



REPORT OF THE TASKFORCE FOR THE REVEIW OF THE WAKF COMMISSIONERS OF KENYA ACT 1951

1st of May 2017

Acknowledgement

We wish to acknowledge the Government of Kenya for constituting and appointing the Taskforce to review the Wakf Commissioners of Kenya Act 1951. This is a very old but sensitive legislation that is part of our historical and cultural reality. Especially we would like to thank the Attorney General, Honorable Githu Muigai and Madam Eunice Sawe of the Office of the Public Trustee, for their trust and unrelenting support to the efforts of this Taskforce (TF). Further we wish to extend our gratitude to the following organizations; The Muslim Welfare Association (MEWA), Umma University, Jamia Mosque and Najah Centre in Malindi which supported the Taskforce with resources and ideas that enabled the TF to discharge its mandate at times when resources from the Wakf Commissioners of Kenya were not availed. We also received submissions from various individuals and beneficiaries and we would like to single out the Mwijabu Waqf whose beneficiaries have been supportive of the work of the Taskforce. We also reviewed reports made by various scholars, academics and interested Muslims, who had previously attempted to document Waqf issues and conducted interviews with key informants who had knowledge of Waqf issues. We appreciate the support of Dr Ibrahim Bulushi, Prof Hassan Nandwa and Mr Abdulhamid Said Swaleh who served as experts on various topics relating to Waqf. We appreciate their invaluable advice. We also appreciate Amina Karama for assistance in analyzing the Waqf Commission property portfolio and to Salah Jilow for insights into Waqf matters from Malaysia.

Finally, our appreciation also goes to the Wakf Commissioners of Kenya for facilitating a number of workshops that culminated in this report.

Executive Summary

The effort to amend and improve the Wakf Commissioners of Kenya Act 1951 began much earlier. The Attorney General Honorable Githu Muigai appointed the Taskforce for the Review of the Wakf Commissioners Act of Kenya 1951. The Task Force Announced to members of the Public through social and Print Media and also by putting up notices on notice Boards in Mosques in both Swahili and English calling for views regarding any changes or suggestions related to the Wakf Commissioners of Kenya Act 1951. Views were collected from members of the Public, Interested parties, Professionals and Civil Society and Muslim Organisations and scholars. The views are summarized in this report which comprises of several chapters.

Chapter one gives us a general Background about the Institution of the Waqf and the Waqf Law in Kenya. It also narrates the appointment of the taskforce and its terms of reference and highlights the methodology used in the reviewing the Wakf commissioners Act of Kenya 1951 as guided by the Terms of Reference provided by the honorable Attorney General.

Chapter Two narrates the situation of the Waqf during the time of the Prophet and the status of the Wakf Institution during Islamic History and the current situation in other Islamic Jurisdiction. It further highlights the History of the Wakf in Kenya and the situation over the years. It give s highlight about the Wakf Properties being administered by the Wakf Commissioners of Kenya and the state of the leases and the income from those leases. In general due to defective leases, very little income in being realized from the Wakf properties in Mombasa, Lamu and Malindi.

Chapter Three gives details about the proposed Wakf policy. Suggesting innovative ways in which to administer the Wakf beyond the tradition approach which had been the case with the current wakf Law in Kenya.

Chapter Fours goes through the current Wakf Law, section by section and suggests areas for amendment, addition or deletion. The name is proposed for change from Wakf Commissioners of Kenya to Waqf Commission of Kenya. There is consensus about the use of “Waqf” and not “Wakf”, "Waakif" and not Wakf giver and “Auqaf” instead of “Waqfs”. The amendments also suggest drastic changes to the Law on the recruitment of a Chief executive officer, appointment of Professionals as Commissioners. The proposals contained in the proposed legal framework will improve the Administration of Wakf Properties and the Wakf Commissioners of Kenya

Chapter Five outlines the organisation framework of the proposed Waqf Commission with new functional areas and also 9 regional coordinators to cover the whole of Kenya. The proposals contained in this report should be adapted so as to reform the Wakf Commissioners of Kenya in line with modern realities and also with the Constitution of Kenya 2010.

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Acronyms

WCK: Wakf Commissioners of Kenya

S.A.W (prayers to Prophets Muhammad Peace be Upon Him in Arabic)

PBUH (Peace Be Upon Him) (prayers to Prophets Muhammad)

PBUT (Peace be Upon Them) Prayers to the Companions of the Prophet

AG: Attorney General

IT: Information Technology

GOK: Peace Be Upon Him

UAE: United Arab Emirates

Key Words

Wakf: An Arabic word meaning an Islamic endowment of property to be held in trust and used for a charitable or religious purpose.

Waqf: Same as Wakf. The use of the “q” is going to be adopted for the proposed Act and Policy because it reflects the correct pronouncement in Arabic.

Auqaf: This is the plural of Wakf or Waqf.

Waqfs: Same as Auqaf. In some cases this is written as the plural of Waqf in Arabic. The Taskforce agreed to use Auqaf

Waaqif: Refers to the person who gives of his property to Waqf

Mutawali: Refers to the Trustees appointed to administer Waqf Property

Ummah: Refers to Society or Community

Kadhi: a judge in a Muslim community, whose decisions are based on Islamic religious law. The Kadhi Courts are provided for the in the Constitution of Kenya 2010.

Zakat: Is a form of alms-giving treated in Islam as a religious obligation or tax, which, by Quranic ranking, is next after prayer (salat) in importance

Sharia: Sharia law, or Islamic law is the religious law forming part of the Islamic tradition. It is derived from the religious precepts of Islam, particularly the Quran and the Hadith.

Waqf Kheir: an Islamic endowment of property to be held in trust and used for the public.

Waqf Ahly: an Islamic endowment of property to be held in trust and used for the benefit of the family

1.0 Chapter One

1.1. Introduction

‘Waqf’ is an important Islamic institution, being the greatest sources of charity devoted for the overall development of the Muslim society. Traditionally it has been used to support various religious, educational, economic, social, and cultural programs in Islamic countries hence emerging as a vital institution in the Muslim society serving the purpose of maintaining various Islamic and social organizations as well as assisting poor individuals of the society leading to a significant reduction of poverty. Its origin dates back to the time of Prophet (peace be upon him) who himself practiced it and, upon his demise, a number of his companions followed him in this noble task. In the Ottoman Empire the institution of the Waqf played also a vital role to the extent that Ottoman sultans used it to provide basic and essential public services.

1.2 Waqf Law in Kenya

The current Waqf law in Kenya was assented to on 8th June 1951 and it is referred to as Wakf Commissioners Act (CAP 109). It provides for the appointment of Wakf Commissioners and prescribes their powers and duties. Its states that every Waqf made by or for the benefit of any Muslim shall be administered in accordance with the provisions of this Act.

1.3 Justification for Review

The Wakf Commissioners Act 1951 is an old law that is incapable of serving the current Muslim Ummah well. It is not aligned to the current constitution and has within it, terms and titles that are against the spirit of the Kenyan Constitution and contain in its language that segments the Muslim Ummah as it defines Muslims as Arabs, members of the twelve tribes, a Baluchi, a Somali, a Comoro islander, a Malagasy or a native of Africa of the muslim faith. This is clearly a law that was informed by the policies of the colonial era that categorized Kenyans based on race. It also still refers to the Provincial Commissioner, the Coast Province and the Governor of Kenya, titles and offices which no longer exist. The current structure and organization of the Wakf Commissioners of Kenya also fails to meet the expectations of the Muslim Community and the descendants of those who dedicated their properties to Waqf.

1.4 Appointment of the Taskforce to Review the Wakf Commissioners Act 1951

In a notice in the Kenya Gazette dated 26th October 2015 the Honorable Attorney General appointed a Taskforce to Review the Wakf Commissioners Act 1951. In carrying out this review the Taskforce is required to research, receive views from members of the public whether written or oral and also review previous reports on the Waqf properties. It is also required to compare with regional and international best practice.

1.5 The Taskforce Membership

Members appointed by the Honorable Attorney General are as follows:

1. Hamadi Iddi Boga (Prof) - Chairman
2. Juma Ngao
3. Zubeir Noor
4. Saad Yahya (Prof)
5. Sheikh Ibrahim Lethome
6. Mwanakitina Bakari
7. Abdallah Kheir (Dr)
8. The Chief Kadhi
9. Brenda Mutoka – Attorney General’s Office Joint Secretary

10. Jafred Maliro- Attorney General's Office, Joint Secretary

1.6 Terms of Reference for Taskforce

- (a) Review the legal, policy and Institutional framework for the Management of Wakf Commissioners of Kenya
- (b) Propose appropriate reforms to the legal, policy and Institutional Framework for the Wakf properties in Kenya
- (c) Propose appropriate amendments to various legal instruments with a view to strengthening the legal and Institutional framework for the management of Wakf Commissioners of Kenya
- (d) Consider and propose appropriate mechanisms for collaboration and cooperation among Institutions involved in the management of Wakf properties
- (e) Consider and propose appropriate mechanisms for the Management of Wakf Commissioners of Kenya in the devolved system of Government and in the Management of the properties and the Wakf Commissioners of Kenya
- (f) Identify international or regional best practices in the management of Wakf Commissioners of Kenya and Wakf Properties
- (g) Prepare a Report on the necessary legal, policy and Institutional framework for effective management of the Wakf Commissioners of Kenya and Wakf Properties
- (h) Carry out such other functions as maybe necessary or incidental to the forgoing.

1.7 Methodology

The Task force on the Wakf Commissioners of Kenya appointed by the Honorable attorney General held its first formal meeting on 20th February 2016. During the first meeting it was agreed that three committees be formed to help synthesize issues before their presentation to the Task force for consideration. Other methods used in collecting views and preparing the report are given in the sections below. Further the Committee held meetings and coopted resources persons as guided in the terms of reference contained in the gazette notice. The Committee has been regularly updating the Attorney General appraising him on the progress so far made. The Team received views from members of the public in written and in oral. The committee also benefited from a number of reports and publications regarding the issue of Wakf.

1.7.1 Formation of Committees

1.7.1.1 *Waqf Policy Committee*

- (a) Prof. Saad Yahya
- (b) Prof. Hamadi Iddi Boga

Terms of Reference

- (i) Review Current Government Policy and Practice on Administration of Waqf Properties
- (ii) Compare current Waqf Policy in Kenya with regional and international best practice
- (iii) Develop a draft policy for consideration by the task force

1.7.1.2 *Waqf Law Committee*

- a. Sheikh Ibrahim Lethome
- b. Dr Mwanakitina Bakari

Terms of Reference

- (i) Review the Wakf Commissioners Act 1951 in line with the Constitution and other related legislation
- (ii) Compare the Wakf Commissioners Act 1951 with other regional and international best practice with regards to the management and utilization of Waqf properties
- (iii) Develop Draft Zero of the Waqf Act

1.7.1.3 *Institutional Framework Committee*

- c. Dr Abdallah Kheri
- d. Zubeir Noor Hussein
- e. Sheikh Juma Ngao

Terms of Reference

- (i) Review the current institutional structure of the Wakf Commissioners and its interactions and collaboration with other organs e.g. Attorney General, Regional Commissioner, Chief Kadhi, Other Government Agencies, existing Aukaf and also other Islamic Institutions.
- (ii) Compare the Institutional Framework with regional and International Best Practice
- (iii) Propose improvements in the Institutional Framework taking into consideration transparency and accountability and creating checks and balances for effective administration of Waqf Properties

1.3 Literature Review

Different teams reviewed texts, laws, literature and studies that handle the Waqf issues from many sources. The literature served to highlight various Waqf regimes in the world especially in Turkey, Malaysia and India where the Institution is well established. The reference sources will be given at the end of this report or as foot notes.

1.4 Collection of views from the general public

The Taskforce begun its work and made appeals to the public and interested parties to make their submissions to the Taskforce in writing suggesting reviews to the policy, laws and Institutional framework for the administration of Waqf properties in Kenya. The public was informed about the taskforce and its objectives with the aim to have a law that complies with the constitution of Kenya 2010, international best practice, Islamic law and serving the best interests of those who give for Waqf and their beneficiaries. Interested parties were advised to get a copy of the Wakf Commissioners Act 1951 to familiarize themselves with the relevant law and to submit their views to the Secretariat in soft or hard copy. The views were to be addressed to **The Taskforce for Review the Wakf Commissioners Act, Office of the Attorney General and Department of Justice, P.O. Box 80366 Mombasa, 9th FLOOR, NSSF BUILDING NKURUMAH ROAD, MOMBASA, bmutoka@gmail.com**

1.5.2 Workshops and Consultative Meetings

1.5.2.1 Meeting with Jamia mosque committee

Task force Members held a consultative meeting with Jamia Mosque Committee. Jamia mosque committee were briefed on the mandate of the taskforce and invited to make submissions on the review of the Wakf Commissioners of Kenya Act 1951. Jamia Mosque offered to host the Nairobi stakeholder's public meeting, a meeting with the Muslim members of parliament and with the relevant committee of parliament.

1.7.2.3 Workshop organized with Umma University

On 24th May 2016, Umma University together with the Taskforce organized a workshop at Laico Regency Nairobi. The meeting was successful and was addressed by the Deputy Chief Kadhi (on behalf of the Chief Justice). The AGs Office was represented by Madam Eunice Sawe. Many Nairobi and Garissa based Muslim organizations were represented. A report for the meeting is being compiled.

1.7.2.4 Workshop organized with MEWA

On 28th May 2016 MEWA together with the Taskforce organized a meeting in Mombasa with stakeholders from Mombasa and Lamu. . Due to funding problems only Prof. Hamadi Boga, Dr Abdallah Kheir, Dr Mwanakitina Bakari and Zubeir Noor attended on the side of the Commission.

1.7.2.5 Workshop organized with Najah Centre in Malindi

The community in Malindi invited the Taskforce to Malindi on 31st of May 2016. A meeting was held at the Najah Islamic Centre. The Taskforce was represented by Prof. Saad Yahya, Ibrahim Lethome, Dr Abdallah Kheri and Zubeir Noor. Submissions were received from Muslims in Malindi and after conversations those who attended were requested to make any further submissions through the secretariat.

1.7.2.6 Bench marking with other countries

Due to financial constraints, international benchmarking was limited to literature information sourced from publications from various countries found online and websites of Waqf organizations, think tanks and Universities.

1.7.2.7 Analysis of Waqf Asset Portfolio

The team also had access to Wakf Commissioners of Kenya documents and was able to review the Waqf assets. Data was analysed and is presented as part of this report.

1.7.2.8 Interview of Key Informants

The team sought out and interviewed key informants who gave their insights into the administration of Waqf properties in Kenya.

1.7.3 Limitations

The work of the taskforce was constrained by obstacles placed by concerned parties, the long absence of the Wakf Commissioners of Kenya and resource limitations. This limited the taskforce's ability to cover the breadth of the country in collecting of views. Despite this, the taskforce is of the view that the ideas and proposals made in this report represent the views of the wider Muslim community

2.0 Chapter Two

2.1 Waqf in the time of the prophet (PBUH) and his companions (PBUT)

The concept of Waqf where property is dedicated for some charitable purposes existed since the pre-Islamic period and the Prophet, may peace and blessings of Allah be up on him, encouraged his companions to do charity work including making donations of property with continuous yields (sadaqatun-jaariya¹) for charitable purposes. Othman bin Affan bought a well for the use of the people of Medina. The concept remained the same during the entire period of Sahaba and during the era of the Umayyad until 13th century during the Abbasid dynasty when a graveyard Waqf was made in Palestine with the appointment of administrators making it an independent institution although with minimal government. It appears that there was mismanagement and encroachment of the Waqf property attracting criticism of jurists like al-Mawardi who advocated for its being placed under the walayatil madhalim, a parallel judicial institution charged with the responsibility of addressing injustice²s.

2.2 An overview of Waqf in the Islamic world

In the interest of learning from international good practice we have analysed Waqf administration methods and structures in six countries (Malaysia, Sudan, Mauritius, Kuwait, Indonesia and India), the selection being based on diversity in terms geography, size and Muslim majority/minority status. The detailed case studies are presented in Appendix A, while the highlights are summarized below.

2.2.1 Summary of lessons from international good practice

- The legal aspect is very important and must address the definition of Waqf and types of Waqf including for instance cash, real estate, or jewelry; temporary or permanent; management and development of Waqf, while pegging all these definitions to the sharia. Some countries include non –Muslims as donors or beneficiaries as long as the property/donation is allocated for charitable purposes. Whatever the case, it should not go into specifics of racial or tribal targeting as might happen in Kenya if no controls were put in place.
- The Waqf properties in most countries fall under a ministry of the state (especially in Islamic countries) though with some autonomy and independence. In most cases, there is a board with committees or a board with collectors for certain regions or individual Waqfs. Malaysia has 13 religious councils for 13 regions and 1 for the state. Kuwait has a central body with committees.
- Most countries have to decide on the school of thought to follow and there is some flexibility in some countries regarding e.g. a) permission to substitute property or sell an original Waqf property and replace it, b) owner changing his/her mind and revoking Waqf during their lifetime contrary to the perpetuity principle, c) flexibility in family Waqfs by specifying the number of generations to be beneficiaries, and d) spousal consent.
- In all countries it seems important and even mandatory that a comprehensive inventory is preserved, lost Waqfs should be repossessed. Also, a balance needs to be struck between preservation of Waqf properties and development as too much commercialization (putting financial gain as the main objective) may dilute the very essence of Waqf.

¹ Bukhari Hadith 38; Muslim Vol 5 Hadith No. 73 “when a person dies, his deeds stop except from 3 things (i) Sadakatu jaariya(ii) knowledge which is beneficial (iii) a pious child who prays for him and. Narrated by Bukhari and Muslim.

² Al Mawardi. Al Ahkamu al sultaniyya (The Book of Islamic Constitutional and Administrative Law)

- Professional training or expertise and training are always needed. In more developed Waqf countries, there are skilled personnel that contribute to the management and development of Waqf as an institution. Inclusion of the following personnel (either in committees /boards or by outsourcing) has proved to be beneficial: Islamic microfinance experts, shariah law experts, property managers/ project managers, staff with IT training.
- Development of Islamic finance has gone a long way in helping the development of Waqf properties. International ties and cooperation has helped those countries whose finance sector is still developing. Collaboration for research purposes is also beneficial.
- Transparency and accountability is important as seen in Mauritius, Sudan and Kuwait where annual audited accounts are expected. In some cases they are also held accountable for meeting attendance. However, this should go hand in hand with provision of incentives e.g. remuneration. Indonesia allows up to 10% of Waqf proceeds for this while Mauritius also has a guideline.
- Some autonomy is needed from the state to avoid undue interference although the state should be involved to supervise and set the policy/ legal/institutional framework in a supervisory role.
- Diverse projects have been undertaken and therefore the scope is wide. As such criteria should be set up as well as investment guidelines. There should be a balance between those Waqf set up purely for social benefit of the wider public and those that can increase income for further future benefit. This an important principle in the interest of sustainability.
- The central body should keep promoting /marketing the Waqf activities so as to attract more Waqfs. This is a lesson from which WCK could learn.
- Recent innovations include capital market instruments e.g. Waqf shares (Malaysia), and cash Waqfs for poverty alleviation through Islamic finance (Indonesia).
- Use of advanced technology for example in Malaysia where they have Information management systems, GIS (geographical information systems) and building information systems and other tools in data management systems.
- Most countries have the leeway to establish joint stock companies (through sale of shares) and corporations (Sudan, Indonesia) for the purpose of investing Waqf monies.

In general, the countries studied try to ensure that Waqf continues to benefit the wider community in terms of socio-economic status, eradication of poverty. One must keep in mind the bigger picture and not just the direct beneficiaries of a Waqf. After all, the more the beneficiaries, the better for the initial endower. Another important finding from the above is that the Waqf sector is modernizing fast and keeping abreast of innovations in finance, information and communications technology. Highly qualified personnel are needed to manage these processes and systems, and to attract them calls for competitive benefits in terms of working environments and remuneration. Administering a Waqf is wealth management in every sense of the word, the only variation being the boundaries imposed by sharia.

2.3 The Wakf Commissioners of Kenya and its work

A more detailed assessment of the composition, organizational structure and performance of WCK is given elsewhere in this report. For now the purpose is to identify those factors which have contributed to the diminution of WCK's assets portfolio and the organization's influence both in the society and in government. The heyday of Waqf in Kenya was the first half of the twentieth century, when not only were

new Waqfs being created and the benefits were visible, but that the institution was regarded with awe and respect. At its peak the Commission managed about 800 properties, a sizable figure considering it only operated in the former Coast Province. In recent years the Commission has become a pale shadow of its former self. So how did this decline come about? The causes are numerous, some self-inflicted. A former commissioner attributes the dwindling performance and revenues to the following factors among others:

- Continuation of outmoded management approaches inherited from the colonial government and dating back to the early twentieth century;
- Inadequate records, making it difficult for donor families and potential givers to track income and expenditure flows for each property;
- Failure to gain the support of professionals, business people and thought leaders who had the goodwill and could have helped to move the institution forward;
- Misuse and abuse of Waqf properties by tenants, who sublet the properties at a much higher rent without landlord's approval, which further erodes Commission revenues since they have no capacity to enforce lease conditions;
- Resentment and little faith among the public at large, which has affected the level of support and also "demoralized the personnel and even the commissioners to such an extent that any good done is met with negative reciprocation"³.
- Realization by givers or donors that there are alternative legitimate ways of creating endowments, e.g. through trust legislation; and by lessees and grabbers that the judicial system is not always sympathetic to the Waqf cause.
- Unwarranted demands by local authorities, e.g. the former Mombasa municipality, that WCK should pay rates for its properties, even though that is contrary to the exemption provisions in favour of charities as contained in section 27 of the Valuation for Rating Act. Paying the bills brought WCK to its knees. There is indeed a case for the minister responsible for property taxes to promulgate special rules under the act which are relevant to Waqf properties.

These developments have had two negative effects. First, the reluctance or hesitation on the part of donors to create new Waqfs, preferring instead to resort to the Trust Act, or at least to form private Waqfs outside the ambit of WCK. Secondly the extremely poor financial situation in the 1980s enabled greedy investors to take advantage of the situation and acquire prime properties which had to be leased out to save the properties from the auctioneer's hammer. Unfortunately NMK were in a weak negotiating position, and did not even get independent valuation advice. The lease terms were generally very disadvantageous to the commission, being typically a 99 year lease at throwaway rentals and no rent reviews. The repercussions are being felt today, when many properties are locked up in long leases at negligible rents and the commission lack the capacity to terminate the leases. Our analysis of the leased properties portfolio is summarized below.

2.4 WCK Portfolio of leased properties

A large number of Waqf properties are leased out to third parties in order to generate revenues. There is data for 264 leases as follows:

³ Shariff Hussein A. Hussein 2008. *Review and Improvements of Waqfs in Kenya* (mim).

Table 1: Summary of leases as retrieved from Wakf Commissioners of Kenya (2016)

Area	no. of leases	No. of owners
Mombasa	253	34
Lamu	11	3
Malindi		
Total	264	37

2.5 Prominent givers of Waqf

All the 264 properties are belong to 37 owners from both Mombasa and Lamu which gives an average of 7 properties per owner.

However, 71% of all properties are owned by 4 people as follows:

Table 2: List of properties which were given as Waqf and their givers

Owner/beneficiary	no. of properties
Requesh	14
Mwijabu	42
Gaf	47
Juma bin Abdalla	86
Total	189

2.6 Summary of Lessees from Waqf records

There are 139 tenants in total. The tenant with the most leases is Lira Investments renting 18 plots at a rent of Ksh1, 000/= per annum per plot. And 23 properties are rented to unspecified tenants while 3 properties are vacant and one is unrented.

Of the 264 properties, 4 are not leased out and therefore remain vacant.

Table 3: Data on status of lease properties

Status	No. of leases
Rented to named Lessee	241
Rented to unspecified Lessee	23
Vacant/unrented	4
Total	264

2.7 Lease Terms

The lease terms as per the data are as follows table 4a and b below

Table 4a: Data shows the length of lease periods

Term (years)	no. of properties	% of total
33	4	2
46	2	1
66	2	1
99	216	82%
unspecified	32	12%
Vacant	4	2%
Total	264	100%

Table 4b: Data on the period when leases were issued.

Date of commencement of lease	no. of leases
1910 – 1920	1
1921 – 1940	1
1941-1950	62
1951-1970	3
1971-1980	1
1981-1990	25
1991-2000	105
2001-2010	3
2011-2014	28
No date indicated	31
Vacant properties	4

In short,

- 82% of the leases granted are 99 year leases.
- The shortest leases were granted between 1976 – 1993
- The first lease was granted in 1913 while the latest in 2014.
- 28 leases of 99 years were granted between 2012 and 2014.

The spike in lease grants in the decade 1991 – 2000 is difficult to explain. It could be due to a policy or leadership change at the Commission level.

2.8 Expired Leases

The system of tracking lease expiry dates seems to be deficient:

- 19 properties do not have expiry dates indicated in the list but they might be available in the lease documents (if existing at all)
- The following 4 leases have already expired between 2009 – 2013 (Table 5)

Table 5: List of plots whose leases have expired.

PLOT NO.
151/I
73/XX
46/XX
172/XXI

- 3 leases expire in the next 5 years while 29 leases will expire after 2100.

This means that a substantial proportion of the portfolio is tied up in long leases at very low rents, much to the disadvantage of the Waqf beneficiaries. And when leases do expire there is no reliable machinery for negotiating extensions, repossession or finding another lessee.

Table 6: Data showing expiry dates for leases

Expiry date	no. of leases
2030-2050	66
2050-2100	128
After 2100	28

2.7 Rents receivable

Table 7 below shows a wide range of rent levels charged on Waqf properties. Of course a lot depends on the type, size, location of the property concerned, and when the lease was granted. Leases negotiated in the first half of the last century carry rentals which seem extremely low by today's standards; rent review clauses were non-existent, indeed unheard of, because inflation was not an issue. But for later leases especially those granted over the last four decades, rent review clauses would be the norm.

Whatever the case it would be difficult to justify the extremely low incomes received from the leased properties.

Table 7: Data on rent received from Waqf properties

Rent range Ksh per annum	no. of properties	Total rent
1- 1000/=	141	92,070/=
1,000 – 10,000/=	47	202,746/=
10,000-30,000/=	38	641,638/=
30,000-100,000/=	22	1,208,629/=
Over 100,000/=	7	1,080,650/=
TOTAL	255	3,225,733/=

- 30 properties at sh100 and below
- The rent of 4 properties has not been stated but this includes two leases which have not been renewed
- The highest rent is sh240,000/= per annum while the lowest rent is KSh 25/= per annum

2.8 General Issues affecting Waqf

The following general observations can be made about lease properties:

- There may be a challenge in getting tenants for vacant land. Ideally, there should be provision for marketing in order to get lessees at market rates. However one must weigh the cost and time taken to market against the advantage of quick tenancy/ occupation which guards against encroachment by squatters.
- The lease terms are too long (99 years) and it is not clear whether there are rent review clauses. The urban economy is dynamic and ever evolving and as such, the commission should consider leases terms of 33 years or 45 years at most, in order to take advantage of the changing urban landscape and prevailing market trends.
- Expired leases should be renewed in good time and at prevailing rates or the properties should revert to the owners lest controlled tenancies are created.

A leasing policy ought to be developed by the commission to provide a guideline for the property managers.

2.9 Information on Rented Properties

There are 42 rented properties on 18 plots each housing 1 – 4 flats/ shops or rooms.

The breakdown is as given in Table 8a.

Table 8a: Data Business renting on Waqf properties

User	No.	% of total properties
shops	12	29%
Flats	27	64%
House	2	5%
Hotel	1	2%
Total	42	

The total rent from all the properties is Ksh434,140/= per month broken down in Table 8b

Table 8b: Income from business renting on Waqf properties

User	Amount (Ksh)
Residential	276,740
Commercial	157,400

Therefore, commercial properties make up 31% of the portfolio and account for 36% of the total rental collections, which could be viewed as a low figure considering that commercial properties tend to command much hire rentals in the market.

The rent levels are as in Table 9

Table 9: Bands of rents with Waqf property

Range (Ksh)	no. of properties	% of total properties
0 – 1000/=	3	7%
1001- 10,000/=	22	52%
10,001- 20,000/-	15	36%
Above 20,000/=	2	5%
Total	42	

Half the properties have rentals of between 1- 10,000/= per month, while rents above sh20, 000 per month are rare.

3.0 Chapter Three

3.1 Draft Policy Framework

3.1.1 Background

The Attorney General's Office formed a Task Force in October 2015 to investigate the operations, structure and performance of the Wakf Commissioners of Kenya with a view to proposing such legislative and institutional reforms as may be necessary. The aim of this Chapter is to help the AG's Office to develop a policy framework to guide the Task Force's investigations and proposals. Since the Commissioners have a long history and tradition of serving the Muslim community in the face of numerous challenges, it is important that the socio-economic environment and administrative context in which they operate are well understood before any drastic measures are taken towards improving the public image, organization and performance of Waqf endowments in Kenya, especially as the core subject is the creation and management of assets, largely land-based, for the long term good of specified private and public beneficiaries.

3.1.2 What is Waqf?

Waqf means to bind the property, and therefore insulate it from the market. It is a trust for charitable purposes established under Islamic Law and is therefore often but not always tied up to purposes related to religion. Like in all other trusts the donor gives and the trustees take and then the purposes of the trust are identified and administered by the trustees. Through case law the four essentials of Waqf have been established as follows:

- It must be a final gift to charity;
- The donor must actually divest himself of his right in the property – this means that with respect to a Waqf there can never be anything like a resulting trust; they are supposed to divest themselves;
- It must be an irrevocable and absolute gift;
- It must be perpetual.

The last requirement may seem to offend the general rule against perpetuity in land legislation, but the Land Registration Act offers exceptions for purposes of Waqf.

With regard to the first essential – final gift to charity – the purpose can be any object which Islamic law would approve of and therefore the objects must fall within the Sharia. With regard to the second and third essentials this is a fundamental part of a Waqf a gift as it cannot be contingent. It must not only be an absolute gift but the donor must actually divest himself of the property. They cannot retain title to the property.

With regard to the fourth essential, a Waqf is a trust in perpetuity and even if the donor does not state that he gives his gift in perpetuity the law will deal with the gift as a perpetual trust.

The administration of a Waqf is by a person or persons called *Mutawalli*. Any person may be appointed a *Mutawalli* including the donor but he may not by reason of such appointment retain any right in the property.

3.1.3 Waqf purposes

A Waqf can be for any purpose not repugnant to Sharia. While family Waqfs (*Waqf Ahly*) are traditionally focused on protecting future generations from destitution and homelessness, public Waqfs (*Waqf Kheir*) are dedicated to public wellbeing by financing educational, public health, orphanages and related facilities and their running. As society changes and new needs arise it is important for Waqfs in Kenya to adapt to the times and support new types of purposes as discussed elsewhere in this paper.

3.1.4 Approach to preparation of the policy chapter

The preparation of this policy chapter is based on information and insights gained from a variety of sources, the main ones being:

- Documents from the Wakf Commissioners of Kenya (WCK)
- Research work done by scholars on Waqf practice in east Africa
- Relevant Kenyan legislation
- Discussions with selected Sharia scholars and Waqf beneficiaries
- Analysis of case studies of international good practice.

An important source of data is the consultative meeting sponsored by WCK in June 2015 in Mombasa and attended by Waqf administrators, beneficiaries, Islamic scholars and academics⁴.

3.1.5 Values and Principles

The preparation of a Waqf policy ought to be guided by the following principles:

- a) Strict observance of the basic purposes of Waqf as enshrined in Islamic law and consistency with generally accepted goals of Waqf;
- b) Respect for the traditions and customs of the various communities in which Waqf endowments are in use;
- c) Making the best use of Waqf assets and infrastructure for the benefit of the designated beneficiaries, be they individuals or groups;
- d) Using the best available methods and techniques by institutions entrusted with administering Waqf endowments, such that a professional and business-like approach forms the basis of all its operations and those of its affiliates.
- e) Reducing poverty, improving the social wellbeing and generally enhancing the living standards of beneficiaries in accordance with the will of the grantor;
- f) Creating a national footprint for the public institution responsible for administering Waqfs, thereby not only bringing its services to a wider clientele, but also expanding the scope of legitimate endowments and grants;
- g) Making it possible for the benefits of Waqf endowments to be extended to hitherto neglected purposes e.g. protection of refugees, displaced persons, the aged, children and disable citizens;

⁴ Report of the Retreat to Review the Wakf Commissioners Act held at Mombasa 13-14th June 2015.

- h) Contributing to the attainment of sustainable development goals.
- i) Being part of the international community of Waqf organisations, while at the same time contributing and learning from innovative practices and the best international thinking.

Finally Waqf endowments ought to be seen as an economic sector in its own right capable of making a significant contribution to national wealth and its growth in a compassionate and poor-friendly manner.

3.1.6 Place of Waqf in the National Policy Landscape

A century of Waqf legislation in Kenya, beginning with the first law in 1900⁵, can be attributed to not only the importance of the sector but also government commitment to lending a hand in addressing the challenges that would inevitably face a socio-religious enterprise with a strong economic underpinnings, and which also affects the daily lives of hundreds of thousands of citizens. The main object was good management practice and accountability to the beneficiaries, be they families or public institutions. That unwritten policy has evolved with the times. The present initiative is in that spirit, and that is why a quick scrutiny of the relevant policy environment was necessary.

3.1.6.1. *Waqf and Vision 2030*

Streamlining the administration of Waqf endowments will be in line with meeting the goals of Kenya Vision 2030. The Vision is the national long-term development policy that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030. It comprises three key pillars: Economic, Social and Political. The Social pillar aims to create a just and cohesive society which enjoys equitable social development in a clean and secure environment. Housing and urbanization, equity and poverty eradication are some of the key sectors of the social component which are in fact the very sectors that the Waqf reforms will concentrate on. This pillar seeks to engender just, cohesive and equitable social development in a clean and secure environment, while the Political Pillar aims to realize an issue-based, people-centered, result-oriented and accountable democratic system. The theme of the Second Medium Term Plan of Kenya Vision 2030 (2013-2017) is “Transforming Kenya: Pathway to Devolution, Socio-Economic Development, Equity and National Unity” and therefore, it is important that Waqf reforms should be in step with the collective journey on that path.

3.1.6.2. *National Land Policy*

Since the majority of Waqf assets are in the form of land and property, any changes in the national land policy could affect the operations of WCK. Fortunately the current national land policy published in 2009⁶ does not seem to have interfered with the status of Waqf assets. Key provisions of the policy include the creation of three categories of land (public, private and community land); formation of a National Land Commission; protection of land rights on the one hand while on the other giving a measure of relief to squatters who are threatened with eviction; and dealing with “issues requiring special intervention” (refugees, historical injustices, matrimonial property and informal settlements).

⁵The Wakf Commissioners Ordinance of 1900 is the precursor of more recent statutes.

⁶ Sessional Paper no. 3 of 2009

Land policy prescriptions were adopted almost entirely by the 2010 constitution⁷, and relevant legislation was subsequently passed in 2012, resulting in five statutes as follows:

- Land Act
- Land Registration Act
- National land Commission Act
- Environment and Land Court Act
- The Urban Areas and Cities Act
- Community Land Act

Unfortunately there is a general misconception that Waqf land is community land. It is in fact private property set aside by the owners for the purpose of benefiting specified families or public facilities, with the trustees (i.e. WCK in some cases) acting as managing agents. WCK does not own any property apart from what has been given to them by the government.

Some Waqf beneficiaries, especially those of Waqf Ahly complain that their properties have been let to tenants who pay pittance in terms of rent but have sublet at exorbitant rents to businesses, some illegal activities under Waqf laws, such as bars, night clubs, dubious lodges and gambling parlours. It is possible that WCK have been neither aware of nor able to prevent such transactions. One solution would be to create rules, as subsidiary legislation, under the Land Registration Act⁸ that prevent the Registrar from registering any transaction involving Waqf property without approval from WCK or the Mutawalli / trustees. To enable that it would be necessary to reconcile The Waqf Register with the Land Register, which is very easy now that both books have been or are about to be computerized. Waqf status should consistently appear as an encumbrance or inhibition in the Land Register. However this approach has its drawbacks, since it will make it easier for land grabbers to target Waqf properties.

Controls are also needed to prevent lessees redeveloping or changing the use of property without permission from Waqf beneficiaries and overseers. Not only do leases have to be better drafted but closer collaboration with local authorities – be they municipalities or counties – is essential. All the same, the recognition of Waqf land in the Land Registration Act⁹ is significant since it exempts Waqfs from the general rule that when land is transferred the transferee cannot be prevented from disposing of the land. In fact this is the only mention of Waqf that one can find in the current land legislation.

There is a strong case for criminalizing non-compliance with Waqf deed conditions and Waqf Law since such activities rob beneficiaries of their income or other tangible benefits such as education, good health or access to devotional rights.

3.1.6.3 Urbanisation and Housing

One Kenyan in three lives in an urban area. The proportion of the population living in towns in cities is increasing at 4.2% annually, which means it doubles every 16 years. The Waqf system can make a sizeable contribution to delivering requisite infrastructure targeting the poorer sections of the

⁷ Constitution of Kenya 2010 chapter 5

⁸ Section 110 of the Land Registration Act 2012 enables the Cabinet Secretary to make regulations on any matter “for the better carrying into effect of the provisions of this Act”. In so doing the CS is required to take into account the advice of the National Land Commission.

⁹ Section 41(3)

Muslim population, especially those in existing towns like Mombasa, Nairobi, Malindi, Garissa and so on; and of course in newly created settlements. The National Housing Policy (Sessional Paper 3 of 2004) was seen as a stepping stone towards better delivery of affordable housing to the majority of Kenyans. The policy is intended to address the deteriorating housing conditions countrywide and to bridge the shortfall in the national housing stock arising from demand far exceeding supply, particularly in urban areas. The shortage is manifested in overcrowding, poorly planned neighborhoods and uncontrolled growth of informal settlements especially in peri-urban areas. The policy aims at:

- Enabling the poor to access housing and basic services necessary for a healthy living environment especially in urban areas.
- Encouraging participatory approaches to slum upgrading, including income generating activities that effectively combat poverty.
- Promoting and funding research on the development of low cost building materials and construction techniques.
- Harmonising existing laws governing urban development and electric power to facilitate more cost effective housing development.
- Facilitating increased investment in housing by the formal and informal private sectors, and
- Creating a Housing Development Fund to be financed through budgetary allocations and financial support from development partners and other sources.

One of the key recommendations of The National Housing Survey 2014¹⁰ is about equitable utilization of residential land in urban and rural areas with particular attention being paid to the needs of underprivileged and homeless citizens: “Urban housing delivery should go beyond focusing on market forces, if we have to address the issue of slums and informal settlements.” The spirit of Waqf is consistent with national aspirations towards providing a decent home to every Kenyan family.

3.1.6.4 Financial markets

The growth of Islamic Banking and the Sharia-compliant investment market over the last decade augers well for the Waqf sector. In the past investment in new development and redevelopment of Waqf properties was constrained by scarcity of capital, since no interest-free loans were available. The situation has now changed and there is ample opportunity for Waqf administrators to access funds through one of the many channels available in Sharia compliant financing practice. Naturally controls will be needed to ensure prudent and responsible behavior and that Waqf assets are not exposed to undue risk. The same could be said about potential development partnerships where WCK manages prime developable land and wishes to cooperate with a developer for triple benefit (WCK/beneficiary/developer), while at the same time retaining custody of the property. A formula for sharing the benefits will need to be prescribed to ensure that Waqf beneficiaries get their due share of profits.

¹⁰ Kenya National Housing Survey 2014. The survey shows that outside the major towns, housing conditions in counties with a substantial proportion of Muslims are among the worst in the country. For example Tana River, Marsabit, Kilifi and Kwale are in that order the counties where most houses (more than half) are roofed in makuti or grass. Health and sanitation indicators show a similar trend.

Collaboration between Muslim Saccos and WCK will be mutually beneficial since they could pool resources to invest in affordable housing, small business ventures and other projects aimed at improving living conditions: “The vast potentials of the (third) sector is only now being realized by mainstream Islamic economics which had left the issues related to the sector largely to Sharia scholars giving fatwas. The affinity of the Muslim third sector with the conventional microfinance and cooperative sectors, which have recently received a big boost, may have something to do with this revival”¹¹.

The Muslim third sector is a good vehicle through which to integrate with the larger economy. That it operates more to the advantage of those at the bottom than those at the top of the income and wealth pyramid, is a significant plus point¹². Here is an opportunity for the Waqf sector in Kenya to prove its mettle. Emerging Sharia compliant products are beginning to appear in the Kenyan insurance market, while one can foresee access to the bond market as being not too distant. Both are opening new avenues for Waqf administrators to invest in and borrow from.

Traditionally charities have been excused from paying tax on income and imports, but implementation of this policy varies with the taxing authority. For instance while rating (property tax) legislation exempts charities, many municipalities insist on collecting rates from say educational institutions, hospitals and similar charities.

3.1.6.5 Basic Rights

The basic rights specified in chapter 4 of the 2010 constitution¹³ provide a basis for the ongoing review of policies and legislation relating to key social entitlements including education, health, personal and collective safety, as well as a clean environment, housing and economic advancement. Waqf administrators, like all property owners and service providers, are therefore responsible for making sure that their tenants and clientele are not subjected to breaches of the relevant constitutional rights. The implication is that Waqf properties must be maintained in a good and habitable condition; that personal safety is ensured; and that nuisances and polluting activities are adequately controlled to avoid exposing citizens to health hazards.

3.1.6.6 Participation and inclusion

Participation and inclusion are regarded as an inalienable right guaranteed by the national constitution, the implication being that the reformed WCK must ensure that relevant stakeholders are adequately involved and consulted when it comes to making important decisions. However that would and should not apply to routine operational matters.

The primary stakeholders are the respective Waqf beneficiaries, and it is important to be able to distinguish between what information needs to be shared with the whole community and what is specific to individual Waqfs. This raises the question whether the Waqf Register should be accessible to the public. In the interest of transparency, restricted access could be the solution, since otherwise Waqf assets could be exposed to fraudulent activities, much in the same way as a similar problem exists in the Land Registry.

¹¹ Mohamed Aslam Haneef “Preliminary Thoughts on Diagnosing Some Methodological Issues in Developing Islamic Economics”. Paper presented at a Workshop organized by the Islamic Economic Institute, King Abdul-Aziz University, Jeddah, Nov. 12-13 2012. The author is Director of the Center for Islamic Economics, International Islamic University of Malaysia.

¹² Ibid.

¹³ Especially articles 40, 42, 43, and 54-57.

The effort to protect the disabled and less fortunate members of the society ought to be reflected while promoting Waqf endowments. Indeed one of the main goals of such endowments is to enhance the wellbeing of kin and community. Therefore we should see more Waqfs being formed to benefit say disabled people, the elderly and the displaced. Street children are another category that really needs to benefit from Waqfs. But inclusion also means that such beneficiaries will be given a voice in the running of their facilities.

3.1.6.7 Leadership and integrity

The provisions of chapter 6 of the constitution are such that persons appointed to sit on a reformed WCK will need to be whiter than white. Invoking the constitution should really be unnecessary, since as Muslims they are expected anyway to meet certain standards of integrity and “uadilifu” in keeping with the teaching of the Quran¹⁴, especially as the institution they are in charge of has a religious foundation. Thorough scrutiny will be needed, in addition to the normal proof of educational achievement and social acceptability.

3.1.7 Policy Framework and Key Attention Areas

3.1.7.1 Givers and receivers

The general belief is that only very rich people can afford to create Waqfs. However the reality is that anyone with a durable asset like a house or agricultural plot can decide to dedicate the property to the welfare of relatives or the good of society at large. Efforts will therefore be made to expand the circle of givers. The Waqf Register maintained by WCK contains many instances where widows from humble backgrounds have donated buildings, farms, furniture and jewelry as Waqfs; as have of course business people, community leaders and wealthy landlords.

Waqf should not be made to defeat the law of succession or to avoid paying creditors. This should be made unlawful.

3.1.7.2 What is given: types of assets

It will also be the policy to widen the range of types of assets that can form the basis of Waqf to include not only immovable property but also chattels (goods) and financial assets (e.g. cash, stocks in acceptable companies and so on), works of art, books and similar movables.

Unclaimed assets held by the Public Trustee or Unclaimed Assets Authority which belonged Muslim should be transferred to the Waqf Commission.

3.1.7.3 Waqf deeds and documentation

For any Waqf, the basic document is the Waqf deed, whose structure can be very simple as long as it spells out the main ingredients, i.e. giver, receiver, purpose, property, duration, witnesses and Mutawalli/trustee(s). In the interest of certainty and clarity the giver can use the services of a Sharia scholar, Kadhi or lawyer, but he could also do it himself if he so wished. In order to make the process of creating new Waqfs much easier the use of a standard official format, verification procedure (to prevent one giving under duress) and registration will be required.

¹⁴ Quran 23: Verses 8, 10-11

3.1.7.4 Protection and Recovery of Waqf Property

Waqf property should insulated from compulsory acquisition as much as possible. Where Waqf property has to give way to a road or other Government project, compensations should be in the form of Land or some other property that would continue to yield income to support the Waqf in perpetuity. If cash is given then it should be used to acquire property to be administered as wished by the waqif.

Registration of any transaction involving Waqf properties must be approved by the Wakf Commissioners or Trustees. Sub-leasing of Waqf properties should only be done with permission of Wakf Commissioners and beneficiaries. For the protection of Waqf property, Waqf properties should always appear as an encumbrance in the register. Change of use of Waqf property by lessee must also be approved by the Wakf Commissioners. The following issues regarding protection of Waqf properties need serious consideration.

- Any abuse of Waqf properties should be deemed a criminal offence and should attract a heavy penalty.
- Where Waqf assets were illegally transferred, the Waqf Commission should have the powers to recover the property.

The Land Registrar will be required to ensure that no Waqf property is transferred illegally, and that adequate procedures are put in place to facilitate cooperation between WCK and the Chief Lands Registrar and the National Land Commission.

The Waqf properties should have powers to recover Waqf properties which were illegally acquired by a third party.

For properties where the Waqf was given verbally and handed down through oral tradition, verification committees and documentation to secure the properties for posterity would be constituted

3.1.7.5 Viability of Waqf properties

Where a Waqf property is deemed no longer viable the Commission or beneficiaries may apply to the Courts to have it declared so. The Commissioners, administrators or beneficiaries may propose alternative beneficial use, development or investments that would make the Waqf property viable

3.1.7.6 Purposes old and new

The traditional purpose of public Waqfs (Waqf Ahly) is to provide for family (including oneself) and one's descendants after death. This is a motive which will not only be supported but also expanded to make it possible, where the giver so desires, for the deed to specify that the proceeds of Waqf property should be devoted to say educating grand children or girls, or providing medical expenses for descendants, or such similar specific benefit.

In the case of family Waqfs (Waqf Kheir), it has traditionally focused on schools, colleges, places of worship, hospitals, old people's sanctuaries and wayfarers' homes (hostels), all of which are still valid purposes. But it is also necessary to create new uses (and revive forgotten ones) as a result of present day social and economic demands, including:

- Facilities for displaced persons
- Recreational facilities like public open spaces, play grounds and youth clubs
- Social halls, meeting venues for young people; exhibition centres

- Specialized hospitals
- Neighbourhood/community libraries, innovation centers and open data hubs
- Initiatives that will empower the poor; enable the disabled; create jobs for the youth; enhance creative and managerial skills and help keep young people away from crime and extremism
- Micro-infrastructure projects like boreholes and renewable energy systems
- Research activities, especially in the sciences; this need not necessarily be an expensive venture, since a research grant programmed involving relatively small amounts could go a long way to enhancing research capacity in the country and generating new knowledge
- Rehabilitation centres for ex-prisoners, substance abusers and abused young girls.

So the potential purposes and uses of Waqf endowments are diverse. But there are also uses which need to be discouraged or even prohibited. Waqfs with a political motive will not be allowed. And those with potentially divisive and socially disruptive motives will need to be carefully scrutinized before registration. Another perfectly valid purpose which ought to be discouraged is the erection of ostentatious mausoleums.

3.1.7.7 National outlook and regional representation

Although for historical reasons the mandate of the WCK is limited to the coastal region and its definition of a Muslim is very narrow, there are Waqfs all over the country, especially in those counties with large concentration of Muslims. For example most mosques and cemeteries as well as numerous madrasa schools are maintained by income earned from properties donated specifically for the purpose. Such Waqfs are managed by trustees under a variety of laws, depending on the particular situation, e.g. as trusts, societies, family groups, community groups, cooperatives and so on. For example a housing estate developed by a Sacco could have a mosque and madras on site which is run by a committee as part of the Sacco, or a similar situation may be found in the precincts of a college. The point is that there will arise many situations where the administrators want to register such assets as statutory Waqfs in the interest of sustainability and ease of administration. The key to attracting the creation of new Waqf assets seems to lie in ease of entry, efficient and reliable management, transparency and access to advisory technical services. An inventory of all existing and potential Waqfs in the country will be prepared to set the stage for a WCK with a national face.

Demographic trends are such that the Muslim population is increasing at about the same rate as the national increase¹⁵. Large scale migration to urban areas, especially the larger and medium sized cities, has resulted not only in the emergence of Muslim majority neighborhoods but also phenomenal growth in Muslim held assets and businesses; and very important in the present context, the creation of endowments in favour of religious, educational and health facilities. Many of these facilities are doing well even without WCK assistance. The ownership is in the hands of the founder, which could be an individual or a corporate entity. The owners will not flock to the WCK unless they can see a significant improvement in performance and clear benefits resulting from their joining.

¹⁵ It is difficult to get precise statistics since the last two national censuses carry contested data when it comes to counties in the north-east of the country. Affected communities and researchers have found verification to be difficult because of the inability to access ward and enumeration area level data.

3.1.7.8 Property redevelopment and use changes

Development of peri-urban land and redevelopment of urban properties will be allowed in special circumstances, the main considerations being:

- Observance of Waqf deed intentions
- Compliance with Sharia and national laws
- Improved benefits to recipient families or institutions
- Concurrence of beneficiaries.

For major projects that are likely to make significant changes to the use or character of the property, it will be necessary to obtain court approval.

3.1.7.9 Institutional and financial reforms

Improvements to Waqf management will include strict rules on professional standards for managing Waqf assets, auditing procedures, ceilings on administrative expenses and remuneration to trustees, and investment and borrowing guidelines. The current powers of the Commissioners will be strengthened, e.g. the power to take over a Waqf on application and consent of trustees and beneficiaries; to take over the administration of a Waqf which is poorly administered; to sanction contracts involving transfer of property by way of lease or alienation; and to take over from the Public Trustee unclaimed property of deceased Muslims and to manage the same as if it were Waqf.

Performance benchmarks will be established. The reformed WCK will have the following basic features,

- Handful of Commissioners, preferably not more than seven members and including some women; the commissioners will not be full-time time appointees
- Highly qualified and competent secretariat with supporting staff
- Five regional offices to serve citizens in the Coast region, Central, North-east, Rift Valley and Western Kenya.

Details of powers and responsibilities will be specified in legislation.

3.1.8 Policy Implementation

Successful implementation of a national Waqf policy embracing the above approach will depend largely on the following steps being taken.

3.1.9 Inclusive approach

An open and transparent approach to reforms involving all stakeholders is necessary as required by the Constitution of Kenya 2010 especially as in the past there have been complaints that not only the Muslim community, and even beneficiary families and facilities, have not been consulted when important decisions are made by WCK. Most Muslims who would be potential givers or beneficiaries do not have much knowledge of information about the Wakf Commissioners of Kenya. The Commission should therefore be mandated to conduct awareness campaigns and civic education among potential givers and beneficiaries on a continuous basis.

3.1.10 Legislative reforms

Waqf legislation needs to be rewritten. In the interest of speed it would be desirable for the Task Group to prepare an initial draft for discussion with community leaders, WCK and scholars before it is polished

by the AG's Office. The substantive bill will be supplemented by drafts of subsidiary legislation and proposed amendments to other statutes as may be necessary. More details are given chapter 4 and 5 of this report.

3.1.11 Capacity building

Professionalizing Waqf management will need a competent corps of professionals to steer the reformed WCK through the first few years before it finds its new feet, not only at the trustee/board level but also in the lower echelons of the Waqf community. Once the systems and routines have been established it will be easier to decentralize the functions to regional offices.

Qualified personnel will be needed in various disciplines, including law (both shariah and secular), finance, property asset management and administration. As the portfolio grows it may be necessary to employ a small technical wing focusing on preventive maintenance.

A recruitment and training programme will be developed so as to:

- a) Ensure a sustainable pool of human resources is available,
- b) Raise awareness of Waqf benefits and issues among Muslim communities and
- c) Improve management skills among private trustees/Mutawalli whose endowments do not come directly under WCK.

Improved leadership and management will enhance the commission's credibility and influence in government, community and business circles.

3.1.12 Improving facilities and systems

Since it is the aim of this policy to raise the standards of Waqf management to the highest levels of productivity, accountability and transparency, adequate resources will be invested in capacity building and supporting facilities. The cost will be shared by proceeds from Waqf assets, donations from well wishers and where possible **allocations from the national budget through the AG's Office.**

3.1.13 Giving teeth to Waqf administrators

One of the problems in the existing system is the inability to effectively enforce violations of Waqf law and related administrative rules. A new system of enforcing will be installed include efficient oversight (e.g. of assets use and transfers) by trained personnel and stiff penalties for non-compliance as prescribed in the law or lease agreements. This will be accompanied by a training and advisory service to help users appreciate respective rights and responsibilities.

3.1.14 The Role of the Kadhi's Courts

According to the Constitution, the Kadhi's courts Article *"The jurisdiction of a Kadhi's court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts"*. Any disagreements dealing with the Waqf matters should be adjudicated by the Kadhi's Courts. As a result the Kadhi as a neutral arbiter should not be a Commissioner in the Waqf Commission.

Conclusion

Waqf endowments have done much to enrich and improve the lives of Kenyans. The problems currently being experienced at the government, community and individual levels when it comes to Waqf administration are not insoluble. With a well-considered and articulated policy backed by adequate legislation rooted in both Sharia and constitutional principles, and an adequately resourced administrative infrastructure, it should be possible to rebuild the nation's trust in Waqf as a devotional and economic ethic or tool worthy of continued national support.

Chapter Four

A Legal framework for the Administration of Waqf Properties in Kenya

The team reviewing the Wakf Commissioners Act of Kenya identified many areas that need to be amended to accord with the Kenya Constitution 2010, to give the proposed Waqf Commission more operation capability and autonomy and to advance transparency and accountability. The proposed amendments are listed below in a tabulated manner showing the section of the act being amended, the proposed amendment and the justification for the same.

Summary of proposed changes in Wakf Commissioners Act of Kenya 1951

CAP.109	PROPOSED AMENDMENTS	JUSTIFICATION
TITLE: WAKF COMMISSIONERS ACT CHAPTER 109	<i>The Wakf Act</i>	-It is an Act for the establishment of the institution of Wakf and not the members(commissioners) “Wakf” is the correct transliteration of the Arabic word "وقف"
An Act of Parliament to make better provision for the appointment of Wakf Commissioners, to prescribe their powers and duties and to amend the law relating to Wakf property	<i>An Act of Parliament to provide for the establishment of the Wakf commission, appointment of commissioners, their powers and duties and management of Wakf property as prescribed in the act</i>	The proposed amendment more accurately captures the intention of the legislation.
Section 1 Short title and application This Act may be cited as the Wakf Commissioners Act and shall apply to such Areas as the Minister may, by notice in the Gazette, direct.	<i>This act may be cited as the Wakf Act, and shall apply to the entire Republic of Kenya</i>	It should not be limited to parts of the country. Muslims are found in different parts of the country and the institution of Wakf is intended to benefit all.
Section 2 Interpretation In this Act, except where the context otherwise requires— “commissioner” means a member of the Wakf Commissioners appointed	In the Interpretation include the following -“Chief Executive Officer” means the chief executive officer of the Wakf Commission recruited under section 9 of the Act.	In the proposed structure of the commission, the secretariat will be headed by a chief executive officer and not the secretary.

<p>under section 6; “Muslim” means an Arab, a member of the Twelve Tribes, a Baluchi, a Somali, a Comoro Islander, a Malagasy or a native of Africa, of the Muslim faith; “trustee” includes any person, whether alone or jointly with another, in control of any property the subject of a Wakf or in receipt of any rents or profits thereof; “Wakf” means the religious, charitable or benevolent endowment or dedication of any property in accordance with Muslim law; “Wakf Ahli” means a Wakf made for the benefit of an individual or family, or for the performance of rites or ceremonies recognised by Muslim law as being for the benefit of the soul of an individual (including the dedicator) or of the souls of the members of a family; “Wakf Commissioners” means the Wakf Commissioners of Kenya constituted under section 6; “Wakf Khairi” means a Wakf, other than a Wakf Ahli, made for any religious, charitable or benevolent public purpose recognised by Muslim law, including the provision and upkeep of cemeteries and burial grounds</p>	<p>“Commissioner” means a member of the “Wakf Commission” as appointed under section 6 of the Act.</p> <p>-“General administration fund” means funds to be used for general administration and management of the Wakf.</p> <p>“Maintenance and reserve fund” means the fund used for preservation and maintenance of Wakf property.</p> <p>“Muslim” is any person who professes Islam.</p> <p>“Wakf” instead of “Wakf” “Surplus funds” refers to a special account in which funds from unclaimed property, surplus monies after maintenance, monies from Wakf where the intention of the Waaqif are unlawful, unascertainable, incapable of being effected or beneficiaries are unascertainable is deposited.</p> <p>In the definition of “trustee” delete “in control” and replace with “administering”</p> <p>“Waaqif” means a person who endows his property or cash for religious charity. In the definition of “Wakf” replace “Wakf” with “Wakf” and replace “Muslim law” with “Islamic law”. The plural “Wakf” is “Auqaf”</p>	<p>See justification for “Wakf” above.</p> <p>The fund has been severally referred to in the Act but not defined to distinguish it from other funds therein.</p> <p>(Refer above)</p> <p>Muslim -The current definition of Muslim in the Act is not inclusive as it leaves out Muslims who do not belong to the listed groups.</p> <p>Refer to justification above.</p> <p>“Administering” better captures the role of the Wakf Commission.</p> <p>For consistence the transliteration of a Wakf is called “Waaqif” For “Wakf” see above.</p> <p>Muslim law does not exist.</p>
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	<p>“Wakf Ahli” replace “Muslim law” with “Islamic law”</p> <p>“Wakf Commission” means the Wakf Commission as constituted under section 6</p> <p>Under definition of “Wakf Khairi”, replace “Wakf” with “Wakf”, delete “other than Wakf Ahli”, replace “Muslim law” with “Islamic law” and delete “including the provision and upkeep of cemeteries and burial grounds”</p>	<p>The plural of “Wakf” is not “Wakfs” but “Auqaf” See above</p> <p>We are defining the institution i.e the Commission and not the members of the commission.</p> <p>For “Wakf” and “Islamic law” refer above. “Other than Wakf Ahli” serves no purpose. “Including the provision and upkeep of cemeteries and burial grounds” the list cannot be exhaustive of benevolent public charities so it is more prudent not to list.</p>
<p>Section 3. All Wakfs to be administered in accordance with this Act Every Wakf made by or for the benefit of any Muslim shall be administered in accordance with the provisions of this Act: Provided that any person professing Islam who is not a Muslim within the meaning of section 2 may appoint the Wakf Commissioners to be the trustee of any property the subject of a Wakf made by that person, and in every such case the Wakf Commissioners shall act as trustee thereof and the property shall be Administered in accordance with this Act.</p>	<p>Replace “Wakfs” with “Auqaf” ... Replace “Wakf” with “Wakf”</p> <p>Delete the proviso</p>	<p>Refer above.</p> <p>Refer above</p> <p>The proviso is redundant after amending the definition of “a Muslim”</p>
<p>Section 4. Validation of Wakfs</p>	<p>Validation of “Auqaf” Delete “for any of the following purposes”</p>	<p>For “Auqaf” see above (i.e. the plural of “Waqf”) “For any of the following purposes”. It serves no</p>

<p>(1) Every Wakf heretofore or hereafter made by any Muslim which is made, either wholly or partly, for any of the following purposes, that is to say:</p> <p>(a) for the benefit, either wholly or partly, of the family, children, descendants or kindred of the maker or of any other person; or</p> <p>(b) if the maker of the Wakf is an Ibathi or Hanafi Mohammedan, for his own maintenance and support during his lifetime, is declared to be a valid Wakf if—</p> <p>(i) it is in every other respect made in accordance with Muslim law; and</p> <p>(ii) the ultimate benefit in the property the subject of the Wakf is expressly, or, in any case in which the personal law of the person making the Wakf so permits, impliedly, reserved for the poor or for any other purpose recognised by Muslim law as a religious, pious or charitable purpose of a permanent character: Provided that the absence of any reservation of the ultimate benefit in property the subject of a Wakf for the poor or any other purpose recognised by Muslim law as a religious, pious or charitable purpose of a permanent character shall not invalidate the Wakf if the personal law of the maker of the Wakf does not require any such reservation.</p>	<p>4(1) replace “maker” with “Waaqif” Delete “4(1) (b). Under 4(1)(i) replace “Muslim law” with “Islamic law” Under 4(1)(ii) replace “Wakf” with “Waqf” and “Muslim law” with “Islamic law” Under the proviso replace “Muslim law” with “Islamic law” 4(2) replace “Wakf” with “Waqf” and replace “the maker” with “the Waaqif”. Delete “of the “Wakf”</p> <p>4(2) Replace “Wakf” with “Waqf” and “maker” with “Waaqif”</p>	<p>purpose after deleting Section 4(1) (b). “Waaqif” see above. For “Islamic law” and “Wakf” see above.</p>
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<p>(2) No Wakf to which subsection (1) applies shall be invalid merely because the benefit in the property reserved by the Wakf for the poor or any religious, pious or charitable purpose is not to take effect until after the extinction of the family, children, descendants or kindred of the maker of the Wakf.</p>		
Section 5		
<p>Section 6 Constitution of Wakf Commissioners (1) There is hereby constituted a body to be known as the Wakf Commissioners of Kenya, which shall consist of eight persons, of whom— (a) one shall be the Provincial Commissioner of the Coast Province, who shall be <i>ex officio</i> a member; (b) one shall be the Chief Kadhi, who shall be <i>ex officio</i> a member; (c) one shall be a Muslim appointed by the Minister on the nomination of the Provincial Commissioner of the Coast Province; and (d) five shall be Muslims appointed by the Governor from a panel of names submitted by the Provincial Commissioner of the Coast Province after taking into consideration Muslim opinion in relation thereto. (2) Every commissioner appointed under paragraph (c) or paragraph (d) of subsection (1) shall hold office for a period of three years</p>	<p>6(1) Replace “Wakf commissioners” with “Waqf Commission”.</p> <p>6(1) Replace “eight” with “nine”</p> <p>Delete section 6(1)(a)-(d)</p> <p>Delete “of whom” and replace with “representing the following :”</p> <ul style="list-style-type: none"> a) -Architect/engineer b) Accountant / economist c) -Lawyer d) -Sharia scholar e) -Representative of SUPKEM* f) -Representative of the Wakf owners. g) -Administrator h) -Town planning i) -Representative of the Office of the Attorney General <p>Provided that they satisfy the following conditions:-</p>	<p>The Act establishes the institution known as the “Waqf commission”</p> <p>“Nine “an odd number preferred in case of a tie. Further, nine is within limits envisaged by the Constitution of Kenya.(See article 250(1). This number can also take care of regional representation ...ie divide the country into nine regions in line with the administrative regions that we have today.</p> <p>Chief Kadhi- is a judicial officer and it is envisaged that disputes pertaining to Wakf shall be brought before him for arbitration and thus a conflict of interest (refer to the proposed new section----- below).</p> <p>We are proposing qualification and criteria for appointment of commissioners which is a departure from the current Act.</p>

<p>unless he sooner resigns or, for good cause, is removed by the Minister, but shall be eligible for reappointment.</p> <p>(3) Any vacancy among the commissioners appointed under paragraphs (c) and (d) of subsection (1) shall be filled by some person appointed by the Minister in the same manner as the person whose vacancy is to be filled was appointed.</p>	<ul style="list-style-type: none"> a) Must be a Muslim b) A holder of a degree from a recognized university c) Satisfies chapter six of The Constitution of Kenya. <p>6(2) the composition of the commission shall consider the following:-</p> <ul style="list-style-type: none"> i. Persons with disability ii. Youth iii. The two third gender balance rule as per The Constitution of Kenya. <p>6(3) replace “he” with “she/he” and delete “by the Minister” and add “one more term” after reappointment</p> <p>New section 6(4) delete paragraph “(c) and (d)” and replace with “this section” and delete “some” and replace with “a” Delete “by the Minister”</p> <p>Add new section 6(5) “ The commissioners shall be appointed by a selection panel to constituted for this purpose by the Attorney General in consultation with representatives of the Muslim community”. The selection panel aforesaid shall:- (i)Advertise</p>	<p>This is in response to views expressed by many Muslims and the need to tap from the different skills/professions which will help in running the commission more effectively.</p> <p>a) Waqf- is an Islamic religious institutions and only those who profess the religion may fully appreciate its reality.</p> <p>b) - Need for knowledgeable and well educated commissioners to manage the institution.</p> <p>C) This is an institution holding property and funds in trust, hence the need to have people of integrity.</p> <p>Requirement to be Muslim because this is an Islamic religious institution.</p> <p>The institution must be run by professionals. They are many qualified Muslims.</p> <p>Since this is a public institution, those entrusted with its management must be comply with the constitution.</p> <p>Affirmative action for inclusivity and compliance with the constitution.</p>
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	<p>(ii)Shortlist (iii)Interview (iv)Forward the names of the successful candidate for appointment.</p> <p>Provided that:</p> <p>(i) The Chief Kadhi or any Kadhi shall not be appointed in the selection panel.</p> <p>(ii) Once the commission is duly constituted the selection panel shall stand dissolved.</p> <p>6(2) delete “by the minister” and replace with “in accordance with rules made by the commission as provided for under section 26 of the Act.</p>	<p>Gender sensitivity and affirmative action to include the women.</p> <p>Requirement to be a Muslim is already provided for under the proposed amendments in section 6(1) above.</p> <p>By the Attorney General consulting with Muslim community, they will feel involved and own the process. Further there is more transparency in the process.</p>
<p>Section 7 Commissioners to be a body corporate with a common seal (1) The Wakf Commissioners shall be a body corporate having perpetual succession and a common seal, and shall have all the powers, functions and duties conferred and imposed by this Act. (2) The Wakf Commissioners may sue and be sued in its corporate name, and may for all purposes be described by that name. (3) The seal of the Wakf Commissioners (Cap. 47) shall be authenticated by the</p>	<p>7(1) delete “Wakf” and replace with “Waqf Commission” 7(2) delete “Wakf Commissioners” and replace with “ Waqf Commission’ 7(3) delete “Wakf commissioners” and replace with “Waqf Commission” 7(3)* 7(4) delete “Wakf Commissioners” and replace with “Waqf commission” Sectary*</p>	<p>See above</p>

<p>signature of the chairman, or a commissioner authorised to act in that behalf, and the secretary, and the seal shall be officially and judicially noticed.</p> <p>(4) All documents, other than those required by law to be under seal, made by, and all decisions of, the Wakf Commissioners may be signified under the hand of</p>		
<p>Section 8. Chairman and quorum</p> <p>(1) At the first meeting held in each year the Wakf Commissioners shall elect a prominent Muslim from among their members to be the chairman for the ensuing year.</p> <p>(2) The chairman shall preside over all meetings of the Wakf Commissioners at which he is present, and in his absence from any meeting the commissioners present shall elect a commissioner to preside over the meeting.</p> <p>(3) A quorum of the Wakf Commissioners shall be three of whom one shall be an <i>ex officio</i> member.</p>	<p>8(1) Replace “Wakf commissioners” with “Waqf commission”</p> <p>Delete “prominent Muslim from among the” and replace with “one”</p> <p>8(2) delete “Wakf commissioners” and replace with “Waqf commission” replace “he” and replace with “she/he”, replace “his” with “hers/his”</p> <p>8(3) Replace “Wakf Commissioners” with “Waqf commission”, delete “three” and replace with “five”</p> <p>The requirement for ex-officio member to be present should be dropped</p>	<p>See above.</p> <p>“Prominent Muslim” serves no purpose after the proposed amendment to section 6 above.</p> <p>The proposed number of commissioners is nine. For more accountability, checks and balance, five is reasonable and prudent</p> <p>Ex-officio member have at times not been available holding back the work of the Commission</p>
<p>Section 9 Secretary, officers and servants</p> <p>The Wakf Commissioners may, upon such terms and conditions as they may think fit, employ a secretary, who shall hold a professional qualification as an accountant or a secretary, and such other officers and servants as may be deemed</p>	<p>Replace “Wakf commissioners” with “Waqf commission”</p> <p>Replace “a secretary” with “a chief executive officer”, replace “a secretary” with “an administrator”</p> <p>delete “servant” and replace with “support staff” replace</p>	<p>See above</p> <p>The “chief executive officer” better captures the envisaged role of the head of the secretariat of the Wakf Commission.</p> <p>Servant is derogatory</p> <p>See above</p>

<p>requisite for the proper administration of the affairs of the Wakf Commissioners, and may dismiss any person so employed.</p>	<p>“Wakf commissioners” with “Waqf commission”</p>	
	<p>Introduce a new section 9A “the secretariat of the Wakf Commission shall be in Mombasa but the commission may establish branches in other parts of the country as and when deemed necessary</p>	
<p>Section 10 Register of Wakf property (1) The Wakf Commissioners shall keep, in such form and containing such Particulars as may be prescribed, a register of all property the subject of a Wakf. (2) Every trustee of property the subject of a Wakf shall, within two months from the date of the making of the Wakf, apply to the Wakf Commissioners to register it; and every application shall be in such form and shall contain such particulars and be accompanied by such fee as may be prescribed. (3) All fees for the registration of property the subject of a Wakf shall be credited by the Wakf Commissioners to a fund to be known as the general administration fund. (4) Any trustee who fails to comply with the provisions of subsection (2) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months.</p>	<p>10 (1) Replace “Wakf commissioners” with “Waqf commission” Replace “Wakf” with “Waqf” Replace “Wakf” with “Waqf” 10(2) Replace “Wakf” with “Waqf” Replace “Wakf commissioners” with “Waqf commission” 10(3) Replace “Wakf” with “Wakf” Replace “Wakf commissioners” with “Waqf commission” 10(4) replace “two thousand” with “twenty thousand”</p>	<p>For “Wakf” in place of “Wakf” “Wakf Commission” in place of “Wakf Commissioners” see justification above.</p> <p>“Two Thousand shillings” 60 years ago might have been deterrent but not anymore. Twenty thousand is more reasonable today.</p>

<p>Section 11</p> <p>Commissioners may take over administration of Wakfs upon application</p> <p>On the application—</p> <p>(a) in the case of Wakf Khairi, of the trustee or trustees, as the case may be, of the Wakf; and</p> <p>(b) in the case of Wakf Ahli, of the trustee or trustees, as the case may be, with the consent of the majority of the beneficiaries of the Wakf,</p> <p>the Wakf Commissioners may take over, subject to such conditions as may be imposed by the Wakf Commissioners, the administration of the property the subject of the Wakf and that property shall thenceforth vest in the Wakf Commissioners.</p>	<p>11(a) Replace “Wakf” with “Waqf”</p> <p>11(b) Replace “Wakf” with “Waqf”</p> <p>Replace “Wakf commissioners” with “Waqf commission”</p>	<p>See justification above.</p>
<p>Section 12</p> <p>12. Commissioners may take over administration of Wakfs which are being conducted in an improper or unauthorized manner</p> <p>(1) In any case in which it appears to the Commissioners that—</p> <p>(a) there is no properly constituted trustee of a Wakf; or</p> <p>(b) any trustee is acting in an improper or unauthorized manner,</p> <p>the Wakf Commissioners may, in the case of Wakf Khairi of their own motion, and</p>	<p>12(1) “Wakf commissioners” with “Waqf commission”</p> <p>Replace “Wakf” with “Waqf”</p> <p>Replace “Wakf” with “Waqf”</p> <p>12(2) Replace “Wakf” with “Waqf”</p> <p>“Wakf commissioners” with “Waqf commission”</p> <p>12(3) “Wakf commissioners” with “Waqf commission”</p> <p>Add “s” to “find”</p> <p>Add a new subsection 3 “in the case of both private and public Auqaaf the trustee shall be required to furnish the commission with a list of all persons having interest and beneficiaries together with their last known addresses</p>	<p>See justification above</p> <p>This new subsection (3) is intended to ensure more prudence on the part of the Commission in ensuring as possible no stake holders left out on one hand and lock out non-stakeholders or persons who may not have any locus</p>

<p>in the case of Wakf Ahli on the motion of the majority of the beneficiaries, hold an inquiry.</p> <p>(2) Written notice of such an inquiry shall be given to all persons having any interest in the Wakf, and these persons shall by that notice be invited to appear and give evidence before the Wakf Commissioners.</p> <p>(3) If, after holding an inquiry, the Wakf Commissioners find either that there is no properly constituted trustee of the Wakf, or that any trustee is acting in an improper or unauthorized manner, the Wakf Commissioners may make an order either declaring that the property the subject of the Wakf shall in future be administered by the Wakf Commissioners or appointing some other person or persons to be a trustee or trustees.</p>	<p>within thirty days of filing of the motion.”</p> <p>Subsection 3 becomes subsection 4.</p>	<p>from wrongly benefiting from Wakf property.</p>
<p>Section 1313. Trustees of Wakfs may be called upon to produce evidence of proper administration of their trusts</p> <p>(1) The Wakf Commissioners may at any time call upon any trustee of Wakf property to satisfy it that the property is being properly administered, and may require the trustee to produce any document or books, whether of account or otherwise, in his possession or control relating to the property.</p>	<p>13(1) “Wakf commissioners” with “Waqf commission” Replace “Wakf” with “Waqf” Replace “his” with “hers/his”</p> <p>13(2) Replace “his” with “hers/his” “Wakf commissioners” with “Waqf commission” replace “two thousand” with “twenty thousand”</p>	<p>See justification above for “Wakf” in place of “Waqf” and “twenty thousand” in place of “Two Thousand”</p>

<p>(2) Any trustee who fails to comply with a requirement to produce documents or books in his possession or control made by the Wakf Commissioners under subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months</p>		
<p>Section 14 14. Contracts or agreements relating to Wakf property for more than one year must be sanctioned by commissioners No contract or agreement of any description whatsoever purporting to sell or to lease or otherwise alienate any property the subject of any Wakf for any period exceeding one year shall be valid unless the sanction in writing of the Wakf Commissioners has first been obtained.</p>	<p>14 Replace “Wakf” with “Waqf” “Wakf commissioners” with “Waqf commission” Delete ”to sell” Add “any trustee who fails to comply with the requirement of this section shall be liable to a fine of not less than one hundred thousand or imprisonment not exceeding one year”.</p>	<p>There should be no room for sale of any Wakf property except under circumstances provided for under section 17 below.</p>
<p>Section 15 Titles to Wakf property shall not be acquired by prescription or adverse possession after commencement of Act Notwithstanding anything to the contrary in any Act or law for the time being in force, no title to any property the subject of a Wakf shall, after the commencement</p>	<p>Replace “Wakf” with “Waqf”</p>	<p>See justification above</p>

<p>of this Act, be acquired by any person by reason of that person having been in adverse possession thereof or by reason of any law of prescription</p>		
<p>Section 16 16. How Wakf property to be administered (1) Subject to the provisions of subsection (2), all property the subject of any Wakf which is under the control of the Wakf Commissioners shall be administered by the Wakf Commissioners in accordance with the intentions of the maker of the Wakf, if those intentions are lawful according to Muslim law and are capable, of being carried into effect, and whether those intentions are ascertainable by reference to tradition or by reference to any other evidence lawfully obtainable. (2) In any case where in the opinion of the Wakf Commissioners the intentions of the maker of a Wakf are unlawful or unascertainable or are incapable of being carried out, or where any surplus revenue remains after fulfilling the intentions of the maker of the Wakf, the Wakf Commissioners shall in the case of a Wakf Khairi, apply the property the subject of the Wakf or any surplus property or revenue therefrom, as the case may be, for such benevolent or charitable purposes on behalf of Muslims as appear to the Wakf Commissioners proper, and, in the case of</p>	<p>16(1) Replace “Wakf” with “Wakf” “Wakf commissioners” with “Waqf commission” Delete “under the control” and replace with “registered with” “Wakf commissioners” with “Waqf commission” Delete “maker” and replace with “Waaqif” Delete “of the Wakf” Replace “Muslim law” with “Islamic law” 16(2) “Wakf commissioners” with “Waqf commission” Delete “maker of a Wakf” replace with “Waaqif” Delete “maker of a Wakf” replace with “Waaqif” Replace “Wakf commissioners” with “Waqf commission” Delete “maker of a Wakf” Replace “Wakf” with “Waqf”</p>	<p>“Control” give the impression of a lot of discretion on the part of the Commission. To avoid any abuses by the commission, the committee felt that the “control” be replaced with registered. Other provisions of the Act will give the powers of the Commission.</p> <p>In line with the proposed amendments to terminology, the maker of a Wakf is correctly referred to as a “Waaqif”.</p>

<p>a Wakf Ahli, shall apply the property or surplus property or revenue in such manner as the Wakf Commissioners think fit for the benefit of the beneficiaries of the Wakf.</p>		
<p>Section 17 17. Commissioners may dispose of Wakf property in certain circumstances If it appears to the Wakf Commissioners that in respect of any Wakf the intentions of the maker cannot reasonably be carried into effect and that it is accordingly expedient that the property the subject of the Wakf or any part thereof should be sold, the Wakf Commissioners may cause that property or part thereof to be sold, and shall apply the proceeds of sale in the manner provided by subsection (2) of section 16: Provided that nothing in this section shall be deemed to authorize the sale of any land or any part thereof which under any Wakf is to be used for a cemetery or burial ground or for the building of a mosque.</p>	<p>“Wakf commissioners” with “Waqf commission” Delete “maker” and replace with “Waaqif”</p>	<p>See justification above.</p>
<p>Section 18 Unclaimed property of deceased Muslims (1) Notwithstanding anything to the contrary in the Law of Succession Act (Cap. 160), any property of a deceased Muslim to which no claim has been established within one year from the date upon which that property vested in the administrator of the estate or in the Public</p>	<p>Replace “Wakf commissioners” with “Wakf commission” Replace “Wakf” with “Waqf” 18 proviso-replace “twelve” with “fifteen”</p>	<p>See justification above. “Fifteen years” in place of “twelve years”, at least if the person was not born at the time of making the Wakf or on the date of death of the Waaqif., at fifteen the claimant will be “baaligh” (mature) according to Sharia. NB* maturity under Sharia is not by attaining a certain fixed</p>

<p>Trustee shall be handed over to the Wakf Commissioners by the administrator or Public Trustee, as the case may be, and shall, if not handed over in the form of money, be converted into money and paid by the Wakf Commissioners into a special fund created for the purpose to be known as the surplus fund.</p> <p>(2) The surplus fund shall be utilised by the Wakf Commissioners for such benevolent or charitable purposes for the benefit of Muslims as the Wakf Commissioners may consider proper:</p> <p>Provided that if, within twelve years from the date upon which any property of a deceased Muslim was handed over to the Wakf Commissioners pursuant to subsection (1), any person establishes a claim thereto, the Wakf Commissioners shall pay out of the surplus fund a sum equal to the amount paid into that fund in respect of the property of the deceased Muslim.</p>		<p>age. It is biological and differs from person to another but on average, at 15 years, the probability of attaining “Buluugh” (maturity) is higher than at 12 years.</p>
<p>Section 19</p> <p>19. Wakf property not to be used by commissioners towards another Wakf while latter Wakf property exists</p> <p>The Wakf Commissioners shall not utilize any property or any revenue from any property the subject of a Wakf for any purpose connected with another Wakf so long</p>	<p>Replace “Wakf commissioners” with “Waqf commission” Replace “Wakf” with “Waqf” Replace “five” with “one”</p>	<p>The proposal to replace “five” with “one” to avoid a situation whereby funds from one Wakf are utilized for the purpose of another Waqf and for five years, it remains unpaid. Unless there are very compelling reasons, the funds so utilized should be repaid within one year. A</p>

<p>as there still exists any property the subject of the latter Wakf: Provided that, if satisfied that any property the subject of a Wakf Khairi is urgently in need of any expenditure for repairs or for any other purpose, the Wakf Commissioners may, notwithstanding that there exists property the subject of that Wakf, utilize the revenue arising from property the subject of some other Wakf Khairi for the purpose, if the Wakf Commissioners are satisfied that—</p> <p>(i) that revenue is not then required in connection with the latter Wakf Khairi; and</p> <p>(ii) the amount of the revenue so utilized will, without prejudice to the purposes of the Wakf in connection with which it is used, be repaid out of the property of that Wakf within five years from the date of being so utilized.</p>		<p>professionally run commission should be prudent enough to do that within one year.</p>
<p>Section 20 Maintenance and reserve fund The Wakf Commissioners shall keep in respect of each Wakf a maintenance and reserve fund, into which shall be paid, before any payment is made for the purpose of carrying out the intentions of the maker of the Wakf, such sum as in the opinion of the Wakf Commissioners is necessary to maintain and preserve the</p>	<p>Replace “Wakf commissioners” with “Waqf commission” Delete “maker of a Wakf” And replace “Maker of Wakf” with “Waaqif”</p>	<p>See the justification above.</p>

<p>property the subject of the Wakf: Provided that the balance on hand in any maintenance and reserve fund shall not at any time exceed thirty per centum of the value of the property the subject of the Wakf.</p>		
<p>Section 21 21. Moneys to be paid into the surplus fund (1) If, in respect of any Wakf— (a) the intentions of the maker— (i) are unlawful or unascertainable; or (ii) are incapable of being carried into effect; or (iii) cannot reasonably be carried into effect; or (b) the beneficiaries are unascertainable; or (c) any surplus revenue remains after making the payments required by section 20, and after carrying into effect the intention of the maker of the Wakf, the Wakf Commissioners shall pay into the surplus fund created under section 18 the proceeds of sale of any property the subject of a Wakf as is mentioned in paragraphs (a) and (b) of this subsection and any surplus revenue as is mentioned in paragraph (c) of this subsection. (2) The Wakf Commissioners shall have power to place on deposit in any bank, or to invest in and upon such investments and securities as are allowed</p>	<p>21(1) Delete “maker of a Wakf” and replace “Wakf” with “Waaqif” Replace “Wakf” with “Waqf” 21(2) Replace “Wakf commissioners” with “Waqf commission” Delete “any” replace with “sharia compliant” add “sharia compliant” after the word “such”</p>	<p>- See justification above.</p> <p>The Waqf Commission is an Islamic religious institution and should be run strictly in accordance with Sharia hence the funds can only be placed in Sharia compliant financial institutions. We now have Sharia compliant banks in Kenya.</p>

<p>by law for the investment of trust funds, any moneys standing to the credit of the surplus fund, and income derived therefrom shall be paid to the credit of the general administration fund.</p>		
<p>Section 22. Fees (1) There shall be charged by the Wakf Commissioners a fee of such amount as may from time to time be prescribed for the management of Wakfs vested in the Wakf Commissioners; and until any other fee is prescribed, the Wakf Commissioners shall charge a fee at the rate of five per centum per annum of the revenue of the property of a Wakf Khairi, and ten per centum per annum of the revenue of the property of a Wakf Ahli. 2) The money derived from such fees shall be paid into the general administration fund, and shall be utilized by the Wakf Commissioners first in defraying the expenses of management, and the surplus shall be used for such charitable purposes as the Wakf Commissioners may consider proper. (3) No fees shall be prescribed under subsection (1) except after the passing of a resolution for that purpose by the majority of the commissioners present at a meeting of the Wakf Commissioners convened for the purpose.</p>	<p>22(1) Replace “Wakf commissioners” with “Waqf commission” Replace “Wakfs” with “Auqaaf” Delete “vested in “ replace with “registered with” 22(2) Replace “Wakf commissioners” with “Waqf commission” 22(3) Replace “Wakf commissioners” with “Waqf commission”</p>	<p>“Vested” may give the impression of “ownership”. For the avoidance of any doubt. “Registered” best describes the position of the Commission. it is also more in line with the focus on the institution rather than the members therein.</p>

<p>Section 23 Allowances to commissioners The Wakf Commissioners may pay to any commissioner such allowance as the Minister may fix: Provided that the payment of any such allowance shall only be made after a resolution for the purpose has been passed by a majority of the commissioners present at a meeting of the Wakf Commissioners.</p>	<p>Replace “Wakf commissioners” with “Waqf commission” Delete “as the minister may fix” and replace with “as prescribed by Salaries and Remuneration Commission (SRC)” Proviso- replace “Wakf” with “Waqf”</p>	<p>In line with the Constitution of Kenya, the Waqf Commission is a public institution and should be run as such. Allowances for members of all commissions are determined by the SRC.</p>
<p>Section 24 Accounts and audit The Wakf Commissioners shall keep proper accounts of all property and money which comes into their hands, and such accounts shall be audited by an auditor approved by the Minister at such times as the Minister may direct.</p>	<p>Replace “Wakf commissioners” with “Waqf commission” Delete “ which comes into their hands” replace with “in its custody” Delete “by the minister” replace with “by the relevant authority” Delete “the minister” replace “as it may direct”</p>	<p>“in its custody” is a better expression than “Which comes into their hands” “their” refers to “The Commissioners” as opposed to “The Commission” The proposal is in line with the moving from the commissioners to the institution i. the Wakf Commission”</p>
<p>Section 25 Banking accounts (1) The Wakf Commissioners shall open a banking account or banking accounts into which all moneys received by the Wakf Commissioners shall be paid, and out of which all payments authorized by the Wakf Commissioners shall be made. 2) Any such banking account shall be operated by the chairman, or a Commissioner duly authorized in that behalf by the Minister, and the secretary.</p>	<p>Replace “Wakf commissioners” with “Waqf commission” Replace with (2) .Any such banking account shall be operated by the chairman, or a Commissioner duly authorized in that behalf by the Commission, and the Chief Executive Officer.</p>	<p>This will give the Commission operational autonomy and secretary has been replaced by the Chief Executive Officer (see above)</p>
<p>Section 26 26. Rules</p>	<p>26 –Replace “Wakf Commissioners” with “Waqf Commission”</p>	

<p>The Wakf Commissioners may, with the approval of the Minister, make rules generally for the better carrying out of the provisions of this Act and for prescribing anything required by this Act to be prescribed.</p>	<p>Replace “Minister” with “Attorney General”</p>	
<p>Section 27 27. Saving All Wakf property registered under the Wakf Commissioners Act (Cap. 47 (1948) now repealed) shall be deemed to have been duly registered under this Act.</p>	<p>This remains the same</p>	<p>N/A</p>

Conclusion

Chapter Five

Proposed Institutional Framework for the administration of Waqf Property in Kenya

Background

The institutional framework of the Waqf started as early as during the life time of the Prophet Muhammad (s.a.w). The Prophet used to encourage his companions to create different types of Auqaf according to the different societal needs. The Prophet (saw) also guided on how to administer the Waqf properties. This is clearly observed in the following Hadith Narrated by Ibn Umar. During the lifetime of Allah’s Messenger (s.a.w), Umar ibn Al-Khatib gave in charity some of his property, a garden of date Palms called Thamgh. Umar is reported to have said:

“O Allah’s Messenger! I have some property which I prize highly and I want to give it in charity” The Prophet (s.a.w) said, “Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, not bequeathed, but fruits are to be spent in charity.”

So Umar gave it in charity, and it was for Allah’s cause, e.g. the emancipation of slaves, for the poor, for guests, for travellers, and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly, and could let a friend of his eat from it provided he had no intention of becoming wealth by its means.

Comparing Auqaaf in Different Countries

The following is a comparative table showing regional and international Institutional Framework for the administration of Auqaf. The Committee shall be guided by the practices in other jurisdictions as it proposes a new framework for the Wakf Commissioners of Kenya.

AREAR	CONTRY	ADMINISTERED BY	FRAMEWORK/ STRUCTURE
	Kenya	Administered through the Wakf Commissioners Act of Kenya 1951 Through the GOK, Office of the Attorney General (AG)	WCK consists of eight persons, all government appointees, including the Chief Kadhi and the Provincial Commissioner of Coast province [According to the Constitution of Kenya 2010 it is Regional County Commissioner of the Coast Region]. The Provincial Commissioner is the one who nominates the other six Commissioners (in consultation with the Muslim Community) for appointment by the Attorney General.
	Tanzania	In the mainland, Waqf is governed by the provisions of Part XV of Probate and Administration Act, Cap 352 R.E 2002 which	Section 142 of the Act established the Waqf Commission of Tanzania which must consists not less than eight persons appointed by the President whose majority members must be Muslim. ¹⁷

¹⁷ The author couldn’t establish who is the chairman and the other members of Waqf commission in Tanzania.

Regional		incorporates the Wakf Commissioners ordinance, cap 326 ¹⁶ .	No research available which shows the magnitude and value of Waqf properties in the country neither its social role has been systematically studied.
	Zanzibar	By the Zanzibar government. It is called The Waqf and Trust Commission	The chairman is appointed by the President from persons of integrity, and adequate of Islamic knowledge with sufficient leadership experience. Members of the board are appointed by the Minister, in appointing such member shall have regards to the following requirements: <ul style="list-style-type: none"> a) One member to be a qualified Lawyer, with experience of three years. b) One member is qualified civil engineer or a university graduate in real property management. c) One member is a graduate in public administration or financial administration or economics. The term of the office of the board is three years, but the chairman and member are eligible for reappointment for more than one term. There shall be a secretary to the board appointed by the board from among the senior staff of the commission. In Zanzibar, Waqf matters are governed by the Waqf Validating Decree, Cap 104 and Waqf Property Decree, Cap 103 as amended by the Waqf Property (Amendment) Decree, No. 12 of 1966. ¹⁸
	Malaysia	Islamic Religious Council of each State [IRC] ¹⁹	The Islamic Religious Council establishes the <i>Waqf</i> Management Committee to administer all matters pertaining to <i>Waqf</i> . The committee has the Authority to frame any policy, to supervise, to administer, to manage, to develop and to improve any matters related with <i>Waqf</i> administration.

¹⁶ A paper posted on 30th June 2014, by Khalfan Abdallah Salim “Waqf and Waqf System in Tanzania: Can Islamic Bank/ Windows play role?”

¹⁸ Ibid.p.3

¹⁹ The government of Malaysia has formed a department for *Zakat, Waqf and hajj* under the Prime Minister’s Department on the 27th March 2004 with the aim of making the administration systematic and effective. **This department however does not have any authority to administer and manage *waqf* properties but rather plays a Role as a planning coordinator and observes the *waqf* matter.** A paper by Zulkifli Hassan & M. Najib

International			Every state Islamic council has its own management committee and it is the burden of the committee to administer all of the <i>Waqf</i> properties and this includes the investment on <i>Waqf</i> land. ²⁰ In term of court’s jurisdiction, <i>Waqf</i> , lies within the jurisdiction of the Shari’ah court as provided in List II (1) of the Ninth Schedule of the Federal Constitution.
	U A E in Sharjah	Articles 37 to 50 of the Sharjah Waqf Law regulate the management of Waqf.	The management of any Waqf is to be conducted by a trustee or a board of trustees. The trustee or board of trustees is authorized to act on behalf of the Waqf.

Restructuring the Wakf Commissioners of Kenya

The Wakf Commissioners of Kenya as currently constituted has a very lean structure which has existed since its establishment. The entire organization is comprised mainly of 3 workers comprising the Secretary, Two clerks and some field officers in Malindi and Lamu. The Committee is proposing a more elaborate structure that will professionalize the organization and also give it a more prominent role in the 9 regions.

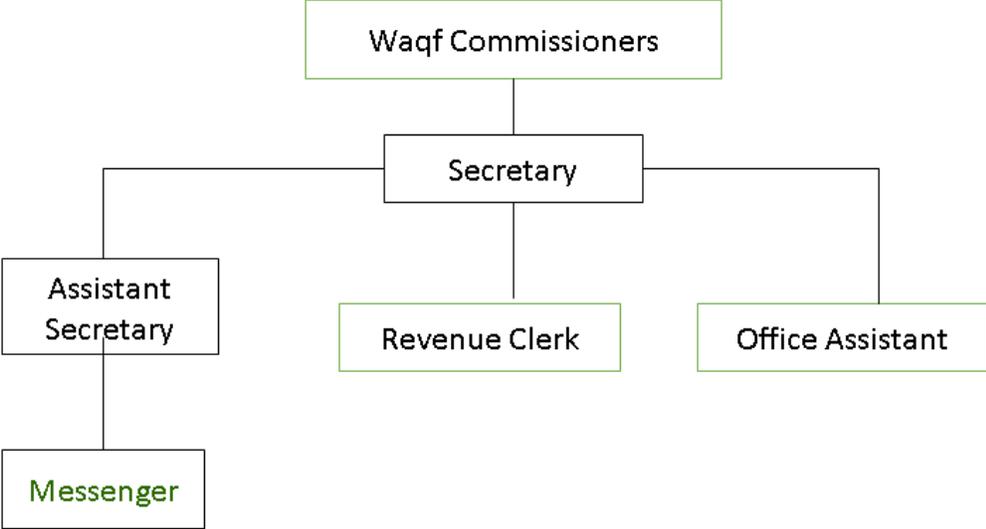


Figure 5-1: The Current Organisational Structure of the Wakf Commissioners of Kenya

Abdullah, Faculty of Shari’ah and Law Islamic Science University of Malaysia, Email: zul361977@yahoo.com “*The Investment of Waqf land as an instrument of Muslims Economic Development in Malaysia*”.p.3. 2008

²⁰ Ibid .p. 5

The Proposed Waqf Commission Secretariat/Head Quarters

The Taskforce members propose that the Wakf Commissioners of Kenya should now apply to all of Kenya but that the Waqf Commission Secretariat be retained in Mombasa. The Secretariat should However be strengthened to be able to fulfill the more complex mandate. The Commissioners as well as the Commission staff should be persons of high moral integrity and professional competence. The Wakf Commissioners of Kenya should then have Offices in 8 regions managed by a lean secretariat. The Regions are proposed as follows

1. Headquarters to Cover the Coast Region
2. Nairobi Region
3. North Rift Region
4. South Rift Region
5. Western Region
6. Nyanza
7. North Eastern Region
8. Central Region
9. Eastern Region

(ii) The Chief Executive Officer

The Taskforce proposes that the Secretariat be led by an Officer who has minimum Bachelor's degree level qualifications and who has a wealth experience in matters of Planning, Finance, Properties, Law or General Administration. The Officer should be appointed competitively in line with the provisions of the proposed Act. His mandate should be clearly defined. The chief executive officer should be the secretary to the Commission

(iii) Accountant

The Waqf Commission deals with many financial transactions that require proper records and accounting. As the level of complexity grows, the Commission should have an accountant to ensure that proper financial records are maintained and the organization grows its financial base in line with its mandate. The organization should regularly prepare and audit its accounts in line with the Act.

(iv) Legal Department

The Waqf Commission is regularly entangled in legal disputes with either Lessees or Waqf beneficiaries and is regularly drawing contracts with tenants or other parties. Weak legal advice in the past has made the Commission enter into very weak contracts which have made the Waqf commission loose properties for many years. This department may be established and strengthened so as to secure the interests of the Waqf Commission.

(v) Zakat/Welfare Department/Public Relations

The Waqf Commission is envisaged as an organization that does good. So far the Commission has not developed any programs for the welfare of the community. The Commission is also hardly known outside Mombasa. It has thus failed to attract more benefactors. In line with a proposed expanded mandates the Waqf Commission may establish departments for Zakat Collection from Muslim wells wishers, develop

programs to support the needy and other welfare issues and also a marketing or PR department to market the activities and mandate of the Waqf Commission.

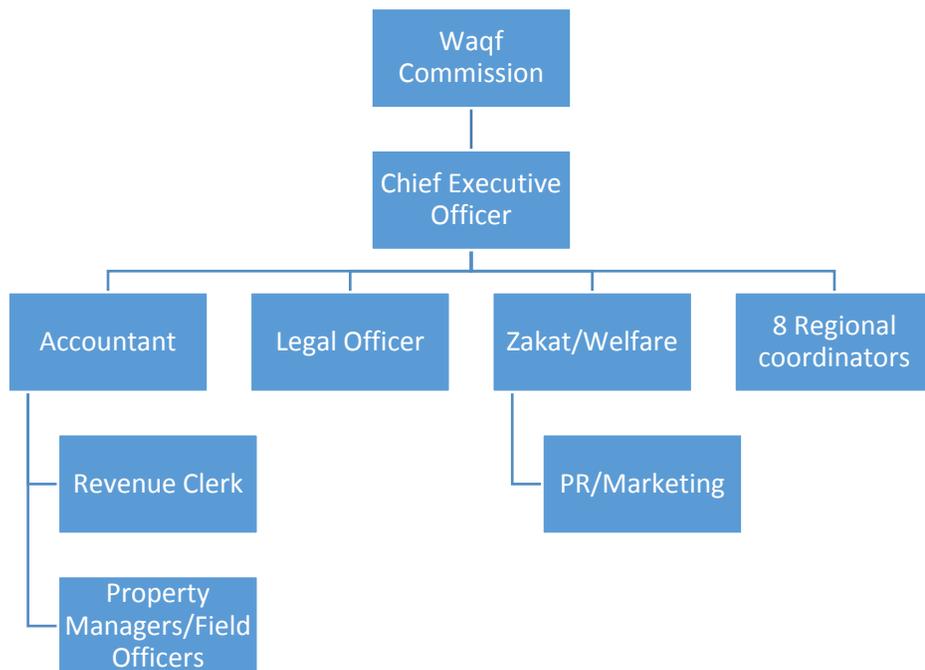


Figure 5-2 proposed structure of the Waqf Commission

Devolving Waqf Matters

In line with the Constitution of Kenya 2010, the task force recommends also the devolution of Waqf matters. The initial law had envisaged Wakf Commissioners to only operate in the Coast Region, but Muslims have since settled in different parts of the Country and Waqf Properties are scattered all over the Country and cases of mismanagement or outright theft of Waqf properties have been reported. The task force recommends 9 regional coordinators in line with the administrative regions designated by the Ministry of Interior and national coordination. The regional Coordinators will be answerable to the Chief Executive Officer. Each Regional Coordinator will be responsible for a cluster of counties.

Linking with other Institutions

As currently structured the Wakf Commissioners of Kenya appears to be domiciled in the Presidency, Ministry of Interior and National Coordination because of the role of the Coast Regional Coordinator in the appointment of Commissioners. Yet appointment of Commissioners is actually done by the Attorney General. The Minister mentioned in the current Act is thus not clearly defined. The current act also has not stated out rightly which other state organs will relate with the Wakf Commissioners of Kenya. The Task force proposes as follows

- (i) The proposed Waqf Commission should be anchored in the Attorney General's Office working with the Office of the Public trustee.
- (ii) The Attorney General should appoint the Waqf Commission members in line with the proposals in this report. The Regional Commission should no longer play any role in Waqf

matters, instead a representative of the Attorney General should be a member of the proposed Commission.

- (iii) On matters of Land and Waqf properties administration, the Commission should work closely with the National Land Commission and the Ministry of Lands. A strong relationship with County Governments also needs to be defined.
- (iv) The Chief Kadhi and his Officers should not sit in the Commission. This is in conflict with the mandates as judicial officers, who are supposed to adjudicate any matters where the parties profess the Islamic faith. This position has been strongly supported by the current Chief Kadhi who is a member of the Taskforce.

Chapter Six

General Conclusions and Recommendations

In General, the Wakf Commissioners Act of Kenya 1951 is long overdue for review. The review proposed here address key areas including the scope, the Governance structure and the Appointment of Commissioners. It aligns to the Constitution of Kenya 2010, proposes a procedure for a more transparent selection of commissioners and modernizes the operations of the Wakf Commissioners of Kenya. The proposed Waqf Commission is now suggested to cover 9 regions in accord with devolution and coordinators are proposed for coordinating the clusters of counties in the proposed regions.

The proposals contained herewith also try to remove any ambiguities associated with the previous law and empowers the Commissioners to administer Waqf properties more efficiently for the benefit of the intended beneficiaries.

The proposal removes the role of the Regional Commissioner and the Chief Kadhi and injects professionalism in the running of the proposed Waqf Commission.

Even as the mandate and scope of the proposed Waqf Commission is enhanced, it is important for the Government and the future commissioners to remember that, the Commission should not be a tool for enriching the managers of the Commission. It is a tool for charity for the benefit of the beneficiaries and the waqif. The Governance structures should ensure fidelity to this religious principle which governs the establishment and running of Auqaf.

Recommendations

- (i) The proposed Waqf Policy be finalized and adopted.
- (ii) The Wakf Commissioners of Kenya as currently constituted should quickly review and renegotiate all leases to accord with the current economic reality
- (iii) The Wakf Commissioners of Kenya should audit all its properties and recover any properties that might have fraudulently changed hands.
- (iv) The Report should be subjected to public participation in the general Islamic community for ownership of the proposals.
- (v) The Taskforce for the review of the Wakf Commissioners of Kenya Act 1951 should work with drafters from the Attorney General's Office to complete the draft Bill and Draft Policy.

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Appendix A: International Case Studies

MALAYSIA

Institutional and Legislative framework

In Malaysia, Waqf affairs are the responsibility of the Islamic Religious Council of each state. The Islamic Religious Councils are empowered to administer and manage Waqf properties. There are 14 State Islamic Religious Councils, one for each of the 13 states and one for the Federal Territory. Beside the Islamic Religious Council, the government of Malaysia has formed a department for zakat, Waqf and hajj under the Prime Minister's Department on the 27th March 2004 with the aim of making the administration systematic and effective.

Legal provisions on Waqf and Islamic Finance Options in use.

Where *Waqf* land is not economical, *istibdal* can be used²¹. That is the *Waqf* land can be sold, the proceeds of which can be used to purchase another piece of land which is more beneficial. Section 2 of the Enactment of *Waqf* (State of Selangor) 1999 defined *istibdal* as a substitution of *Waqf* property with another property or cash either through substitution, purchase, sale or any other way that approved by syariah principles. In recent years, particularly on the contemporary Waqf activities in Malaysia, new ideas have been evolved. For example, innovation on corporate Waqf, the establishment of World Waqf Fund (Mahamood, 2007) and of Waqf Bond offered under Waqf Enactment.

These are among the new innovations towards building a modern and contemporary platform for Waqf revival and development in Malaysia Waqf property. Contemporarily, many channels of investment can generate returns for Waqf property, and increase value to it, with safety assurance of the original property. This includes the following Islamic funding instruments, which are used for various Waqf projects:

5.1 Ijarah (Lease): Ijarah is an Islamic lease where the investor purchases an asset and leases it to a client for fixed monthly payments. For developing Waqf properties, the Build-lease-transfer mode would be applied. This implies that the financier would build the buildings on the Waqf lands, lease to Waqf institutions to recover its funding and desired profits, then at the end of the lease period, the ownership of the buildings will be transferred to Waqf either through sale, gift, or by way of abandonment.

5.2 Musharakah (Equity Partnership): Musharakah involves partners providing funds for a venture, with profits shared according to an agreed ratio, and the loss is borne by them in accordance with their capital contributions. The Waqf institution brings in the asset, while the other partner builds on the land. A decreasing partnership model (*musharaka mutanaqisa*) would be applied, in which the Waqf institution and another partners undertake a profit making venture, with an agreement on the returns, where subsequently the Waqf institution purchases other partners' share, in order to have total ownership of the venture.

5.3 Murabahah (Cost-Plus Sale Contract): A Murabahah transaction is a sale at a stated profit. In a Murabahah transaction, the Investor purchases an asset from a third party and sell it to the client at a stated profit on a spot or deferred payment basis. This instrument is relevant to cash Waqf, the Waqf

²¹ See Monzer Kahf. 1998. *Financing the Development of Awqaf Property*. Seminar on Development of Awqaf. IRTI. Kuala Lumpur. 2-4 March 1998. Kahf defined *Istibdal* as the sale of all or part of a Waqf land and to purchase with its proceeds another piece of land dedicated as Waqf for similar purposes. This practice is acceptable by majority of muslims jurists such as some of Shafi'is, Malikies, and Hanbalis provided that it fulfils certain requirements. See further Al-Zarqa'. Mustafa Ahmad. 1997. *Ahkam al-Awqaf*. Amman: Dar `Ammar . p. 74.

institution will stand as the investor so as to buy the asset from the third party and sell it to the client based on agreed upon profit.

5.4 Mudarabah (Silent Partnership): A Mudarabah transaction is an investment partnership between an investor (or financier) and an entrepreneur known as the Mudarib whereby risk and rewards are shared. In the case of a profit, both parties receive their agreed-upon share of the profit. In the case of a loss, the investor bears any loss of capital while the Mudarib loses his time and effort. Under this mode, the Waqf institution lets the financier construct a building on Waqf land, while the developer exclusively manages the project. Upon completion, the building would be rented out and the rental is shared between the institution and the developer, with the Waqf institution using the revenue from the rental of the building to increase its share in the building and to distribute it among the beneficiaries.

5.5 Istisna' (Partnership in Manufacturing): This is a mode of financing where the commodity involved is manufactured to the specifications of the purchaser. It is widely used in the housing finance sector. The Waqf institution can seek finance for the construction of a building. The financier may undertake to construct the house on a specified land either belonging to the client or purchased by the financier, based on Istisna', with payment fixed in the agreed manner.

Innovations

It is expected that Malaysia will introduce an Islamic capital market product of securitization of *Waqf* property through *sukuk* instrument as stated in the Capital Market Master Plan issued by the Securities Commission. Additionally, some states including Johor, Melaka and Selangor have initiated a scheme of *Waqf* shares. *Waqf* share is a scheme where individual or organization purchase a few units of shares with the minimum value for example of RM10.00 per unite offered by the Majlis. *Waqf* shares in form of certificate with the necessary value will be offered to the general public. The purchased *Waqf* shares will be dedicated in perpetuity for the purpose of charity and hence the purchaser will not be given any dividend or profit. The scheme has contributed to several economic and educational developments including a plantation project of 3800 acres land and purchase of six storey hostels at Cairo, Egypt for students' accommodation.

Management

Malaysia has a Management Manual for its Waaqif properties which provides very comprehensive guidelines to the wholes states in Malaysia almost in all aspects of the administration of *Waqf* lands. This initiative taken by the Department of *Awqaf, Zakat* and *Hajj* may solve a lot of administrative problems such as procedures and substantives.

Implementation of the ICT System. Some states have implemented the information communication technology system in their *Waqf* administration²². The Islamic Religious Council of Pulau Pinang for example has four main applications namely *Waqf* information management system, comprehensive building information system, information system based on geographic information system (GIS) and Penang Geographic Information System. The implementation of ICT in *Waqf* administration provides an effective management and planning platform. Such information system offers various benefits in terms of data, record, figures and enables efficient *Waqf* property's management and administration.

²² Abdul Hamid Mariman et al. 2006. *Perlaksanaan Sistem Teknologi Maklumat Dalam Pengurusan Harta Waqf*. Konvensyen Wakaf Kebangsaan organized by the Department of Auqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006.

THE SUDAN

History

The Waqfs have a long history in the Sudan since the ninth century (Abdel Hadi, 1997: 5). The Waqfs in Sudan were traditionally weak and suffered from political instability. The legal system pertaining to the Sudanese Waqfs kept evolving, eventually from the local Maliki to the Hanafi School. **As it is well known, Imam Hanife allows the founder to revoke his Waqf in his lifetime on the grounds that he may face emergencies.** Founders can also increase the share of a beneficiary from the Waqf's revenue while reducing that of the others. Also, judges are authorised to dissolve a family Waqf in response to a complaint by a beneficiary.

Legal Framework

The establishment of the Ministry of Awqaf and Religious Affairs and the enactment of the Awqaf and Religious Law, 1980 conferred on the Minister the general trusteeship of all the awqaf in Sudan. The Waqf Institution called Islamic Endowment Corporation (IEC) established in 1986 has played a central role in the management and development of Waqf assets and has been in the forefront of Waqf development using many innovative mechanisms. In 2008 a new law called "the Diwan of the National Islamic Endowments Act of 2008" was enacted. It establishes, a general institution called the Diwan of National Waqf as a body corporate (Section 4-1) for preservation, management and development of awqaf in Sudan. There is a general secretariat and CEO of the Diwan. The law empowers the Board of Trustees (nominated Council of Ministers on the recommendation of the competent minister) with full authority and autonomy required for implementation of the national policy of the Diwan. The Diwan is empowered "to recover all the endowed money which is possessed by other individuals, institutions, companies, or governmental authorities or to receive a just and equitable compensation from them.

Current approach

Waqf issues in Sudan have been approached horizontally, by increasing the number of endowments, whether in real estate or in cash, as well as vertically, by better management and education to enhance Waqf revenues. The vertical approach has taken the form of enhancing the consciousness of the population through the media and by introducing Waqf jurisprudence in to educational syllabus. Confiscated properties of the Waqfs by the earlier governments have been restored. The establishment of the Great Awqaf Company in 1995 financed by donations from the public whose capital was provided by private donations through public participation. The basic aim of the company is to popularise Waqf establishment, to implement social justice in the community, encourage spending for charity, invest the cash capital to ensure its steady and sustained growth, provide services for Sudanese pilgrims, to be involved in infrastructure projects, to build mosques, hospitals, schools and homes for the senior citizens, to establish affiliated joint-stock companies and to share in their profits and enhance its own revenue.

Examples of Awqaf

- Waqf-al-Sinnariah in Makkah founded for the benefit of Sudanese pilgrims and later substituted for a developed property in Makkah for the same beneficiaries by the Saudi government under the Islamic mode of istibdal / substitution

- Waqf al-Baghdadi, an educational Waqf that was developed with use of private funding under an agreement between the IEC and the Islamic bank through the traditional mode into an 8-storied commercial building and giving it on a long lease contract for 99 years.
- Another example of Waqf is the Mujama' al-Zahab al-Tijari that was developed by the IEC with financing from an Islamic bank. The original Waqf was a piece of land left idle for almost a century using the mode of diminishing musharakah and was developed into a Gold Commercial Center. The funds needed for development were raised through issue of Waqf shares.
- Family Waqf (Waqf ala-aulad) such as The Sharwani Institute for Quranic Studies, Alzaytona Hospital in Khartoum.
- Waqf Future Fund. A cash Waqf that permits its donors to support numerous ongoing charitable projects.

Management of Waqf Assets

Responsibility: The law empowers the Diwan to engage in the planning and organization of the national endowments inside and outside Sudan and the development of policies, plans and regulations for it. The Diwan is required to approve the budget submitted by the Secretary-General for development of Waqf assets inside or outside Sudan after studying their technical and economic feasibility. The Waqf funds must be managed in compliance with the provisions of Islamic Sharia. The Diwan can recover all the endowed money which is possessed by other individuals, institutions, companies, or governmental authorities or to receive a just and equitable compensation from them. The regulatory framework must seek to strike a balance between concerns about preservation and development. According to Sudanese law, a major objective of the Diwan is to conduct scientific studies and research on awqaf, and carry out training and capacity building and institutional development in the field of Waqf and encourage citizens to do Waqf. There seems to some be positive evidence that the state can indeed play the role of an efficient manager of awqaf

Transparency: The Diwan must maintain proper books of accounts in accordance with sound accounting principles and be subjected to independent annual audit of the account. The Board of Trustees must produce a yearly statement of accounts. Trustees and principals of universities, associations, and other endowments must submit to the Diwan the annual reports of revenues and expenses related to the endowments.

Accountability: The membership of the Board of Trustees are held accountable for meeting attendance

Development of Waqf Assets: The Diwan's duties include which include the maintenance and improvement of endowed funds and evaluation, construction and re-construction, and investment funds in all legitimate investments. The Diwan can sell the endowed asset to replace it with better ones, establish companies, partnerships with any party capable as per Islamic law and must maintain an inventory of endowments, develop them and maximize returns on them taking advantage of commercial opportunities.

AWQAF MAURITIUS

Institutional Arrangement

Despite its small size, the current population of Mauritius is 1.2 million people of which 17% are muslims. As far back as 1805, the first mosque was built and to date there are over 200 mosques and numerous properties that muslims during their trade boom period gave as donations for religious and

social purposes. Waqf is governed by the Waqf Act of 1941. Under the Act, there is a Board of Wakf Commissioners, appointed by the President consisting of not less than 4 persons of the Muslim faith who serve for a term of one year, renewable for a second term. The Chairman is usually a senior Government official, but not necessary a Muslim. However, as from 1968 Muslim officials have occupied the Chair. The annual accounts of the Board are audited by an independent firm of Chartered accountants. The Board functions as a Supervisory body as the management of each Waqf falls under the responsibility of each Mutawalli appointed by the Waaqif.

The Waqf Act makes provision for an annual levy of not more than 2.5% of the gross total income of each Waqf property for the purpose of defraying any expenses that may be incurred by the Board. The Board is also responsible for the distribution of the 'Muslim Religious Subsidy', a function that falls outside the scope of the Waqf Act. All declarations of Waqf are registered in the Office of the Registrar-General and transcribed with the Conservator of Mortgages. However many religious organisations have found it more convenient to administer their mosques within the parameters of the Law of Associations rather than registering them as Waqf properties. Rassool (2007) observes that there is a need to promote the benefits of Waqf and develop Islamic financing as some assets become dilapidated and are not developed due to lack of finance.

Waqf Issues & Lessons to be learnt

The Waqf Act, as promulgated in April 1941, went a long way towards satisfying the concerns of the Muslims regarding the management of Waqf properties. However, there are numerous issues involved including:

- The law in Mauritius explicitly provides for family Waqf and a few interesting features, such as, the possibility of restricting the benefits to one or two generations, the need spousal consent before making a Waqf, list of relatives who may benefit from Waqf and the order of priority among them, definition of a child and a descendant and related circumstances, how Waqf benefits will be apportioned between children and descendants and other possible beneficiaries across generations and so on. However Rasool (2007) argues that many Waqfnamas (deeds) are poorly drawn. The Waaqif, should be well trained to offer advice when drawing up the instrument. For example, stating that benefits should continue to benefit descendants in perpetuity largely dilutes the income too much and this often leads to quarrels among beneficiaries.
- The state agency as regulator should clearly stipulate elaborate and clear eligibility criteria for a mutawalli or nazir or trustee-manager not only covering aspects of integrity and trust-worthiness but also professional competence. Sometimes the Mutawalli may lack the required skills to develop a property and there is also much tension between the mutawalli and the beneficiaries, as they do not necessarily share the same vision. The Board also does not have the power to force the mutawalli to act and develop the Waqf property. Laws must clearly articulate the responsibility of Waqf management that should not only emphasize preservation and protection of Waqf assets, but also their development.
- The Mutawalli sometimes fails to submit annual audited accounts in due time and the penalty in this respect is only Rs500 which is relatively low. However, such punitive clauses and the law that stipulates sets the maximum remuneration to which a mutawalli is entitled to one tenth of the income where the mutawalli has no beneficial interest (except is ruled otherwise by the court), should promote ideals and provide incentives for performance. Mutawallis who fail the integrity test should be punished but the state should not be allowed to engage in whimsical or irrational action against the mutawalli.

INDONESIA

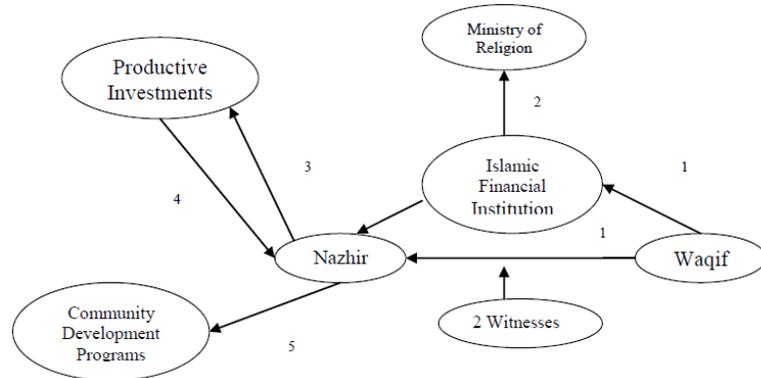
Overview of *Waqf* and Cash *Waqf* Practices in Indonesia

In 2004, Indonesian government issued Act no 41 2004 as regulation of *Waqf* in Indonesia. The Government also launched the Indonesian *Waqf* Institution/Badan Wakaf Indonesia (BWI) as a government body which directly coversees the development of *Waqf* in Indonesia. As for the NGOs, Tabung Wakaf Indonesia (TWI) is the most aggressive institution which offers *Waqf* as well as cash *Waqf* collection. TWI has launched many successful programs, for different charitable causes. For *Waqf* collection, TWI openly collaborates with any institution for instance ALFA supermarket which is one of the biggest retail supermarkets in Indonesia. TWI invited ALFA supermarket to collect fund through cash *Waqf* during Ramadhan. ALFA supermarket appoints its cashiers as a person who collect fund so that it can make easier for its customer to donate in form of cash *Waqf*.

Regulation of *Waqf* in Indonesia

In managing the *Waqf* asset, *nazhir* can get benefit from the profit of *Waqf* investment up to 10 percent of the total profit. *Waqf* asset can be categorized as movable and immovable categories. The immovable category consist of land, building, trees, the ownership of an apartment, and other immovable asset which is approved by shariah and law, while the movable category consist of money, precious metal, stocks and bond, vehicle, intellectual right, rent, and other movable asset which is approved by shariah and law. *Waqif* can donate movable *Waqf* including cash *Waqf* through the Islamic financial institutions which are appointed by Ministry of Religion. The *Waqif* should make a letter stating the intention to donate *Waqf* in form of cash *Waqf*. The *Nazhir* then issues the cash *Waqf* certificate as proof of donation. The Islamic financial institution in the name of *nazhir* should register the cash *Waqf* to the Ministry of Religion at least seven working days after the cash *Waqf* agreement had been made.

Figure 1: The Procedure of Cash *Waqf* in Indonesia

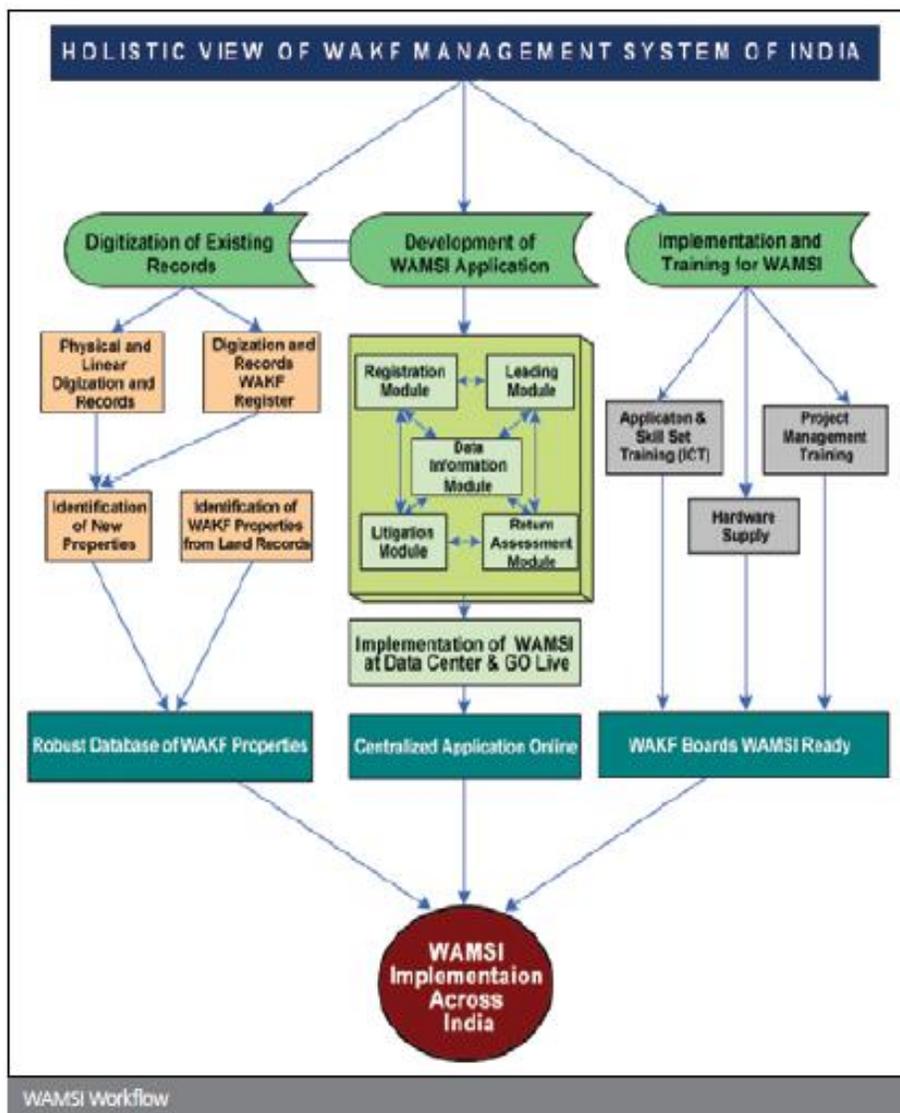


Cash *Waqf* can be utilized as one of IMFIs source of fund. The best way for IMFIs to get advantage from cash *Waqf* is to become cash *Waqf* collectors (*nazhir*). If IMFIs do not have the capability to manage those funds, the IMFIs can collaborate with cash *Waqf* fund managers from other institutions. The experience in Indonesia shows IMFIs can also become an investment alternative for cash *Waqf* institutions. IMFIs can utilize cash *Waqfs* as one of their strategies to achieve sustainability. If IMFIs can utilize and maximize cash *Waqf* as their source of fund, and if they use that fund for poverty alleviation program, cash *Waqf* can achieve its objective to deliver socio economic justice for Muslim communities. To increase the capability to manage those funds, the IMFIs can collaborate with cash *Waqf* fund managers from other institutions. The experience in Indonesia shows IMFIs can also become an investment alternative for cash *Waqf* institutions. IMFIs can utilize cash *Waqfs* as one of their strategies to achieve sustainability. If IMFIs can utilize and maximize cash *Waqf* as their source of fund, and if they use that fund for poverty alleviation program, cash *Waqf* can achieve its objective to deliver socio economic justice for Muslim communities.

INDIA

Waqf Management System of India (WAMSI)

A Joint Parliamentary Committee or JPC on Waqf in its 9th Report had recommended the computerization of the records of State/UT Waqf Boards. In order to ensure transparent management of all the Waqf Properties and computerize the core functions of all State/UT Waqf Boards (SWBs), Government of India has launched “Scheme of Computerization of Records of State/UT Waqf Boards” in December 2009. In this scheme, Central financial assistance is given to the State Waqf Boards for setting up of ICT Infrastructure, deployment of Technical Manpower for initial hand-holding period for managing & operating the ICT Infrastructure and Software Applications, and for imparting training and knowledge transfer to the staff of nthe SWBs.



The phase-I of the project entails to accomplish the following objectives:

- a. To maintain up-to-date correct inventories for Waqf Properties.
- b. To facilitate cross checking of Waqf Property Records with other databases maintained at State/UT level especially those of Revenue Records and Civic Bodies.
- c. To track the revenue generated from individual Waqf Properties by ensuring timely reminders for submission of Annual Returns by Waqf Properties' Managers.
- d. To transparently manage the leasing process of Waqf Properties and to monitor the pending payments from lessees thereof.
- e. To track the litigations on Waqf Properties by ensuring timely pleading in the Hon'ble Courts.
- f. To digitally preserve the documents establishing the Waqf Properties Ownership rights.
- g. To facilitate easy retrieval of documents when required in case of litigations in Hon'ble Courts.

Apart from the known benefits as part of objectives listed above, there would be many intrinsic benefits such as streamlining of record keeping at State/UT Waqf Boards, enhanced transparency in the existing system of Waqf Management, etc. Another anticipated benefit would be electronic access of valuable documents related to Waqf Properties that will reduce unnecessary handling of fragile documents, thus contributing to their long-term preservation. The project is a landmark one and is allowing the development of Waqf Properties to increase the revenues which can then be utilised for allround development. The greatest benefit will be the real time monitoring that can be carried out for each Waqf Property in the country to ensure that such Waqf Properties are not encroached and/or alienated.

KUWAIT

Waqf Investment criteria

KAPF was established as a governmental body, enjoying relative autonomy in decision-making in compliance with governmental rules and regulations to take charge of awqaf within and outside Kuwait. The decree specified the duties and responsibilities of KAPF previously conferred upon the ministry of awqaf & Islamic affairs. As per article 2 of the KAPF decree, it took charge of calling for Waqf and attending to all that is related to it, managing its funds, **investing them** and spending their proceeds as specified by the waqifs in compliance with the shari'a purposes of Waqf and to develop the society civilizationally, culturally and socially to ease the burden of the poor and the needy. This case study concentrates on the calling for Waqf and Investment function of KAPF.

Awqaf affairs board is formed as follows:

- Minister of awqaf and Islamic affairs
- KAPF secretary general
- Undersecretary of the ministry of awqaf and Islamic affairs member
- Director of the public authority for Social security
- Director of Zakat house
- A representative of the ministry
- Finance to be assistant undersecretary in status
- A representative of the public authority for investment
- Three members known for experience and specialty to be appointed for three years

The board form the following permanent committees: The Shari'a Committee which is in charge of giving the shari'a opinion ; the Committee for Developing and Investing Waqf revenues; and the Committee of Waqf Projects which is in charge of overseeing that spending out of the Waqf proceeds is carried out properly and to approve the grants offered to the relevant projects.

Calling for Waqf:

Media and marketing activities

Media and marketing activities seek to attract waqifs. These policies can be elaborated in the following:

- Media campaigns through television, radio, advertisement in public places and buses, papers and magazines, Friday sermons and donations on religious occasions, telephone hotline telephone which provides the public with information about Waqf, KAPF and Waqf funds
- The low price Waqf share which encourages the various sectors of the society to contribute to Waqf.
- Recognizing a number of media men involved in Waqf sector.
- Holding exhibitions and seminars at the local and international levels to illustrate the strategies of KAPF and present its activities, in addition to hosting all those concerned in discussing and evaluating the achievements and future plans.
- Providing books and annual reports in which the achievements of KAPF are highlighted annually.

Interest in waqifs:

KAPF is interested in extending bridges of communication and cooperation with waqifs and their families and to provide the required welfare and support to the needy among them as set for in the Islamic shari'a and in compliance with the nature of the Kuwaiti people. These activities cover the following areas.

- Paying personal visits to current and potential waqifs whether these are individuals and organizations.
- Facilitating the procedures for the new waqifs
- Gathering full data about the waqifs and their descendants and poll them on all that is related to Waqf and spending its proceeds
- Providing financial support and other services to the waqifs families as required by their conditions
- Payment of heirs' share in joint Waqf at the beginning of each financial year

- Recognizing donors according to special rules and regulations

Interest in Non-Governmental Sector and Public Utilities Societies

Investing Awqaf and Augmenting Proceeds

This is one of the major areas of KAPF which revolves round managing Waqf funds property, maintaining, and developing them through shari'a- compliant investment opportunities to realize maximal revenues

Criteria of KAPF investment strategy

These criteria govern the works of KAPF and implement its investment programmes:

- Shari'a criterion which provides for risk free policy in order to maintain the Waqf capital
- Economic criterion which is based on carrying out feasibility study for any investment work
- Geographical criterion based on distributing investments to various thoroughly studied geographical locations.
- The criterion of diversifying investment instruments, for example, investment in portfolios
- The criterion of diversifying investment sectors, for example, financial, real estate, services, etc...
- Technical criterion which sets investment ceiling for each sector

The above mentioned criteria assisted in improving the economic performance of KAPF and enabled it to carry out major investment activities and to play more effective roles in promoting the social, economic and developmental progress. The financial sector accounts for a large portion of the activities of KAPF as a result of advocating modern means in investment.

Appendix B: List of Waqf Properties

MOMBASA

	WAQF OF	PLOT NO.	LESSEE	LEASE TERM	ANNUAL G. RENT	REMARKS
1	ABDALLA SHIMBWA	162/XLII	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	12,000/-	
	HEMED BIN SHEIKH	113/XLII	PLOTS RENTED		6,050/-	
2	K.M. REQUESTH	49/IX	SITABAI J.A. PREM	99 YRS W.E.F 1/2/1942	180/-	
		50/IX	SITABAI J.A. PREM	99 YRS W.E.F 1/2/1942	120/-	
		268/XI	HUSSIN ABDALLA ABDULREHMAN	99 YRS W.E.F 1/2/1942	3,000/-	
		270/XI	SHAUKAT NOOR	99 YRS W.E.F 1/2/1942	1,025/-	
		278/XI	ABDULKARIM H. MOHAMED	99 YRS W.E.F 1/2/1942	1,025/-	
		287/XI	MUSTAFA ADAMAL	99 YRS W.E.F 1/2/1942	1,025/-	
		289/XI	MOHAMED FAROUK ABDULAZIZ	99 YRS W.E.F 1/2/1942	6,000/-	
		291/XI	DAMARIS MUKANYO	99 YRS W.E.F 1/2/1942	12,000/-	
		292/XI	AMINA AHMED	99 YRS W.E.F 1/2/1942	1,025/-	
		293/XI	EL-BUSAIDY J.A. MOHAMED	99 YRS W.E.F 1/2/1942	25/-	
		294/XI	GIBSON DIXON SHEM	99 YRS W.E.F 1/2/1942	1,025/-	
		297/XI	NAUSHADALI MAWJI	99 YRS W.E.F 1/2/1942	1,025/-	

		301/XI	MOHAMED ALI SALEH	99 YRS W.E.F 1/2/1942	1,025/-	
		312/XI	WILSON NGIBUNI	99 YRS W.E.F 1/2/1942	150/-	
		204/II	SHEIKH ALI TAIB	33 YRS 1988	492/-	
		103/II	PLOTS RENTED		9,900/-	
3	MWIJAB	45/XX	SAROYA INVESTMENTS	99 1/12/2012	4,805/-	
		46/XX	POSTBANK	1/12/2012	119,490/-	
		47/XX	BAGWANDAS A. PATEL	99 YRS W.E.F. 1/1/1988	18,750/-	
		48/XX	TAIYEBALI INVESTMENT	99 YRS W.E.F 1/1/1988	9,375/-	
		49/XX	COMPOSITE PROPERTY	99 YRS W.E.F. 1/1/1988	28,125/-	
		50/XX	KANTILAL RATHOD	99YRS W.E.F. 1/1/2013	120,000/-	
		51/XX	KHAJITABHAI W/O KAPACEE	99 YRS 1/1/2013	69,020/-	
		52/XX	COMPOSITE PROPERTY	99 YRS 1/12/2012	12,000/-	
		53/XX	ZEENAT M. TAJBHAI		NOT RENEWED	
		54/XX	SHAMIS NOOR	99 YRS 1/12/2012	44,240/-	
		55/XX	MAHESH K. SHAH	99 YRS 1/12/2012	11,260/-	
		56/XX	MOIZ MOHAMEDALI JIVANJEE	99 YRS 1/1/2013	11,250/-	
		57/XX	JAYLAN HAJI BADAWI	99 YRS 1/12/2012	34,470/-	
		58/XX	SHAHIN SWALEH	99 YRS 1/9/1993	6,000/-	
		59/XX	STREAMLINE PROPERTIES	99 YRS 1/12/2012	60,309/-	
		60/XX	YASMIN MOHAMED JIBRIL	99 YRS 1/12/2012	13,200/-	
		61/XX	ABDULKADIR MOHAMED	99 YRS 1/12/2012	32,270/-	

		62/XX	FARIDA & SALMA MUKIRA	99 YRS 1/12/2012	47,880/-	
		63/XX	MERU ROAD FLATS		NOT RENEWED	
		64/XX	SALIM ALI A. BAJABER	99 YRS 1/12/2012	12,300/-	
		65/XX	HUSSEIN M. MOHAMED	99 YRS 1/12/2012	182,280/-	
		66/XX	PRADEEP L. WEERATNA & ANOTHER	99 YRS 1/12/2012	12,298/-	
		67/XX	KAMAL ABDULLA ISSAK	99 YRS 1/1/2013	61,360/-	
		68/XX	SALIM FARAJ NASIBU	99 YRS1/8/2003	5,000/-	
		69/XX	NARGIS MOHAMED BAYUSUF	99 YRS 1/1/2013	24,600/-	
		70/XX	SAID A. KARAMA	99 YRS 1/1/1994	120/-	
		71/XX	SHAUKAT M.K. NOORAN	99 YRS 1/12/2012	1096/-	
		72/XX	BHAGWANDAS PATEL	66 YRS 1/1/1988	18750	
		73/XX	TAIYEBALI INVESTMENTS	99 YRS 1/12/1913	9,375/-	
		74/XX	COMPOSITE PROPERTY	99 YRS 1/1/1988	28,125/-	
		75/XX	KANTILAL RATHOD	99 YRS 1/1/2013	35,680/-	
		76/XX	FATMA AHMED ZEIN	99 YRS 1/1/2013	45,920/-	
		52/XXI	AMIN & SHARIFF JEILAN	99 YRS 1/1/2013	36,640/-	
		278/XXI	AMINA OMAR ATHMAN	99YRS 1/1/2013	7,500/-	
		279/XXI	WILSIN GITAU	99 YRS 1/1/2013	69,020/-	
		280/XXI	PARK HOUSE LTD	99 YRS 1/1/2013	69,020/-	
		281/XXI	ISSA ABDI	99 YRS 1/1/2013	69,020/-	
		719/VI	MOHAMED ABSURA		250/-	
		77/78/XXVII	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	84,000/-	

		172/XXI	KHAJITABHAI KAPACEE	1/1/2013		
		24/XL	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	24,000/-	
		171/VI	PLOT RENTED		6,800/-	
	SURPLUS FUND	165/XXX	JAYLAN KOLATIN	99 YRS W.E.F. 1/1/1984	333/-	
		176/XXI	CANON ASSUARANCE	99 YRS W.E.F. 1/1/1984	24,000/-	
		11/XXXV	ZAINAB BINTI SOUD	99 YRS W.E.F. 1/1/2001	4800/-	
		132/XLII	AMINALI HASNAJI	99 YRS 1/1/1994	5,000/-	
		196/XXX	FEISAL SALIM JAFFER	99 YRS 1/9/1993	1,200/-	
		327/III	SUN N SAND	99 YRS 1/1/1991	3,000/-	
	M.S. BAMKELLE	84/XLI	SHIGOG INVESTMENTS	99 YRS W.E.F 1/11/1988	78000/-	
	GAF	133/X	SALMA YESLAM	99 YRS W.E.F 1/2/1942	150/-	
		134/X	METHODIST CHURCH	99 YRS W.E.F 1/2/1942	150/-	
		135/X	ANDREW ODHIAMBO	99 YRS W.E.F 1/2/1942	50/-	
		136/X	MIRAM W/O ABDALLA	99 YRS W.E.F 1/2/1942	50/-	
		137/X	APOLLO ASSUARANCE CO. LTD	99 YRS W.E.F 1/2/1942	50/-	
		138/X	SALIM HAJI MOHAMED	99 YRS W.E.F 1/2/1942	50/-	
		139/X	MOHANLAL NEMCHANDA`	99 YRS W.E.F 1/2/1942	50/-	

		140/X	JITENDRA D. PATEL	99 YRS W.E.F 1/2/1942	400/-	
		141/X	ANDIVROI MACHARIA	99 YRS W.E.F 1/2/1942	50/-	
		142/X	SAID MOHAMED ALI	99 YRS W.E.F 1/1/2003	6,000/-	
		143/X	MICHAEL O. WAMBAR	99 YRS W.E.F 1/2/1942	50/-	
		144/X	JACKOB LUKE THUO	99 YRS W.E.F 1/2/1942	50/-	
		145/X	ABDULMAJID FANDA	99 YRS W.E.F 1/2/1942	25/-	
		146/X	SALIM SAID NUHED	99 YRS W.E.F 1/2/1942	150/-	
		147/X	ARTHUR W. THUNGU	99 YRS W.E.F 1/2/1942	40/-	
		148/X	DENISH MAGANLALI	99 YRS W.E.F 1/2/1942	50/-	
		149/X	EUNICE MURIUKI	99 YRS W.E.F 1/2/1942	45/-	
		151/X	KULSUMBHAI HAJI	99 YRS W.E.F 1/2/1942	100/-	
		152/X	MOMBASA TECHNICAL UNIVERSITY	99 YRS W.E.F 1/2/1942	50/-	
		153/X	OSMAN AYOOB BACHANI	99 YRS W.E.F 1/2/1942	50/-	
		155/X	SALIM SWALEH SALIM	99 YRS W.E.F 1/2/1942	150/-	
		156/X	AHMED ALI SALIM	99 YRS W.E.F 1/2/1942	50/-	
		158/X	AMASLIY MARKET	99 YRS	11,500/-	

				W.E.F 1/2/1942		
		159/X	SIDIK HUSSEIN MIYANJI	99 YRS W.E.F 1/2/1942	50/-	
		160/X	GEORGE GITUMBU	99 YRS W.E.F 1/2/1942	50/-	
		161/X	SAYYEDA A. MOLEDINA	99 YRS W.E.F 1/2/1942	50/-	
		162/X	MOHAMED A. CHAUNDRY	99 YRS W.E.F 1/2/1942	45/-	
		163/X	JUSUF YAKUB SAYANI	99 YRS W.E.F 1/2/1942	45/-	
		164/X	SHAMSA RAHANI	99 YRS W.E.F 1/2/1942	45/-	
		165/X	FAKHAR HUSSEIN TAFAL	99 YRS W.E.F 1/2/1942	100/-	
		166/X	NOOREIN AL HAJI BADAN	99 YRS W.E.F 1/2/1942	10,000/-	
		167/X	ALI HASSAN SHARMAN	99 YRS W.E.F 1/2/1942	100/-	
		168/X	CARLISLE CREEK APARTMENTS	99 YRS W.E.F 1/2/1942	12,000/-	
		169/X	BOARD OF GOVERNORS MSA POLYTECHNIC	99 YRS W.E.F 1/2/1942	50/-	
		170/X	ZOHER H. PIRBHA	99 YRS W.E.F 1/2/1942	6,000/-	
		171/X	SHASHUDIN ZINDIN	99 YRS W.E.F 1/2/1942	100/-	
		172/X	RUSTAMALI GULAMALI	99 YRS W.E.F 1/2/1942	100/-	
		173/X	RASHID M. JUMA	99 YRS W.E.F 1/2/1942	100/-	

		418/X	CHRISTOPHER ODHIAMBO	99 YRS 15/9/97	12,000/-	
		419/X	ASYA ABDULMUNEM	99 YRS 15/9/97	12,000/-	
		420/X	MOHAMED TAJ MOHAMED	99 YRS 15/9/97	12,000/-	
		421/X	IMRAN ENTERPRISES	99 YRS 15/9/97	12,000/-	
		422/X	PETER MAVONDO NGUI	99 YRS 15/9/97	12,000/-	
		423/X	ABDALLA MWARUWA	99 YRS 15/9/97	12,000/-	
		424/X	PILU BERCHABHAI PATEL	99 YRS 15/9/97	12,000/-	
		176/X	GEORGE MONDI	99 YRS 1/12/1942	70/-	
		177/X	BOARD OF GOVERNORS MOMBASA POLYTECHNIC	99 YRS 1/12/1942	70/-	
	S.R. DARRAN	133/XVI	SOLOMOM MBUGUA MBETE	99 YRS 15/3/1945	140/-	
		134/XVI	ABDULMAJID ALI RAMZAN	99 YRS 15/3/1945	130/-	
		135/XVI	ASSOCIATED ELECTRICALS	99 YRS 15/3/1945	155/-	
		136/XVI	NATIONAL OIL CORP.	99 YRS 15/3/1945	20,000/-	
		137/XVI	ZAFFER IBRAHIM KARIMJEE	99 YRS 15/3/1945	180/-	
		138/XVI	R.M. SHAH & ANOTHER	99 YRS 15/3/1945	180/-	
		139/XVI	MUKESH PREMJI	99 YRS 15/3/1945	180/-	
		140/XVI	MADRASATUL MUNAWARAH TRUST	99 YRS 15/3/1945	180/-	
		141/XVI	KHALIL AHMED	99 YRS 15/3/1945	175/-	
		320/XVI	PLOT RENTED		240,000/-	
	JUBILEE HALL TRUST	4/XXXI	JUBILEE HALL TRUST	99 YRS 1/1/1991	12,000/-	
	SHIKELLY	77/I	CARRINGTON ESTATE	99 YRS 1/1942	400/-	
		235/I	TRADE PLUS INTERNATIONAL		36,000/-	

	RASHID SOUD	104/XLIV	SHIGOG INVESTMENTS	99 YRS 1/11/1998	9,000/-	
	ALI MUTWAFY	64/XLIV	SHIGOG INVESTMENTS	99 YRS 1/11/1988	9,000/-	
	MANDHRY	45/XX	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	15,000/-	
		18/XXI	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	12,000/-	
		197/I	CHARLES MWAURA			COURT CASE
	SAID & ATIYA	79/II	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	24,000/-	
	FADHELU S. KHALFAN	8/XXIX	OSMAN A. OSMAN	99 YRS 1/9/1935	17,400/-	
	NAAMAN BASHEIKH	17/XXXI	MOHAMED MASKERY	66 YRS 1/1/1993	1,875/-	
	AZIZ BIN JUMA MUHUNZI	2540/VI	ORAKO LTD		8,000/-	
	MWINYIKOMBO	44/XXX	SHIGOG INVESTMENTS	99 YRS W.E.F. 1/11/1988	22,500/-	
	SALIM KHALFAN	38/XXXI	SHARIFA SHEIKH MOHAMED		150,000/-	
	ALI MKADAM	259/II	PLOT RENTED		81,600/-	
	MOHAMED ABOUD	236/VI	PLOT RENTED		140,400/-	
	DUWEIKY	523	PLOTS RENTED		24,000/-	
		951	PLOTS RENTED		1,200/-	
		952	PLOTS RENTED		20,400/-	
	RASHID SOUD	1551	BAHARINI VENTURE	33 YRS 1/10/1986	30,000/-	
		1242	PLOTS RENTED		31,200/-	
		1294	PLOTS RENTED		2,400/-	
		1632	PLOTS RENTED		2,400/-	
	SALIM KHALFAN	1576	HAFIDH M. HAFIDH	99 YRS 1/7/1995	2,800/-	
		1076	RENTED		31,200	
	NASSOR SULEIMAN EL-BAKRY	1673	MOHAMED O. DAHMAN	99 YRS 1/7/1995	2,000/-	
	S.G. DARAMKY	99	SAID SWALEH SHARMAN	46 YRS 1/1/1986	720/-	
		99	MALINDI GINNERIES	99 YRS 1/1/2014	60,000/-	

		99	SAID SWALEH SHARMAN	46 YRS 1/1/1984	1,500/-	
	ABDULREHMAN BASHEIKH	1392	SWALEH ABDALLA NASSOR	99 YRS 1/1/1982	6,000/-	
		1416	PLOTS RENTED		2,400/-	
	ALI BIN NASSOR	1197	SALIM AHMED TAIB	99 YRS 1/3/1966	1,000/-	
		1198	MOHAMED FEISAL OMAR	99 YRS 1/3/1966	300/-	
		1383	VACANT			
		1588	VACANT			
		1663	BARNIK	99YRS 1/3/1966	6,000/-	
	ISLAM BIN ALI	103	SHIGOG INVESTMENTS	99YRS 1/2/1995	5,200/-	
		104	MJANAKHERI FARM	99 YRS 1/2/1992	3,750/-	
		111	GHALIB A. SHEIKH	99 YRS 1/1/1982	675/-	
		114	TAWFIQ MUSLIM YOUTH	99 YRS	12,000/-	
		166	VACANT			
	HAJI FERUNZY	167	ALI BIN SUEDAN	99 YRS 1/1/1982	625/-	
	ABDALLA MAKI	156	SINBAD HOLDINGS	99 YRS 1949	1,920/-	
	SHEIKH BATE	109	JANMAL MOHAMED	99 YRS 1/1/1995	5,625/-	
	JUMA BIN ABDALLA	4012	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4013	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4014	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4015	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4016	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4017	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4018	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4019	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4020	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	

		4021	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4022	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4023	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4024	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4025	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4026	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4027	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4028	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4029	LIRA INVESTMENTS	99 YRS 1/1/1991	1,000/-	
		4030	CIMA MARCELLO & OTHER	99 YRS 1/1/1991	1,000/-	
		4031	CIMA MARCELLO & OTHER	99 YRS 1/1/1991	1,000/-	
		4032	CARTISANO MARIA	99 YRS 1/1/1991	1,000/-	
		4033	CARTISANO MARIA	99 YRS 1/1/1991	1,000/-	
		4034	CARTISANO MARIA	99 YRS 1/1/1991	1,000/-	
		4034	WALTER CARELLI	99 YRS 1/1/1991	1,000/-	
		4035	WALTER CARELLI	99 YRS 1/1/1991	1,000/-	
		4036	CALORE MASSIMO	99 YRS 1/1/1991	1,000/-	
		4037	ROBERTO PACCCIONI	99 YRS 1/1/1991	1,000/-	
		4038	ROBERTO PACCCIONI	99 YRS 1/1/1991	1,000/-	
		4039	BARBARA MASSI & OTHER	99 YRS 1/1/1991	1,000/-	
		4040	BARBARA MASSI & OTHER	99 YRS 1/1/1991	1,000/-	
		4041	BARBARA MASSI	99 YRS 1/1/1991	1,000/-	
		4042	BARBARA MASSI	99 YRS 1/1/1991	1,000/-	

		4043	BRACCO GIANCARLO & OTHER	99 YRS 1/1/1991	1,000/-	
		4044	BRACCO GIANCARLO & OTHER	99 YRS 1/1/1991	1,000/-	
		4045	RENATO MARINI	99 YRS 1/1/1991	1,000/-	
		4046	RENATO MARINI	99 YRS 1/1/1991	1,000/-	
		4047	ENRICO COLOMBI & OTHERS	99 YRS 1/1/1991	1,000/-	
		4048	RENATO MARINI	99 YRS 1/1/1991	1,000/-	
		4049	RENATO MARINI	99 YRS 1/1/1991	1,000/-	
		4050	GUIDI BELLI	99 YRS 1/1/1991	1,000/-	
		4051	CALVALARI LUIGIANO	99 YRS 1/1/1991	1,000/-	
		4052	ANTONIETTE BENTINI	99 YRS 1/1/1991	1,000/-	
		4053	JONO LUIGI	99 YRS 1/1/1991	1,000/-	
		4054	MALINDI PROJECTS LTD	99 YRS 1/1/1991	1,000/-	
		4055	MALINDI PROJECTS LTD	99 YRS 1/1/1991	1,000/-	
		4056	MALINDI PROJECTS LTD	99 YRS 1/1/1991	1,000/-	
		4057	MALINDI PROJECTS LTD	99 YRS 1/1/1991	1,000/-	
		4058	ALBERTO COTARI	99 YRS 1/1/1991	1,000/-	
		4059	GUSERI GUIDO	99 YRS 1/1/1991	1,000/-	
		4060	IVO GALFRE	99 YRS 1/1/1991	1,000/-	
		4061	ANTONITTE BENTINI	99 YRS 1/1/1991	1,000/-	
		4062	RENATO MARINI	99 YRS 1/1/1991	1,000/-	
		4063	FANZEL GINO	99 YRS 1/1/1993	1,000/-	
		15/3141	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	

		3142	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	
		3143	ERICH SZEWZUK	99 YRS 1/1/1993	1,000/-	
		3144	ERICH SZEWZUK	99 YRS 1/1/1993	1,000/-	
		3145	ERICH SZEWZUK	99 YRS 1/1/1993	1,000/-	
		3146	DR. BRUNO	99 YRS 1/1/1993	1,000/-	
		3147	DR. IMMO KUCKULIES	99 YRS 1/1/1993	1,000/-	
		3148	DR. IMMO KUCKULIES	99 YRS 1/1/1993	1,000/-	
		3149	DR. VOLKER BECKER	99 YRS 1/1/1993	1,000/-	
		3150	DR. VOLKER BECKER	99 YRS 1/1/1993	1,000/-	
		3151	DR. VOLKER BECKER	99 YRS 1/1/1993	1,000/-	
		3152	ERICH SZEWZUK	99 YRS 1/1/1993	1,000/-	
		3153	HERMAN DETERING	99 YRS 1/1/1993	1,000/-	
		3154	NICKI KOENECKE	99 YRS 1/1/1993	1,000/-	
		3155	NICKI KOENECKE	99 YRS 1/1/1993	1,000/-	
		3156	FRANCO ZIMMERMAN	99 YRS 1/1/1993	1,000/-	
		3157	FRANCO ZIMMERMAN	99 YRS 1/1/1993	1,000/-	
		3158	FRANCO ZIMMERMAN	99 YRS 1/1/1993	1,000/-	
		3159	RUMEO	99 YRS 1/1/1993	1,000/-	
		3160	FRANCO ZIMMERMAN	99 YRS 1/1/1993	1,000/-	
		3161	FRED KIESEWETAR	99 YRS 1/1/1993	1,000/-	
		3162	FRED KIESEWETAR	99 YRS 1/1/1993	1,000/-	
		3163	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	
		3164	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	

		3165	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	
		3166	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	
		3167	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	
		3168	PETER KOENECKE	99 YRS 1/1/1993	1,000/-	
		128	MJANAKHERI FARM	99 YRS 1/1/1993	150/-	
		1540	SHEIKH ALI BIN TAIB BAJABER	99 YRS 1/1/1993	875/-	
		30	RENTED		6,000/-	
		1059	RENTED		1,200/-	
		1285	RENTED		12,600/-	
	ALI FUMO	959	SHIGOG INVESTMENTS	99 YRS 1/1/1995	27,500/-	

LAMU

	PWANI	784/I	RENTED PLOTS		128480/-	
		800/I	RENTED PLOTS		22,080/-	
		1038/I	RENTED PLOTS		1,200/-	
		1039/I	ABDULREHMAN MAHRUS	99 YRS 1/1/1997	6,000/-	
		10350	UNRENTED			
		114/II	RENTED PLOTS		89,280/-	
	RODHWA	151/I	ALI MOHAMED ABDULLA	33 YRS 1/1/1976	150/-	
		361/I	FADHIL A. FADHIL	99 YRS 1/1/1983	3,400/-	
		512/I	PREMISES RENTED		42500/-	
	SEIF BIN SALIM	43/II	RENTED		400/-	
		51/II	BAKARI SOMOE	33 YRS 1/6/1988	3,975/-	

Appendix D: Draft Waqf Amendment Bill

Taskforce for the Review of the Wakf Commissioners of Kenya Act 1951

Background

‘Waqf’ is an important Islamic institution, being the greatest sources of charity devoted for the overall development of the Muslim society. Traditionally it has been used to support various religious, educational, economic, social, and cultural programs in Islamic countries hence emerging as a vital institution in the Muslim society serving the purpose of maintaining various Islamic and social organizations as well as assisting poor individuals of the society leading to a significant reduction of poverty. Its origin dates back to the time of Prophet (peace be upon him) who himself practiced it and, upon his demise, a number of his companions followed him in this noble task. In the Ottoman Empire the institution of the Waqf played also a vital role to the extent that Ottoman sultans used it to provide basic and essential public services.

Waqf Law in Kenya

The current Waqf law in Kenya was assented to on 8th June 1951 and it is referred to as Wakf Commissioners Act (CAP 109). It provides for the appointment of Wakf Commissioners and prescribes their powers and duties. Every Wakf made by or for the benefit of any Muslim shall be administered in accordance with the provisions of this Act.

Justification for Review

The Wakf Commissioners Act 1951 is an old law that is incapable of serving the current Muslim Ummah well. It is not aligned to the current constitution and has within it terms and titles that are against the spirit of the Kenyan Constitution and contain in it language that segments the Muslim Ummah as it defines Muslims as Arabs, members of the twelve tribes, a Baluchi, a Somali, a Comoro islander, a Malagasy or a native of Africa of the muslim faith. This is clearly a law that was informed by the apartheid policies of the colonial era. It also still refers to the Provincial Commissioner, the Coast Province and the Governor of Kenya, titles and offices which no longer exist. The current structure and organization of the Wakf Commissioners of Kenya also fails to meet the expectations of the Muslim Community and the descendants of those who dedicated their properties to Waqf.

Appointment of the Taskforce to Review the Wakf Commissioners Act 1951

In a notice in the Kenya Gazette dated 26th October 2015 the Honorable Attorney General appointed a Taskforce to Review the Wakf Commissioners Act 1951. The Taskforce was given three months to undertake that task. In carrying out this review the Taskforce is required to research, receive views from members of the public whether written or oral and also review previous reports on the Waqf properties. It is also required to compare with regional and international best practice.

The Taskforce Membership

Members appointed by the Honorable Attorney General are as follows:

Hamadi Iddi Boga (Prof) - Chairman

Juma Ngao

Zubeir Noor

Saad Yahya (Prof)

Sheikh Ibrahim Lethome

Mwanakitina Bakari (Dr)

Abdallah Kheir (Dr)

The Chief Kadhi

Brenda Mtoka –Joint Secretary

Jafred Maliru- Joint Secretary

Appeal to the Public

The Taskforce has begun its work and appeals to the public and interested parties to make their submissions to the Taskforce in writing suggesting reviews to the policy, laws and Institutional framework for the administration of Waqf properties in Kenya. The ultimate aim is to have a law that complies with the constitution of Kenya 2010, international best practice, Muslim law and serves the best interests of those who give for Waqf and their beneficiaries. Soon we will announce a series of public meetings to receive views and submissions from the general public. Such views will be collected from all over Kenya. Interested parties are advised to get a copy of the Wakf Commissioners Act 1951 to familiarize themselves with the relevant law.

Views should be submitted to the Secretariat in soft or hard copy up to 31st March 2016

The Taskforce for Review the Wakf Commissioners Act

Office of the Attorney General and Department of Justice

P.O. Box 80366 Mombasa

9th FLOOR, NSSF BUILDING

NKURUMAH ROAD

MOMBASA

bmutoka@gmail.com

Jopo la Mapitiyo ya Sheria ya Makamishna wa Wakfu ya Kenya 1951

Utangulizi

'Wakfu' ni taasisi muhimu ya Kiislamu na ni chanzo cha sadaka nyingi zenye azma ya kuuendeleza Umma mzima wa Waislamu. Tangu mwanzo umetumika kusaidiwa mipango mingi ya kidini, kielimu, kiuchumi, kijamii, na kitamaduni katika mataifa ya Kiislamu hivo basi imejitokeza ni taasisi muhimu katika jamii ya Waislamu inayosaidiwa mashirika ya Kiislamu na Kijamii pamoja na kuwasaidiwa watu masikini katika jamii na kupunguza sana umasikini. Tangu wakati wa Mtume Muhammad (SAW) wakfu ulikuwako na baada ya kuondoka maswahaba wake waliendelea na jambo hili muhimu. Wakati wa Himaya ya Uthmaniya (Ottoman Empire), wakfu ulikuwa na jukumu kubwa mpaka Masultani wa Uthmaniya waliutumia wakfu kuwapa umma huduma muhimu.

Sheria ya Wakfu nchini Kenya

Sheria ya Wakf nchini Kenya ilitiwa sahihi kuwa sheria mnamo tarehe 8 mwezi Juni 1951 na yajulikana kama Sheria ya Makamishna wa Wakf (CAP 109). Inazungumziya kuandikwa kwa Makamishna wa Wakf na inaeleza sheria zao na majukumu yao. Wakfu wowote unaotolewa au unaofaidi Waislamu utatekelezwa kulingana na maelezo ya Sheria hii.

Sababu za Mapitiyo

Sheria ya Makamishna wa Wakfu ya Kenya 1951 ni sheria ya zamani isiyoweza kutumikiya Ummah wa Waislamu hivi sasa. Haina usawazisho na Katiba ya sasa na ina anwani na maneno yanayokwenda kinyume na dhamiri ya Katiba ya Kenya kwa kuwa na lugha inayougawanya Ummah wa Waislamu kwa kuwabandika majina kama: Waarabu, Watu wa Makabila Kumi na Mbili, Mbulushi, Msomali, Mngazija, Mmalaysia, au Muislamu mwenyeji wa Afrika. Ni wazi ni sheria iliyotungwa ikiandamana na sera za ubaguzi wakati wa Ukoloni. Bado inayo maneno kama Mkuu wa Mkowa, Mkowa wa Pwani na Gavana wa Kenya, anwani na madaraka ambayo hakuna tena Kenya. Muundo na mipangiliyo ya sasa ya Makamishna wa Wakfu wa Kenya imeshindwa kutimiza matarajiyo ya Jamii ya Waislamu na warithi wa wale waliyojitoleya mali yao kwa Wakfu.

Kuundwa kwa Jopo la Mapitiyo ya Sheria ya Makamishna wa Wakfu ya 1951

Kulingana na notisi ya Kenya Gazette ya tarehe 26 Oktoba 2015, Mheshimiwa Mwanasheria Mkuu wa Serikali aliunra Jopo la Mapitiyo ya Sheria ya Makamishna wa Wakfu ya 1951. Jopo hilo lilipawa miezi mitatu kuifanya kazi hiyo. Kutekeleza pitiyo hilo Jopo ni lazima litafiti, lipokee maoni kutoka kwa umma, yaliyoandikwa au ya mdomo na kupitiya ripoti za zamani za mali ya Wakfu. Imetakiwa piya ilinganishe na wafanyavo wengine katika eneo hili na ulimwenguni.

Waliyomo kwenye Jopo

Wanajopo waliyoteuliwa na Mheshimiwa Mwanasheria Mkuu wa Serikali ni:

Hamadi Iddi Boga (Prof) - Mwenyekiti

Juma Ngao

Zubeir Noor

Saad Yahya (Prof)

Sheikh Ibrahim Lethome

Mwanakitina Bakari (Dkt)

Abdallah Kheir (Dkt)

Kadhi Mkuu

Brenda Mtoka – Katibu wa Pamoja

Jafred Maliru- Katibu wa Pamoja

Mwito kwa Umma

Jopo limeanza kazi na linaomba umma wote na wanaohusika kuleta rai zao za mapitiyo ya sera, sheria na ratiba za kiasasi za kusimamiya mali ya Wakfu katika Kenya. Shabaha kuu ni kuwa na sheria inayokubaliyana na katiba ya Kenya ya 2010, mifanyiko ya kimataifa, Sheria ya Kiislamu, na inawatumikiya vema wanaotowa mali yao kwa Wakfu na wanaofaidika kwayo. Baada ya muda kidogo tutatangaza mfululizo wa mikutano ya umma kupokeya rai na mapendekezo yao. Mapendekezo hayo yatapokelewa kutoka pembe zote za Kenya. Wanaohusika wanaombwa wapate nakala ya Sheria ya Makamishna wa Wakfu 1951 ili wajuwe yaliyomo na sheria zinazohusika.

Mapendekezo yote yawasilishwe kwa Ofisi kimaandishi au kimtandao **hadi tarehe 31 Machi 2016.**

Yapelekwe kwa:

The Taskforce for Review of the Wakf Commissioners Act

Office of the Attorney General and Department of Justice

P.O. Box 80366 Mombasa

Gorofa ya Tisa , JENGO LA NSSF, BARABARA YA NKURUMAH , MOMBASA

Au kimtandao baruwa pepe: bmutoka@gmail.com

- country of origin or destination; sector-wise breakdown)
- (ii) overview of main policy trends for the last 10+ years (parameters/priorities of the national development strategy/poverty reduction strategy, trade policy including any regional trade arrangements, membership of the WTO, privatization/regulation, broad parameters of competition law, labour and environmental regulation, fiscal regime for foreign investors and their investments and intellectual property rights regime);
 - (iii) Policy-making process for investment issue (what are the national policy objectives/targets for investment, to what extent are these purely economic objectives and how far are they affected by social and political objectives, which Ministry(ies)/agencies/other quasi-governmental bodies participate in the decision-making process, how much independence to sub-national layers of government (state, region, municipality etc.) have on investment issues).
- (c) the technical committee shall also undertake the following tasks:
- (i) review and document the national laws relevant to foreign investors;
 - (ii) review and discuss such laws as employment laws, corporate laws, investment laws and evaluate whether and how they protect foreign investors.
- (d) undertake benchmarking tours to identify best practices in investment generation process;
- (e) review the NIP concept note, work programme and budget;
- (f) brief the steering committee;
- (g) undertake stakeholder consultations on the various sectors and areas of coverage.
3. In the performance of its functions, the Committee:
- (a) shall hold such number of meetings in such places and at such times as the Committee shall consider necessary for the proper discharge of its functions;
 - (b) liaise and consult with Government ministries, public bodies and the private sector in order to collect the required information;
 - (c) may carry out or cause to be carried out such studies or research as may inform the Committee on its mandate;
 - (d) Subject to the foregoing, the committee shall have the powers necessary or expedient for the proper execution of its mandate, including the power to regulate its procedure.
4. The Committee shall be deemed to have commenced work on the 1st September, 2015.
5. The Committee shall prepare and present its final policy to the Cabinet Secretary by the 31st December, 2015, after which it shall stand dissolved.

Dated the 26th October, 2015.

IBRAHIM MOHAMED,
*Principal Secretary,
State Department of Commerce and Tourism,
Ministry of East African Affairs, Commerce and Tourism.*

GAZETTE NOTICE NO. 8601

**TASKFORCE ON THE REVIEW OF THE WAKF
COMMISSIONERS ACT 1951**

IT IS notified for the general information of the public that the Attorney-General has appointed a taskforce consisting of the following—

Hamadi Boga (Prof.)—*Chairman*

1. The Members of the Taskforce shall be—

Sheikh Juma Ngao

Zubeir Hussein Noor
Sheikh Ibrahim Lethome
Saad Yahya (Prof.)
Mwanakitina Bakari (Dr.)
Abdallah Kheir (Dr.)
The Chief Kadhi or his representative

Joint Secretaries:

Brenda Mtoka
Jafred Maliru

TERMS OF REFERENCE OF THE TASKFORCE

2. The Terms of Reference for the Taskforce shall be to—

- (a) review the legal, policy and institutional framework for the management of Wakf Commissioners of Kenya;
- (b) propose appropriate reforms to the legal, policy and institutional framework for Wakf properties in Kenya;
- (c) propose appropriate amendments to various legal instruments with a view to strengthening the legal and institutional framework for the management of wakfcommissioners of Kenya;
- (d) consider and propose appropriate mechanisms for collaboration and co-operation among the institutions involved in the management of wakf properties;
- (e) consider and propose appropriate mechanisms for the management of wakf Commissioners of Kenya in the devolved system of Government and in the management of the properties and the Wakf Commission of Kenya;
- (f) identify international or regional best practices in the management of Wakf Commissions and Wakf properties;
- (g) prepare a report on the necessary legal, policy and institutional reforms necessary for effective management of Wakf Commissioners of Kenya and Wakf properties;
- (h) carry out such other functions as may be necessary or incidental to the foregoing.

3. In the performance of its functions, the Taskforce—

- (a) shall hold such number of meetings in such places and at such times as the Taskforce shall consider necessary for the proper discharge of its functions;
- (b) co-opt any resource persons as and when necessary, on short term basis, to assist in the achievement of the Terms of Reference;
- (c) make reports or updates, every two weeks, to the Attorney General outlining any matters that may require urgent action;
- (d) shall receive views from members of the public and receive oral and written submissions from any person with relevant information;
- (e) may use official reports of any previous investigations relevant to its mandate;
- (f) may carry out or cause to be carried out such studies or researches as may inform the Taskforce on its mandate.

4. The Taskforce shall complete its work and submit its final report to the Attorney-General not later than three months from the date of its first appointment and the Attorney-General may when necessary extend the period.

5. The costs incurred by the Taskforce, including but not restricted to the facilitation and payment of allowances in respect of the members and secretariat of the Taskforce, shall be defrayed from the funds of the Wakf Commissioners of Kenya.

6. The Secretariat of the Taskforce shall be based at the Office of the Attorney-General and Department of Justice offices in Mombasa. Submission from the public can be addressed to the Secretary, Taskforce to Review of the Wakf Commissioners Act, P.O. Box 80366 Mombasa.

Dated the 26th October, 2015.

GITHU MUGAI,
Attorney General.