

# WAQF COMMISSIONERS OF KENYA



CAPACITY ENHANCEMENT  
INITIATIVE 2018/19



PROPOSAL

## Acknowledgement

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## CAPACITY ENHANCEMENT PROPOSAL

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# **I BACKGROUND**

## **Purpose of Report**

The Waqf Commissioners of Kenya is a statutory body in Kenya that oversees all matters pertaining to Waqf and whose duties are enshrined in the Waqf Commissioners Act Cap 109, of the Laws of Kenya. With the passage of time, the commission has experienced various challenges in the execution of its duties brought about by various constraints including legal constraints, financial constraints and so on. This has seen its effectiveness in managing the Waqf portfolio deteriorate over the years. The current Commission is keen on revamping the Commission's capacity and effectiveness in managing its portfolio and has in fact been working with a special task force formed by the Attorney General's office for the purpose of reviewing the Waqf Commissioners Act.

## **Approach**

Our approach to the proposal is to begin with focusing on the relevant background information and ongoing work/research including brief analysis of the Muslim population, the tenets of Waqf, the current governing legislation and institutions in place together with the recent proposals of review of the Waqf Commissioners Act. This forms a basis on which we can deduce the institutional improvements needed and how to break down the transformation of the commission into achievable milestones. It to develop the final recommendations which are costed and presented to target potential financiers.

Investigations have been based on data from a variety of sources, including official documents and reports from the Waqf Commissioners and the task force appointed by the Attorney General to review the Waqf Commissioners Act; statistical data from the Kenya National Bureau of Statistics; various research reports, field observations, databases and consultations with the Waqf Commission.

## II SOCIO-ECONOMIC CONTEXT

### Country Profile

Kenya is a republic in East Africa neighboured by five other countries i.e. Ethiopia to the north, South Sudan to the north-west, Uganda to the west, Tanzania to the south and Somalia to the north east. It has a total land area of 582,650 sq. km. with a coastline stretching for 536 km. It is traversed by the equator and notable for its geographical variety that includes desert, snow capped peaks, highland forests and tropical savannah. The population is largely concentrated in the bottom half of the country, since only a third of the land area is cultivable, the rest being arid and semi-arid pasture and savannah. Nearly half the population consists of children under the age of 16 years.

According to the 2009 national census Kenya had a total population of 38.61million people<sup>1</sup>. Currently the population is estimated to be 42 million with an annual growth rate of 2.7%.

The mainstay of Kenyas economy is agriculture which is promoted by the soils and conducive climate in the country. Agricultural (including horticultural) produce form the biggest exports from the country and contribution to the GDP. The property sector/ construction industry and tourism industry are both also very vibrant. Below are some indicators on the economy.

- Kenya's current account deficit widened by 5.4 per cent to stand at USD 1,304 million in the second quarter of 2017 from a deficit of USD 1,237 million during the first quarter of 2017
- Annual average inflation (change in the annual average consumer price index) in Kenya increased 7.06 percent year-on-year in September of 2017. It is the lowest inflation rate since January amid a slowdown in food and electricity cost. (Central Bank of Kenya, 2018)

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<sup>1</sup> 2009 National Population and Housing Census (KNBS)



- Kenya's economic growth is projected to decelerate to 5.5%, a 0.5 percentage point mark down from the 2016 forecast, according to the World Bank's Kenya Economic Update (KEU).
- The commercial bank weighted average lending/overdraft interest rate was approximately 13- 14% in 2017.
- The previous 9- day Treasury bill interest rate was at 8% while the interest rate for the 364 day T-bill was 11.2%.

### **Muslim Population in Kenya**

Islam first came to Kenya from the Indian Ocean coast, where it remained concentrated for nearly 1,000 years. By the eighth century, pioneer Arab Muslim traders had arrived in the East African lands of modern-day Kenya and Somalia, bringing foreign goods and their new religion with them as they settled the coastal ports. Their arrival was part of a larger, wide-ranging spread of Islam that would entrench the religion on three continents less than a century after the death of the Prophet Muhammad (PBU). Archaeological evidence attests to a thriving Muslim town on Manda Island by the tenth century AD. On arrival, Muslims settled along the coast, engaging in trade and intermarried with the local tribes. With time, through the interactions of individuals, Islam spread inland to other parts of the country.

According to the 2009 census, the Muslim Population in Kenya was then 4,304,798. Muslims in Kenya are about 10 percent of the Kenya population. Recent studies put the figure at about 10m Muslims. Although Islam has spread throughout Kenya, the largest number of Muslims is found in the coastal and north-eastern regions while other parts of the country also have sizeable numbers. The vast majority of Muslims in Kenya follow the Sunni Islam of Shafi school of jurisprudence. There are also sizeable populations of Shia and Ahmadi adherents.[2]

The Supreme Council of Kenya Muslims (SUPKEM) is the umbrella body of all the Muslim organizations, societies, mosques committees.

Kadhi's courts are provided for in the country's constitution. This court has legal jurisdiction over personal law including marriage, divorce, custody of children and inheritance.

### **Waqf Commission Act**

The Waqf Commissioners Act (Chapter 109 of the Laws of Kenya) was enacted in 1951. It provides for the appointment of Waqf Commissioners and prescribes their powers and duties. It states that every Waqf made by or for the benefit of any Muslim shall be administered in accordance with the provisions of this Act. The commissioners (eight in number) are appointed to serve for a term of 3 years and are responsible for managing the Waqf portfolio.

It has been the only law governing Waqf, and the Muslim *Ummah* has had to rely on it this far despite its shortcomings. Shortcomings include:

- It is not aligned to the current constitution and has within it, terms and titles that are against the spirit of the Kenyan Constitution;
- It also contains language that segments the Muslim community as it has a very narrow definition of who is a Muslim;
- 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 Waqf Commissioners of Kenya also fails to meet the expectations of the Muslim community and the descendants of those who dedicated their properties to Waqf endowments.

### **Waqf Management**

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 portfolio of the Commission has dwindled such that properties that are currently under the Waqf Commissioners management are less than 300 (see table below).

<b>Area</b>	<b>No. of leases</b>	<b>No. of owners</b>
Mombasa	253	34
Lamu	11	3
Malindi	-	-
<b>Total</b>	<b>264</b>	<b>37</b>

Some of the properties are not in a good state and the commission attributes this to:

- Outmoded management approaches
- Inadequate records
- Misuse and abuse of Waqf properties by tenants
- Unwarranted demands by local authorities, e.g. rates (property tax)
- Inadequate resources to support the operations of the commission.

In a notice in the Kenya Gazette dated 26th October 2015 Kenya's Attorney General appointed a Taskforce to Review the Waqf Commissioners Act 1951. In carrying out this review the Taskforce was required to research, receive views from members of the public whether written or oral and also review previous reports on the Waqf properties. It was also required to research and extract lessons from regional and international best practice and present their findings for validation by

the Kenya Muslim Ummah. The taskforce presented their final findings and recommendations in December 2017 as summarized below.

## **Waqf Reforms**

The Reforms proposed by the Taskforce were divided into three different areas:

### Waqf policy

The report suggested the preparation of a Waqf policy which ought to be guided by a number of principles including:

- ✓ Strict observance of the basic purposes of Waqf as enshrined in Islamic law
- ✓ Respect for the traditions and customs of the various communities involved
- ✓ Making the best use of Waqf assets and infrastructure and indeed enhancing the long term sustainability of the endowments in economic and social terms.
- ✓ Using the best available methods and techniques by institutions entrusted with administering Waqf endowments,
- ✓ Reducing poverty, improving the social wellbeing
- ✓ Creating a national footprint for the public institution responsible for administering Waqfs
- ✓ 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 and so on
- ✓ Contributing to the attainment of sustainable development goals.
- ✓ 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.

The key attention areas that would need to be addressed in summary are:

- The main players in the Waqf cycle i.e. who are the main givers and receivers
- The types of assets that can be given as Waqf - including immovable property, chattels (goods) and financial assets, works of art, books ETC

- Waqf deeds and documentation i.e. the structure of the Waqf deed, format, verification and registration.
- Protection and Recovery of Waqf property: protection from compulsory acquisition as much as possible, approval and registration of any transaction involving Waqf properties, penalties for abuse of Waqf properties and provision for recovery of lost and grabbed Waqf properties.
- Assessing the viability of Waqf properties through a court process and proposal of alternative beneficial use, development or investments that would make redevelopment or improvement of the property viable.
- Potential purposes and uses of Waqf endowments: Some new beneficial uses should be encouraged while others with political or divisive motives should be discouraged.
- National outlook and regional representation since there are Waqfs all over the country despite the current definition and scope in the law governing Waqfs.
- Property redevelopment and use changes criteria including: Observance of Waqf deed intentions, compliance with Shariah and national laws, improved benefits to recipient families or institutions and 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 and municipal approval.

#### Institutional and financial set up

Improvements to Waqf management will include strict rules on professional standards for managing 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. 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.
- Emphasis on an inclusive approach and consultations
- Improving facilities and systems, and capacity building to rise levels of accountability and transparency, and increased productivity.
- Reforming the administrative structure such that the Commission's secretariat is headed by a Director General supported by suitably qualified and experienced professionals in the areas of property asset management, finance, social/public relations, human resources, sharia and law.

#### Legislative issues

- The team reviewing the Waqf Commissioners Act of Kenya identified many areas that need to be amended to accord with the Kenyan Constitution 2010, to give the proposed Waqf Commission greater operational capabilities and autonomy, and to advance transparency and accountability. The Waqf legislation needs to be rewritten such that the substantive bill will be supplemented by subsidiary legislation and proposed amendments to other statutes as may be necessary. There should be enough provision with regard to transition of staff, property, agreements, leases and other obligations of the Waqf Commissioners, so as to secure rights, obligations and properties of all stakeholders. All old pre-independent leases which have disadvantaged the Commissioners as outlined in this report should be revoked and renegotiated in line with the current economic reality to assure viability and sustainability of the proposed Waqf Commission.
- 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.

### Summary of Task Force recommendations

Numerous recommendations have been made in the AG's Task Group Report, but those that call for immediate action could be summarized as follows:

- (i) *The proposed Waqf Policy be finalized and adopted and the name of the Waqf Commissioners of Kenya should be changed to Waqf Commission of Kenya.*
- (ii) *The Waqf Commissioners of Kenya as currently constituted should quickly review and renegotiate all leases to accord with the current economic reality.*
- (iii) *The Waqf Commissioners of Kenya should audit all its properties and recover any properties that might have fraudulently changed hands.*
- (iv) *The Taskforce for the review of the Waqf Commissioners of Kenya Act 1951 should work with drafters from the Attorney General's Office to complete the draft Bill.*

### III PROPOSED PROJECT

#### Project objectives

The objective of the project is to enable the WCK to take up its role effectively in light of the proposed reforms. Since the scope of the proposed changes is very wide with some changes touching on national laws and policy issues, the scope of the project will be limited to immediate actions that will empower the commission in terms of facilities and know-how to manage its portfolio and to generally take up its new role. The project will take three angles as follows:

#### Scope of Project

1. Database and Asset Portfolio - information management, inventories, maps

This will involve digitising and updating the Commission's list of properties. Various tasks will need to be carried out to establish a comprehensive database/ inventory of properties under the Commission's charge. The following tasks will be carried out:

- ✓ Collating the information at the secretariat together with site visits to confirm the same and add attributes to the database including a rough estimate of total value of the inventory
- ✓ Identify Waqf assets on the basis of available asset lists in various Departments;
- ✓ Verify available data and fill in gaps based on data obtained from interviews, field visits and other sources;
- ✓ Prepare an up-to-date list of assets showing identification no., location, current user, description, condition and other relevant information as agreed with WCK leadership;
- ✓ Create a framework for undertaking estimates of valuation of each asset using internationally acceptable asset valuation methods such as those recommended by IVSC (International Valuation Standards Committee);
- ✓ Prepare a digital database and Assets Register;
- ✓ Prepare a digital map showing the location of immovable properties;

- ✓ Validate ownership documents in collaboration with the National Land Commission and the Lands Registrar;

Such information will make it much easier to improve not only efficiency but also transparency.

## 2. Institutional strengthening and capacity enhancement

Activities under this component consist of the following:

- a) Outline the human resources, equipment/software and relevant skills/know how that will be required at secretariat level for day to day management of the properties. Lay out a corporate organogram and outline capacity building strategies for staff at secretariat level
- b) Train nominated commission secretariat staff in keeping the Register up-to-date and collecting revenues accruing from the portfolio.
- c) Provide essential equipment to supplement existing stock as follows:
  - 4 laptops
  - 2 cameras
  - 4 Desktop computers
  - 1 photocopier/ scanner/ printer
  - 1 GPS hand held device

## 3. Improving Sustainability

Modern office premises are required to host the Waqf secretariat. Since the database will be digital, it is imperative that there be systems and equipment in place and in an air conditioned environment since temperatures in Mombasa can rise to 40 degrees C in the summer. The current premises, with moderate renovation would make suitable offices to host the new secretariat which is expected to have more professional staff to aid in the management and implementation of the reforms. Part of the same building, which is strategically located in Mombasa city centre, could also be let out in order to bring in income to cover day to day

expenses of the secretariat along with staff salaries before the Commission gets its footing. The project will involve the following:

Refurbishment of Waqf building located on Makadara Road: The details of the property are as follows,

Title: L.R No. 1149/ Mombasa

Location: Makadara Road, Mombasa Island

Occupancy: Owner Occupied on one wing on ground floor, tenants in the other areas.

Approximate size: plot covers 0.13 acres (540 m<sup>2</sup>). The building has a total of just a little over 800 sq. m.

Proposed improvements: Some renovation works are ongoing at the moment following a vacancy in the one of the flats upstairs. The minor repairs dealing with plumbing and electrical wiring are costing approximately Ksh 500,000/-. These works are being undertaken in only one section of the building yet the entire building needs urgent attention to bring it up to competitive standards.

The property in question is in a prime area and the Commission can benefit greatly from the rental income the building can generate. After thorough assessment of the current use of the premises and the aspirations of the Commission, suggested changes that need to be implemented include:

- Relocating the Waqf secretariat offices to the flat upstairs. The secretariat only requires approximately 150 - 200 sq. meters for its operations. The space at street level will fetch a higher rent and will be beneficial to the Commission's mission. The rest of the space upstairs can also be rented out at market rent.
- Revoking all current leases (if any) in the building and ensuring zero occupancy to pave way for the renovation works.
- Redoing the finishes and fittings to bring it to the standard of current modern commercial buildings. Modern finishes should be incorporated within the building, but the cultural fabric of the building must be maintained. These renovations changes will be accompanied by standard amenities such as back-up generator, cctv cameras and internet connectivity.

Security is important since precious public documents, going back to the beginning of the last century, are in custody.

- With the help of additional structural engineering support, an additional floor or two can be added onto the existing building. This upward extension must be well designed into a seamless addition to preserve the façade and look of the building.

Renovation and expansion of the building will also help enhance its image and presence in the city to a level commensurate with the status of the Commission.

## V IMPLEMENTATION

### **Project Cost Estimates**

As discussed in the sustainability section, there are two options available for the works:

a) Refurbish existing premises:

Refurbishing and restoring the existing structure will improve the potential rental income from the property. Restoration tasks that need to be done include;

- Rewiring of entire building and installing electric meters for each tenant,
- Replacing the waste pipes for the entire building and creating new toilet facilities to accommodate the projected demand from the new tenancies.
- Install modern fittings such as modern floor tiling, air conditioning piping and internal fibre-optic cabling
- Paint entire building- internal and external
- Restore doors and windows, sanitary fittings, light fittings and structured cabling for the computer network.

Cost: Ksh 10,000,000<sup>2</sup>

Current income on 100% occupancy: Ksh 73,000 per month

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<sup>2</sup> Costs are based on prevailing market rates with related expenditure (professional fees, permits, cost of accessing funds, contingencies etc.; no allowance has been made for developer's profit).

Projected income: **Ksh 300,000 /month i.e. ksh 3.6 million per annum**

b) Extend a few floors higher:

As much as renovating the existing space will increase rental income, the full potential of the property can only be achieved by increasing the built up area to the County government's allowable built up area ratio. Construction of an additional two floors (approximately an extra 800 sq. m.) will give the property more lettable space. To achieve this, the following steps will need to be taken:

- Engage professionals to design an extra two floors and conduct a structural engineering survey in order to modify structural frame to accommodate two extra floors
- Refurbish existing two floors to the same standard as the two new floors.

Cost: Ksh 45,000,000

Projected income: **Ksh 550,000 p.m. i.e. ksh 6.6 million per annum**

### **Partnerships**

The Waqf Commissioners of Kenya are seeking partnerships with various financial institutions, both national and international, in order to actualize the projects. The Commission will explore different ways to create special vehicles to achieve their objective of long term sustainability and will not disregard the potential of innovative methods such as joint ventures and Build Operate Transfer (BOT) arrangements or borrowing from shariah- compliant financial institutions. Legal support will be of utmost importance in the event of any partnership with a third party.

However the utmost priority is to start by seeking a grant to supplement local resources so that the total amount raised is circa ksh 54 million (USD 540,000) to cover project costs broken down as follows:

## SUMMMARY OF COSTS

Activity	Description	Option A Cost (Kshs)	Option B Cost (Ksh)
1	Database and Mapping	3,815,000	3,815,000
2	Analysis	1,291,250	1,291,250
3	Strategy Formulation	1,355,000	1,355,000
4	Institutional development Strategy	941,250	941,250
	Contingencies and inflation (5%)	370,125	370,125
	<b>Subtotal</b>	<b>7,772,625</b>	<b>7,772,625</b>
	16% VAT	1,243,620	1,243,620
5	Sustainability redevelopment	10,000,000	45,000,000
	<b>Grand Total</b>	<b>19,016,245</b>	<b>54,016,245</b>

*\*Detailed financial proposal attached.*

## Financing Plan

It is envisaged that the total project cost will be Ksh67,520,310 to be financed as follows:

		<b>Ksh</b>
Grant	80 %	54,016,245
Contribution by WCK <sup>3</sup>	10%	6,752,031
Contribution by Kenya Government (including city/county authorities) <sup>4</sup>	10%	<u>6,752,031</u>
<b>Total</b>		<b>67,520,310</b>
		<b>(say US\$ 675,000)</b>

## Timetable

This is an 18 (eighteen) month project. That will give enough time for the various activities planned e.g. property assets inventorying/ database, mapping, training of administrators and execution of building works.

## Project Risks and Mitigation Measures

The legal reforms may take a bit longer than expected thus affecting the legal framework to empower the commissioners to take full control and implement some changes. There is a new bill on the drawing board to aid in pushing for the enactment of the proposed changes. The government itself initiated the process and therefore it is eager to complete the reforms

Political interference, lack of government support would be a hindrance to project implementation, but these are remote possibilities.

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<sup>3</sup> Preparatory work including architect's fees for the initial scheme plans and marketing of lettable space

<sup>4</sup> Waiver of cost of permits, environment assessment/clearance, etc. and providing improved infrastructure

Then there are the normal procurement and construction risks, but these can be mitigated by competent project management.

### **Assumptions**

Key assumptions are that,

- The legislative amendments will be implemented as proposed by the AG'S Task Force;
- Professional staff will be recruited as proposed by the Task Force
- The political environment will remain stable
- Fluctuations in the exchange rate and inflation will be minor and manageable.

## **VII CONCLUSION**

The project is religiously and socially desirable and commendable while at the same time being economically viable. Its benefits will go far beyond WCK and the Kenya coast, since improved Waqf management will be seen all over the country and future generations will be able to enjoy better facilities in homes, schools, mosques, and recreation areas. A growing number of Waqf donors will gain confidence in the Commission and the fact that assets are well managed and beneficiaries receive the services they are entitled to.