict technical sense is not fully crystalised in the community. According to some of the responses to our questionnaire, even the people engaged in the traditional system of education have no clear picture of practical operation of waqaf. The reason given for this is that the idea of waqaf exists so far only in the pages of classical Fiqh books, but not in practical life. Others suggest that the real problem in introducing institution of waqaf in Nigeria is the prevailing ignorance about the system and lack of initiative by the Ulama and Islamic organisations.

From the foregoing discussions it seems sufficiently clear that Nigeria is a virgin land for the operation of waqaf. As it was earlier mentioned, Muslim population still makes donations towards the construction and maintenance of mosques, schools and even medical Centres throughout the country. The existing initiative by individual donors can be transformed in such a way that the properties so donated shall be administered as waqaf depending on the intention of the

donors. Once the importance and practical feasibility of waqaf is well understood and appreciated, the system can then be introduced and operated will full cooperation of the Muslim community. It goes without saying that a competent and trust-worthy administrative machinery lies at the root of any waqaf system. The challenge is therefore not only to popularise the idea of waqaf but also to produce such a truly Islamic administrative structure which can operate the system with the possible maximum efficiency and effectiveness in Nigeria.

4.4 Administration of Waqaf

The problem that commonly arises from the administration of a waqf is that of inadequate competent administrative staff of high moral integrity. Since the sense of waqaf fund is to provide goods and services for the beneficiaries to whom the waqf is dedicated, or to invest the available resources with a view to meeting the requirements of the beneficiaries, it goes without saying that there must be prudent management of the funds.

The success or failure of any waqf fund is largely dependent on the kind of management team assigned to look after the funds. As most of the respondents to our questionnaires and interviews confirm that waqf institution can operate strictly according to the sharia only. Where the fund is entrusted to a team of qualified and God-fearing administrators. Without these qualities, it is not possible

to ensure proper and effective utilisation of the resources for the benefit of the society.

In managing waqf funds, any of the following methods may be adopted.

a) Direct Administration: Under this method, the waqf institution administers all projects directly. This includes, among other things, expenditure of waqf fund for the purchase of materials and supervision of execution of the projects. Here, it is essential that there should be dependable and competent staff who can effectively manage all aspects of the projects.

b) Administration by Proxy : This requires assigning the responsibility of managing the projects to an agent. The latter will have the duty to manage and execute the projects on behalf of the waqf fund. It is also necessary that such an agent possesses sufficient administrative capability and experience. The usual practice is that the agent manages the projects in return for a fixed annual fee payable by the waqf authority.

c) Leasing: This is where the waqf authority enters into a lease agreement with another party who will be responsible for the project investment. The waqf authority grants the right of dealing with the waqf property to the lease holder in return for payment of a lump sum. This right includes authority to manage the

project as the lease holder deems appropriate with a corresponding obligation to bear the risk associated with such investment.

It is usually found useful to extend the duration of the lease for a longer period. Because when the lease contract is for a short period, the lease holder (otherwise known as project investor) is likely to become indifferent as to the development of the project which he occupies only for a limited period of time. But where the lease lasts for a longer period, the project investor will find it unavoidable to spend on maintenance and renovation of the waqf property. And this is in line with the interest of the waqf fund.

4.5. Areas for allocation of Waqaf fund

By and large, there may be two major projects to which waqf fund may be allocated. There are:

(i) Service Projects

(ii) Revenue Generating Projects

The application of this classification may be as follows:

(i) Service Projects : The principal purpose of waqaf fund is to render necessary services to the society. This requires selection of appropriate projects to which fund may be allocated. The choice of such projects largely falls within the discretion of the waqif (founder). However, where the waqif has not specified a particular project, then the mutawali (the manager) has to take initiative and determine

the type of project to be introduced. Whatever may be the case, selection of projects should be guided by certain considerations including the following:

The project must necessarily be lawful in the sight of Sharia. Waqf fund cannot be used for any purpose running contrary to the laws and ethics of Islam. Thus, it is not permissible to hire a building, build with waqf fund, to serve as a brewery or free women house. Instead, waqf fund should be allocated for projects such as building schools, mosques, student hostels and the like.

The project should be in a form of concrete social service. According to the sharia, it is not preferable to consider raw cash as waqf project in itself. The money has to be concerted into specific service projects by building schools, hospitals, wells and the like.

As an exception to this rule, there may still be situations where raw cash may be regarded as a type of waqaf project. Supposing the waqif declares his intention that the money should be used as revolving funds out of which people take loan during difficulties and return the same within agreed period. This is quite acceptable.

The project should be of a perpetual nature except where the waqif requires that the project be for a specific period.

In view of the above considerations and suggestions forwarded by some of the respondents to our questionnaires and

interviews, the following service project seems to be worth considering in experimenting waqaf within the Nigerian context.

Education Industry: Education industry is the most dilapidated in Nigeria today. It needs serious attention and all possible efforts have to be put to improve it. The crisis that has affected the education sector is more pronounced within the Muslim society. This covers both the traditional Islamic learning and modern school system. Unless this negative development is arrested in time, there can be no bright future for the community. The significance of sound education for the survival of any community needs no emphasis. Waqf funds can be used to alleviate the problem facing educational sector at all levels of learning. And this contribution is seriously needed in Nigeria today than any other time.

Sponsorship of Students: Closely related to education is the need to establish waqf to take care of the needy students. It is worth mentioning here that a considerable number of able ad intelligent students cannot continue their education because of financial difficulties. Most parent cannot afford to pay for their children's education.

Some of the respondents indicated that a substantial high level manpower can be developed if students' problem can be tackled. Waqf funds may therefore be allocated for

sponsorship of students.

Health Care Delivery System: Within the Muslim section of Nigerian society, health care is another area requiring serious attention. Sickness is rampant and people cannot afford to pay for their medical bills. The public health service has deteriorated quite significantly. Private health institutions are expensive and beyond the reach of the common people. It would therefore be a great service to the society if waqf funds are allocated to establish clinics and hospitals.

The urgency of this matter need to be appreciated in view of what Christian Evangelists are presently doing among the Muslim population. They exploit the need of the masses for health care services to convert especially the rural Muslims to Christianity.

Other Special Services: There are also other social services on which waqf funds may be spent. These include, among other things, provision portable water, construction of roads, market places and the like. The type of social services to be rendered depends on the specific needs of the community.

(ii) Revenue generating projects

Projects for investment of waqf funds may be selected depending on feasibility studies ascertaining the potentiality or otherwise of any given project. Investment of waqf funds

is to be governed by the conditions regulating commercial transactions under the sharia.

There are some essential considerations which have to be taken into account in selecting projects for the purpose of investing waqf funds. As a rule, investment of waqf funds should meet two basic conditions. First, the project should be high profit yielding, and secondly, it has to be compatible and harmonious with the teaching of Islam. In other words, the project should not involve anything prohibited by the sharia.

As to the areas where there is good prospect f profit, the awqaf authority has the discretion in selecting projects depending on existing social and economic circumstances. However, observance of norms and ethics of sharia should be ensured by the awqaf authority acting in cooperation with the Islamic judiciary.

4.6 Sources of Fund

Generally speaking, there are two sources of awqaf funds. These are funds dedicated by the waqif (founder). One may grant funds for waqf in an individual capacity or as a group such as families. The rules and regulations of sharia regulating dedication of property for waqf purposes have been outlined in chapter II. The other source is the revenue generated from the waqf funds invested in profit yielding

ventures.

4.7 Legal Position of Waqf

Waqf is one of the few Islamic institutions which are recognised under the law of Nigeria. In fact, the constitution which is regarded as the supreme law of the country expressly provides that waqf institutions should enjoy the protection of the state. For administrative purposes, waqf falls within the jurisdiction of Sharia Court of Appeal. The constitution of the Federal Republic of Nigeria, 1979, provides as follows:

> "There shall be *for any state that requires it* a Sharia Court of Appeal for that State." (emphasis added)[32]

Although, Sharia Courts of Appeal exist so far only within the sixteen Northern States, there is no legal inhibition preventing the Southern States from establishing such Courts. The Constitution is aptly clear on the issue. It says:

> "The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the Court is competent to decide in accordance with the provisions of sub-section (2) of this section."

In sub-section (2)C of the same section 242 it provides that:

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[32]The Constitution of the Federal Republic of Nigeria, Daily Times Publications. Printed by Times Press Ltd., Apapa, 1979, p.85.

> "For the purposes of section (1) of this section, the Sharia Court of Appeal shall be competent to decide on any question of Islamic personal law regarding a *waqaf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim."[33]

This means that it is the fundamental constitutional rights of Nigerian Muslims, both in the northern and Southern States, to establish Sharia Courts of Appeal. One of the responsibilities of these courts, as we have mentioned above is to ensure that the management of waqf funds is strictly administered in accordance with the Sharia. It is worth nothing that this has been the position of the Nigerian law for over half a century although there has been no initiative on the part of the people to introduce waqf.

4.8 Summary

In this chapter, we have discussed problems and prospects of waqf in Nigeria. Issues such as administration, sources and allocation of funds have been elaborated. This is with a view to throwing some light as to the operation of waqf in Nigeria. It still needs to be emphasised that there is sufficient reason for introducing institution of waqf in Nigeria. Almost all the essential factors required for operating the system are available. And there is an urgent need in the society for establishing awqaf funds. The next

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[33]The Constitution of the Federal Republic of Nigeria, Daily Times Publication. Printed by Times Press Limited, Apapa, 1979, p.86.

chapter carries specific recommendations for doing that.

CHAPTER FIVE

5.1 Summary

Waqaf is an Islamic financial institution in which the usufruct of a property is dedicated for pious purposes. Its significance covers both religious and economic benefits. This all important provision of the Sharia has been neglected by the Nigerian Muslims.

This neglect can squarely be attributed to their level of ignorance on the concept of virtually most of the Islamic scholars int his country do not pay any serious attention to this provision and consequently the well-to-do Muslims are ignorant of the provision and they spend their excess wealth on sponsoring Hajj trips, Sadaqah, etc. instead of setting up *awqaf* outfits. Thus, the main objective of this study is to awaken the consciousness of the Muslim populace on the need to set up the *awqaf* of institutions in Nigeria.

The scarcity of relevant materials in the field notwithstanding, an attempt is made in this study to review the available materials with a view to extracting some useful information that can help in motivating Nigerian Muslims to appreciate the need for the setting up of *awqaf* institutions. An attempt was also made to bring to light the opinions of various Islamic as well as western scholars on the concept of *waqaf*. The historical development of the concept, its administration, comparative analysis between the Islamic *waqaf*

and the English Trust and other relevant issues were highlighted.

Questionnaire, personal interviews and documentary works were used as the main sources of data for the study.

Finally, an attempt was made to discuss among others, the conditions governing the operation of *waqaf*, its different forms of administration, sources and applications of *waqaf* funds and the prospect of *waqaf* operation in Nigeria.

5.2 Conclusion

From the findings of this study, the following conclusions can be drawn:

1. That waqaf is an important means of financing non-profit projects which if properly established and managed will significantly help to solve most of the social and economic problems of the Muslim community in not only Nigeria but any were the concept is practiced.
2. Muslims, especially the well-to-do in Nigeria, are generally unaware of the significance and potentialities of waqaf in solving the social and economic problems of the community.
3. In the light of the conditions prescribed by the Shariah, we may say that there is no institution so far operating properly as waqaf in Nigeria. Although, there are many trusts and foundations established by Muslims all over the country, we can not say that these institutions'

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operations comply strictly, with the conditions governing the operation of waqaf in Islam. This in fact notwithstanding that they may be performing some of the waqaf functions.

4. The Muslim scholars emphasise more on the idea of charity (i.e. sadaqah) in its general sense rather than waqaf during their regular teachings. This has restricted the activities of Muslim donors to ordinary charity even in matters that may otherwise be made waqaf.

5. That there is a general need for public enlightenment about the concept of waqaf, its significance and operations.

6. Apart from the problem of enlightenment, another major obstacle has been lack of confidence or trust in the administrators of the *waqaf* by the potential waqaf. A lot of people find it difficult to get trust-worthy people to whom they can entrust their property.

7. There is considerable difference between the Islamic waqaf and the western concept of Trusts/Foundations. Basically, waqaf is purely humanitarian, non-profit institution guided by religious teachings, whereas the western trust, apart from philantrophic motive, can also be business venture run by individuals and is not guided by any religious teachings.

5.3 Recommendations

From the above analysis and conclusions reached in this study, the following are suggestions that may help in bringing out the concept and application of waqaf into light in Nigeria. Moreover, it is our hope that these suggestions will also be useful to those countries that may have similar situation.

1. The Islamic organisations should organise public lectures, symposia and workshops to enlighten the Muslim populace about the concept, the importance and the need to establish *waqaf* institutions in Nigeria.

2. Higher Institutions of learning offering Islamic studies and Law (Shariah) should incorporate the theory and practice of *waqaf* in their curricula. The emphasis should be on how to introduce and sustain the *awqaf* institutions in Nigeria.

3. For easy management, at least at the beginning, individual and simple form of waqaf fund may be initiated because it may not be practicable to start immediately with a well established form of waqaf as obtained in the Gulf States and other Muslim countries.

Therefore, for the sake of easy and effective management, the following structure[34] may be considered in introducing institution of waqaf in Nigeria.

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[34]See Appendix I

4. Functions of Various Segment of the Structure

While the Board of Trustees may be on part-time and voluntary, the other Officers should be on full-time. The Manager will be the general supervisor of the waqaf.

Investment officer will only be concerned with all the investments under the waqaf which may either be initiated by the investment officer directly from the waqaf funds or originally dedicated.

The Finance Officer is to keep records of all the sources and applications of the waqaf funds and to ensure proper utilisation of all the available funds.

Project Officer is to take care of all the projects to be executed by the waqaf. The projects may be capital in nature such as building of mosques, schools, clinics, roads, digging of wells, building of students' hostels etc or it may be in the form of recurrent expenditure such as payment of salaries of teachers, scholarship/bursary allowances etc.

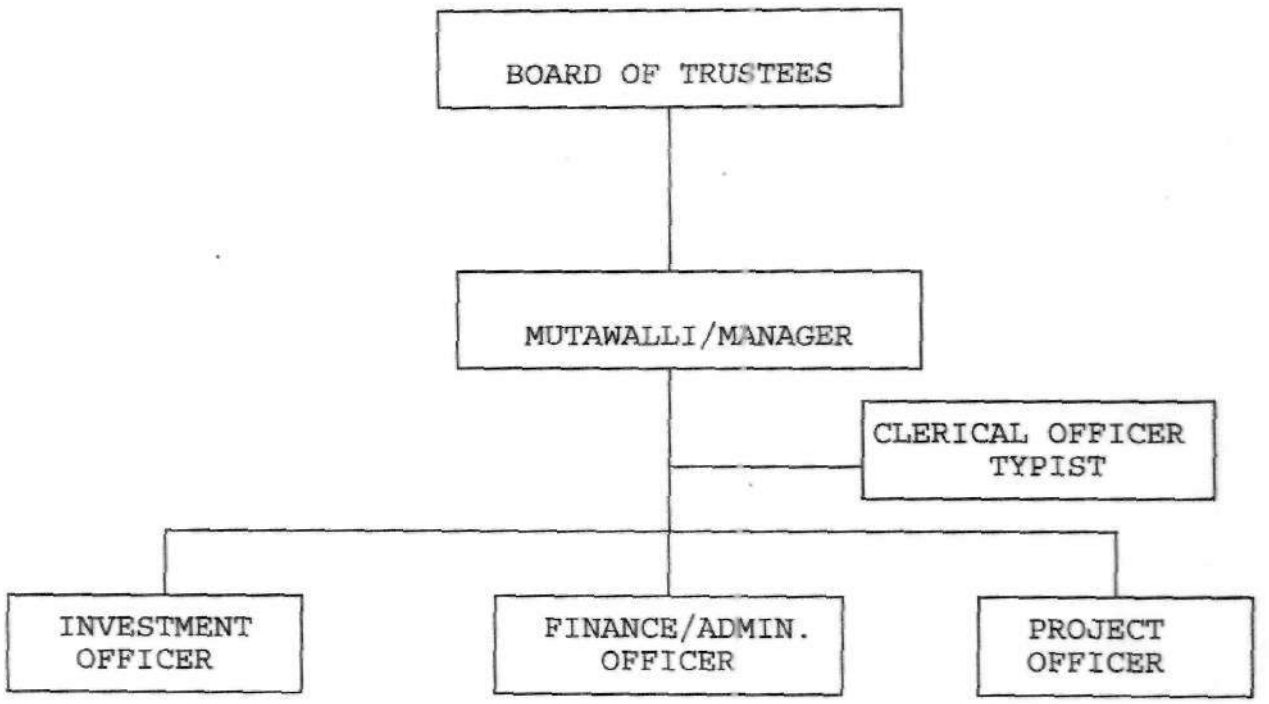
Clerical Officer/Typist is to handle the general clerical work of the office which may include typing and general maintenance of the office.

5. Muslims should be encouraged to establish Islamic institutions of waqaf rather than concentrating their efforts in the establishment of trusts and foundations that we have all over the nation. It is our desire that at least a simple waqaf fund should be established immediately either by an

individual or an Islamic Organisation to serve as an eye opener.

APPENDIX I

PROPOSED INITIAL STRUCTURE FOR WAQAF FUND IN NIGERIA



APPENDIX II

QUESTIONNAIRE

TOPIC: FINANCING NON-PROFIT PROJECTS THROUGH WAQF

RESEARCHER: ALIYU ABUBAKAR TANKO

INTRODUCTION

Waqf(endowment) is a means of financing non-profit projects which people voluntarily established for the benefit of others.

As important as this subject is especially to the Muslims, people in Nigeria do not seem to practice it. It is with a view to bringing out this important concept and encouraging the general public to practice it that this questionnaire is developed.

The information obtained from this questionnaire will be used for a study for a partial fulfillment of a master of Business in Administration(MBA) degree.

I therefore request you to kindly contribute towards this humble effort by providing relevant in information to the following questions:

1. What in your opinion is the reason why people in Nigeria do not practice Waqf in Nigeria?

2. In what ways can people be encouraged to practice Waqf?

3. In view of our situation in Nigeria, which form of Waqf do you think will be most relevant and why?

4. In what ways do you think our well to do Muslims can be informed about the importance of Waqf?

5. Have you ever come across any Waqf project in operation in other countries?

6. If the answer to 5 is 'yes' what problems do you envisage on its practical application in Nigeria?

7. What is the tradition of our well to do in practicing Waqf?

8. Do you think a well organised institution of Waqf as it exists in the Middle East can be introduced and sustained in Nigeria?

9. If your answer to question 8 is 'yes', how?

10. If your answer to question 8 is 'no', why?

11. Give any relevant comment on the subject FINANCING NON-PROFIT PROJECTS THROUGH WAQF