PROSPECTS OF WAQF IN PROMOTING SUSTAINABLE DEVELOPMENT AND POVERTY ERADICATION

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ABSTRACT

Waqf as a wealth redistribution institution in Islam has immensely promoted the sustainable development of the hitherto Muslim world. It was thus described as the engine room of development until its assets were frozen by the colonialist. African countries and especially Nigeria suffer from poverty, civil strife and insecurity that constitute a hurdle to the sustainable development of the continent. This article through a doctrinal research observes that the waqf institution if effectively harnessed, immensely contribute in overcoming poverty upon which insecurity and civil strife thrives. This work notes that the government of Nigeria and most particularly the northern states’ government have not given the waqf institution the desired legal environment for its effective functioning. Indeed Nigerian Muslims rarely understood the significance of the waqf institution beyond the building and management of Mosque due to lack of enlightenment. This work observes that having regard to the developmental contributions of waqf, if given the legal impetus it desires to grow, it has the prospects of promoting sustainable economic development of Nigeria whose population face acute problems of poverty. This work concludes that while Islamic scholars bear the responsibility of enlightening Muslims on the benefits and prospects of the institution in solving poverty related issues and promoting sustainable development, government particularly of the northern states of Nigeria should promulgate laws that give the institution legal backing for its efficient management.

INTRODUCTION

Waqf is a voluntary charity whose reward continues to flow even after the death of the founder. Its sustainable development potentials lie in providing social amenities to its host community and providing employment opportunities. Its proceeds subject to the terms contained in the founding documents is normally distributed to the beneficiaries and the surplus further reinvested into activities and businesses that propel sustainable economic development and entrepreneurial development of its host community. This antecedent of Waqf made it to be

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described as the engine room for economic growth and sustainable development of the then Muslim community until its properties were frozen by the colonialist.

The word *awqafa* which is the root word of *Waqf*, literally means hold, confine or prohibit. Thus, *awqaf* are perpetual charities restrained or confined for benefits which are charitable in nature.¹ The practice of *waqf* dates back to early days of Islam and served as a major medium for delivering public goods and social services to its host communities.² The various public services that are now provided by government agencies were hitherto delivered through private initiatives most particularly the *waqf* institution.³

Having illuminated the role *awqaf* played in providing social services and other sustainable economic development infrastructure that was dearly needed at the time under reference, this work seek to serve as a medium to advocate for rejuvenating the *awqaf* in the Muslim world and particularly in Nigeria. It also seek to stress the need to redirect the objectives of *awqaf* to focus on activities that would engage beneficiaries in entrepreneurial activities that promote skills acquisition so as to eradicate redundancy and unemployment among persons that are capable of working.

In order to reap the benefits of *awqaf* funds in multiple of ways the work explores the means by which beneficiaries entrepreneurial engagement may be redirected towards achieving economic development of the country. In the light of the foregoing this work studied existing literatures relevant to the issues raised in the paper and made a qualitative analysis of the literatures using the doctrinal methodologies.

The work in doing so is divided into eight sub-themes that are closely related and adjunct in achieving the objective of the paper which is aimed at appraising the prospects of the *waqf* institution in eradicating poverty through funding entrepreneurial skills acquisition. It therefore made a foray into the theme of the paper in a concise introduction and studied the nature and purpose of *waqf*.

**EVOLUTION AND NATURE OF AWQAF AS AN INCIDENT OF DEVELOPMENT**

The practice of *waqf* has been traced to the period of the Prophet (SAW). It was reported that a Jew bequeathed his wealth to the Prophet (SAW) on the condition that he uses it for charity. The Prophet (SAW) proceeds to establish the very first *waqf*.⁴ In another *hadith* it was reported

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³ Ibid

that Umar, the second khalif, asked the Prophet (SAW) how he may deal with a certain piece of land that he had obtained in Khaibair in a manner most pleasing to Allah. In response, the Prophet of Allah (SAW) said: "Make the property immovable, not subject to sale, gift, or inheritance, and give its revenue to the poor". This advice of the Prophet (SAW) can rightly be said to be justified by his Hadith that said, "When a man dies, all his acts cease to yield reward but three: recurring charity (such as waqf), beneficial knowledge, and pious offspring who pray for him".

The foregoing hadith generally motivated the establishment and development of waqf. Indeed at the zenith of the Republic of Turkey, three quarters of the country's arable land belonged to waqf foundations. Iran and Egypt also had about a seventh of their arable land stood immobilized as waqf property. The replica of the foregoing positions was obtainable in other Islamic societies around the 19th century, most notably in Algeria and Tunisia. The awqaf mentioned above provided social services and busted economic activities of their respective communities.

At the disintegration of the Ottoman Empire, most emerging governments such as Greece expropriated the awqaf. This was brought about by the massive economic significance of the waqf, and its sustainable development drive that made it to control a vast range of assets, including residences, shops, and production facilities.

Indeed at the beehive of awqaf, it was possible for one to meet all one's needs through goods and services provided by awqaf institutions. Non Muslims have also been among the beneficiaries of services rendered by awqaf institutions.

Pursuant to the 'tanzimat' Ottoman reforms of 1839, and in a bid to check the outreach of awqaf, the government placed all awqaf properties under a ministry empowered to regulate them. This gave birth to the formal contravention of the revered Islamic law principle relating to waqf that; 'stipulations made by waqf founders are inviolable'. Colonization of Islamic state that saw the creation of new nation states with new leadership that labored under the colonial government that took negative stands against awqaf deal the most serious fatal blow on the awqaf. This is because awqaf were seen as supporting causes that were pro-masses

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Muslim, Hadith No. 4006, Ch: 5; Suyuti, A., ‘Tanwirul Hawalik’ Commentary on Muwatta Malik, (vol.2), (Cairo: Dar Ihya’a Kutub al- Arabiya, ND) p.159
Ibnul Hajjaj, M. I., Sahih Muslim, A. H. Saddique (trans.), (Lebanon: Dar al-Kotob al-Ilmiyyah, 2007), Hadith No. 4006, Chap. 5, Book 13. (Hereinafter referred to as Sahih Muslim, Hadith No. 4006, Ch: 5, Book 13.)
Sahih Muslim, Hadith No. 4006, Ch: 5, Book 13.
Kuran, T., op. cit. p.850
Ibid
For instance The charitable complex, founded in Jerusalem by Haseki Hurrem, wife of Sulaiman the Magnificent in 1552 possessed entire villages, several shops, a covered market bazaar, two soap plants, eleven flour mills, and two bathhouses, all in Palestine and Lebanon. See Kuran, T., op. cit. p.848.
Kuran, T., op. cit. p.850
Ibid p.852 A Jewish traveler of the 1640s relates how, during a journey from Egypt to Istanbul, he and his companions spent most nights at a waqf endowed inn open to travelers of every faith. Soup kitchens, hospitals, shelters, and other social welfare institutions served people of all religions, and non-Muslims commonly served on their staffs.
Kuran, T., op. cit. p.888
which also strengthened the struggle of the masses against tyrannical governments. Islamic Scholars were also denied economic base for resisting the broader agenda of a so called modernization in the name of secularity. This led to expropriation of many awqaf in several Muslim countries.

This is further fortified by the believe that state with stronger revenue base would find it easier to pursue Westernization and facilitate foreign investment which ultimately led to underdevelopment of the Muslim world and retarded sustainable development of the said Muslim countries. As a result the revenues of all awqaf were by law channeled into a common treasury and ultimately formed part of the consolidated revenue fund of the state which were disbursement wherever the government saw fit, irrespective of what the original objectives of the waqf in question were.

The governments in those countries took responsibilities of spending on institutions hitherto funded by the awqaf systems such as mosques and left over religious schools including Al-Azhar University in Cairo. After stripping it of the developmental and productive content, the term “Islamic Awqaf” is now mostly used to refer to mosques and its affiliated “religious affairs.” Ultimately the revenues yielding to the awqaf found their way into the hands of corrupt public officials who embezzled it. The foregoing robbed awqaf of their permanent nature that had its basis in the Islamic rule of ‘static perpetuity’ principle and made them susceptible to being frozen by the state. Taking this into consideration there is therefore the need to preserve the private character of awqaf and limit government’s role to a regulatory function only.

**ISLAMIC LEGAL PRECEPTS GOVERNING AWQAF**

Islam in its drive to meet the social needs of the Ummah obligated the state to institutionalize certain private initiatives through its regulatory function. Towards this Allah said: “They ask thee how much they are to spend; Say: ’What is beyond your needs.’” As stated earlier the Prophet (S.A.W.) also initiated awqaf and encouraged their establishment with the objective of reducing the gap and inequality among the social strata in the Muslim communities and a private sector driven provision of social amenities for the benefit of the Muslim communities.
Driven from the Qur’an and Sunnah, the schools of Islamic law have laid down rules governing the establishment and management of *waqf* with some degree of variations. In order to legally establish a *waqf*, the donor must declare either orally or in writing that he has immobilized a particular property for the purpose of serving a designated cause in perpetuity. He is also obligated to appoint a manager (*mutawalli*) of the *waqf*, and set an order of succession of future *mutawallis*. The *mutawalli* as a trustee of the immobilized property has a duty to manage the *waqf* according to the terms set out by the founder and in the best interest of the beneficiaries. His responsibility does not only relate to ensuring effective management of the *waqf* and ensuring its economic viability, but also include appointment of capable hands for effective management of the property in the best interest of the beneficiaries. The appointment and activities of the *mutawalli* are to be supervised by the judge within whose jurisdiction the immobilized property is situate. The judge also has the power to resolve any dispute that may have arisen relating to the management and control of the *waqf*.

### a. *Waqf Khairi* (Philanthropic Endowment)

This type of *waqf* centers on building and maintenance of religious institutions, like: mosques, *madaris* and other tools for religious propagation. This often consists of properties immobilized for the conduct of religious activities or for financing the maintenance of such properties.

It also provides support for the poor, such as: health care services, transients’ residence, eateries, water supply, education and other related services which may necessarily include energy supply to cater for the modern day needs. The social needs usually catered for by the *awqaf* foundations are those needs that fall within the *maslahah* categories of *darrurriyat* (necessaries) and *hajiyyat* (amenities). This clearly shows with the current level of unemployment, entrepreneurial skills development which necessary for providing employment is one of the cardinal objectives of *waqf*.

### b. *Waqf Ahli* (Family Endowment):

This is where a *waqf* is established for the purpose of providing support to the family members of the donor as a first line charge and what remained of it is employed in service to the poor. This contrasts the western concept of trusts that does not allow beneficiaries of a trust to come from the family members of the donor. Hence trust can only be made for religious or philanthropic purposes. In Islam, establishing a *awqaf* is guided by strict Shari’ah rule that include the following:

(i) The property immobilized as *waqf* must be a fixed asset whose service or proceeds can be perpetual in nature such as land, building, camels, cows, sheep, books, jewelry etc. Orthodox scholars also disliked cash *waqf* or anything that can be extinguished in consequence of its

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21 Kuran, T., op. cit. p.861
24 S. Sabiq, op. cit. P. 263
25 Hassan, M. K., op. cit. p.267
26 Hassan, M. K., op. cit. p.267
usage such as cash, food staple and other goods that can easily perish.\textsuperscript{27} The reason for the foregoing is the non permanent nature of cash waqf. However, this rule has now been relaxed to accommodate modern trends of event in response to which scholars now accept cash \textit{awqaf}. Transfer of \textit{waqf} capital across economic sectors by redirecting loans from one set of borrowers to another.

(ii) The property endowed must be capable of providing social service intended by the donor on a permanent basis admitting the static perpetuity principle.

(iii) The \textit{waqf} donor must possess the requisite legal capacity under the \textit{Shari'ah} enabling him to donate his property. Thus a child, an insane person, or a person who does not own the property cannot immobilize a property for lack of capacity.

(iv) The purpose for which the \textit{waqf} is made must be a charitable purpose from the point of view of \textit{Shari'ah}.

(v) The beneficiaries of \textit{waqf} if they are person(s) must be alive and if they are services or activities they must be lawful and legitimate.\textsuperscript{28}

It is noteworthy that, unlawful things cannot be immobilized as \textit{waqf}, such as dog and pig as well as that which is incapable of being sold such as mortgaged property.\textsuperscript{29} Akin to the foregoing scholars have raised the question as to whether cash \textit{waqf} can satisfy the core \textit{waqf} rule of static perpetuity. It is feared that cash \textit{waqf} is more susceptible to being embezzled. However, contemporary Islamic scholars found comfort in the modern financial and administrative techniques especially with modern technology deployed in handling finances, which tend to make cash investment more secured. The practice of cash \textit{waqf} takes two forms:

(1) Free Loan to the beneficiaries to support the beneficiaries solve their financial predicaments or engage in business or trade; and

(2) Cash \textit{waqf} invested into useful ventures whose net return is employed to fund the charitable purpose for which the \textit{waqf} was established.

As a result of the cardinal nature of the static perpetuity principle in the establishment and management of awqaf, a \textit{waqf} once established cannot be wound up, and its original purpose cannot be altered or reviewed except for inescapable reasons that are sanctioned by the judge within whose jurisdiction the \textit{waqf} is situate.\textsuperscript{30} Western scholars have argued that the rule that prevents altering the original purpose of the \textit{awqaf} was responsible for the decay of \textit{awqaf}. However, such an assertion cannot be sustained having regard to the fact that the institution

\begin{footnotesize}

\textsuperscript{28} Hassan, M. K., op. cit. p.268

\textsuperscript{29} Sabiq, S., op. Cit. P.263

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was providing essential services to the Islamic civilization, that made such civilizations to become a beehive of economic activities until the *awqaf* was frozen by colonialist.

The *waqf* system was indeed less rigid than propagated by apologetic western writers who seek to shift the blame of the dysfunctionality of *awqaf* resulting from their being frozen by colonialist. Added to this, is the gradual taking over of provision of social amenities by the state which was hitherto provided by the *waqf* system. It is not in doubt that the freezing of the *awqaf* led to the collapse of the Muslim communities’ social welfare systems.\(^{31}\) The elasticity of *waqf* law can be seen in the acceptance of cash *waqf*, contrary to the essential requirement of the classical Islamic law allowing only immovable property to be immobilized as *waqf*.\(^{32}\)

Another instance where the dynamism, flexibility and creative adaptations to changing situations of Islamic law generally and the *waqf* law in particular is the current trend in establishing *awqaf* as corporate entities with juristic personality, which means that they can sue and be sued. The corporate status also bestow on the power to have a board of *mutawallis* that oversee the affairs of the *waqf* with powers similar to those of a corporate board of trustees instead of one *mutawalli* managing the institution.\(^{33}\) This allows for innovation and robust management of the *awqaf* since more people with different background, experience and knowledge manage them instead of only one *mutawalli* that looks at things with parochial lenses.

In any case, the *mutawalli* has the authority to dispose the residual income after the expenditures designated by the *waqf* deed are meet or the prescribed services had been performed.\(^{34}\)

The metamorphosis of *waqf* from fixed assets to an admixture of fix cum cash *waqf* made it flexible enough to lend itself to realities of modern needs to suit the circumstances of the time and human development dynamics. This also pave way for innovations that enabled the *mutawallis* to redirect the employment of the *waqf* fund and in some case the residue of the income of the *waqf* to issue that are beguiling and require urgent attention of the Muslim *Ummah* like the current issue of the Internally Displaced Persons (IDPs).

**REJOINDER TO THE CRITICS OF THE STATIC PERPETUITY PRINCIPLE**

Islamic gives individuals the right to own, sell, mortgage, or invest their own property as they see fit and to maintain ownership and control of the profit generated by their economic activities.\(^{35}\) Muslims thus invested in *awqaf* to achieve dual objectives of providing a social service here and a lasting reward in the hereafter.\(^{36}\) Though *waqf* is a religious institution meant


\(^{32}\) Kuran, T., op.cit. p.848

\(^{33}\) Ibid, p.842

\(^{34}\) Ibid p.855


\(^{36}\) Qur’an 36:12; Sahih Muslim, Hadith No. 4005, Ch: 4, Book 13.
to invest in lasting charity, it also serve as an economic investment avenue and played significant role in the social, economic, political and religious life of its host communities.\(^{37}\) Allah said ‘Verily We shall give life to the dead and We record that which they send forth and that which they live behind and of all things have we taken account in a clear book (of evidence)’.\(^{38}\)

One privilege enjoyed by a donor of a *wawf* is that he can invest the whole of his estate and direct its usufruct to a charitable purpose. However, that cannot be done by other means of devolution of estate allowed under Islamic law. For example, one cannot dispose the whole of his property by will as he is limited to 1/3 only. On the other hand in succession disposition of estate is restricted to legal heirs of the deceased only.\(^{39}\) Indeed *wawf* ensures that the property remain in one economic unit and avoid fragmentation inherent in property subject of inheritance, such that it continue to provide that service for which it is immobilized uninterrupted by the death of the donor.\(^{40}\)

From the legal point of view, the ownership of a *wawf* lies outside the person who created it and become vested in Allah (SWT).\(^{41}\) The remuneration of the manager (*mutawalli*) is usually provided for in the deed establishing the *wawf* although most often the deeds do not contain such provisions. Where however a lacunae exist in the deed establishing the *wawf* as to the remuneration of the *mutawalli*, he is deemed to be a volunteer, but there is nothing in the sources of Islamic law precluding the court from the apportioning a remuneration for him on reasonable terms. The Hadith of Umar (R.A.) reported by Ibn Umar which is the *locus classicus* on the subject supports that, more particularly where the Hadith provides; ‘nothing precludes the *mutawalli* from taking sustenance from the *wawf* or to feed his friend there from reasonably’.\(^{42}\)

The institution of *wawf* has been criticized for operational rigidity, in that the law governing it requires that the set objectives of every *wawf* must be strictly followed and the manager appointed by founder cannot be replaced by another person.\(^{43}\) Similarly, neither the founder nor the *mutawalli* has the power to alter the objectives of a *wawf* as set out in the founding deed. It is further alleged that the rigidity is more worrisome where the founder dies and no provision is made in the founding document for the replacement of the *mutawalli* after the death of the founder.

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\(^{39}\) Reiter, Y., op. cit., p.7; It is however noteworthy that, most *wawf* are made for the benefit of the poor segment of the society. Therefore investing in *wawf* has the greater tendency of benefitting the poor which is the basic fundamental objectives of the Shari’ah that is enabling the people to satisfy their basic need such that they can be able to meet the five fundamental objectives of the Shari’ah. This also corresponds with the basic objective of sustainable development. See Layish, A., *Women and Islamic Law in Non-Muslim State*, Journal of Jerusalem, (1975), p.296

\(^{40}\) Reiter, Y., op. cit., p.7; S. Sabiq, op. cit. p.262

\(^{41}\) Hassan, M. K., op. cit. p.270

\(^{42}\) Sahih Muslim, Hadith No. 4006, Ch: 5, Book 13

\(^{43}\) Kuran, T., op. Cit. P863
mutawalli, appointing a replacement for him may not be an easy task. Akin to that is where the objectives of the waqf become no longer attainable.\textsuperscript{44}

However, this appears to be a misconception of the Shari’ah. The Shari’ah in its bid to ensure flexibility and dynamism of its laws and rules allowed for juristic exercise through ijtihad to make room for the Shari’ah to contain future legal developments. Waqf it is noteworthy is not an exception. Thus changes in the law regulating it, be it in the object of the waqf, or in the replacement of the mutawalli has since been settled. Islamic scholars such as Imam Ahmad bn Hambal and Ibn Taymiyyah have made pronouncement that allow the alteration of the subject matter of waqf as well as the alteration of its objectives.\textsuperscript{45} Two instances in which immobilized properties can witness changes are noteworthy here;

a. Where the subject matter of waqf became dysfunctional as a result of being dilapidated, the property may be replaced with a functional one so that it can serve the purpose for which it was immobilized. It may be added here that where the object of waqf is no longer in tune with modern day realities, the object may be replaced with an object that better serve current human needs.

b. The immobilized property or its object may be altered for the maslahah (overall benefit) of the community where it is situate. Imam Ahmad bn Hambal and a host of other scholars have authorized such a change. In support of their position, they relied on the fact that Umar bn al-Khattab moved the old Grand Mosque of Kuffa to another place and built in its place a market.\textsuperscript{46} This is further fortified by the fact that both Umar (RA) and Usman (RA) renovated the Prophet’s (SAW) Mosque in Madina.

This suggests that awqaf properties should not be allowed to dilapidate to ruin. It should in consequence be altered, renovated or relocated in order for it to serve its intended purpose. Indeed, it has been reported on the authority of Aisha that the Prophet (SAW) said if not for the people… I would have reconstructed the Ka’aba and made two doors for it; one would serve as the entrance and the other as the exit door.

Concerning alteration of the object of waqf, i.e. power of (istibdal), Abu-thaur and a host of other scholars like Abi Ubaid bn Harbawaith the judge of Cairo are of the opinion that where a waqf is made for a particular purpose, but such a purpose can better be achieved if the property is changed, it is in the overall interest of the beneficiary for it to be changed.\textsuperscript{47} Abi Ubaid during his tenure as a judge had given judgment in favor of changing a waqf property for it to better

\textsuperscript{44} Ibid
\textsuperscript{45} S. Sabiq, op. Cit. P.265
\textsuperscript{46} See S. Sabiq, op. cit. p. 265
\textsuperscript{47} Ibid p.871; S. Sabiq p.265, for example mutawallis of an Algerian waqf established for the benefit of Mecca and Medina managed, acting on the authority they enjoyed, enlarging the awqaf endowment through insightful purchases, sales and exchanges of assets. Some founders explicitly empowered their mutawallis to exercise their own judgment on business matters to enhance the economic fortunes of the awqaf and in the best interest of the beneficiaries. Courts with jurisdiction over Trabzon’s awqaf obliged a wide range of adaptations.
achieve its objectives. This is in conformity with the opinion of Ahmad bn Hambal when he permitted the alteration of a waqf property for the maslahah of its beneficiaries.48

For a waqf to pool its resources with other awqaf or other organizations for investment in capital intensive economic activity, the founder must have explicitly made such allowance in the founding deed.49 The significance of awqaf to pool their resources together, in certain technical and financially intensive economic activities that are essential to achieving sustainable development cannot be over-emphasized.

What would appear to be more equitable to ensure sustainable use of waqf properties is to allow the mutawalli acting in good faith to effect such changes that will enable the waqf property to be redirected to provide service in conformity with the fundamental objectives of Shari’ah of satisfying the needs of the beneficiaries based on the Islamic doctrine of Maslahah.50 The usefulness of the alleged rigidity adversely portrayed by western scholars cannot be dismissed by a wave of hand. This is because it plays a cardinal role in preserving the permanent nature of waqf which helped in its accumulation of capital asset, revenues and usufructs whose steady increase ensured the capital fluidity to service its set objectives. Added to this the diversity of its objectives as well as the huge wealth accumulated by the awqaf plays an important role in promoting sustainable development of the Muslim communities.

The static perpetuity principle in the real sense could be relaxed where the maslahah of the beneficiaries of the waqf in particular and that of the Muslim Ummah demands so to pave way for a more beneficial use of the immobilised property and to limit the misapplication of resources, especially if the mutawalli can satisfy the court of the need to redirect a waqf to a more functional use.51 The mutawalli’s best understanding of the founder’s desires forms the basis of all decision making in the management of the waqf.

However, it would be more tenable in law, if the mutawalli would be required to show that such a decision if taken would be equitable enough to promote the sustainable development in terms of satisfying the needs of the beneficiaries in particular and the poor segment of the present and future generations in general. The contemporary Islamic legal approach to administration of waqf properties tends to allow broader operational powers to the mutawallis.52 But his capacity to effect changes will depend on the judge’s supervisory jurisdiction over the waqf.53

Currently, awqaf are formed in the form of corporate entities that the courts treat as a legal person.54 As such, its mutawalli, who normally are a committee of individuals known as board

48 Ibid. p. 266
49 Kuran, T., op. cit. p.865
50 Ibid. p.863
52 Kuran, T., op. cit. p.865
53 Ibid
54 Ibid
of trustees or even another corporation, enjoys broader rights to change its services, mode and rules of operation, and even its goals where necessary. It is however generally suggested that, the operational latitude of the mutawalli whether individual or corporate entity and the services that the awqaf provide should be subject to the dictates of Islamic doctrine of maslahah.

However, it is fearful that mutawallis with broader powers to effect changes would especially if the waqf is of the charitable nature, be tempted to embezzle, or mismanage the waqf fund. The tight rules of management would be required to ensure transparency and accountability as well as to protect the interests of the intended beneficiaries. More so, that consistency in the supply of particular services by a waqf institution will render more proactive support to the poor in terms of enhancing sustainable development than continuously changing its objectives, especially if the nature of the original object is entrepreneurial training.

Islamic law is against leasing awqaf property for more than a year at a time it has been shown to be a disincentive to a lessee who wants to make a long term investment as he would avoid committing his resources to maintain the property for the fear that the lease may not be further extended. Mutwallis in order to encourage the leases often sign a long term contract that would lapse periodically for a few days and then get revalidated. Although the legality of this practice is in doubt, but the objective sought to be achieved by the parties is always understood not to circumvent the intendment of rule restricting leasing awqaf beyond a year. Since its intendment is mainly to promote the economic prosperity and structural durability of awqaf property. It need to be mentioned categorically here that, the fundamental Islamic law rule that form the fulcrum of contract which also sanctions the terms of contract such as this is the Hadith of the Prophet (SAW) which states that ‘Muslims are bound by the terms of their agreement except that which legalizes the forbidden or forbids a legal thing.’

ROLE OF WAQF IN POVERTY ALLEVIATION AS A CATALYST FOR SUSTAINABLE DEVELOPMENT

The foregoing discussions clearly depicts that the primary focus of waqf is the provision of social amenities directed towards alleviating the suffering of the less privileged members of the society to enable them satisfy their needs. The poverty alleviation objective of waqf makes it an important mechanism for functional sustainable development. The sector that receives more attention in terms of intervention from awqf since the early days of Islam has been the education sector.

However, since awqaf went into slumber and government took over financing of the education sector, the sector continued to suffer setback, since government intervention had largely been in the provision of the educational infrastructure.

55 S. Sabiq, op. cit. p. 266
56 Kuran, T., op. cit. 886
57 Kuran, T., op. cit. p. 886
58 Hassan, M. K., op. cit. p. 269
59 Awqaf of the Ayubites (1171-1249) and the Mamalik (1249-1517) in Palestine and Egypt are good examples. According to historical sources, Jerusalem had 64 schools at the beginning of the twentieth century all of them
Awqaf have therefore been the source of funding for schools, libraries, books, salary of teachers and other staff, and stipends for students. The funding was not restricted to religious studies but covers other disciplines such as science, arts, medicine as well as support for research and innovation. The funding of education by awqaf enabled the poor to have equal opportunity with the rich in acquiring education. This helps in generating human capital development as a pathway for sustainable development of then Muslim communities and made them the engine of development. The significance of this is not only remarkable in providing the needed human capital development which is essential for sustainable development, but also created an extremely important process of dynamic social change in the Muslim society that is unprecedented in the history of Humanity. This contributed a lot to dynamic change of leadership style and promoted circulation of wealth in the Muslim society, and eliminated the chances of creating aristocratic class that monopolizes wealth and political power.

**MANAGERIAL AND REGULATORY GAPS**

Along with the injunction to establish waqf, the basic regulations guiding the management of waqf were made. Thus if the Islamic world currently fall short of towing the path of sustainable development through private initiatives like the waqf institution, it is not far fetch from the fact its social and legal foundation, once a source of order and cohesion, was battered and supplanted by colonialist concepts and institutions that lack the basic social support system for realistic sustainable development objectives. These influences spelt doom on the starling waqf institution that hitherto had social support and confidence of the both donors and beneficiaries which it now lacks because of its inconsistency with Islamic tenets.

This as discussed earlier is what made the awqaf have been fraught with general managerial lapses and lack of progressive regulatory development to contain modernity and human changing need despite of the availability of ijtihad as an Islamic legislative development tool. However these legislative and managerial lapses reared their heads only after the interference of the post colonial nation states’ governments with the awqaf institutions. These problems include the following;

a) Low credibility in the current managerial practices of awqaf because of government involvement;

b) Failure to match modern trends of event concerning investment and management of awqaf fund with research (ijtihad) to tackle current development needs;

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60 Kahf, M., op. cit. p.35
61 Ibid
62 Sahih Muslim, Hadith No. 4006, Ch: 5, Book 13.
c) Lack of unanimity among different schools of Islamic law about awqaf laws.

The above problems are clearly not donor friendly as they are capable of wooing away donors. Hence openness and transparency in management of the institution of waqf is capable of winning donors’ confidence and boost their contribution to awqaf fund thereby enhancing their sustainable development drive. For the institutions to win the confidence of donors, it should be managed on participatory basis, thoroughly private sector driven management by the founders.63

The doubtful nature of waqf administration due to adverse government involvement in its management in some countries has whittled down their significance. As such their revenue generation capacity and sustainable flow of revenue into the fund currently remains larking in most Muslim communities.64 Thus managing such institution by the state erodes the confidence of both the donors and beneficiaries of waqf. Nigeria is likely to confront similar problem if government decides to be directly involve in its management.

It is suggested that the responsibility of state with respect to waqf institution should be limited to the normal general regulatory and supervisory role the state play with respect to private economic institutions rather than managing their revenues and sometimes merging them with the consolidated revenue fund of the state as awqaf institutions have special objectives for which they are established different from being identified as a state revenue generating institution.

Hence if sustainable development is to be achieve there is need to reconstruct, transform or change existing legal structure governing awqaf they exist as they are built on western notion. There is need that, they engender the necessary Islamic attitudinal and behavioral components capable of attracting the donors to invest in waqf.

CONCLUSION

The waqf institution has remained a viable institution that has been pro-poor and sustainable development driven. From our discussions in the paper waqf as an institution has proved to be an effective tool that guarantees better quality of life of the beneficiaries consistent with the maslahah concept.

However, institutions like this in the modern day require legal and social ‘catalyst’ that does not threaten the culture, values and religious tenets of the members of the target community. Such catalysts if engendered in consonance with Islamic tenets will play an important role in ensuring the functionality of the institution by winning the confidence of members of the communities and donors alike and would enjoy greater voluntary compliance.

63 Kahf, M., op. cit., p.5
64 Dogarawa, A. B., Poverty Alleviation Through Zakah and Waqf Institutions: A Case for Muslim Ummah in Ghana, (First National Muslim Summit by al-Furqan Foundation at Redach Memorial Centre, Lamashegu, Tamale, Ghana, 2009) p.5
Providing the required legal environment for effective functioning of the awqaf offers greater prospects for sustainable development to succeed. It would also assist innovators and managers to translate the desired norms and patterns of behavior into actual sustainable developmental initiatives. However, government need only to bear the regulatory and supervisory role, rather than the managerial role.