ISLAMIC SOCIAL FINANCE REPORT

1436H (2015)

ISLAMIC RESEARCH AND TRAINING INSTITUTE
A MEMBER OF THE ISLAMIC DEVELOPMENT BANK GROUP

Islamic Research & Training Institute (IRTI)

Establishment

The Islamic Research and Training Institute (IRTI) was established by the Board of Executive Directors (BED) of the Islamic Development Bank (IDB) in conformity with paragraph (a) of the Resolution No. BG/14-99 of the Board of Governors adopted at its Third Annual Meeting held on 10th Rabi-ul-Thani, 1399H corresponding to 14th March, 1979. The Institute became operational in 1403H corresponding to 1983. The Statute of the IRTI was modified in accordance with the resolutions of the IDB BED No.247 held on 27/08/1428H.

Purpose

The Institute undertakes research for enabling the economic, financial and banking activities in Muslim countries to conform to Shari'ah, and to extend training facilities for personnel engaged in development activities in the Bank's member countries.

Functions

The functions of the institute are to:

A. Develop a dynamic and innovative Islamic Financial Services Industry (IFSI).

B. Develop and coordinate basic and applied research for the application of Shari'ah in economics, banking and finance.

C. Conduct policy dialogue with member countries.

D. Provide advisory services in Islamic economics, banking and finance.

E. Disseminate IFSI-related knowledge through conferences, seminars, workshops, apprenticeships, and policy & research papers.

F. Provide learning and training opportunities for personnel engaged in socio-economic development activities in member countries.

G. Collect and systematize information and disseminate knowledge.

H. Collaborate to provide policy advice and advisory services on the development and stability of Islamic Finance and on the role of Islamic institutions in economic development to member governments, private sector and the NGO sector.

I. Develop partnerships with research and academic institutions at OIC and international levels. Organization
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ISLAMIC SOCIAL FINANCE REPORT 1436H (2015)

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Contents

This edition of the Islamic Social Finance Report (ISFR) presents the trends, future challenges and prospects for the various segments of the Islamic social finance sector in six Sub-Saharan African countries, namely Sudan, Nigeria, Kenya, Mauritius, South Africa and Tanzania.

Message

There seems to be a consensus among the international community that poverty, at a fundamental level, is a denial of choices and opportunities. Being poor does not mean living below an imaginary poverty line, such as an income of two dollars a day or less. It means having an income level that does not allow an individual to cover certain basic necessities, taking into account the circumstances and social requirements of the environment. It is a violation of human dignity. The poor generally lack a number of elements, such as education, access to land, health and longevity, justice, family and community support, credit and other productive resources, a voice in institutions, which are best termed as access to opportunity. Nowhere is poverty and the denial of opportunities more acute than in Sub-Saharan Africa.

The role of the Islamic social finance sector comprising zakah, awqaf and microfinance institutions in creating the above opportunities for the poor can be hardly overemphasized. Zakah and waqf funds must be an integral part of any poverty alleviation initiative. First, they provide for the “immediate” basic consumption needs of the poorest of the poor, such as food, clothing and shelter. Such safety nets can only be funded through charity. Second, in order to transform such individuals into economically active and productive agents, there is a need to impart or strengthen appropriate skills – technical and entrepreneurial – so that they are able to generate income on a sustained basis without being dependent on charity. Again, such skill-improvement initiatives can be funded through zakah and charity funds. It is important that the safety nets are then linked with microfinance programs, so that these individuals may move through several stages – from abject penury to a stage where they are able to meet their consumption needs, then to a stage where they come to acquire necessary technical and entrepreneurial skills for setting up microenterprises, and then to a stage where they are able to obtain required funds from micro financing institutions (MFIs) and have the microenterprises up and running. Where for-profit MFIs are reluctant to invest in start-up equity, zakah and waqf could fill the gap by providing micro-equity to enterprises set up by the poor.

Unfortunately, in the vast lands of Sub-Saharan Africa, this sector remains highly undeveloped, with a few exceptions. The state of the sector in Sub-Saharan Africa and the many challenges it faces are further explored in this issue of the Islamic Social Finance Report (ISFR). This issue presents the trends, future challenges and prospects for the various segments of the Islamic social finance sector in Sudan, Nigeria, Kenya, Mauritius, South Africa and Tanzania. As you may recall, the maiden issue of the Report focused on selected countries in the South Asia and South East Asia. It documented several good practices from these countries. It is interesting to note that many of the conclusions of the maiden issue have been further validated for Sub-Saharan Africa. There is a need for a revisit of some conclusions, however, in the light of new findings in the context of the Sub-Saharan African economy that is largely agrarian in nature. This supports the original hypothesis underlying this project, that geo-political differences account for major differences in the way the Islamic social finance sector is managed.

The project will continue to take stock of the sector by focusing on other regions in the subsequent studies in sha Allah. Meanwhile, I believe this issue focusing on Sub-Saharan Africa will satisfy a long-felt need for adequate and relevant information that will form the basis of supportive policies and decisions and that will go a long way in strengthening the sector in that region.

Pro. Dato’ Dr. Mohd. Azmi Omar
Director General, IRTI

Acknowledgment

This issue of the Islamic Social Finance Report focuses on selected countries in the sub-Saharan Africa. This is in continuation of the earlier issue focusing on countries in South and South East Asia. The Report has benefited from the comments of and presentations by several scholars and representatives of Islamic organizations from the region under focus. Most of them actively pariticpated in the preparatory events for the study. Two such events are worth mentioning. IRTI organized a workshop on Developing Professional Cadre of Awqaf Professionals in association with Awqaf S.A. in Pretoria, South Africa last year. The event also comprised "targeted" workshops for sisters and the ulema. Later in the year, IRTI organized a workshop on Zakah Management for Poverty Alleviation in association with the South African National Zakah Foundation (SANZAF) in Cape Town, South Africa that was attended by participants from over ten countries in the region.

This study on the Islamic social finance sector, comprising institutions rooted in Islamic philanthropy, e.g. zakah, sadaqa and awqaf and in cooperation and solidarity, has been undertaken by a team of researchers from IRTI supported by some fine contributions by external researchers. Dr Muhammad Aliyu Dahiru from the International Institute of Islamic Banking and Finance, Bayero University Kano, Nigeria deserves special mention for contributing immensely to the section on Nigeria. Dr Magda Ismail from the International Centre for Education in Islamic Finance (INCEIF) contributed a section on Family Waqf in Sudan. Other external contributors include Br Hussen Essof (case study on SANZAF, South Africa), Br Zeinol Cajee (case study on National Awqaf Foundation of South Africa) and Dr Salako Taofiki Ajani (case study on Al-Hayat Foundation, Nigeria).

The study and the preparation of the Report have involved interaction with experts at various stages of its development. Some of the experts who deserve special mention are:

- Dr Mustafa Omar Mohammed, International Islamic University, Malaysia
- Dr Hisham Dafterdar, Consultant, Kuwait
- Saadia Kidwai, Islamic Relief (UK)
- Mohammed Abdul Razig Mohammed, Diwan Zakah, Sudan
- Dr Abdul Elah Mohammed Ahmed, Institute of Zakah Sciences, Sudan
- Dr Badr El Din A. Ibrahim, President, Microfinance Unit, Central Bank of Sudan

A project of this nature would not have been possible without the cooperation and support of major stakeholders in the sector. Some of them who deserve special mention are:

- Osman Ahmad, Islamic Zakah Fund, Malawi
- Izzedine Mohammed, House of Zakah and Waqf, Uganda
- Shaikh Khamees, National Muslim Council of Tanzania
- Amin Mohammad, Head of Dawa Majlis e Ala lil Muslimeen, Kenya
- Hayat Ahmad, Islamic Welfare Fund, Harare (Zimbabwe)
- Dawood Dhanse, Botswana Muslims Association

We are much beholden to all who have contributed to this study and look forward to receiving their continued support as we move forward.

Mohammed Obaidullah (Project Leader)

Nasim Shah Shirazi

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EXECUTIVE SUMMARY

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The Islamic social finance sector broadly comprises the traditional Islamic institutions based on philanthropy e.g. zakah, sadaqah and awqaf; those based on cooperation e.g. qard and kafala; and the contemporary Islamic microfinance institutions that aim at making a dent on poverty.

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The Islamic social finance sector broadly comprises the traditional Islamic institutions based on philanthropy e.g. zakah, sadaqah and awqaf; those based on cooperation e.g. qard and kafala; and the contemporary Islamic microfinance institutions that aim at making a dent on poverty. This issue of the Islamic Social Finance Report (ISFR) presents the trends, future challenges and prospects for the various segments of the Islamic social finance sector in six Sub-Saharan African countries, namely Sudan, Nigeria, Kenya, Mauritius, South Africa and Tanzania. For a variety of reasons, mostly historical and political, each of these countries are at different stages of development as far as zakah, waqf and Islamic microfinance institutions are concerned.

The maiden edition of the ISFR launched in 2014 focused on the Islamic social finance sector in South Asia and South East Asia. It documented several good practices from countries like Indonesia, Malaysia, Singapore, Brunei Darussalam, India, Pakistan and Bangladesh. Many of the conclusions have been further validated in this study. Some call for a revisit in the light of new findings.

The study involved careful collection and analysis of data and information pertaining to legal and regulatory frameworks as well as good and bad practices at macro, meso and micro levels. Attempts to collect, analyze, collate and interpret data involved personal visits to key stakeholder organizations, e.g. Ministries of Religious Affairs, central banks, apex regulatory bodies, networks and associations, major private organizations. Methods of data collection included interviews, focus group discussions and workshops. Data collection for the sampled countries in Sub-Saharan Africa was relatively more difficult than in the South East Asian countries. Notwithstanding this major constraint, the data eventually collected were invaluable and provided the researchers with excellent insights into

There is noticeable variation in zakah from crops, and this is attributable to several factors, including natural and climatic factors, security conditions, and decline in the contribution of small-irrigation schemes due to the high costs of agricultural production.

the inter-country differences in practices. The following first-cut observations have serious policy implications and, therefore, may form the basis of further research and policy dialogue.

The following are the major findings in relation to the zakah sector.

From Individual to Institutional Management of Zakah:

Comparing zakah potential of the sampled countries with their resource requirement to alleviate poverty, it is found that countries like Sudan, Nigeria and South Africa can easily generate resources for poverty alleviation. However, actual zakah collected is far short of the potential. Data also clearly demonstrate that some countries have been non-starters as far as institutional zakah collection is concerned. There is a strong need, therefore, to enhance professionalism and efficiency in zakah management and to ensure a movement away from individual to institutional management of zakah.

Strategic, not Localized Approach to Giving:

It may be noted that a large country like Nigeria has been one of the top countries to receive humanitarian assistance. This perhaps highlights the need to look beyond a highly localized approach to zakah distribution, since locally raised zakah resources may be grossly inadequate to meet local needs, while seeking to move towards institutional zakah management.

Recognition of Diversity:

Differences in geo-political realities affect zakah management. There is thus, great diversity in the zakah management practices. Unlike in South and South East Asian countries, in most Sub-Saharan African countries a major part of zakah is in the nature of in-kind zakah in the form of crops and livestock. Therefore, holding of zakah funds or investment of zakah funds is a non-issue there, while the same is a formidable issue in South and South East Asian countries. Indeed, the case for having standardized and globally acceptable definitions of zakatable assets and methods of estimating zakah liability does not appear to be a strong one. Since Islamic societies are typically characterized by multitude of madhabs and schools of thought, the zakah system must retain enough flexibility to accommodate alternative views.

Liberal Cap on Operational Costs for In-kind Zakah:

Collection of in-kind zakah from the actual locations, e.g. farms that are stretched far and wide, entails huge collection costs. Therefore, a more liberal view is called for in relation to the cap on operational costs that is traditionally placed on one-eighth of zakah funds collected in South East Asia. Further, once zakah is collected, the transportation and storage of in-kind zakah involves substantial costs, which justifies the strategy of on-the-spot distribution. Various good practices developed in the context of South and South East Asian countries may, thus, need to be revisited in the context of the Sub-Saharan African countries.

Compulsory/Voluntary Zakah:

Sudan provides supporting evidence for compulsory zakah. The Nigerian states that have both compulsory and voluntary zakah provide modest supporting evidence in favor of compulsory zakah. The voluntary zakah organizations have generally reported good performance. Irrespective of whether zakah is compulsory or voluntary, a policy of decentralization seems to have paid off. Thus, zakah is observed to be institution-elastic. It is the presence of a network of healthy institutions at multiple levels – in public or private domain - that seems to lead to greater public awareness and greater public participation in the process of poverty alleviation through zakah.

Level-playing Field for Public and Private Agencies:

The coexistence of public and private agencies as zakah collectors raises certain issues. Competition among multitude of zakah institutions brings efficiency and gives more choice to the muzakki. However, competition also presupposes a level-playing field for the players. Where the public agency also assumes the role of the regulator of the zakah sector, it should restrict itself to regulation only, leaving zakah collection to private agencies. Alternatively, the entire process of zakah management should be undertaken by the public agency, through its own decentralized network. Such a scenario does not preclude the involvement of private players as agents of the public body as is the case with Malaysian states.

Sustainability, a Function of Controllable and Uncontrollable Factors:

It was found earlier in the context of South East Asian countries that zakah is sustainable, dependable and could be a growing source of funds for institutions that acquire the necessary professionalism in fund-raising and seek continued betterment in their social credibility through integrity, transparency and good governance. The evidence seems to have lost some rigor in the context of the agrarian economies of Sub-Saharan Africa that display volatility in zakah collections due to changing fortunes in the farming sector. Also, the success or failure of a zakah institution is not so much dependent on whether it is in government or private hands, but on the credibility and trust it enjoys among the muzakki population. This, in turn, is a function of the integrity, transparency and good governance reflected in its practices and as perceived by the stakeholders.

Incentivizing Zakah Payment:

The issue of incentivizing zakah payment is quite crucial. Where zakah payment is made compulsory and non-compliance invites penalties, weak enforcement can cause zakah collection to be poor, as in case of some Nigerian states. With reasonably strong enforcement mechanisms, as in Sudan, incentives in the form of the benefits of compliance (e.g. tax incentives on zakah on salaries) as well as the costs of non-compliance (zakah payment as precondition to other commercial transactions) work well. At the same time, where zakah payment is voluntary, its mobilization has not been any less impressive.

Coordination with Inland Revenue Body:

Where zakah collection and distribution is entrusted entirely to the state, zakah may be seen as a component of aggregate resources available to the state. In this sense, zakah payment may be seen as a perfect substitute of the direct taxes to the state and may be allowed as deductions to tax payable. However, there must be absolute clarity on the issue as well as coordination between zakah and inland revenue agencies.

Prioritization in Distribution:

In the light of various legal opinions relating to distribution of zakah among eligible beneficiaries, there is a case in favor of a scheme of prioritization among different types of beneficiaries with highest priority being given to the needs of the ultra-poor. Basic consumption needs are, by definition, more urgent than needs that may be deferred to a future date. In this sense, zakah is traditionally viewed as a solution to the consumption needs of the poor. However, there is also merit in using zakah to enhance the wealth-creating capacity of the poor so that they are able to get out of the vicious circle of poverty and find lasting solutions to their needs.

Cautious Approach to Credit Guarantee:

There is a case in favor of using zakah for covering genuine credit defaults by the poor, since such borrowers qualify as eligible beneficiaries in the eyes of Shari'ah. There is, however, need for adequate caution while designing an institutional mechanism for this purpose. It is not easy to differentiate between genuine and willful defaulters for any microfinance institution operating with inadequate and imperfect information.

Supporting Infrastructure:

Zakah management in Sub-Saharan Africa in general seems to have suffered a great deal due to absence of meso-level organizations, e.g. networks, training and education providers, consultancy and standard-setting bodies and advocacy organizations. As a result, public awareness about zakah obligations is extremely low in many parts of the region. Data is extremely scarce. Capacity building is extremely important but neglected and large percent of zakah should go to this. A major change in mindset of all stakeholders is needed. There is a lot to be done in the matter of improving the administration and governance and disclosures. Transparency and accountability is a precondition to credibility and fund raising.

The following are the major findings in relation to the waqf sector.

A Comprehensive Definition of Waqf:

Waqf law should provide a comprehensive definition of waqf that includes both permanent and temporary waqf. It must explicitly cover various types of waqf: family and social waqf, direct and investment waqf, cash waqf, and corporate waqf.

Preservation of Waqf:

Preservation of waqf is undoubtedly the most important concern in waqf management. The legal framework must clearly articulate that all awqaf (with the exception of temporary waqf or waqf for a finite time period) must be governed by the principle of "once a waqf, always a waqf". In case old laws fail to ensure protection, they must be replaced with new provisions that enable recovery of lost waqf assets.

Development of Waqf:

While preservation is important, the law must clearly recognize the importance of sustaining and enhancing the benefits flowing out of the waqf, this being the ultimate purpose of the act of waqf. This is possible only when the importance of development of waqf is clearly recognized. An undue emphasis on preservation (e.g. constraints on leasing) would lead to neglect of developmental possibility with private participation. Similarly, an undue emphasis on development, to the extent that it results in loss of full or partial ownership of asset to private developers, would dilute and vitiate the very concept of waqf. The regulatory framework must seek to strike a balance between concerns about preservation and development.

Creation of New Waqf:

The legal framework must not put undue restriction on creation of new waqf. Legal requirements that make the process more difficult, e.g. approval of the head of the state, are both unnecessary and undesirable. A simple process of registration with the regulatory body is both desirable and adequate. While obstacles to waqf creation must not be there, the legal framework should actually encourage creation of new waqf by minimizing financial and non-financial costs of waqf creation and management.

Definition of Waqif:

The legal framework should not restrict making a waqf only to Muslim individuals and should permit both non-Muslims and institutional waqif as long as the purpose of waqf is religious or charitable.

Definition of Mawquf:

The legal framework should not restrict the definition of the endowed asset to immovable tangible assets, such as real estate, but should also explicitly recognize movable, financial and intangible assets, e.g. cash, stocks, bonds and financial securities, transportation vehicles, rights on land and building, rights of leasing, rights of intellectual property.

Revival of Family Waqf:

Most observers and scholars of waqf believe that the institution of family waqf must be revived. The laws should consider explicit provisions, such as the possibility of restricting the benefits to one or two generations, the method of distribution of waqf benefits etc. with adequate clarity.

State as Manager of Waqf:

Waqf is an institution originally and always meant to be in the voluntary sector with management of waqf entrusted to private parties. However, the state has often sought to play a role in the ownership and management of awqaf, at times governed by motives to expropriate and at other times by the need to curb corrupt practices of private trustee-managers. Whether ownership and management of awqaf should be in private hands or with the state has no clear answer. There is mixed evidence from both public management as well as private management.

Unambiguous and Explicit Criteria and Rules for Private Managers:

Where waqf management is in private hands as in case of Mauritius, 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. Given that the individual or institution so nominated meets the criteria, the regulator must respect the expressed intention the waqif or endower. 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 responsibility should also include transparent and honest reporting of financials. Laws must clearly stipulate the method of determination of remuneration of managers, sufficiently incentivizing sound and professional management of waqf assets.

Undue State Interference may be Harmful:

There is every reason for the state to take punitive action against mutawallis who fail the tests of efficiency, integrity, transparency. The measures must act as effective deterrent against further acts of apathy, neglect and misappropriation. At the same time, the state should not be allowed to wield absolute power to engage in irrational or whimsical action against the mutawalli. Instances of unfair and unlawful action by state are numerous, as are cases of corrupt mutawallis. There needs to be effective checks and balances in the law against wrongful acts by both the state as well as the private mutawallis. Power has a tendency to corrupt and the possibility of such action can significantly increase the non-financial cost of creating new waqf. Endowers are likely to seek alternative forms of organizing their charitable activities if there is a possibility of undue state interference in the management of the endowed assets or outright usurpation of the endowed assets by the state.

Prudence in Investment of Assets:

It is compulsory to invest waqf assets, be it real estate or moveable assets like cash. Three highly desirable dimensions of investing waqf assets are: sustainability, stability and permissibility of returns.

The following are the major findings in relation to the Islamic microfinance sector, especially in the context of Sudan where microfinance is offered to smallholder farmers.

Unique Products for Smallholder Farmers:

The smallholder farmers are the "economically active" poor who witness grave food insecurity and abject poverty. Agriculture is highly dependent on the local conditions: availability of and access to good land, soil, water, climate and market. Further, crops vary widely in terms of duration, perishability, and seasonality. Therefore, provision of microfinance requires different products, diverse and tailor-made approaches. Recent best practices in conventional microfinance advocate "local" interventions based on a value chain approach.

Comprehensive Project Approach:

While a majority of Islamic microfinance institutions (IsMFIs) focus on provision of microfinance alone to the farmers, a few IsMFIs prefer a more comprehensive and challenging approach. These IsMFIs believe that they must play the role of an anchor and a facilitator in a process of transformation, and in the economic and social empowerment of the farming communities. They prefer to adopt a "project" approach and provide support in a multitude of areas other than finance, such as technology, production, marketing, business development, capacity building, and thus, ultimately steering the project to success.

The key lessons from the case studies included in the paper are highlighted below.

- A review of various Islamic modes that are used for provision of finance to farmers reveals that there is no one-size-fits-all mode, even though bai salam is widely seen to be the appropriate mode for agricultural finance.
- Islamic finance discourages debt-based products and encourages equity and partnership based products in general. Given that conventional MFIs derive their income from interest, they seem to be inclined to push their clients into larger and larger amounts of debt. In the Islamic approach, debt is not just discouraged; there are built-in mechanisms, such as zakah to address over-indebtedness of an individual.
- Islamic finance requires "simplicity" in contracts where the rights and obligations of the parties are well understood by them. Even where an Islamic finance model includes future obligations, or composite structures, the uncertainty and ambiguity factor is kept to the minimum. The diminishing musharaka based models used in Sudan are apparently complex but quite "definitive" in terms of transfer of ownership of the key assets into the hands of farmers over a finite period.
- While credit and finance are key inputs for transforming the lives of the farmers, they often require a wide range of non-financial services. Identifying these non-financial needs and finding creative and innovative solutions thereto is critical for success of any intervention.
- A related question is how these non-financial services are to be funded. Should they be priced? Should the farmers pay for these services? The cases highlight both commercial and philanthropic approaches to the issue.
- MFIs that focus on financing the need for physical assets by farmers through conventional or Islamic credit, or through leasing, often ignore the importance of providing for basic consumption needs. It should not come as a surprise if farmers resort to diversion of funds from the so-called income-generating project or even distress sale of the assets (funded by MFIs) if the basic consumption needs remain unfulfilled.
- The projects discussed in this study not only seek to leverage existing skills, but also to develop new skills, such as in the application of better farming technology on a sustained basis. The projects use an approach similar to conventional venture capital funding (with some differences, of course) and focus on the economic viability of project. They carefully seek to identify risks and mitigate them. They also provide a unique example of combining benevolence with commercial viability.
- In confronting the multitude of challenges facing the poor farming communities, the MFIs may have to limit their outreach significantly. While in case of credit-based finance, the size of financing per beneficiary is very small, the same is very high in case of project-based approaches that seek to finance the entire value-chain.
- Grant money or cash flows from dedicated awqaf may be used to absorb operational cost, thereby making it possible to offer financing at a modest rate. Given the widely expressed concern about affordability of high-cost microfinance, such a possibility offers great promise.

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REGION UNDER FOCUS

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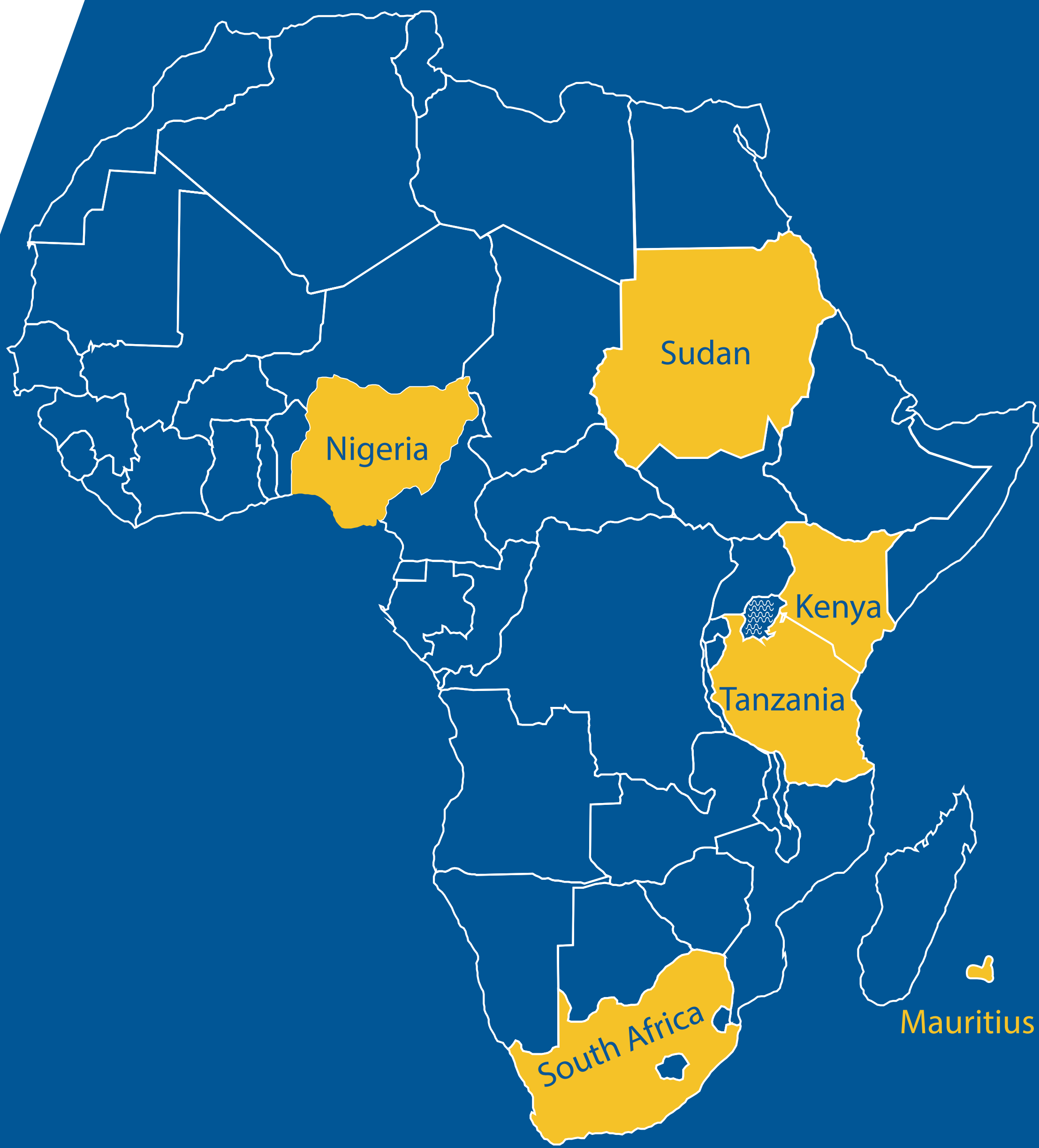
REGION UNDER FOCUS



This is a study of the Islamic social finance sector in six countries of Sub-Saharan Africa, namely Sudan, Nigeria, Kenya, Mauritius, South Africa and Tanzania. For a variety of reasons, these countries are at different stages of development as far as zakah, waqf and Islamic microfinance institutions are concerned.

2 REGION UNDER FOCUS

This is a study of the Islamic social finance sector in selected countries – Sudan, Nigeria, Kenya, Mauritius, South Africa and Tanzania – in Sub-Saharan Africa. of all the countries, Sudan has the most mature and thriving zakah, waqf and Islamic microfinance system. In Nigeria, Muslims constitute at least 50 percent of the population, and they are a dominant majority in the 12 northern states where shariah is accepted as the source of legislation. These states have zakah, waqf and Islamic microfinance institutions, even though their history is somewhat short. The remaining countries, Kenya, Mauritius, South Africa and Tanzania, have Muslims as minorities. For a variety of reasons, mostly historical and political, each of these countries are at different stages of development as far as zakah, waqf and Islamic microfinance institutions are concerned.

The estimated population of Sudan was about 38 million with 80 percent being Muslim in 2013-14, which is the largest ratio among the countries in focus. Nigeria is the largest country in terms of its population (177 million) among the countries under study. The estimated Muslim population of Nigeria was about 50 percent or 89 million in 2013-14. South Africa is the second largest country in terms of its population (about 48 million) with the lowest ratio of Muslim population (1.5%) among the listed countries. The Muslim population of Tanzania was about 35 percent in 2013-14 followed by Mauritius (17.3%). The Muslim population of Kenya was about 5 million or 11.1 percent of the total population in 2013-14.

The primary objective of Islamic social finance - zakah, awqaf, cooperative and not-for-profit microfinance - is to meet the needs of the poor and to make a dent on their ever-rising levels of poverty.

Figure 2.1: Muslim Population (as Percentage of Total Population)

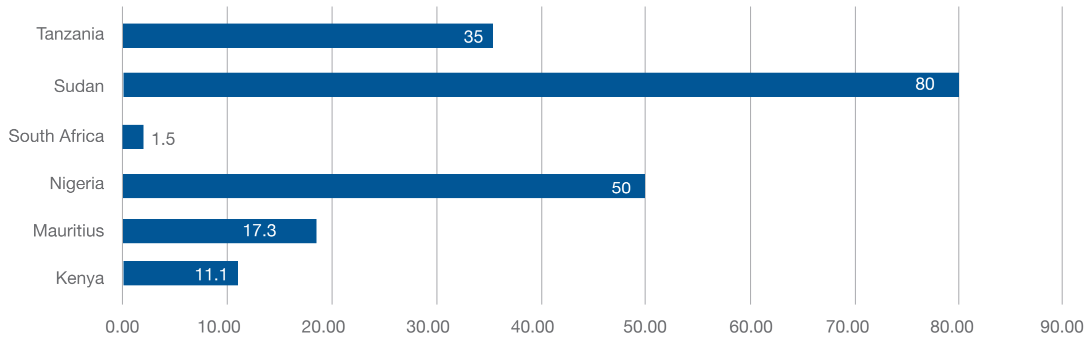


Table 2.1: Muslim Population (2013/2014)

Country	Total population	Muslim population	% of Muslim population
Kenya	45,010,056	4,996,116	11.1
Mauritius	1,331,155	230,290	17.3
Nigeria	177,155,754	88,577,877	50.0
South Africa	48,375,645	725,635	1.5
Sudan*	37,964,000	30,371,200	80.0
Tanzania	49,639,138	17,373,698	35.0

Source: https://www.cia.gov/library/publications/resources/the-world-factbook/geos/tz.html
* http://www.lifeofmuslim.com/2014/01/muslim-population-statistics-in-world-2013-2014.html

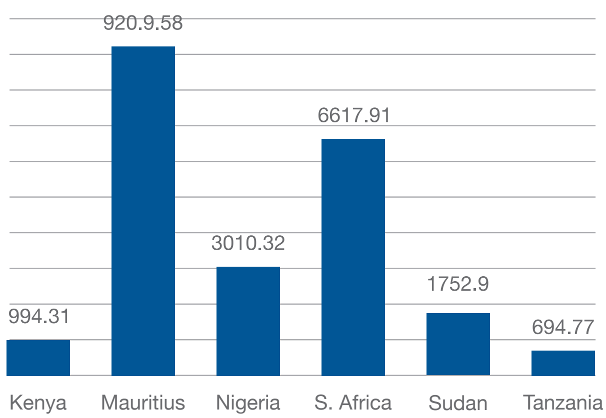
2.1 Trends in Economic Aggregates

This section focuses on broad socio-economic indicators for the region, such as economic growth, structure of the economies, employment, savings & investment, inflation, business environment and governance issues, which directly and indirectly affect the earnings and poverty levels of the households. The six countries under focus are diverse in their natural resources, population, geographic area and levels of economic development.

Gross Domestic Product

Mauritius and South Africa enjoy the status of upper middle-income economies with a nominal per capita income of US$ 9209.58 and US$ 6618 in 2013 respectively. Nigeria is in the lower middle income (USD 3010), while all other countries were in the low-income bracket in the same year (Figure 2.2). In terms of economic size, Nigeria is ahead, having GDP at PPP US$ 1018 billion followed by South Africa (662.5 billion) in 2013. Sudan stands at third position (128 billion), while Kenya was on fourth in 2013 with GDP at PPP US$ 100.4 billion (Figure 2.3).

Figure 2.2: GDP Per Capita (Current USD), 2013



Economic Growth

The economies under study were making reasonable progress in the first half of the study period but some of them suffered after 2007. Nigeria exhibited an average annual growth rate of 9.51 percent during 2000-2007, which was the highest among the countries in focus (Figure 2.4). The contributing factor was the highest growth rate that picked up from 2002 and peaked (33.74 percent) in 2004 (Figure 4). During 2008-2013, it maintained average annual growth rate of 6.63 percent and was not affected by the recent financial crises. After Nigeria, the economy of Sudan performed well during 2000-2007. It recorded an average annual growth rate of 7.50 percent during this period. The economy was making a smooth progress in the early years of the said period but growth rate slipped down to 3.88 percent in 2004. In the following year, GDP growth geared up and reached 11.52 percent in 2007. The financial crises affected the economic growth significantly. During 2008-2013, economy experienced an average annual growth rate of (-) 1.61 percent. Tanzania grew at average annual rate of more than 6 percent during 2000-2007 and 2008-2013. South Africa grew at average annual rate of 4.31 percent during 2000-2007. The global financial crises adversely affected the economy and, therefore, it experienced low average annual growth rate (2.20 percent) during 2008-2013. Mauritius and Kenya registered an average growth rate of 4.27 percent and 4.02 percent per annum during 2000-2007 respectively. Both economies did not suffer during the crises and experienced average annual growth rate of about 4 percent during 2008-2013. down to 3.88 percent in 2004. In the following year, GDP growth geared up and reached to 11.52 percent in 2007.

Figure 2.3: GDP, PPP (Current International $, Billion), 2013

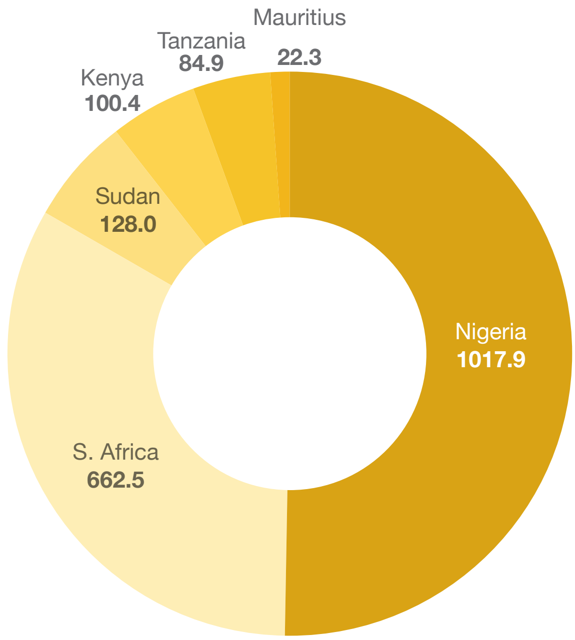
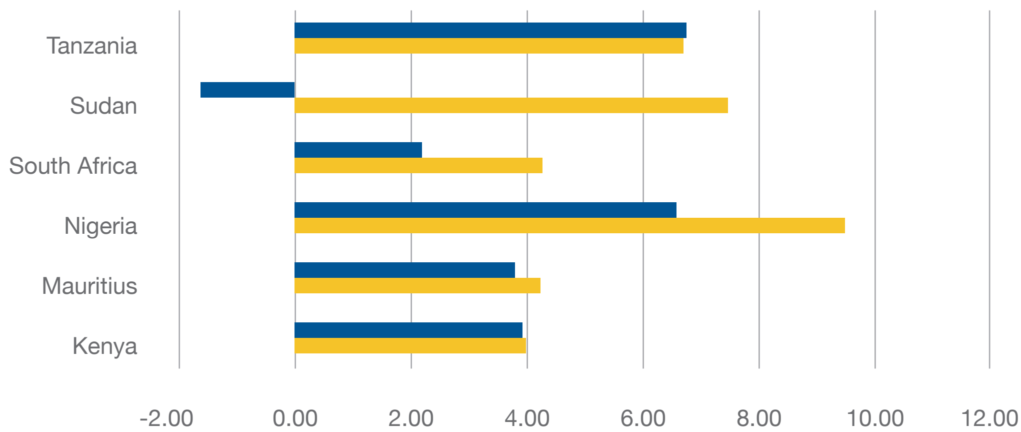


Figure 2.4: Average Annual GDP Growth Rate, 2000-2007 and 2008-2013



	Kenya	Mauritius	Nigeria	S. Africa	Sudan	Tanzania
2008-2013	3.95	3.82	6.63	2.20	-1.61	6.81
2000-2007	4·02	4·27	9·51	4·31	7·50	6·76

The financial crises affected the economic growth significantly. During 2008-2013, economy experienced an average annual growth rate of (-) 1.61 percent. Tanzania grew at average annual rate of more than 6 percent during 2000-2007 and 2008-2013. South Africa grew at average annual rate of 4.31 percent during 2000-2007. The global financial crises adversely affected the economy and, therefore, it experienced low average annual growth rate (2.20 percent) during 2008-2013. Mauritius and Kenya registered an average growth rate of 4.27 percent and 4.02 percent per annum during 2000-2007 respectively. Both economies did not suffer during the crises and experienced average annual growth rate of about 4 percent during 2008-2013.

Structure of Economies

Countries with different per capita income level produce different mix of goods and services. Contribution of services sector to GDP has been greater compared to other sectors in the economies with high per capita income than countries with low per capita income. Mauritius and South Africa enjoy the highest per capita income among the countries under study and, therefore, services sector is dominant in the total production of these economies. Services sector contributed more than 70 percent to GDP of these countries, whereas agriculture sector contributed about 3 percent of the GDP and the rest was coming from the industrial sector. The relative contribution of services

Figure 2.5: Annual Rate of Growth

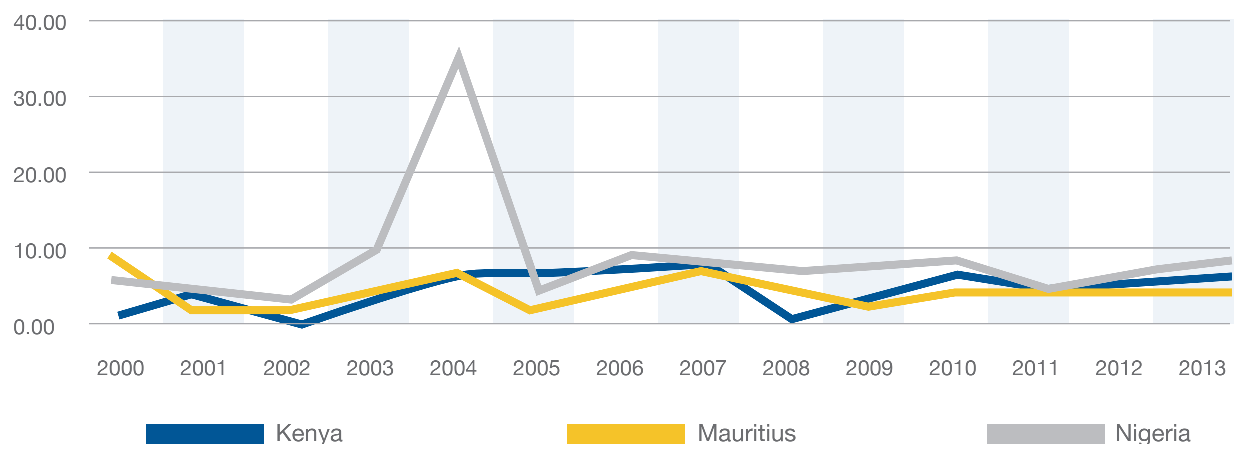
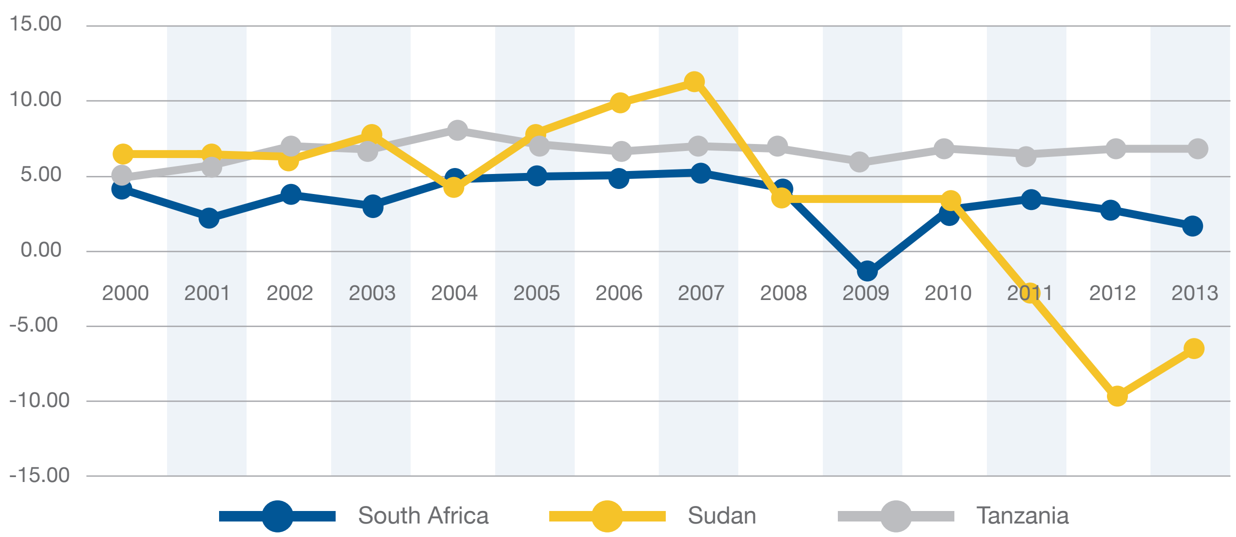


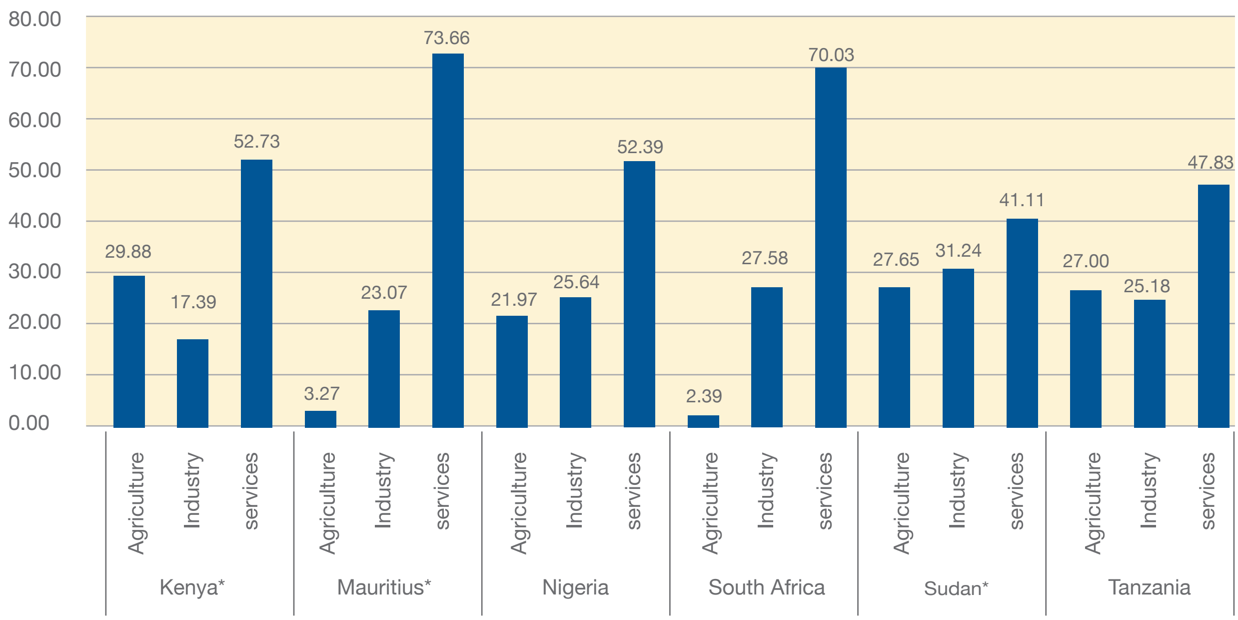
Figure 2.6: Annual Rate of Growth



sector to GDP was about 53 percent in case of Kenya, followed by Nigeria (52.39 percent) and Tanzania (48 percent) in 2013. The relative share of agriculture sector was the highest (about 30 percent) in Kenya, followed by Sudan (28 percent in 2012), Tanzania (27 percent in 2012), and Nigeria (22 percent) in 2013. The percentage contribution of industrial sector to the GDP of Sudan was highest (31.24 percent in 2012), followed by South Africa (27.58 percent), Nigeria and Tanzania (about 25 percent) in 2013 and the lowest (17.39 percent in 2012) in the case of Kenya (Figure 2.7).

Tanzania, the average annual rate of unemployment was in the range of 7.6 to 9.5 percent of their labor force during 2000-2012. The youth unemployment rate was on average in the range of 12 to 17 percent of the total labor force per annum during the same period. Tanzania experienced a low unemployment rate of 3.4 percent on average per annum during 2000-2012. Tanzania also recorded a low youth unemployment rate among the listed countries during the same period, which was on average 6.1 percent per annum (Figure 2.8 and Figure 2.9).

Figure 2.7: % Contribution to GDP (2013)

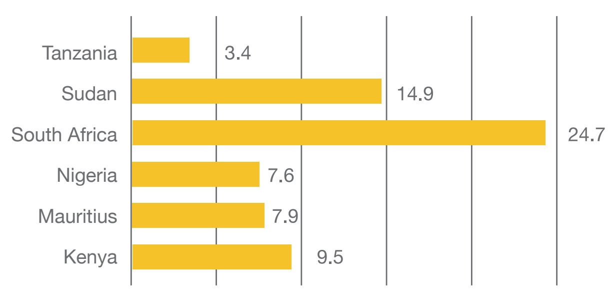


Note: * Figures are for the year 2012

Unemployment

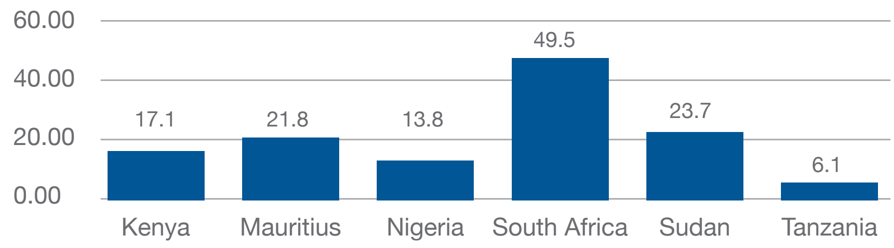
Unemployment is a serious problem for South Africa, whose about one-fourth of labor force is unemployed. The average annual rate of unemployment remained higher in South Africa among the focused countries during 2000-2012 (Figure 2.8). The country is facing hardship in providing jobs opportunity to youth. On average 50 percent of her youth remained unemployed per annum during 2000-2012 (Figure 2.9). Sudan is another country where unemployment was high (on average about 15 percent of labor force per annum) during the same period. On average about 24 percent of her youth has been unemployed, which is the main contributor to the overall unemployment

Figure 2.8: Average Annual Unemployment (% of Total Labor Force), 2000-2012



Source: WB, WDI (2014)

Figure 2.9: Average Annual Unemployment Among Youth (% of Total Labor Force Ages 15-24) 2000-2012



Inflation

Trend in consumer prices in the listed countries remained mixed during the last decade. During 2000-2013, Sudan witnessed an average inflation rate of 12.26 percent per annum. The inflation was in single digit before 2007 but it jumped to double digit in 2008. After 2008, inflation remained in double digits and it pushed up further from 2011 onward (Figure 2.10). Kenya and Nigeria experienced inflation in double digits (10.16 percent and 11.97 percent on average per annum respectively) during 2000-2013.

During the same period, South Africa and Mauritius registered an average annual inflation rate of 5.85 percent and 5.46 percent respectively. These countries were able to keep consumer prices low, except for the years 2007 through 2009 in the case of South Africa, and for the years 2006 through 2008 in the case of Mauritius (Fig 2.11 and Fig 2.12).

The other countries under study recorded an average annual rate of inflation ranging from about 7.6 percent to 9.72 percent during 2000-2013. Tanzania witnessed an average annual inflation rate of 7.92 percent per annum during 2000-2013. The years 2008, 2009, 2011 and 2012 proved to be the bad years for the economy of Tanzania in terms of high consumer prices.

Figure 2.10: Inflation, Consumer Prices (Average Annual %) 2000-2013

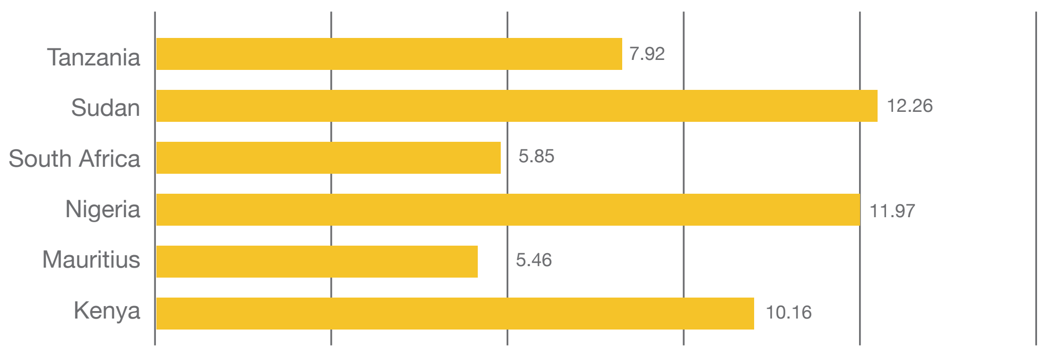


Figure 2.11: Annual Rate of Inflation, Consumer Prices (%)

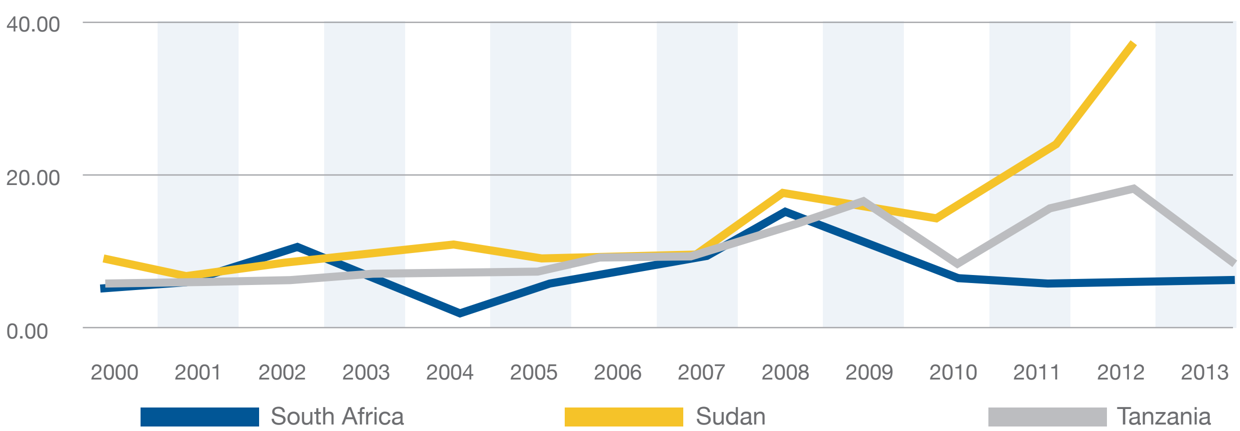
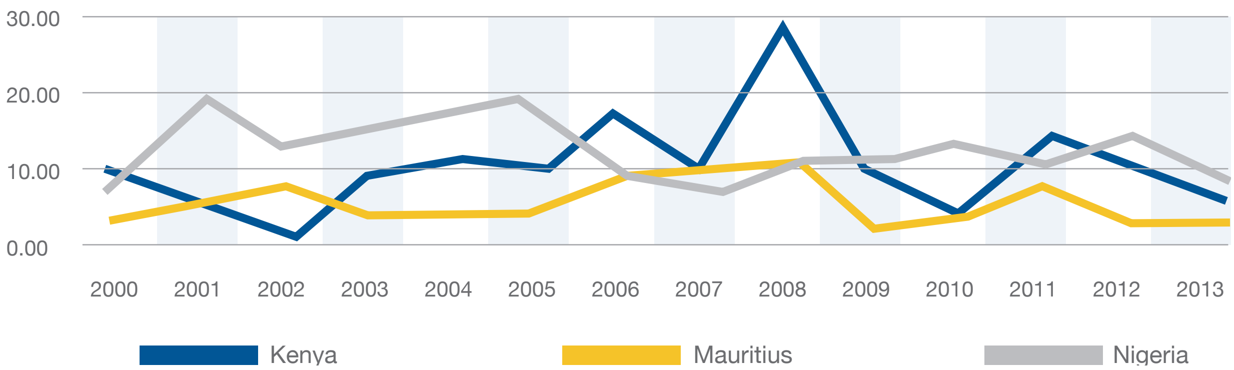


Figure 2.12: Annual Rate of Inflation, Consumer Prices (%)



Savings and Investments

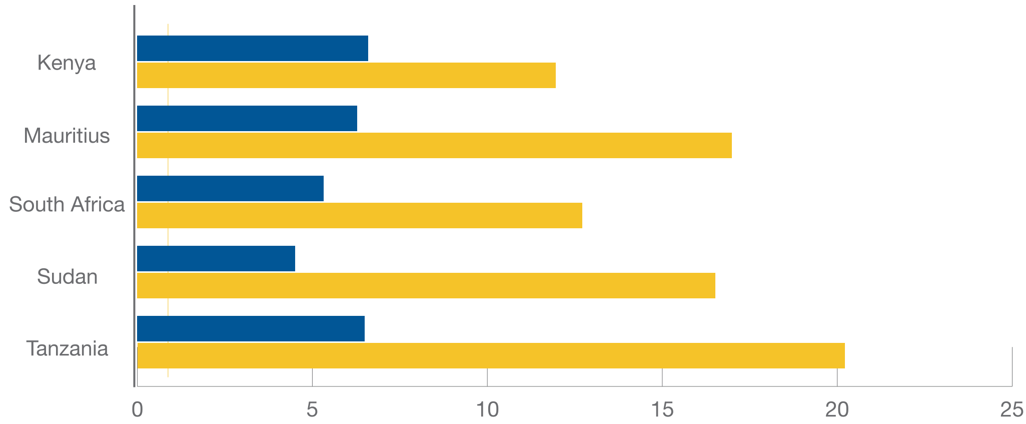
Savings and investments are needed for the growth of the economies. At least 25 percent of the GDP is required to be invested to sustain the development, (WB, 2008). Most of the countries invest more than their domestic savings and the gap between domestic savings and investment is filled by foreign borrowings, foreign investments and foreign aid etc. However, some developing countries save more than investments and fail to channel their domestic savings into productive investments. Nigeria is one of those countries, which could save on average 22 percent of GDP per annum and failed to channel domestic savings for investment. The country Invested on average 9.80 percent per annum during 2000-2013, which is far below the domestic savings. Sudan is another case where its average domestic savings (23.20 percent) per annum exceeded the average annual investments (21.03 percent). However, the difference between savings and investment is much less than the difference between savings and investment of Nigeria. South Africa used its domestic savings (on average 18.40 percent per annum) for domestic Investments (on average 18.03 percent per annum). Nevertheless, this investment was not sufficient for sustaining the economic growth and opening new job opportunities.

Table 2.2: Average Annual Rate of Gross Savings and Investments as a % of GDP (2000-2013)

Country	Gross domestic savings (% of GDP)	Gross fixed capital formation (% of GDP)	Gross fixed capital formation, private sector (% of GDP)
Kenya	7.65	18.55	11.96
Mauritius	17.80	23.27	16.99
Nigeria	21.92	9.80	...
South Africa	18.40	18.03	12.71
Sudan	23.20	21.03	16.52
Tanzania	16.35	26.70	20.21

All other listed countries invested more than their domestic savings. Kenya, Mauritius, and Tanzania invested on average 18.55 percent, 23.27 percent and 26.70 percent per annum respectively during 2000-2013, while their domestic savings remained low during the same period (Table 2.2).

Figure 2.13: Gross Fixed Capital Formation, Public and Private Sector (% of GDP)



	Kenya	Mauritius	S. Africa	Sudan	Tanzania
Public Sector	6.59	6.28	5.32	4.51	6.49
Private Sector	11.96	16.99	12.71	16.52	20.21

Public Sector Private Sector

Almost in all the countries under study, private sector invested more than the public sector during 2000-2013. Private fixed capital formation exceeded manifold than public sector investments, particularly in Tanzania, Sudan and Mauritius during the said period (Figure 2.13).

Income Distribution

Table 2.3 presents income distribution in the listed countries measured by GINI index. GINI index estimates the degree of inequality in the distribution of household income of an economy. The higher GINI index indicates more unequal

Table 2.3: GINI Index

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Kenya	..	..	..	..	..	47.68	..	..	..	..	..
Nigeria	..	..	..	..	42.93	..	..	..	..	..	48.83
South Africa	57.77	..	..	..	..	..	67.4	..	..	63.14	..
Sudan	..	..	..	..	..	..	..	..	..	35.29	..
Tanzania	34.62	..	..	..	..	..	..	37.6	..	..	..

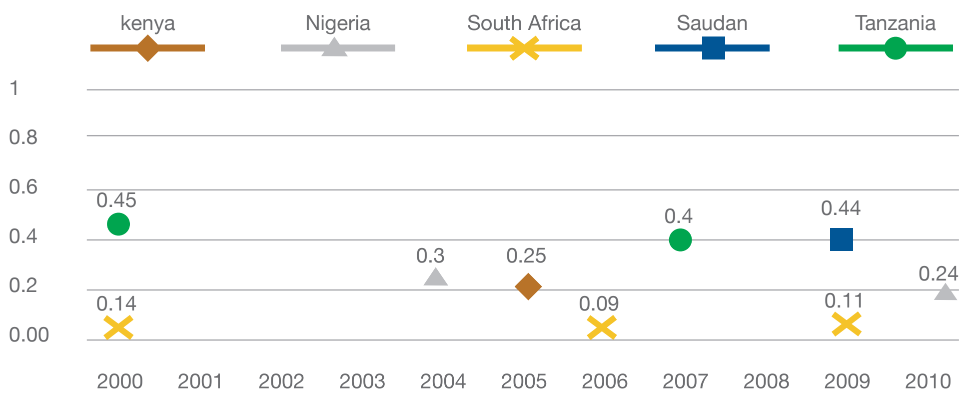
income distribution and vice versa. Income inequality is higher in South Africa compared to other countries under study. GINI index increased from 57.77 percent in 2000 to 67.4 percent in 2006 and slightly dropped to 63.14 percent in 2009. Similarly, income inequality in Tanzania is increasing. It increased from about 35 percent in 2000 to about 38 percent in 2007. The same is true for Nigeria, where GINI index increased from about 43 percent in 2004 to about 49 percent in 2010. In Sudan, income distribution (35.29 percent in 2009) was better compared to other listed countries. (Table 2.3).

Figure 2.14 shows alternative way of looking into income distribution (ratio of bottom 40 percent to top 20 percent of households) and to know whether income of the bottom 40 percent of households improve comparatively. reduction could not be traced for some countries due to lack of time series poverty measures for the period under study.

South Africa made a good progress and reduced poverty to half in the last decade. The head count ratio (HC) based on $1.25 poverty line decreased form 26.2 percent in 2000 to 13.8 percent in 2009. Hc under $2 poverty line dropped from about 43 percent to about 31 percent during the same period. HC under $1.25 poverty line are considered very poor and under poverty line of $2 are considered poor. HC estimates under national poverty line dropped by 15 percentage points from 38 percent in 2000 to 23 percent in 2006.

Kenya recorded HC 43.4 percent and 67.2 percent under international poverty lines respectively in 2005, while about 46 percent were found below the national poverty line in the same year. In Kenya, poverty was more pronounced in the rural areas (HC 49.1 percent) than the urban areas (HC about 34 percent).

Figure 2.14: Income Ratio of Bottom 40 % of Households to top 20% Households



The higher ratio measures better income distribution (the bottom 40 percent is receiving a good share of income relatively) and vice versa. The figure reflects, more or less, the same picture as depicted by Table 2.3. The ratio is very low in the case of South Africa, reflecting that the bottom 40 percent is getting very low income compared to the top 20 percent of the households. The same results have been depicted by GINI index indicating unequal income distribution in South Africa. This ratio is high comparatively for Sudan (0.44 in 2009) and Tanzania (0.45 in 2000 and 0.4 in 2007) implying better income distribution among the listed countries (Figure 2.14)

Incidence of Poverty

The following table 2.4 depicts the incidence of poverty estimated by using international poverty lines at $1.25 a day (PPP) and $ 2 a day (PPP), and the national poverty lines. Poverty estimates are highly sensitive to the poverty line used. Furthermore, progress on incidence of poverty

Among the listed countries, Nigeria has been facing high and increasing incidence of poverty. HC of very poor was 63.1 percent and HC of poor was 83.1 percent in 2004, which increased to 68 percent and 84.5 percent respectively in 2010. However, 48.4 percent were found poor under national poverty line in 2004 and 56.6 percent under rural poverty line in the same year. During 2004 and 2010, HC under national poverty line dropped by 2.4 percentage points, while HC of rural poor dropped by 3.8 percentage points.

In Sudan HC of very poor was about 20 percent and HC of poor was about 44 percent in 2009. Nevertheless, incidence of poverty was found high using national poverty lines. 46.5 percent were found below the national poverty line in the same year. About 58 percent of the total poor were found below the rural poverty line.

In case of Tanzania, incidence of poverty was estimated by using international poverty lines and the same was not available, for the early period of the last decade, under national poverty lines. Under these poverty lines, the HC was found to be highest (about 85 percent very poor and 95.3 percent poor) among the listed countries in 2000. During 2000-2007, Tanzania reduced HC of very poor by 16.7 percentage points and poor by 7.4 percentage points. However, incidence of poverty using national poverty lines was found to be low in 2012. The HC of total poor was 28.2 percent, while that of rural poor was 33.3 percent and urban poor was 15.5 percent in the same year. This shows that poverty is a rural phenomenon in case of Tanzania.

Table 2.4: Head Count Ratio 2000-2012

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Kenya	1	..	..	..	..	..	43.4	..	..	..	..	..	..	..
	2	..	..	..	..	..	67.2	..	..	..	..	..	..	..
	3	..	..	..	..	..	45.9	..	..	..	..	..	..	..
	4	..	..	..	..	..	49.1	..	..	..	..	..	..	..
	5	..	..	..	..	..	33.7	..	..	..	..	..	..	..
Nigeria	1	..	..	..	..	63.1	..	..	..	..	..	68	..	..
	2	..	..	..	..	83.1	..	..	..	..	..	84.5	..	..
	3	..	..	..	..	48.4	..	..	..	..	..	46	..	..
	4	..	..	..	..	56.6	..	..	..	..	..	52.8	..	..
	5	..												
South Africa	1	26.2	..	..	..	..	..	17.4	..	..	13.8	..	..	..
	2	42.9	..	..	..	..	..	35.7	..	..	31.3	..	..	..
	3	38	..	..	..	..	..	23	..	..	..	..	..	..
	4	..	..	..	..	..	..	..	..	..	..	..	..	..
	5	..												
Sudan	1		..	..	..	..	..	..	..	..	19.8		..	..
	2		..	..	..	..	..	..	..	..	44.1		..	..
	3		..	..	..	..	..	..	..	..	46.5		..	..
	4		..	..	..	..	..	..	..	..	57.6		..	..
	5		..											
Tanzania	1	84.6		..	..	..	..	..	67.9		..	..	..	..
	2	95.3		..	..	..	..	..	87.9		..	..	..	..
	3		..	..	..	..	..	..	..	..	..	..	..	28.2
	4		..	..	..	..	..	..	..	..	..	..	..	33.3
	5		..											15.5

Source: World Bank: WDI, (2014)

Note:

1. Poverty headcount ratio at $1.25 a day (PPP) (percentage of population)
2. Poverty headcount ratio at $2 a day (PPP) (percentage of population)
3. Poverty headcount ratio at national poverty line (percentage of population)
4. Poverty headcount ratio at rural poverty line (percentage of rural population)
5. Poverty headcount ratio at urban poverty line (percentage of urban population)

2.2 Potential of Islamic Social Finance

The role of Islamic social finance assumes great significance in the countries under study, given their high poverty levels among the Muslims. The primary objective of Islamic social finance - zakah, awqaf, cooperative and not-for-profit microfinance - is to meet the needs of the poor and to make a dent on their ever-rising levels of poverty. Therefore, it is important to estimate, to what extent Islamic social funds may meet the resource requirements for poverty alleviation. We proceed first by estimating the resource gap for poverty alleviation and then move on to measure the potential Islamic social funds that could be tapped to meet the resource gap.

2.2.1. Estimating the Resource Gap for Poverty Alleviation

The resource gap has been estimated by using the poverty gap index, which is defined as the mean shortfall below the poverty line, expressed as a percentage of the poverty line. The World Bank has used the recently updated poverty lines of US $1.25 a day in 2005 PPP terms for hard core poor and US $2 a day for the relatively poor, which represents the mean of poverty lines found in the poorest 10 to 20 countries ranked by per capita consumption[1]. This reflects the depth of poverty as well as its incidence. The poverty gap index does not provide the total income (consumption) shortfall explicitly. For this purpose, the estimated poverty gap indices based on international poverty lines of $1.25 a day and $2 a day have been converted into percentage of GDP for each country under study.

$$P_1 = 1/N \sum_{i=1}^{q} (Z - Yi)/Z,$$

Where, P1 is poverty gap index, N is total population, Z is poverty line and Yi is the income (consumption) of the ith household. The poverty gap index has been re-arranged to get the absolute resource shortfall to bridge the poverty gap of the countries concerned.

$$\sum_{i=1}^{q} (Z - Yi) = P_1 NZ$$

2.2.2. Estimation of Potential Resources from Zakah

Table 2.5 presents estimates of zakah potential in the listed countries[2] . Except Sudan, all other countries are Muslim minorities. In some countries, Muslims are in a small proportion of the total population and hence zakah potential is very low in those countries. For example Muslim minority is 1.5 percent of the total population of South Africa and they would be able to collect about USD 189 million (0.03 % of GDP) under Z1, USD 383 million (0.06% of GDP) under Z2 and USD 431 million under Z3 (0.07 % of GDP) in 2013. The Muslim minorities of Kenya would be able to collect zakah in the range of USD 126.56 million (0.13 percent of GDP) underZ1 to USD 305.16 million (0.30 percent of GDP) under Z3 in 2013. Muslim

Table 2.5: Estimates of Zakah Potential (2013)

	Z1 (Million USD, PPP)	Z2 (Million USD, PPP)	Z3 (Million USD'PPP)	Z1 (% of GDP)	Z2 (% of GDP)	Z3 (% of GDP)
Kenya	126.56	270.71	305.16	0.13	0.27	0.30
Mauritius	66.62	142.50	160.63	0.30	0.64	0.72
Nigeria	8776.45	18771.85	21160.99	0.86	1.84	2.08
South Africa	178.87	382.58	431.27	0.03	0.06	0.07
Sudan	1843.51	3943.06	4444.90	1.44	3.08	3.47
Tanzania	456.75	976.93	1101.26	0.54	1.15	1.30

1 For more precise estimates, national poverty lines and micro data of each country are required, which are not available Therefore, international poverty lines and the poverty gap indices measured in terms of the same are used for estimation.

2 For calculating estimates of zakah potential as well as complete methodology see (Shirazi, 2006; Shirazi and Fouad, 2010)

minorities in Mauritius would collect in the range of 0.30 percent of GDP to 0.72 percent of GDP under different scenario. Similarly, zakah potential in Tanzania is in the range of 0.54 percent of GDP to 1.30 percent of GDP. zakah potential of Nigeria is in the range of 0.86 percent of GDP to 2.08 percent of GDP. Sudan is the only Muslim dominant country among the listed countries, where zakah potential is in the range of 1.44 percent of GDP to 3.47 percent of GDP under different scenarios.

Table 2.6 shows money required to reduce poverty of the selected countries. Comparing zakah potential of the list countries (Table 2.5) with their resource required (Table 2.6) to reduce poverty (defined in terms of USD 1.25 a day); it is found that countries like Sudan, Nigeria and South Africa can easily generate resources for poverty alleviation. The money required for Muslim minorities in country like Kenya is 0.32 percent of GDP, whereas corresponding potential zakah collection is 0.30 (Z3) percent of GDP. The gap between resource required and potential zakah collection of the country is marginal. However, Tanzania would be unable to bridge the resource gap by potential zakah collection.

Table 2.6: Resource Shortfall for Poverty Reduction

	Resource Shortfall under USD 1.25 per annum as % of GDP	Resource Shortfall under USD 2.0 per annum as % of GDP
Kenya	0.32	0.96
Nigeria	1.47	3.50
South Africa	0.001	0.01
Sudan	0.49	2.20
Tanzania	3.02	8.17

There is a case in favor of a scheme of prioritization among different types of zakah beneficiaries with highest priority being given to the needs of the ultra-poor.

3

ZAKAH

3

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3 ZAKAH

Zakah is essentially a compulsory annual levy on the wealth of an adult and sane Muslim individual who might possess wealth beyond a prescribed minimum. For wealth to become liable for zakah, it must remain in the ownership of the individual for one Hijrī calendar year (Hawl) and must exceed a minimum threshold (Nisab). Zakah is not levied on income which is used for consumption, and items of wealth which are used for personal and family utilization. Zakah is levied on savings that are transformed into wealth of an individual and added to his stock of wealth, and on agricultural output. It is also levied on forms of wealth that are characterized as stocks (e.g., gold, silver, the inventory of trade and livestock). Zakah is not levied on wealth that is in the nature of means of production, such as tools and equipment, machinery etc. Islamic law provides for elaborate rules relating to estimation of zakah base (amount of wealth on which zakah is levied) and the rates of levy that vary with forms of wealth. With most forms of financial assets, the rate is two and a half percent.

The gravity of the problem is compounded by the fact that forms of savings, investment and wealth have undergone major changes since the ancient jurists wrote their texts. While rules for assets, such as livestock, agricultural produce, fruits remain same, newer forms of wealth require new rules of the game. These include buildings and other physical assets on lease, factories and plants, machines and equipment, and all kinds of fixed and circulating capital that provide for income flows. Further, there are now new forms of income for professionals and the salaried class. This naturally leads to divergence of views and unresolved issues pertaining to their zakatability, applicable rates and related matters. There is difference of view with respect to defining the concept of Nisab as well. One view is to see Nisab as a dynamic rather than static concept. Nisab is the dividing line that separates the basic necessities of life from luxuries and therefore changes with time and place. It provides for an acceptable standard of living, which covers all necessities of life, such as food, clothing, house, household belongings, education, health care, and means of transportation and as such is relevant for a particular community at a point in time.

Collection of zakah from farms entails huge collection costs. Therefore, a more liberal view is called for in relation to the cap on operational costs that is traditionally placed on one-eighth of zakah funds collected in South East Asia.

While discussing the rules governing zakah liability, it is perhaps logical to begin with assets and applicable rates that are clearly mentioned in the Qur'an and Sunnah and that have been extensively discussed in classical texts and then move on to the newer forms of wealth that may be subject to zakah. The latter, needless to say, involve intellectual reasoning by scholars and reflect the divergence in their views. Broadly, one may categorize a zakatable item as zakatable asset (a stock concept) and zakatable output (a flow concept). Assets may include forms of financial and physical capital. Output may be expressed as revenues – gross and net – and earnings or income.

Any asset that is zakatable must fulfill the following conditions:

1. Absolute right of ownership of wealth with exclusive right of disposition.
2. Growth or potential of growth in wealth.
3. Wealth above the minimum threshold (Nisab).
4. Passage of a year (Hawl) applicable on livestock, money, and business assets.

The rate of zakah on most forms of zakatable assets is two and a half percent. For output, revenues and earnings to be zakatable, the last condition, i.e. passage of a year, is not required. This is logical as these are in the nature of flows. Further, the rate of zakah is higher at ten or five percent depending upon whether the output or revenue earned is expressed as net of related costs or in gross terms.

It is interesting to note that zakah rate on the stock of capital and assets is lower than that which is applicable to flow of output and revenues. Further, while aggregating the zakah liabilities from different zakah bases, care must be exercised to ensure that there is no double counting.

Islam stipulates conditions on the use of zakah funds and requires that funds must clearly flow to specified categories of beneficiaries only. Zakah funds must be clearly distinguished from funds with Islamic treasury pooled through taxes and state revenues and cannot be used to finance infrastructural projects, public utilities and services beneficial to all Muslims - the poor and the rich - or for meeting the administrative expenditure of the state .

The following verse of the holy Quran defines the eligible beneficiaries (mustahiqeen) of zakah.

"The offerings (zakah) given for the sake of Allah are (meant) only for fuqara (poor) and the masakeen (needy), and ameleen-a-alaiha (those who are in charge thereof), and muallafat-ul-quloob (those whose hearts are to be won over), and for fir-riqaab (the freeing of human beings from bondage), and for al-gharimun (those who are overburdened with debts), and fi-sabeelillah (for every struggle) in Allah's cause, and ibn as-sabil (for the wayfarer): (this is) an ordinance from Allah- and Allah is all knowing, wise." (9:60)

Zakah is, therefore, primarily in the nature of a safety net to take care of the necessities of life of those who cannot afford them. The first two categories, namely fuqara (the poorest of the poor) and masakeen (the needy and destitute) include individuals with no means of livelihood or inadequate income to meet their basic necessities of life that would include orphans, the sick and the disabled, and the homeless.

Zakah funds may also be used to defray the operational costs of managing a zakah organization. This is to maintain the integrity and the independence of collection and disbursement of zakah funds. The third category of eligible recipients of zakah, ameleen-a-alaiha refers to the personnel employed for this purpose and their salaries may be paid out of zakah funds.

Muallafat-ul-quloob, the fourth category, literally means people whose hearts are to be won over and implies such non-Muslims who are close to understanding and perhaps accepting the truth and message of Islam. Under the fifth category, fir-riqaab zakah may be used to pay ransom or compensation to buy freedom for slaves and prisoners of war.

The sixth category, al-gharimun, refers to individuals trapped in debt. It is important that such debt does not relate to frivolous and conspicuous consumption. It is also important that the default or delinquency in repayment of debt is not wilful and deliberate. Scholars also add qualifiers to debt eligible for zakah support, such as that arising out of settling disputes among Muslims. Further, the amount of zakah that is paid cannot exceed the amount of debt.

The seventh category, fi-sabeelillah, is a broad one and includes expenditure for the propagation and defence of Islam. It also includes expenditure on charitable projects in the field of education, medical care, and social welfare.

Finally the eighth category, ibn as-sabil (son of the road/ the wayfarer), denotes any person who is far from his/ her home who, because of circumstances beyond his/her control, and does not have sufficient means of a livelihood at his/her disposal. In its wider sense it describes a person who, for any reason whatsoever, is unable to return home temporarily or permanently, either such as a political exile or refugee. This allows for use of zakah funds for rehabilitation work in post-conflict regions.[3]

3 The above section is extracted from Obaidullah (2012) Zakah Management for Poverty Alleviation, IRTI, IDB

For details, see following section on legal and regulatory framework for zakah.

3.1 Overview of the Zakah Sector

The last issue of the Report focused on countries in South and South East Asia and identified a clear upward trend in the mobilization of zakah. Countries like Indonesia and Malaysia were observed to have experienced a steady growth in zakah mobilization, interestingly, under two distinct zakah management systems. While zakah collection is mandatory in Malaysia, it is voluntary in Indonesia. Other countries, e.g. India, Pakistan and Bangladesh displayed interesting variations too. In the present sample of countries in Sub-Saharan Africa, we find a similar variation. While zakah is mandatory in Sudan and four states in Nigeria, it is voluntary in other states of Nigeria as well as in the other countries under focus.

3.1.1. Sudan

The zakah system in Sudan has evolved over time. The system has been fine-tuned over the years with proactive changes in the legal and regulatory framework. The formal organization of zakah in Sudan began in the 1980s with private foundations collecting zakah in accordance with Shariah law. This formed the basis of successive laws of zakah in Sudan. Observers find four phases in the evolution of the Sudanese zakah system. The first phase relates to creation of zakah law in 1980 (1400H) that established the Zakah Fund. The law at this stage targeted a voluntary revival of the institution of zakah without any element of coercion. The beginning of phase two is marked by introduction of the law of zakah and taxes in 1984 (1404H). The law made zakah payment compulsory and placed zakah and taxes under a single authority. Further reform in zakah law was undertaken two years later. In 1986 zakah was separated from taxes and the new law established an independent chamber or the Diwan Zakah (phase 3). Phase 4 began in 1990 with further reforms in the zakah law that essentially sought to fill gaps. Finally, in 2001, the current zakah law was put in place that firmly established zakah as a socio-economic institution that could play a major role in economic uplift of the masses. Zakah as a national institution now has the following major policy goals:

- To provide safety net against drought, desertification, disasters and epidemics.
- To mitigate poverty by providing cash and in-kind support.
- To directly establish and participate in various projects for the poor and needy.
- To tackle unemployment via making training compulsory for grants for small projects.

In Sudan, the Diwan Zakah is the apex zakah body. It is an independent corporate body with the right to undertake all necessary measures to assess zakah liability and collect the same. It is also solely responsible for distribution of zakah among eligible beneficiaries in compliance with shariah and with a view to realizing the social objectives of zakah. It is also responsible for creating public awareness about the institution of zakah. The Diwan carries out its functions under the supervision of the High Zakah Board of Trustees, which is the supreme authority in the matter. The structure at the central level is repeated at the state level and the state apparatus is linked to the Diwan Zakah. Complete decentralization is attempted by extending the infrastructure right up to the village level.

In Sudan, the Diwan Zakah is the apex zakah body. It is an independent corporate body with the right to undertake all necessary measures to assess zakah liability and collect the same.

3.1.1.1. Zakah Collection

Creation of a country-wide decentralized infrastructure backed by a good system of accountability and governance has ensured that zakah collected has steadily been growing. The time-series behavior of zakah collection in Sudan over the last 10 years is presented in Table 3.1. Indeed, it increased from SDG (Sudanese Pounds) 119.1 million in 2000 to about SDG 1,299.7 million in 2013 at an annual average growth rate of 19 percent. In US dollar terms, the growth has been less spectacular, at about 7.2 percent per year, thanks to devaluation of Sudanese pound against dollar over these years. The conversion rate for Sudanese pound against US dollar was 2:1 on July 01, 2007 (when it replaced the Sudanese Dinar that was exchanging at 200:1). It then depreciated to 2.5:1 on 31 Dec 2010, 2.67:1 on end-2011, 4.4:1 on end-2012 and end-2013 and further to 5.85:1 on end-2014.The effective growth rate in zakah in USD is plateaued due to such extreme adverse currency movement. The growth was particularly impressive during 2011 and 2012 at 36 percent and 48 percent respectively. It, however, moderated to 8 percent in 2013, due primarily to a decline in zakah from crops due to crop failure.

While the realized growth in zakah collections in the past appears to be quite impressive, there is a long way to go.

In a 2013 study the Institute of Zakah Sciences Sudan, estimated that in view of the current economic growth of Sudan and the developments in the economic front, the zakah base has widened to SDG 193 billion on which the zakah is estimated at about SDG 5.8 billion. Given that the actual zakah collected in 2013 stood at about SDG 1.2 billion, four in every five pounds of zakah due remain uncollected.

In order to identify the reasons and major challenges to zakah collection, we disaggregate total zakah into its components based on the sources or the nature of zakah base. The composition of zakah in Sudan has its uniqueness. A large chunk of zakah comes in the form of crops from the agriculture sector.

This is so because of the agrarian nature of the country. Table 3.2 disaggregates the annual zakah collected in terms of the sectors that contributed to zakah collection.

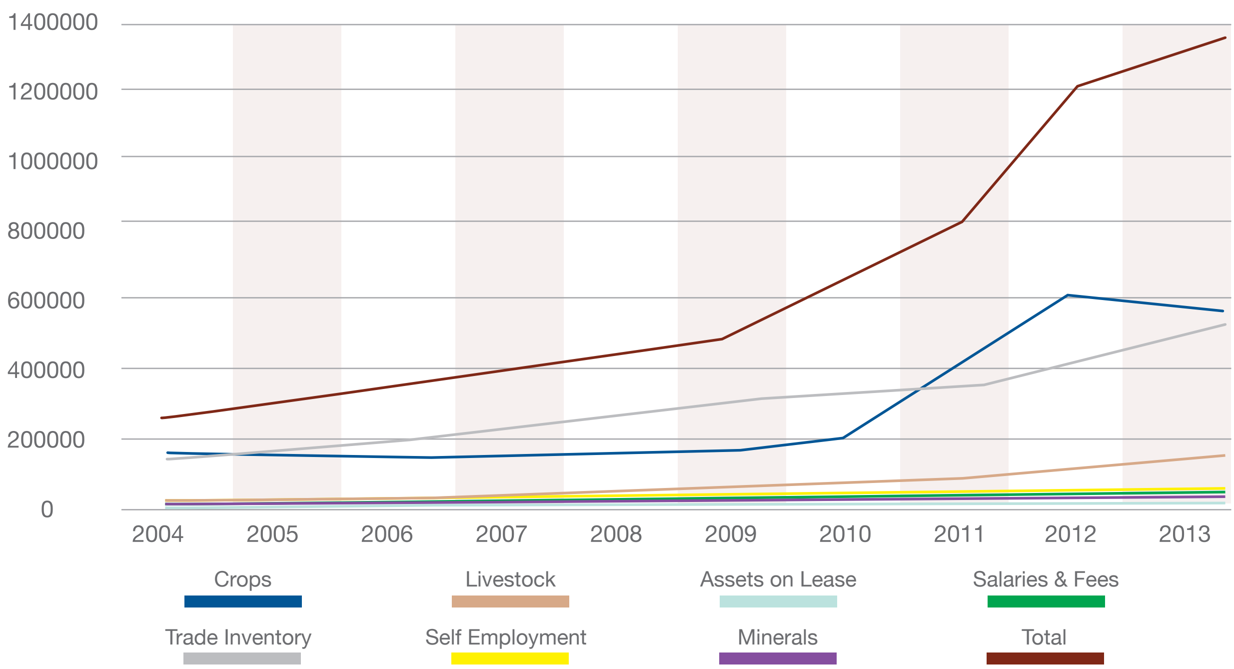
Table 3.1: Growth in Zakah Collection in Sudan (2004-13)

Year	Amount (‘000 SDG)	Growth Rate %	Amount (‘000USD)	Growth Rate %
2004	271352	12.0	117978	12
2005	314483	16.0	157242	33.3
2006	357141	14.0	178573	13.6
2007	404486	13.0	183858	3
2008	445281	10.0	202400	10.1
2009	497439	12.0	198976	-1.7
2010	592637	19.0	219495	10.3
2011	807801	36.0	183,592	-16.4
2012	1198636	48.0	210289	14.5
2013	1299678	8.0	220286	4.8

Table 3.2: Sources of Zakah Collected (Time-Series Behavior)

Year	Crops	Livestock	Trade Inventory	Self-Employment	Assets on Lease	Salaries/ Fees	Minerals	Total
2004	115118	19100	103075	1953	12784	19322	0	271352
2005	124393	22293	133142	2406	14694	17555	0	314483
2006	121369	22925	178407	2745	15216	16479	0	357141
2007	141125	24648	199430	3201	18823	17259	0	404486
2008	147256	24021	232985	3611	14734	22674	0	445281
2009	151362	27983	274848	3732	19179	20335	0	497439
2010	208417	39384	295761	4231	20472	24372	0	592637
2011	362090	64190	318638	4734	22359	35790	0	807801
2012	597394	104687	407229	6679	30892	50880	875	1198636
2013	546587	124912	505725	8706	37916	59146	16686	1299678

Figure 3.1: Sources of Zakah Collected in Sudan (Time-Series Behavior)



The time series behavior of different sources of zakah shows that zakah collected from all sources except the crops have steadily increased over time. Zakah from the crops in the year 2006 and more recently in 2013 actually declined from their previous years, primarily due to lower crop yields. Total zakah collected experienced a slower growth due to this. In terms of contribution to total zakah, crops and trade inventory have been equally significant.

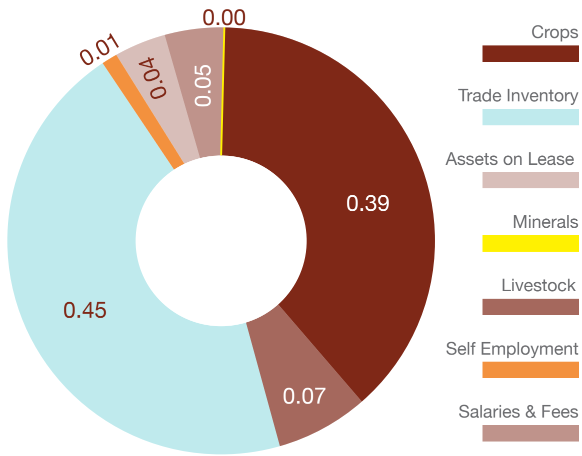
Table below presents the percentage contribution of zakah from different sources to total zakah.

While crops have contributed more if we consider recent data, trade inventory has contributed more if we consider data over the last decade. Together, they constitute over 80 percent of zakah collected on average. This indicates a possibility that the potential of zakah from other sources, e.g. salaries, fees, minerals, remain largely untapped.

Table 3.3: % of Contribution to Zakah by Different Sources over time in Sudan

Year	Crops	Livestock	Trade Inventory	Self-employment	Assets on Lease	Salaries/ Fees	Minerals	Total
2004	0.42	0.07	0.38	0.01	0.05	0.07	0.00	1.00
2005	0.40	0.07	0.42	0.01	0.05	0.06	0.00	1.00
2006	0.34	0.06	0.50	0.01	0.04	0.05	0.00	1.00
2007	0.35	0.06	0.49	0.01	0.05	0.04	0.00	1.00
2008	0.33	0.05	0.52	0.01	0.03	0.05	0.00	1.00
2009	0.30	0.06	0.55	0.01	0.04	0.04	0.00	1.00
2010	0.35	0.07	0.50	0.01	0.03	0.04	0.00	1.00
2011	0.45	0.08	0.39	0.01	0.03	0.04	0.00	1.00
2012	0.50	0.09	0.34	0.01	0.03	0.04	0.00	1.00
2013	0.42	0.10	0.39	0.01	0.03	0.05	0.01	1.00
Average	0.39	0.07	0.45	0.01	0.04	0.05	0.00	1.00

Figure 3.2: Average % of Contribution to Zakah by Different Sources in Sudan



Issues in Collection

The following are some of the critical success factors and challenges to optimizing zakah collection from crops, livestock, trade and business, salaries and professional incomes, minerals and other sources. A problem that persists across all categories of zakah is identified as lack of public awareness of the mandatory nature as well as the rules of zakah. Similarly, awareness levels are quite low among relevant stage agencies as regards their legal obligation to support the Diwan in its collection efforts.

Crops

The share of zakah from crops in total zakah has witnessed great variation - between 30-50 percent, which is attributable to several factors, e.g. natural and climatic factors; security conditions faced by some areas; and problems unique to large agricultural projects and a decline in the contribution of small-irrigated schemes due to the high costs of agricultural production. Nevertheless, the fact remains that zakah from crops is a significant contributor to the total kitty and the share has been rising in recent times. Overall, one may find that zakah from crops is collected in areas of relative stability. Collection also has benefitted from the accumulated experience of workers in the zakah collection in the field. Some major challenges, however, remain.

- Overall, monitoring costs are quite high. It is extremely difficult to monitor all production, since large tracts of land are difficult to reach. Reaching out to faraway locations may not also make economic sense if the potential zakah to be collected is not large enough.
- Leakages are hard to control in view of multiple entry points to major cities. Attempts to set up control points to monitor the highway traffic at entrances to major cities are thwarted by private entry points. For instance, Khartoum State, which is one of the largest producer of agricultural products in Sudan, provides for easy transport of such goods and an easy route for exports through the sea.
- Many of the products are stored at the sites of production making it difficult to monitor them in a timely manner and to subject them to zakah. A large part of the production goes for domestic consumption that enhances difficulty in assessing the true zakah base. In addition, zakah due from the production of some small private holdings is hard to monitor and collect, even though the same represents a significant proportion of the total production.

Livestock

Livestock contributes significantly – more than crops - to the GDP of Sudan. It is a dominant form of zakatable wealth in regions such as Darfur and Kordofan. However, it contributes a meagre 7 percent to total zakah. A major reason for this is widespread instability in these regions with large herds of livestock. zakah collected from livestock has, thus, been affected by poor security situation in the region, even while it has experienced a steady increase.

- Another issue with livestock is the opaqueness of national boundaries across which the herds move in search of pastures. This makes it extremely difficult to keep track of the livestock and subject them to zakah.
- Owners of livestock are a difficult people of deal with, according to zakah collectors, and it requires a high degree of efficiency, professionalism and hardwork to collect zakah from the people who keep changing their locations in search of pastures, often across national borders.

Mining

Zakatable wealth from mining in Sudan is mostly in the form of gold. zakah collected from this source has seen a spurt only during the last couple of years. The major problem areas in zakah collection on gold are as follows:

- Families hold a large chunk of gold and the state apparatus for zakah collection does not have full control over production process of gold.
- There is private and irregular mining as well as foreign and non-Muslim ownership of the mines that make it difficult to obtain information on the annual production and levy zakah.

Trade and Commerce

Zakah from trade and commerce constitutes largest source of zakah considering data over the last decade. Its share of the total zakah reflecting its relative importance may be attributed to (i) the growing importance of the services sector and industry in the composition of GDP and (ii) steady development in the capacity of the staff of Diwan and in systems leading to enhanced coverage. However, collection of zakah on business and commerce in Sudan faces many challenges that need to be addressed.

- A key challenge relates to the lack of coordination between state zakah body and the banking system. The Diwan zakah exercises little control over bank deposits that are zakatable. There is no sharing of information or coordination between the Diwan and the central bank of the country in this regard. It is estimated that the zakah due on bank deposits of 23,416 million SDG was 585.4 million SDG in the year 2013 alone, a sum equivalent to 115.8% of the total collection under trade and business. This zakah could be easily collected with the support and cooperation and in coordination with the banking system.
- Zakah collection also suffers due to a lack of coordination between the Registrar of Companies and the Diwan Zakah. It is estimated that the number companies that pay zakah is less than one-tenth of the over 40,000 registered companies. While some companies may not be zakatable owing to their being owned by non-Muslims, the fact remains that there is substantial loss of zakah due to lack of coordination.
- There is also loss of zakah due to absence of any linkage between customs clearance procedures and zakah payment. Linking up a certification by zakah authorities

(that zakah due has been paid) with customs clearance of goods entering or leaving the country will significantly boost collection.

- Investment by government bodies and companies are subject to zakah. However, the Diwan has little option but to accept the zakah allocated by the Auditor General in this regard. This results in a dispute between the company or government body and the Diwan zakah.
- The Diwan, though it performs a function comparable to Inland Revenues Authority, remains comparatively understaffed and with grossly lower amount of resources at its disposal. At the same time, its domain of activity is much wider. This naturally hampers collection efficiency.
- A provision in zakah law (Article 49) requires presentation of zakah settlement certificate before certain transactions can be completed, e.g. payments from the government treasury, states, governments, institutions of local council, treasuries of public organizations and institutions, or companies to which the government contributes; registration of companies, co-ownership, business names and trademarks register; registration, or renewal of registration in the register for importers and exporters; registration of ownership of real estates; participation in government auctions; obtaining licenses, renewal and transfer of ownership of commercial and rental vehicles, harvesters and tractors; obtaining and renewal of trading licenses; seeking approval of erecting multistory buildings etc. This is purported to enhance zakah compliance. However, the implementation of this provision has been extremely weak in view of continued resistance on the grounds of public grievance.

Zakah collection efforts may be timed with seasonality of crops, taking periodic breaks after zakah collection is completed for a given cycle of crops

Miscellaneous (Assets on Lease, Salaries, Wages, Fees)

Together, these constitute less than 15 percent of total zakah, notwithstanding their high potential. The primary reasons for this include lack of capacity of the staff of the Diwan and lack of systems to monitor and collect all forms of wages, salaries and other incomes.

- When government units, foreign missions and international organizations, own the leased property collection of zakah by the Diwan is less efficient as the latter is not adequately empowered to take all necessary steps in such cases.
- The system to monitor the incomes of high-ranking employees in government as well as in the private sector is weak, especially when they are posted overseas.

Policy Recommendations

- Due to the vast expanse of agricultural areas and given the hugeness of the monitoring task, the zakah collection efforts may be timed with seasonality of crops, taking periodic breaks after zakah collection is completed for a given cycle of crops.
- The presence of Diwan at specific control points on highways should expedite resolution of conflicts and enhance efficiency.

- The involvement of Diwan in the agricultural census should facilitate easy completion of the public records of the zakah payers.
- Efforts should be made to enhance the awareness of jurisprudence of zakah on agricultural production and to involve the zakah payers in the distribution of a part of the zakah.
- A focus on in-kind collection coupled with adequate incentives for zakah collectors should lead to expansion of zakah collected.
- Compliance with Article 49 of the zakah Act of 2001 must be ensured. This provision requires linking all government transactions and land records, renewal of business licenses and permits of public vehicles, provision of services of customs clearance and registration of companies with certification of zakah settlement by the Diwan.
- Public auditor of banks, companies and government agencies that have invested public money should coordinate with the Diwan before placing any provision for zakah in the budget for these units.
- The Diwan should be provided with facilities and customs exemptions for mobility devices and other devices which it needed in the conduct of its work.
- The Diwan should have access to all the field studies, surveys and census data to incorporate the same in its database of zakah payers.
- The Diwan should coordinate with voluntary and service providers around the center and states to obtain the required information that will help collection of zakah similar to taxes and duties.
- Zakah collection should involve use of modern technologies and networking supported by training to raise the technical capacity of zakah officials with a view to enhancing the outreach and depth of zakah.
- Zakah mobilization should actively involve local committees as a way to build social capital and enhance community solidarity. Local participation should be sought in the collection of zakah on agricultural products of smallholdings, and inventorize merchandize and leased property in the locality. zakah should be distributed in the neighborhood in order to encourage them to contribute to community solidarity.
- The Diwan should seek full coordination with the central bank and the Ministry of Minerals to enhance its effectiveness.
- The competent management of zakah on metals should require monitoring the production plans of all producers of metals and their extracts.

The competent management of zakah on metals should require monitoring the production plans of all producers of metals and their extracts.

- Some fiqhi issues need to be addressed urgently. For instance, zakah on extracted minerals from the land of Muslims, financed by foreign capital, raises important issues. How should the yield be subjected to zakah, given that the foreign investor is only a tenant of this land that is owned by a Muslim zakah payer? Should zakah be levied on total output or minerals extracted or should it be levied only the share of the Muslim owner?
- The children of pastoral tribes in the desert tribes of Kordofan and Darfur and Kassala should be allowed to take over the collection of zakah in due course.
- A large proportion of cattle collected as zakah should be distributed at the collection area itself to save on costs of transportation and storage.
- The workers engaged in the collection of zakah for cattle should be given a special in-kind incentive for making the rural poor owners of livestock livelihood projects.
- Top zakah payers from livestock owners should be honored for their contribution to community development and solidarity at the time of distribution of in-kind zakah to the region's poor.
- The Diwan should coordinate with trade unions in the matter of zakah collection, as the latter may share vital information regarding wages, output and profitability.
- The Diwan should set up its own storage facilities and warehouses to save the crops and livestock.
- There should be an all-out initiative to sort out the complexities of the procedures and the laws of other institutions so that the Diwan may look forward to improved communication.

3.1.1.2. Zakah Distribution

Shariah mandates that zakah can be distributed to specified categories of beneficiaries. The eight eligible beneficiaries – fuqara (poor), masakin (needy), ameleen-a-alaiha (those who are in charge thereof), muallafat-ul-quloob (those whose hearts are to be won over), fir-riqaab (human beings in bondage), al-gharimun (those who are overburdened with debts), fi-sabeelillah (for every struggle) in Allah's cause, and ibn as-sabil (for the wayfarer) – have been stipulated in the holy Quran. However, the definitions of these beneficiaries or asnaf vary. The Sudanese law defines a faqir (poor) as one "who does not own food enough for one year, or, head of a family who does not have source of income, the student who failed to meet his school fees." On the other hand a miskeen (needy) refers to one who does not own food for one day; this includes those unable to gain, due to permanent handicap, also the patient who cannot meet cost of his medical treatment, and victims of calamities." Notwithstanding these definitions, the Diwan has opted for treating both fuqara and masakin as one category and broadly defined both as those who are not able to meet the basic needs of life and live their life with dignity and without any kind of embarrassment in the society. A broader definition is called for on practical grounds.

In line with growth in zakah collection, the distribution of zakah has also experienced a steady growth over the last decade. The number of beneficiaries has also steadily grown by about 70 percent over 7 years. (Table 3.4) It may be noted that the distribution ratio of zakah – the ratio of zakah distributed to zakah collected in a given period – has been hovering around unity. This is very healthy scenario and indicates the absence of any "zakah holding".

The following table presents the time-series of allocation ratios of zakah among alternative beneficiaries. The poor and the needy (fuqara and masakin) account for the about two-thirds of zakah distributed, even though the percentage of zakah for the poor and the needy was much lower (at around half) at the turn of the century. These were the years when a relatively higher percentage of zakah was allocated to muallaf (15-18 percent) as well as operating expenses. The total operating costs that include salaries/ remuneration to zakah officials as well as other administrative expenses (last two rows in Table below) was as high as 26-32 percent in the year 2000-01 but has been pegged around 20 percent since.

The percentage of zakah allocated to cover operational expenditure is a key policy issue. It may be noted here that the percentage is usually pegged below one-eighth (12.5%) in South East Asian countries, either as a customary practice or as a Shariah requirement (there being eight asnaf, the maximum allocation to any one of them should not exceed one-eighth). The ratio seems to be quite high in the case of Sudan. Indeed, there is some merit in the argument that a higher ratio is a natural consequence of in-kind zakah. While 12.5% may look good as a cap in a scenario where zakah is collected in cash or through online transfer, in-kind zakah in the form of crops, and livestock would require much higher operation costs (on transport, storage etc.). In Sudan, scholars seem to be fine with a cap of 20 percent (perhaps considering that there are effectively five asnaf). Indeed, the concern for high operational costs has enabled the Diwan to bring down the ratio from a high of 31.9 percent in 2000 to 20 percent through the last 6 years.

Table 3.4: Growth in Zakah Distribution (2004-13)

Year	Collection ('000 SDG)	Growth Rate %	Distn ('000SDG)	Growth Rate	%Distribution Ratio	No. of Beneficiaries ('000)
2004	271352	12.0				
2005	314483	16.0				1801
2006	357141	14.0				1893
2007	404486	13.0				1573
2008	445281	10.0	428365		96	1021
2009	497439	12.0	478191	12	98	1517
2010	592637	19.0	597739	28	101	1926
2011	807801	36.0	718538	20	89	2198
2012	1198636	48.0	1093709	52	91	3112
2013	1299678	8.0				

Table 3.5: Zakah Allocation Among Beneficiaries

	Avg	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Fuqara and Masakin	61.44	47.5	52.4	55.7	60.1	60.9	62	64	63	64.5	63	63	68	68	68
Gharimeen	5.14	1.2	4.2	5.2	4.5	6	5.9	5	8	7	5	5	5	5	5
Ibn Sabeel	0.64	1.2	1.2	0.8	0.7	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Muallaf	7.81	18.2	15.6	12.8	8.8	6	3	6	5	5	8.5	8.5	5	3.5	3.5
Fi Sabilillah	2.67	0	0	0	0	5	5.9	3	4	4	4	4	2.5	2.5	2.5
Amileen Alaiha	15.54	17.5	17.9	17.9	16.6	14.6	15.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	16
Admin Expenses	6.68	14.4	8.8	7.7	9.3	7.1	7.2	7	5	4.5	4.5	4.5	4.5	4.5	4.5

Poverty Alleviation with Zakah

A key issue in alleviating poverty with zakah relates to the measurement of poverty itself and defining the poor. According to Sudanese scholars, a poor is one who is devoid of the minimum amount of resources needed to sustain the individual along five dimensions in the light of Maqasid Al-Sharīʻah, e.g. deen (religion), nafs (human dignity), aql (intellect), nasl (lineage) and maal (wealth). The reference point for the measurement of poverty is, however, the family (and not the individual) being the smallest unit in the Sudanese society. Poverty is defined and measured in a relative sense. It takes into account the spatial and regional differences in consumption patterns - urban and rural etc. – for measurement of poverty. of course, specific and special considerations are also given due weightage in the process, e.g. people displaced by war or natural disasters or under special circumstances.

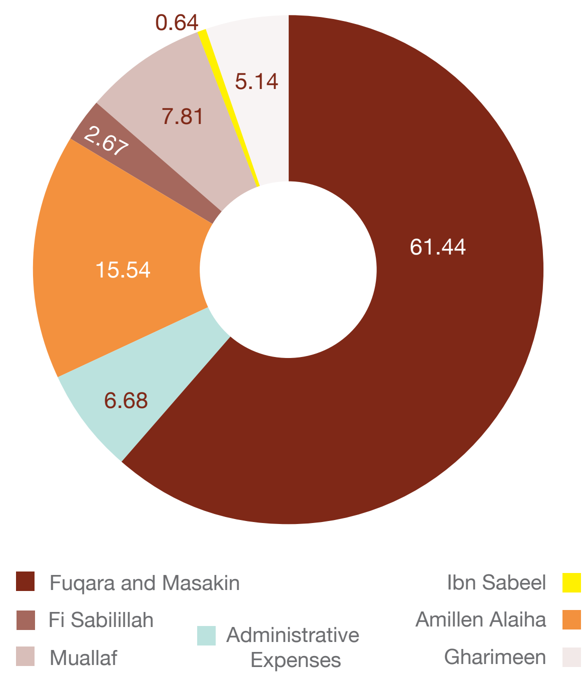
The Diwan over the years has developed several indicators for determination of the poor. A family is considered poor if it fulfills one or more of the following conditions:

- The head of the household is unemployed and does not have a family income.
- The family has an income less than the minimum wage and has no income from any other source.

The head of the family has physical inability or illness that rules out productive work.

- The family has a member suffering from endemic diseases that cost heavily financially.
- The head of household has a chronic illness and has a family of six members or more.
- The head of the family has assets such as a house or agricultural land, but is neither working to be able to generate cash, nor do these assets generate revenue.

Figure 3.3: Average Zakah Allocation Among Beneficiaries



- Entrepreneurs, farmers and blacksmiths who neither produce basic items of sustenance nor have other income for them.
- Agricultural workers and herdsmen, who do not have livestock or other incomes, but have families consisting of six members.

The Diwan has undertaken several studies aimed to identify the poor. The following inventory and classification of the poor in Sudan has been obtained.

According to Sudanese law, the allocation of zakah resources among various categories of eligible beneficiaries

Table 3.6: Classification of Poor in Sudan

Categories of the poor	The number of families	Percentage of the total poor
Total number of poor	2,291,789	100
First category	330,703	14.4
Second category	1,729,449	75.5
Third category	231, 637	10.1

is undertaken by the Supreme Council of Trustees, which takes into consideration various economic and social variables that affect the Sudanese society. The allocation ratios for the various categories of beneficiaries over the past 14 years are presented in Table 3.7. The following observations regarding zakah policy as enunciated by the Supreme Council of Trustees and implemented by Diwan zakah are in order.

- An allocation ratio of over two-thirds to the poor and the needy shows a distinct priority to this category of beneficiaries.
- Within this overall category, there is further prioritization in favor of orphans, widows, sick and infirm, elderly and university students who come from poor families.
- A clear policy exists to provide support and assistance in the form of projects (project health insurance, project uniforms, project to finance university students, project to sponsor orphans etc.).
- The policy has a focus on productive projects that benefit from a specified allocation.
- Zakah is mobilized in two cycles in each year to optimize mobilization efforts. The campaigns undertaken as projects aim to develop local talent and to integrate them with the mainstream.
- Zakah is provided as support to states that are suffering from problems of displacement, war and contribute to the stability and resettlement of returnees.
- The policy focuses on the implementation of collective projects and service projects that address issues of mass poverty (water, health, education).
- The policy aims to contribute to the creation of a society of virtue and morality and supports projects and centers of mass marriages, development of women and young people.
- The policy requires advocacy work aiming to promote a culture of peace and tolerance.

In order to implement the above policies, the Diwan zakah undertakes the following types of projects, programs and activities.

Social Security

This involves distribution of cash and in-kind assistance (including services, such as health insurance) so that the basic needs, such as food, health, clothing and shelter for the vulnerable sections of society are met. It also involves undertaking relief and rehabilitation work during natural calamities in order to preserve human life and dignity. The targeted beneficiaries in normal times include students

Table 3.7: Time Series of Social Security Benefits in Sudan

Year	Households Provided Health Insurance	Students in Foster Care	Orphans in Foster Care
2004	54926	30600	35303
2005	96092	32600	37653
2006	119965	35667	37653
2007	119965	36277	42,200
2008	251492	37500	44,737
2009	347026	38500	45737
2010	357560	38500	45737
2011	375120	80000	48456
2012	383577	80000	53069
2013	469780	82745	55162

from poor families, poor orphans, widows, divorcees and deserted women, infirm and the elderly poor, those suffering from chronic diseases, those with special needs and the families of prisoners and missing persons. During the period from 2009 - 2012, 1,089 million pounds was spent on these causes. Table 3.7 below provides some insight into the social security measures implemented by Diwan over 10 years (2004-2013).

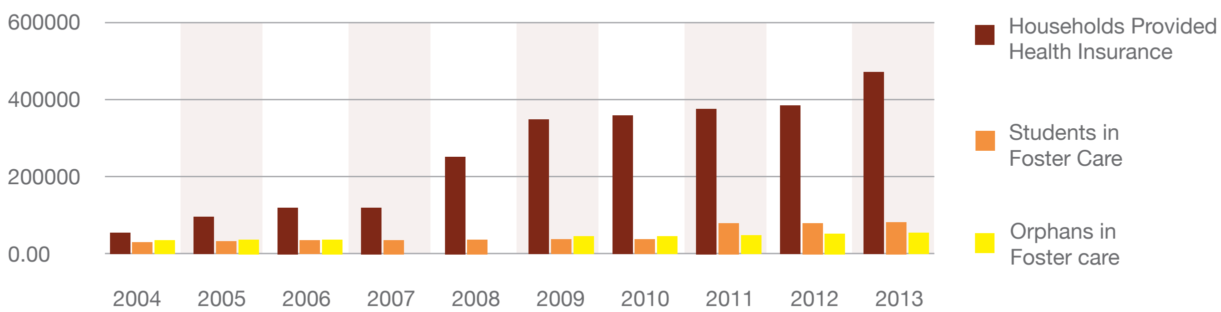
Social Development

This involves contributing to projects for provision of water, health and education services in the areas inhabited by a large number of the poor and to projects to combat impoverishment factors, such as projects to ward off drought and desertification and to combat pests and epidemics. These projects aim to achieve sustainable development in rural communities at different scales. Water projects involve digging of wells and reservoirs, and maintenance of water systems. During the period of 2004 - 2012, 712 different projects were implemented with an outlay of 25.8 million pounds.

The Diwan participates in the healthcare sector through provision of hardware, medical equipment and hospital support as well as through provision of medical services for the poor and needy. The total spending on health projects during the period 2004 - 2012, amounted to 481.5 million pounds. The Diwan contributes towards payment of tuition fees and provision of school supplies and the construction of classrooms in rural areas. It has embarked on 240 education projects benefiting poor pupils. Over the years 2007-12, 240,000 school bags were distributed to poor students in all states. The total spending on education projects during the period from 2004 - 2012 was approximately 51.5 million pounds.

The Diwan also undertook several collective projects in the agriculture sector, e.g. rehabilitation of agricultural projects in the state of White Nile, agricultural cooperatives project in the state of Gedaref, qard-al-hasan for farmers project in the state of River Nile, artificial insemination projects in Kassala, White Nile and Sennar, and cattle ownership project for the poor and needy in multiple states. The agricultural projects covered 550,000 acres, at a total cost of 73.7 million pounds benefiting 214,450 households. A key aspect of the Diwan's intervention in the agriculture sector is the creation of a network of farmers' associations. In 2007, the number of associations stood at 132, which increased to 345 by the year 2013. These associations adopted villages to finance agriculture in over 200,000 acres of land.

Figure 3.4: Time Series of Social Security Benefits in Sudan



Employment and Livelihood Generation

This involves providing finance and other inputs to the unemployed poor to set up micro and small enterprises. The intervention often involves enhancing relevant skills or providing necessary skills through training to one who fails to find gainful employment. It also involves targeting productive families and providing microfinance so that they may set up or expand their micro and small enterprises providing employment and generating livelihood for themselves and for others. The enterprises that have been assisted by the Diwan include poultry farms, grain mills, spices factories, bakeries; tools for footwear, textiles making, work tools for craftsmen and artisans, sewing, embroidery, tire repairing and ice cream making; fishing boats, carts, small taxis and minivans.

Table 3.8: Projects and Beneficiaries of Zakah in Sudan

	Healthcare		Agriculture	
No.	Type of project	Number	Type of project	Number
1	Hospitals	79	Tractors Agricultural	185
2	Health centers	68	Agricultural harvesters	151
3	Pharmacies	18	Ploughs	9325
4	Eye camps	19	Large units	37
5	First aid	18	Small units (for jackets) Forklift Water Pumps	910
6	Rooms for mothers	72	Agricultural projects	54
7	Test labs	62	Gardens (orchards)	85
8	Midwives' bags	260	Poultry Farms	79
9	Different devices (refrigerators, vaccines, blood bank, etc.)	411	Dams and gears	52
10	Sanitation, environment (waste carts)	32	Cattle heads	75,000 heads per year
11	Health Insurance	469780 households		
12	Standardized treatment	5,000 patients annually		

Zakah-funding of projects raises some Shariah concerns, especially relating to tamleek that require that the zakah beneficiary must be made an owner of the zakah-funded project or assets in true sense of the term. These concerns underlie the stipulation by the Diwan that the beneficiaries must become owners of these projects in a legal sense and therefore possess all the rights related to ownership of the assets. The ownership of the projects should be "closed" and restricted to the beneficiaries of zakah only. Further, the projects that produce goods or service that are not in the nature of necessities should not be considered. A considerable importance is attached to training and capacity building of beneficiaries. Retraining of those whose skills have become obsolete are also given importance along with training of fresh entrepreneurs. The Diwan allocates 3% of the zakah funds in each state to be spent on training.

A novel product introduced by the Diwan is the microfinance portfolio guarantee using zakah that is provided by a fund (SDG 200 million) configured as a partnership between the Diwan (50 million pounds) and 32 Sudanese banks (150 million pounds). A well-known collective project implemented by the portfolio is the Abu Halima greenhouses project in Khartoum State benefiting 125 the number of graduates at an investment of SDG 7.1 million. Another partially implemented project by the fund is the health centers project involving 300 doctors and an investment of 1 million pounds. Another project involves a partnership between the fund and the World Food Program to finance 100,000 small-scale farmers in eight states at a total cost SDG 45 million.

Direct Assistance to Poor

The aim of this project is to provide as direct assistance an integrated package of services for 500,000 poorest households in Sudan. This should make a dent on poverty rate while compensating the poor for adverse impact of inflation and other economic maladies.

A key feature of this project is a comprehensive stocktaking survey of the poor in Sudan, which sought to analyze, understand and classify their needs in a comprehensive manner. The database provides the objective basis for the assistance packages to the poor. The packages consist of health insurance, support to student, improvement in shelter, cash and in-kind support (for the purposes of food) and finally, microfinance support with a social dimension. While all the five elements are part of package for the ultra-poor, the other categories of the poor receive a combination of elements that best suit their condition.

Community Development

This involves setting up major projects for the benefit of the community that also requires direct and active involvement of members of the community. This requires exhorting the community towards desired Islamic values, such as zakah compliance and support for programs and projects intended for welfare of orphans and other deprived sections of the society. Ramadan programs and special drive for orphans are examples of such projects. Such programs usually constitute a full range of individual and collective projects, associated advocacy programs and mobilization at a grassroots level. For example, in the year 2012 an amount of SDG 70.3 million was spent on Ramadan program and SDG 26 million for the National Festival of the Orphan.

3.1.1.2. Nigeria

A system of zakah has been in existence in Nigeria since the 19th Century, introduced by the Sokoto Caliphate (1884-1904). The system in Nigeria, as in many countries across the globe, suffered major setbacks due to colonization, when taxes replaced zakah. However, beginning in 1999, 12 states within the Federal Republic of Nigeria adopted Shariah penal law codes in addition to their longstanding systems of Shariah personal law. Currently, there are various institutions responsible for managing zakah. In some states, it is fully backed by the state while in others it is voluntarily observed. The variations are due to several factors such as political will, historical factors, adherence to Islamic values, and intensity of da'awa and levels of public awareness, among others. In addition to the 12 states, we also review a Lagos-based institutional collector called zakah and Sadaqat Foundation covering about eight southern states.

The figures for zakah collection over the last five years (2009-13) show an increasing trend in most states where the system of zakah has been relatively older, e.g. Zamfara and Dutse as well as in case of the private institutional

Table 3.9: Time-Series of State-Wise Zakah Collection in Nigeria (In Thousand USD, 1USD=177.45N)

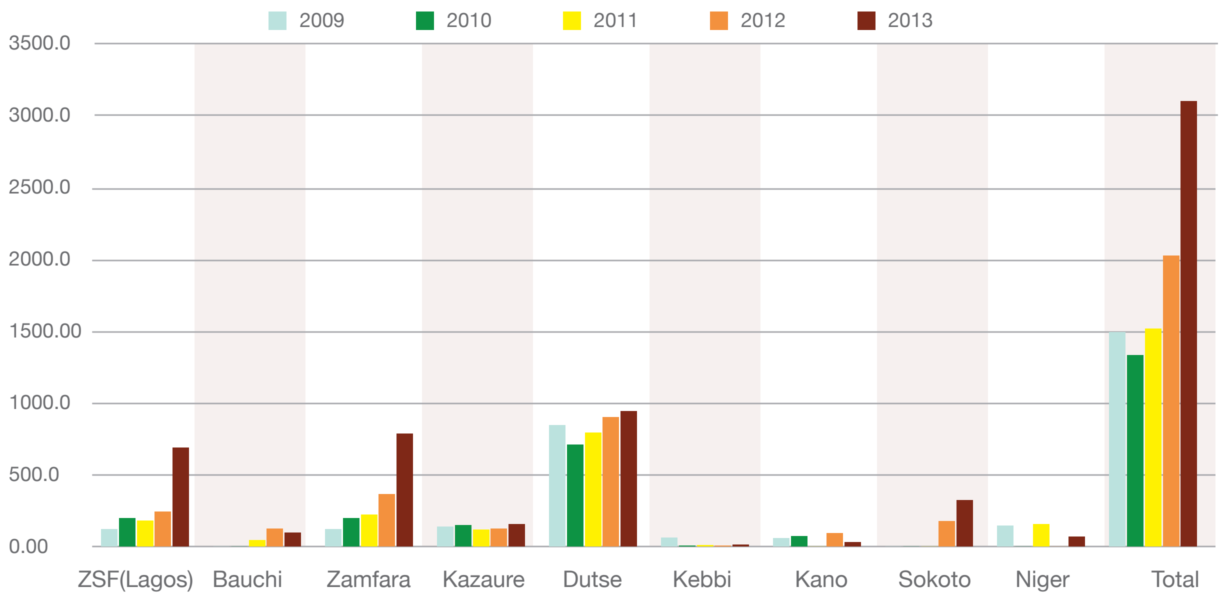
Year	2009	2010	2011	2012	2013
ZSF(Lagos)	121.4	197.8	178.3	240.9	687.7
Bauchi	0.0	0.0	43.4	123.5	96.3
Zamfara	121.4	197.8	221.8	364.4	784.0
Kazaure	138.9	148.0	116.7	123.2	155.2
Dutse	845.3	707.6	792.1	899.4	942.3
Kebbi	62.0	5.1	7.0	4.5	13.0
Kano	56.5	72.8	0.0	90.9	31.3
Sokoto	0.0	0.0	0.0	174.7	321.2
Niger	143.8	0.0	155.9	0.0	66.9
Total	1489.3	1329.1	1515.3	2021.6	3097.9

(In Thousand N)

Year	2009	2010	2011	2012	2013
ZSF(Lagos)	21537.1	35098.1	31641.9	42755.4	122038.7
Bauchi	0.0	0.0	7709.9	21908.6	17088.6
Zamfara	92,232.3	109,762.4	160,511.3	177,167.3	167,834.2
Kazaure	24656.1	26271.0	20703.6	21853.1	27532.0
Dutse	149,992.6	125,556.3	140,565	159,602.6	208,770.1
Kebbi	11000.0	912.0	1250.0	805.0	2305.0
Kano	10034.6	12915.8	0.0	16135.0	5550.0
Sokoto	0.0	0.0	0.0	31000.0	57000.0
Niger	25516.3	0.0	27660.0	0.0	11866.0
Total	264275.7	235853.3	268884.3	358725.7	549727.7

collection. In absolute terms also, these three cases account for about three-fourths of total zakah collected in Nigeria. Overall, the total zakah collected is quite low at about USD 3 million. It should be noted that Dutse as well as Kazaure are two of the five Emirates in Jigawa state. The zakah figures for them have been provided separately.

Figure 3.5: Time-Series of State-Wise Zakah Collection in Nigeria



The table above presents summary of zakah collection in Nigeria from 2009 to 2013. The overall trend of zakah collection for the past five years is positive. It is clear that, there is significant effort put in place to collect and distribute zakah in the country. However, this can be improved particularly given the economic position of the country in general and Muslims in particular and given that, the majority of zakah payers still prefer to pay zakah directly to the beneficiaries. The collection methods vary among the agencies in order to cater to new and existing zakah payers.

Zamfara State

The Board collects different types of zakah including cash collection, livestock and farm produce. The table below shows the performance of the board over 10 years.

may be noted that the zakah collection in Zamfara has steadily increased, experiencing a major jump by about 10 times during 2003-04, which can be attributed to the establishment of a zakah infrastructure and regulatory framework in the state. While the growing trend in cash zakah peaked around 2010 before experiencing modest decline over last three years, the zakah collected as grains experienced a major jump during the same period.

The fact that both zakah collection and distribution take place locally and a major portion of zakah is in the form of grains plus animals; these are distributed on the spot or as soon as possible. Therefore, the issue of zakah holding and carry over to next year does not arise under the system.

Table 3.10: Time Series of Zakah Collection in Zamfara State in Nigeria (2000-2013)

Year	Cash ('000N)	Livestock (Heads)	Grains (Bags)
2000	2324.9	1	260
2001	3266.7	23	391
2002	9058.8	225	550
2003	2082.1	230	682
2004	19434.3	340	2059
2005	21773.8	502	4461
2006	25916.6	460	8030
2007	25256.5	350	9021
2008	28395.2	670	10097
2009	30224.2	300	10301
2010	32784.9	900	9063
2011	29912.7	1004	19068
2012	25538.4	1020	23167
2013	26463.0	980	21395
Total	297417.1	7001	47795

Figure 3.6: Time Series of Zakah Collection in Zamfara State in Nigeria (2000-2013)

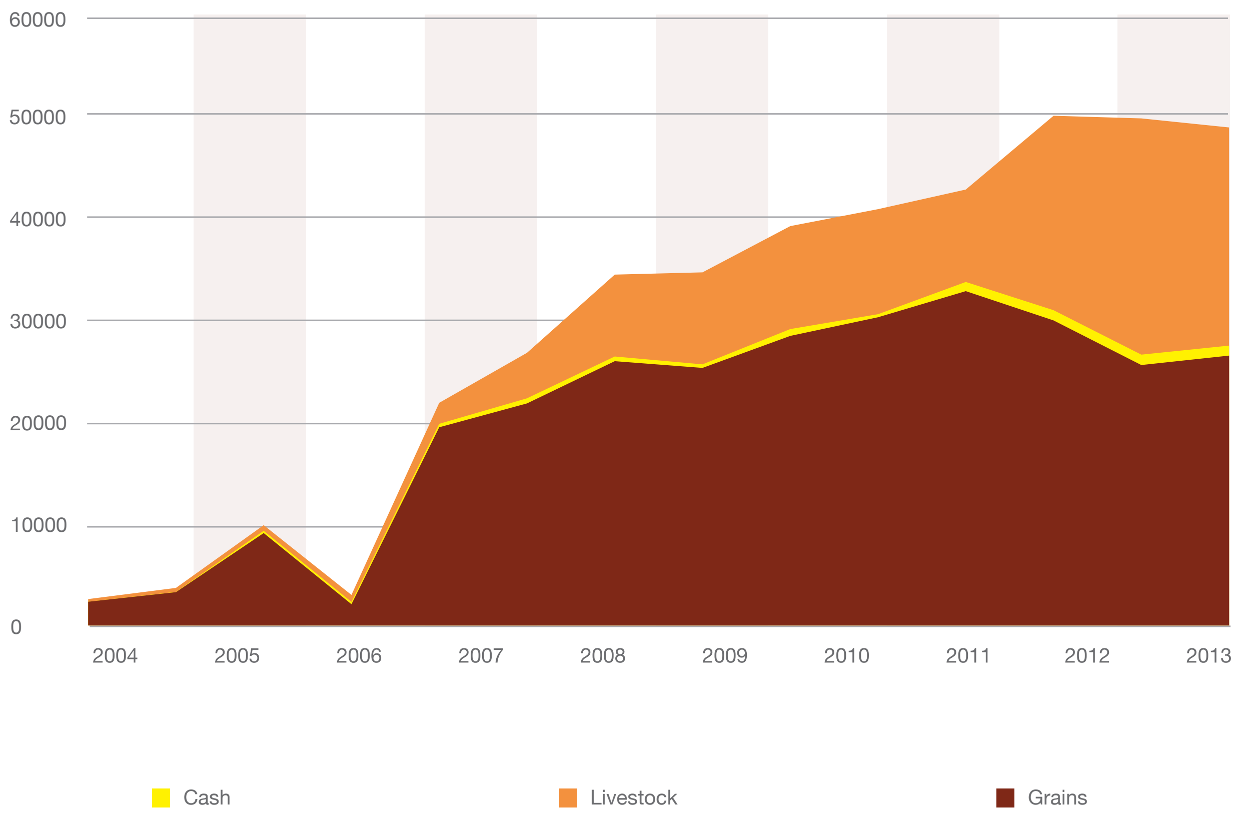
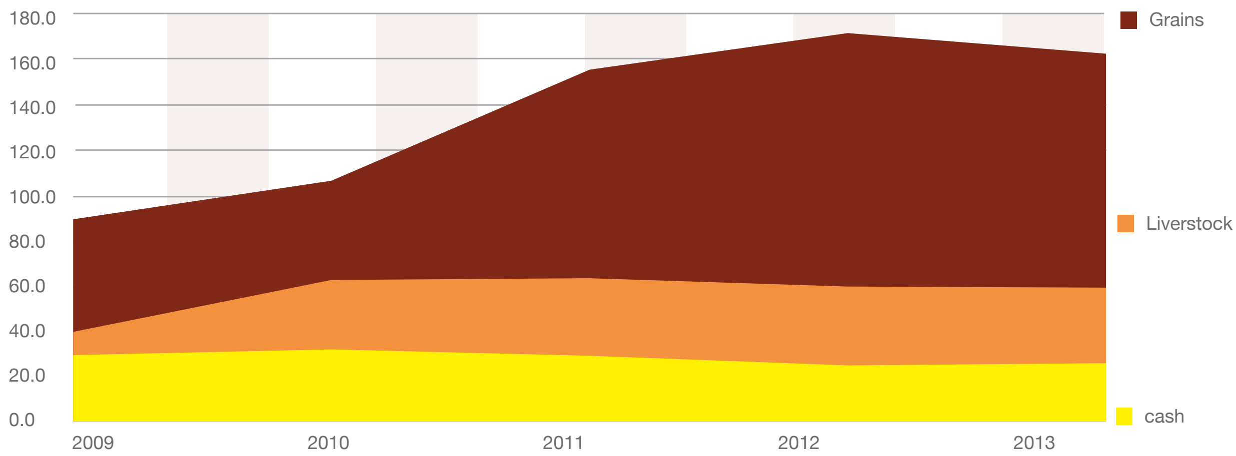


Table 3.11: Time-Series of Zakah Collection in Zamfara State in Nigeria (2009-2013) in Cash Equivalent (Million N)

Year	Cash	Livestock	Grains	Total
2009	30.2	10.6	51.4	92.2
2010	32.8	31.7	45.3	109.8
2,011	29.9	35.4	95.2	160.5
2012	25.5	36.0	115.7	177.2
2013	26.5	34.5	106.8	167.8

Figure 3.7: Time-Series of Zakah Collection in Zamfara State (2009-2013) in Cash Equivalent (Million N)



Jigawa State

In Jigawa state, zakah management is fully decentralized and is undertaken at the level of Emirates. Unlike Zamfara and other states that have centralized Boards, Jigawa state has left zakah management to the Emirates. Though there are five Emirates in the state, two of them in Dutse and Kazaure are the most active in collection and distribution of zakah.

Emirate of Dutse

Table 3.12 below provides the time series of zakah collected in Dutse in both physical and monetary terms. Notwithstanding some variability in terms of physical collection, the quantum of zakah in monetary terms has been growing steadily.

A large part of zakah collected and distributed is in terms of grains. For instance during the year 2012, the total zakah

Table 3.12: Time Series of Zakah Collected in Dutse (Nigeria)

A: In Physical Quantities

Year	Grains			
	Bundle	Bags	Mud	Livestock (heads)
2009	72,186	911	232	529
2010	71,472	886.5	409	335
2011	69,166	1,294.5	395	486
2012	69,720	1,390	111	469
2013	62,942	2,027	249	436

B. In Million N

Year	Cash	Livestock	Grains	Total	No. of Beneficiaries (in thousands)
2009	13.1	----	136.9	150	24
2010	22.3	----	103.3	125.6	26
2011	24.2	----	116.4	140.6	28
2012	25.6	10.6	123.3	159.6	22
2013	32	9.6	167.2	208.8	24

of N159.6 million comprised N123.3 million as grains and N36.3 million as cash and animals. The break-up of the 22K beneficiaries is as follows: 19.6K accepted grains while 2.4K accepted cash.

Kazaure Emirate

Kazaure Emirate is a good example of how decentralized system of zakah collection and distribution takes place. The responsibility for collecting zakah is vested with local committees who are also responsible for storing it at their respective areas and sending reports of collection to the secretariat on a monthly basis. Just before harvest, a written reminder is sent to the district-heads, village and ward-heads to sound the eligible payers of the zakah in their respective localities. Once all the arrangements are set, the Emir invites people to attend the zakah distribution at specific locations. The ward heads and members identify eligible recipients of zakah based on the guidelines given to them by the Emirate level committee.

Table 3.13: Time Series of Collection and Distribution in Kazaure Emirate in Nigeria

Year	Donors (thousand)	Beneficiaries (thousand)	Cash (mill.N)	Livestock (mill.N)	Grains (mill.N)	Amount (mill. N)
2009	13.5	10.9	0.21	0.15	24.66	25.01
2010	14.4	11.4	0.22	0.01	26.27	26.50
2011	17.3	14.0	0.20	0.01	20.70	20.91
2012	18.4	13.2	0.25	0.24	21.85	22.34
2013	18.6	14.7	0.01	0.03	26.22	26.26

In terms of the zakatable items in the Emirate, 98 percent of the collection was from grains and agricultural produce. This is largely due to the agrarian nature of the region. Note that there are minor deviations of the numbers in the above table as compared to table 3.9 perhaps because data was manually collected from different sources and tabulated for this research.

Zakah is always distributed at the area of its collection. Further, the guidelines clearly emphasize the Imams as one of the most important asnaf. The impressive performance of Kazaure Emirate ZDC has shown that people start to accept changes and embrace the new approach of giving out their zakah in the area. Yet, the cash collection has been too insignificant and perhaps confirms the dominant practice of self-distribution of zakah among the payers. Many a times the inappropriate distribution of the proceeds does not allow any positive effect to take place. For instance, it was part of the private practice among the payers to pay zakah to their relatives, to those who pay regular visit to greet them and to exchange zakah among the families of the rich and to delay its distribution to the month of Ramadhan. In fact, the meager amount distributed by many eligible payers as zakah, is too insignificant to be of any benefit the recipients. The amount given often would hardly cover the transportation and other expenses of the recipients since they have to come and collect at the headquarters. This is more pronounced in the case of individual payers as sometimes arecipient would receive an amount just enough to spend on food for the day it has been collected.

Similarly, the meager amount of cash collections represents the huge challenge in creating awareness and convincing the payers to pay their zakah through the institution assigned to collect and distribute.

There is resistance to meeting the administrative costs, especially, the salaries of zakah collectors from zakah collected. This is accentuated by the fact of displacement of the ulema from their principal role in zakah collection and disbursement. Since traditionally, most of the zakah was collected by the local ulama, the changeover to the committee system was fiercely contested often leading to a fatwa that zakah payment to committee does not fulfill one's religious obligation.

However, the committee, through good governance and strategic management has overcome this challenge. One of the strategies employed was distributing fully the amount collected at every locality without taking a single penny from it. This has boosted public confidence in the zakah collection and distribution at the Emirate. Sometimes they used their personal monies to repair and maintain official vehicles and cover few administrative expenses. Moreover, the Emirate due to misappropriation of zakah funds suspended a district head. This has received wide attention given the high level of respect enjoy by the district heads in the state and at the same time this punishment increases public confidence on the officials collecting zakah. The local committees at districts, villages and ward levels identified the beneficiaries. The main committee from the emirate that is in charge of physical distribution at district levels give guidelines on identifying the beneficiaries that include very poor person and orphans.

Bauchi State

Table 3.14: Time Series of Zakah Collection in Bauchi State (2002-2013), Nigeria

Year	Livestock Heads	Farm Produce Bags	Cash mill N	Total (mill N)
2002	5	890	0.17	-
2003	256	2,827	0.87	-
2003	144	1,418	2.36	-
2005	72	751	2.49	-
2006	139	821	2.82	-
2007	278	2,232	2.07	-
2008	234	983	2.09	-
2009	0	0	0.00	-
2010	0	0	0.00	-
2011	0	418.5	5.62	7.7
2012	6	1,224	10.83	21.9
2013	71	1,189	6.18	17.1

Niger & Sokoto State

For Niger state, there seem to be several missing data points. Available figures show that zakah collected has been fluctuating – increased from USD 143.8 thousand in 2009 to USD 155.9 thousand in 2011 only to decline to USD 66.9 thousand in 2013. For Sokoto we have the figures for the last 2 years only during which zakah collected increased from USD 174.7 thousand to USD 321.2 thousand. The officials cite the following reasons as major challenges for zakah mobilization.

1. Resistance by traditional zakah beneficiaries.
2. Ignorance and lack of concern about zakah obligation.
3. Misinformation about the functions of the Board.
4. Inadequate number of vehicles to be used for effective collection and distribution of zakah.
5. Insufficient qualified and committee manpower to handle zakah offices at zonal, district village and ward levels.

Niger state has developed the following guidelines for zakah distribution.

1. Zakah collected by the Board at the Headquarters, Zonal and district levels shall be distributed to beneficiaries unless with the explicit approval of the Board and written authority of the Board Executive Secretary.

2. Zakah distribution at all levels shall be in accordance with the Board's procedure duly communicated to the distribution centers through the Board Secretariat. Distribution to the various administrative or community units must be based on equity and level of performance.

3. Zakah must be distributed only to those categories of people mentioned in the Qur'an (Q:9:60).
4. The Board will retain ten percent of zakah received at the Board Headquarters for distribution to beneficiaries, who occasionally come to the office and for improvement in the general collection exercise.
5. Each of the beneficiaries of zakah shall have the share of zakah as follows:
6. Fuqara (30%). Miskin (30%), Amilin (10%), Muallafat (5%), Riqab (5%), Gharimin (5%), Fisabilillah (10%), Ibn Sabil (5%).
7. The individual zakah beneficiary shall receive not less than N25, 000 and not more than N50, 000 in cash or their equivalent in collected zakah property.
8. Zakah beneficiaries need counselling on the need for the prudent use of the zakah money received by them to make them non-beneficiaries of zakah subsequently.
9. Proper documented account must be rendered to the Board by both the zonal zakah committees and the district zakah councils of who received the distributed zakah and how much, not later than one month after distribution of it.

Sokoto state has also developed sound guidelines for zakah distribution. The following are the latest available figures for zakah distribution.

Figure 3.8: Zakah Allocation Among Beneficiaries in Sokoto (Nigeria)

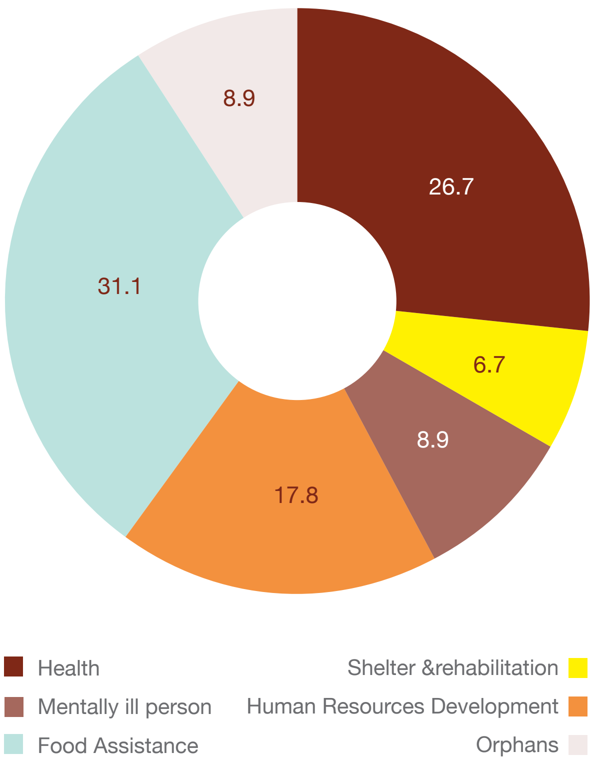


Table 3.15: Zakah Allocation Among Beneficiaries in Sokoto in Nigeria

Head	Summary of Task	Percentage
1. Health	Assist the needy patients who cannot afford settling of medical & theatre bills in the state Donation of blood	26.7
2. Shelter & Rehabilitation	Support needy persons with shelter by construction of rooms or rehabilitation of houses Settling of house rent and debts of the Needy	6.7
3. Mentally ill Person	Collaborate with psychiatric Hospitals in settling of medical bills Rehabilitate mentally ill persons	8.9
4. Human Resources Development	Skill enhancement assistance Promote educational activities in the state Provide capital to disable and needy persons for small scale business	17.8
5. Food Assistance	Assist needy with food in the districts to cushion effect of hunger and poverty	31.1
6. Orphans	Assist orphans and other needy persons in the 63 district of the state.	8.9

3.1.1.3. South Africa

South Africa has long been known for its vibrant Islamic community and its dynamic Islamic charities. Muslims in South Africa number under eight-hundred thousand, i.e. 1.5% of the estimated 52 million population of South Africa. Most of them are descendants of the Malay community (brought in by the Dutch from Java in the 17th Century) and the Indian community (brought in by the British in the 19thCentury). These two ethnic groups are followers of Shafii and Hanafi madhabs respectively. A directory of Muslim organizations in South Africa compiled by Murshid Davids in 1996 estimated that there were approximately 1328 Muslim organizations that collected and distributed zakah and provided a diverse number of services essential to the community. These included social welfare and relief-giving agencies, community based organizations, and theological and humanitarian aid organizations focusing on local and international needs. Major organizations in terms of zakah collection include Jamiatul-Ulama and the various Darul-Ulooms (with Darul-Uloom Zakariyyah perhaps enjoying biggest share); international relief providers, such as, Islamic Relief SA; Gift of the Givers and Al-Imdaad Foundation; and of course, the South Africa National zakah Foundation (SANZAF).

What is the potential of zakah in South African and how much is actually collected? Intelligent guesstimates by observers of the scene place the potential at about R1 billion or about USD100 million. The actual collection is believed to be around R500 million or USD50 million. Since financial information is not readily available at the portals of the major collectors (SANZAF being the notable exception), the estimates may be suffer from gross inaccuracy. However, given that SANZAF alone collected around R80 million in 2013, the estimate of total zakah collection in a country of over 1300 institutional collectors as above is rather conservative.

The history of Islamic NGOs in South Africa that collect zakah dates back to the beginning of the 20thCentury. The key actors were the ulema whose primary concern for Islamic education, burial societies, and halaal services led them to establish Darul-Ulooms as abodes of Islamic teaching and scholarship. A parallel development took shape in the form of establishment of Islamic NGO's by businesspersons. These focused primarily on serving the welfare needs of the Muslim community, including establishing orphanages and feeding programs. Indeed, despite their differences and origins, Islamic NGOs were dependent on the same source for (zakah) resources to perform their work, i.e. the businesspersons. The Ulema based NGO's had more support because of their control over masjids (currently around 1000 masjids in South Africa) while the independent NGO's were largely reliant on voluntary donations of like-minded individuals and didn't always have access to large resources unless they were established and financed by a family backed business. This scenario still exists today.

Further details on SANZAF are provided in the section on successful case studies on zakah management.

3.1.1.4. Other Countries in Sub-Saharan Africa

Malawi

In Malawi, the Islamic zakah Fund has been in operation for about 23 years. The Fund spends all zakah on education – primary, secondary and higher – as well as overseas education. Currently, the zakah Fund funds over 600 students in secondary schools. Education has been top priority for the Fund as the impact has been very good so far with over 700 beneficiary graduates currently occupying high government positions. All donations made to IZF are tax-exempt. An amount of about 2 million dollars was collected over the last 3 years, with about USD800, 000 in 2013. IZF has been spending less than 2 percent on a lean administration with just three staff including one volunteer.

Uganda

In this country of approximately 10 million Muslims, the House of zakah and Waqf has been engaged in zakah and waqf management for last two years. Uganda has no dedicated law for zakah and waqf. The House operates as a private voluntary organization and is currently engaged primarily in creating public awareness about zakah and waqf.

Mozambique

It is a country with about fifty percent of population being Muslims who live in the remote areas in Northern part of the country. The voluntary actions by the Muslim community was in response to severe floods a couple of years back. There seems to be a total lack of awareness among the public about zakah. Charity in general, is a tax-deductible expense and total collection of charity funds by the community was in the range of USD300, 000 over last 3 years.

Zambia

In Zambia, the Islamic organization ZANZAWI received zakah from outside donors initially; and then started collecting zakah from internal donors. With charity funds, it has established a clinic with consultancy fee less than that in government hospitals and a school catering to both Muslims and non-Muslims. In line with advice from SANZAF, it is now targeting the poor, and providing conditional support to education seekers. It also supports tertiary education. Under a house-building scheme, it has assisted poor families to acquire about 40 houses (these are all located near masjid). The poor are identified from those who come to masjid based on imam's recommendation.

Tanzania

The country has a population of about 45 million out of which 25 million are Muslims. There are a few NGOs who collect and distribute zakah, the largest being an association of expatriates from Yemen. There is no national body for management of zakah and zakah is not mandatory. Therefore, there is hardly any accurate information about collections. Efforts are on to unite all Islamic organizations to form a national zakah organization. In Zanzibar, the new Waqf and Trust Commission Act (2007) puts the Commission in charge of zakah management and empowers it to create a special organization or entity or trust to execute this function.

Kenya

Kenya has a population of 43 million population out of which about one-third are Muslims. Unfortunately, there is no organized effort for collection and distribution of zakah here in spite of the huge Muslim population. Notwithstanding the presence of many rich Muslims in Kenya, they seem to pay on their own.

Zimbabwe

In Zimbabwe, the Islamic Welfare Fund has been in existence for over 30 years. The Fund benefits from the services of a committee of volunteers to collect zakah with three full time staff to distribute zakah. Since the country has been going through an economic downturn, collections and distribution have dried up with USD20, 000 on average being distributed every month among widows, aged and orphans for education, health care, and janazas.

Botswana

This country has a population of 1.7 million people that includes about 10,000 Muslims. zakah collected is approximately 1 million USD per year as it is an affluent country. Bulk of money is utilized for education assistance, right through to university level. Interestingly a lot of zakah appears to have been distributed under the Ibn Sabeel category because most people coming to South Africa come through Botswana and most of them turn paupers when they reach Botswana and therefore, need help. Since there are a handful of ulema in the country, there is no aggressive zakah collection.

Mauritius

This is a country with a sizable number of well-to-do Muslims and several Muslim NGOs. However, zakah collection and distribution is undertaken privately and voluntarily.

3.2 Regulatory and Policy Framework

In this section, we undertake a comparative analysis of the institutional and regulatory environment for mobilization and utilization of zakah across countries in the region under focus.

Zakah management in Sudan has evolved over time with four distinct phases. The first milestone relates to the establishment of zakah Fund in the year 1980 that essentially sought to revive the glorious institution of zakah by emphasizing zakah as an important Islamic obligation. The second milestone relates to the establishment of the Chamber of zakah and Taxation in 1984 when zakah became a mandatory obligation, to be collected by the state. This phase is also characterized by lack of clarity between zakah and tax related liabilities that led to a huge shortfall in state revenues (a forty percent budget deficit). The third milestone relates to the establishment of the Diwan zakah as a dedicated body for zakah management in the country, especially to ensure that the social objectives of zakah are fulfilled. The last major development relates to development of a legal and regulatory framework for zakah. The first version of the zakah law was put in place in 1990. It was subsequently amended to become a comprehensive law, known as, the zakah Act 2001.

In Nigeria, out of twelve provinces with significant Muslim population that have adopted Shariah as the source of their legislation nine have already implemented the laws. Kaduna has already drafted the law and will be the 10th province to have a zakah law shortly. Sokoto as the 11th such province has initiated the process for enactment. Gombe is the only province that is yet to take any step in this regard. of all, only two provinces - Borno and Yobe – have enacted regulations and rules to facilitate zakah management. These developments were based on the section 4, sub section 7 of the 1999 Federal Constitution, which gives rooms for introduction of Shariah in any state that wishes to do so. The list of the laws covered in this section include the following:

1. Bauchi State zakah and Endowment Fund Collection, Administration and Distribution Law, 2003.
2. Zamfara State zakah (Collection andDistribution) and Endowment Board Law, 2000, 2003.

3. Niger State zakah (Collection and Distribution) and Endowment Board Law, 2001.
4. Zakah Collection and Distribution Committee Law 2000, Jigawa State.
5. Kano State zakah and Hubusi Commission Law 2003.
6. Katsina State Sharia Commission Law, 2000.
7. Borno State zakah and Endowment Board Law, 2001.
8. Yobe State Religious Affairs Board 2001.
9. Kebbi State zakah and Sadaqat (Collection and Distribution) Board Law, 2000.

In Zanzibar (Tanzania) the newly enacted Wakf and Trust Commission Act No.2 (2007) has a section dedicated to supervision of zakah by the Commission. South Africa has a law for non-profit-organizations that is relevant for its organizations engaged in mobilization of zakah and awqaf.

A recent IRTI study[4] presents the core principles underlying zakah regulation. These core principles follow a coherent hierarchical structure and form the normative basis for enactment of zakah laws. In terms of expediency, the principles/statements used are of three types. The statements containing "must" "should" and "may," reflect the order of importance of the concerned principles. We undertake a comparative analysis of the zakah laws under consideration using these principles as benchmarks.

Box 1: Hierarchy of Core Principles of Zakah Regulation

#0.	Zakah may be either compulsory (#1) or voluntary (#2) in a given jurisdiction
#1.	If zakah payment is compulsory, then
#11.	There must be strong deterrents against non-payment
#111.	Law may prescribe physical and/or financial penalty against non-payment
#112.	Law may provide for forced recovery of due and unpaid zakah
#12.	State should incentivize zakah payment through tax benefits
#121.	State should permit deduction of zakah paid from taxable earnings
#122.	State should permit deduction of zakah paid from tax payable
#13.	State agency for zakah management must be in place
#131.	Agency must be empowered to set regulations
#132.	Agency must be empowered to enforce zakah collection
#1321.	Agency must be empowered to seek any information from any individual or entity for determination of zakah liabilities of muzakkis
#1322.	Agency must be empowered to demand any kind of assistance from other state agencies that is deemed necessary for effective zakah collection
#1323.	Agency must be empowered to punish unauthorized collection
#133.	Agency must be empowered to enforce zakah distribution

4 Obaidullah, M. (2015) An International Comparison of Efficiency of Zakah Laws, Paper Presented at Workshop on Zakah Regulations by Ministry of Islamic Affairs,Government of Maldives at Male during January 10-11, 2015.

#1331 Agency must be empowered to punish unauthorized payment

#134. Rules and criteria for membership and executive positions in the apex agency should be in place

#135. A Shariah body should be constituted for advising the Agency in matters that require formulation of new regulations and rules and that have Shariah implications

#136. Financial provision should be made for Agency to cover its expenditure

#1361. State should provide finance to cover operational expenditure of the apex zakah body

#1362. Zakah body should be permitted to use part of zakah collected (subject to a cap) to absorb operational expenditure

#137. There should be provision of appeal by muzakki against a wrong decision by Agency officials

#14. Agency prescribes how to estimate zakah liability for individuals and businesses

#141. Agency stipulates general conditions relating to zakatability, e.g. Hawl

#1411. Agency defines the zakatable assets/ output/ earnings

#1412. Agency defines assets/ output/ earnings exempt from zakah

#142. Agency stipulates methods of estimation of zakah base and applicable rates of levy

#143. Agency should be empowered to modify the list of zakatable assets, the conditions and methods of zakah estimation from time to time

#15. Agency must distribute zakah among asnaf in conformity with Shariah

#151. Agency should define the asnaf and prescribe methods to determine the same

#152. Muzakki may be permitted to retain a part of zakah for self-distribution

#153. Agency may decide on a priority scheme for distribution of zakah among asnaf

#154. Agency should seek distribution of all zakah collected during the same lunar year and avoid carrying undistributed surplus

#16. Agency should adhere to highest standards of accountability, transparency and good governance

#161. Agency should ensure separation of zakah funds from other forms of charity funds collected

#162. Agency should place the funds in safe and liquid avenues

#163. Agency should share information about zakah collection and utilization with the public with utmost transparency and in a spirit of sharing on a continuous basis

#1631. Agency should be open to suggestions from the community regarding zakah management

#164. There should be strong deterrent in the form of financial penalty and/or physical punishments for dereliction of duty, fraud, dishonesty on the part of zakah officials

#1641. There should be strict deterrent in the form of financial penalty and/or physical punishments against fraud, dishonesty and misappropriation of zakah funds

#1642. There should be strict deterrent in the form of financial penalty and/or physical punishments against Shariah non-compliance

#2. If zakah payment is voluntary, then

#21. State should incentivize zakah payment through tax benefits

#211. State may permit deduction of zakah paid from taxable earnings

#22. There must be an apex body for zakah management in the country, which may be (i) a state agency or (ii) an association/ committee of voluntary institutions

#221. The apex body must be empowered to set regulations/ guidelines for zakah management

#222. The apex body should (i) include Shariah scholars, or (ii) put in place a Shariah body for advising on zakah matters that have Shariah implications arising from time to time

#223. Rules and criteria for membership and executive positions in apex zakah body should be in place

#224. Adequate provision of finance to cover operational expenditure of the apex zakah body should be in place (i) through budgetary allocation and/or (ii) through contribution of a part of zakah collected by the zakah institutions towards covering its operational expenditure.

#23. The apex zakah body in consultation with Shariah scholars and other stakeholders (e.g. professional bodies in accounting, financial planning, inland revenue authorities, and community leaders) should formulate guidelines for estimation of zakah liability of individuals and businesses.

#231. Zakah institution (ZIs) should advise and assist the muzakki in estimating their zakah liabilities in conformity with the guidelines

#232. ZIs may appoint agents for collection of zakah against payment of commission

#233. ZIs may undertake zakah mobilization campaigns and use other solicitation mechanisms for creating awareness about zakah

#24. ZIs must distribute zakah among asnaf in conformity with Shariah

#241. ZIs should follow the guidelines issued by the apex zakah body for definition of the asnaf and the methods for their determination.

#242. ZIs may decide on a priority scheme for distribution of zakah among asnaf

#243. ZIs should seek distribution of all zakah collected during the same lunar year and avoid carrying undistributed surplus

#244. ZIs may be allowed to absorb part of zakah to cover their operational expenditure subject to a cap

#25. ZIs must adhere to highest standards of accountability, transparency and good governance

#251. ZIs must ensure separation of zakah funds from other forms of charity funds collected

#252. ZIs should place the funds, including undistributed surplus if any, in short-term safe and liquid schemes of Islamic financial institutions

#253. ZIs must at regular intervals disclose the figures of zakah collection and utilization by them to the community with utmost transparency and in a spirit of sharing

#254. ZIs must disclose the actual operational expenditure (including commission to agents, contribution to apex body) that is charged to zakah funds

#255. There must be strict deterrent in the form of financial penalty and/or physical punishments for dereliction of duty, fraud, dishonesty on the part of zakah officials

#2551. There must be strong deterrent in the form of financial penalty and/or physical punishments against fraud, dishonesty and misappropriation of zakah funds

#2552. There must be strong deterrent in the form of financial penalty and/or physical punishments against Shariah non-compliance

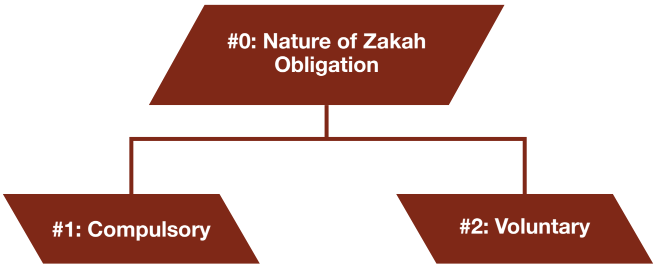
Source: Obaidullah, M (2015), An International Comparison of Efficiency of zakah Laws, Paper presented at International Workshop on zakah Laws, Male, Maldives; 01/2015

In Box 1 we present each one of these core principles one by one, juxtaposing with what the provisions in actual laws in the sampled countries contain in terms of these.

The first principle is that zakah may be either compulsory or voluntary in a given jurisdiction (chart 1)

Zakah is compulsory in Sudan. In Nigeria, of the nine provinces, Bauchi, Zamfara, Niger and Jigawa States have made zakah payment compulsory, while Kano, Katsina, Borno, Yobe and Kebbi states make zakah payment a voluntary act. In Zanzibar of Tanzania, zakah payment is voluntary. zakah payment is also voluntary in other states of Nigeria and in countries like South Africa, Kenya and Mauritius that do not have a legal framework for zakah.

Chart 1



3.2.1. Nature of Zakah Obligation: Compulsory

In Sudan Section 16-1 of the law makes it mandatory to pay zakah on the part of every Sudanese Muslim – resident as well as non-resident – who owns funds that mandate zakah. It also prohibits double payment of zakah. Nigerian laws however clearly stipulate that only a Muslim resident be required to pay zakah (Sec. 13 of Zamfara law and Sec.4 of Bauchi law).

Section 36 of the Sudanese law adds that if the individual liable for zakah is not present, then the person responsible for managing the funds or its legitimate agent is liable. In case of death of the individual liable for zakah, then zakah shall be levied on the assets prior to distribution among heirs. Similar provisions are present in section 18 of Bauchi law and section 28 of Zamfara law.

3.2.1.1. Incentivize Zakah Payment

Sudanese law does not impose any physical penalty on defaulters, but provides for forced recovery of due and unpaid zakah. Section 42 of the law asserts that any person who provides misleading information, evades or abstains from payment of mandatory zakah, shall be penalized for an amount that should not exceed the value of such zakah, the zakah shall forcefully be taken from him

Chart 2

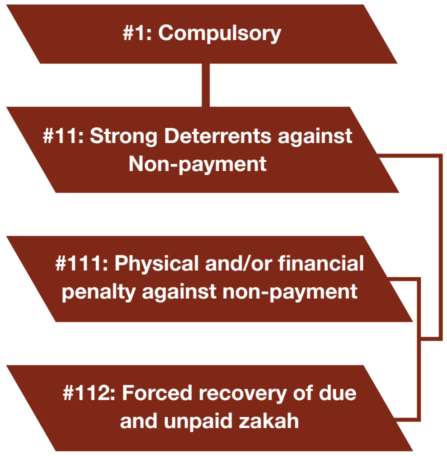
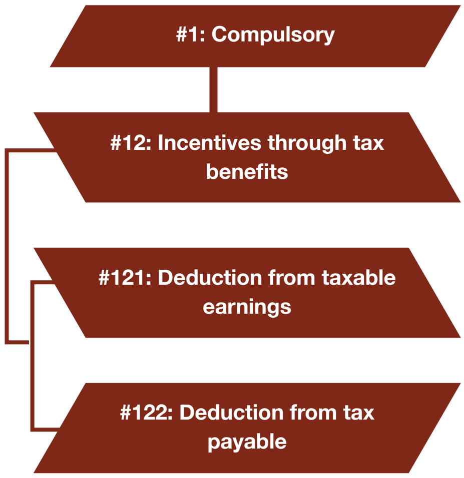


Chart 3



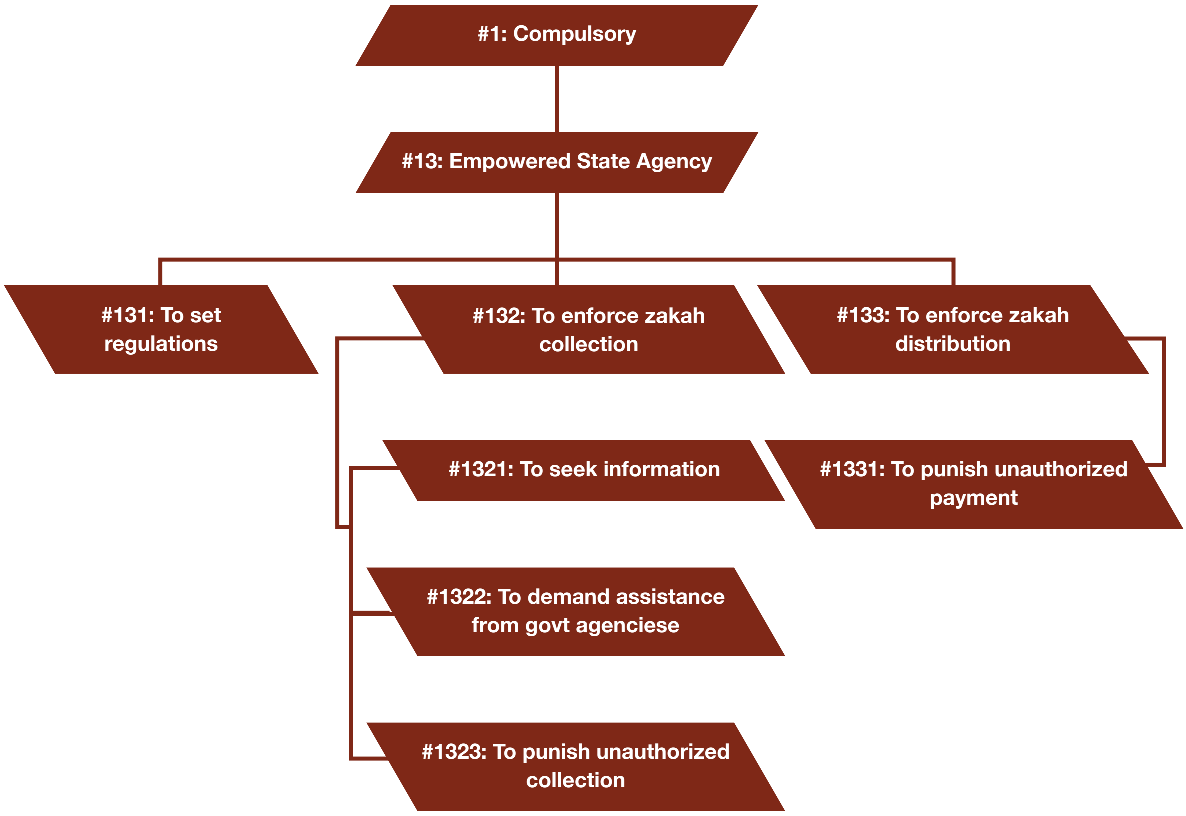
by the Diwan… may issue an order to attach his funds in the banks, provided that; execution is carried out by a competent court. The next section 43 imposes a penalty of 10 percent of zakah liability on any person who objects to forward any under-taking, document or statement, demanded by the Diwan.

The laws in Nigeria however provide for punishment as deterrent against non-payment. Section 3 subsection 2 (g) of the Bauchi state zakah law provides for prosecution through the office of the Attorney-General or with his consent through any legal practitioner of its choice such persons who are eligible but refuse to pay zakah or any person that commits any other offence punishable by this law. Section 22 (1) of the law asserts "Whoever cheats, evades or refuses to pay zakah due from him shall be made to pay the zakah due, and in addition shall be punished with fine not exceeding half of what is payable as zakah or three months imprisonment in default or not exceeding 20 lashes of the cane or both." Similarly Zamfara zakah law provides in Section 34 "Whoever cheats, evades or refuses to pay zakah due from him shall be punished with fine not exceeding the total amount of zakah assessed and payable by him or six months imprisonment in default, and the court shall order such person to pay the amount of zakah due." Further, "the court may attach any property movable or immovable to enforce payment of zakah due."

In the case of Niger state, the term of imprisonment is shorter at 3 months. The laws in both Zamfara and Niger state in section 5 (g) empower their respective Boards "to prosecute, through the office of the Attorney-General, such persons who are eligible but refused to pay zakah." Interestingly, Jigawa State that has a different structure of zakah collection and distribution (by decentralized Committees in contrast to centralized Board in other states) also has the provision of punishing zakah evaders. The law states that in Section 9 (1) "Where an eligible person is assessed by the Committee to pay zakah and he refuses or neglects to pay, the Committee shall institute a civil action in Sharia Court and recover the assessed zakah." In subsection (2) it asserts "Where a Committee in an effort to recover the assessed zakah under subsection: (1) above incurs expenditures, such expenses shall be recoverable from the person who refuses or neglects to pay."

Section 48-1 of the Sudanese law provides for tax incentive on zakah payment. It states, "When the income tax of any person is assessed, the zakah paid by him shall be deducted from his property assessed for income tax, provided that, zakah deduction shall not be duplicated." Further, section 35 dealing with zakah liability on wages and salaries, bonuses, pensions, dividends, incomes of self-employed people and craftsmen makes all such income are subject to zakah at 2.5 percent; and permits "deduction of this amount from the tax imposed under

Chart 4



any other law. (Sec.35-2). For purpose of calculation of zakatable income, a standard deduction will be allowed reflecting the "original estimated need to spend on food and drink, clothing, housing and healthcare" and that is determined by a technical committee set up under the provisions of Article 11."

A similar tax incentive on zakah payment on salaries and wages and other incomes was provided in the early versions of laws in Zamfara and Niger states. Following the Sudanese example, zakah was levied on incomes and the amount of zakah was permitted as tax rebate under section 27 of the 2000 version of the laws. The entire section (including zakah liability on income) was abolished in the 2003 version of the laws. It may be noted that Bauchi law enacted in 2003 also does not impose zakah liability on salaries and wages and similar incomes.

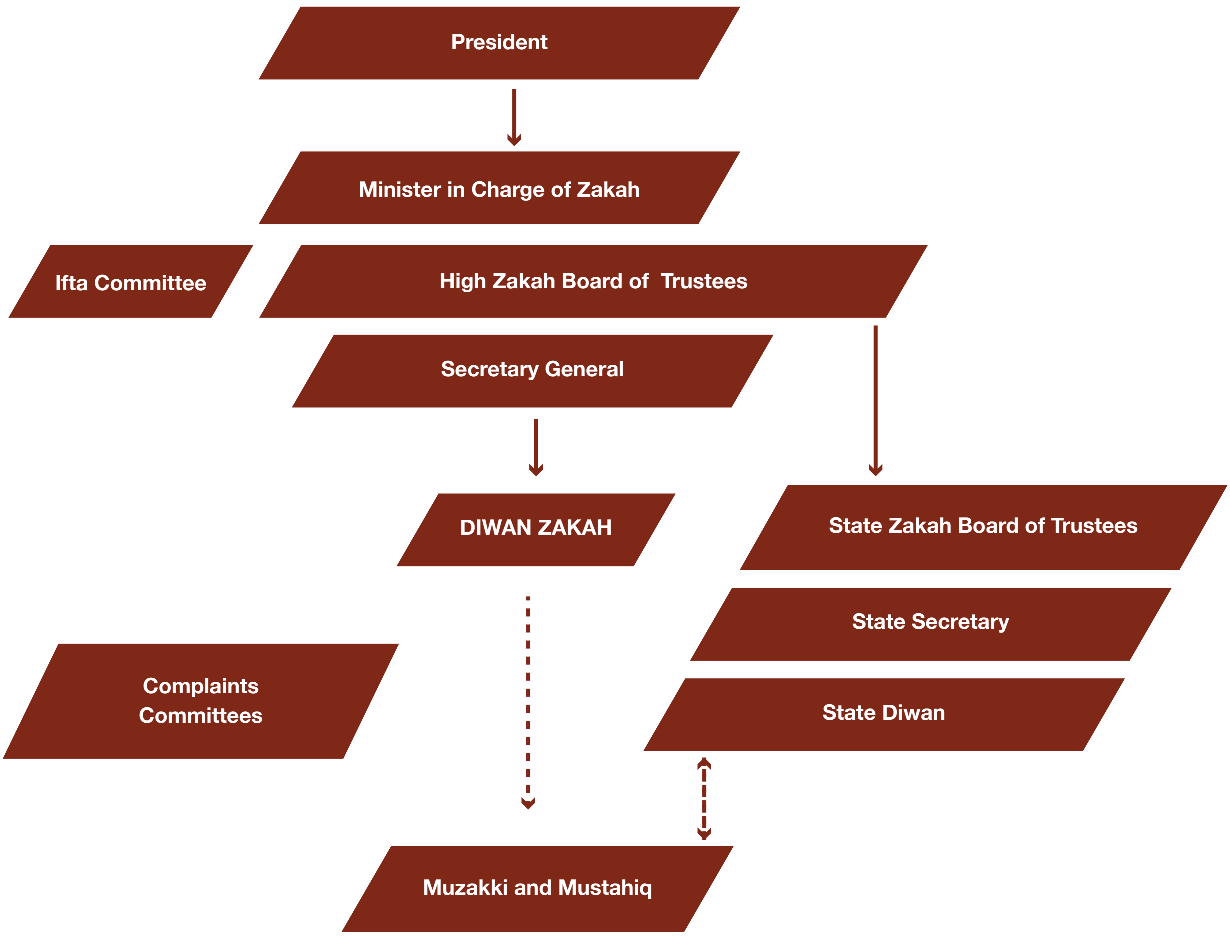
3.2.1.2. Infrastructure

Sudan

The zakah infrastructure in Sudan is presented in chart 5. Chapter 2 of the zakah Act 2001 defines the role, powers and functions of Diwan zakah as the apex zakah body and its relationship with the state apparatus. Section 4 provides for the establishment of the Diwan as an independent corporate body (Sec.4.1). The Diwan has the right to undertake all necessary measures to assess zakah liability and collect the same through the mechanisms prescribed by the regulations. It is also solely responsible for distribution of zakah among eligible beneficiaries in compliance with Shariah and with a view to realizing the social objectives of zakah. It is also responsible for creating public awareness about the institution of zakah (Sec. 5). The Diwan will carry out its functions under the supervision of the High zakah Board of Trustees (Sec.4.2), which is the supreme authority in the matter. The High zakah Board of Trustees shall comprise the Minister (in charge of zakah) as the Chairman, a Secretary General and up to twenty eminent persons as members who will be nominated by the President (Sec.7). The mandate of the Board includes setting policies and guidelines pertaining to zakah collection (e.g., defining nisab) and distribution (Sec.8). The Secretary General of the Board shall be the link between the Board and the Diwan. He shall be appointed by the President of the Republic subject to a recommendation from the Minister (Sec.9). He shall assume the executive responsibility in the Diwan and shall be answerable to the Board with respect to execution of the Diwan's business and resolutions of the Board (Sec.10).

The interesting aspect of the Sudanese framework for zakah management is that the entire structure is repeated at the level of the states with the establishment of zakah Board of Trustees (Sec.14), Diwan (Sec.13), Secretary (Sec.16) and Complaints Committee (Sec.12) for each state with similar powers and functions. The State zakah Boards shall be subject to supervision of the Higher zakah Board of Trustees, adhere to its directives and be seen fully committed to the general policies and plans of the Diwan (Sec.14.2). The Secretary General, in consultation with the Minister (Sec.15.1), shall appoint the zakah Secretary in each state.

Chart 5



Nigeria

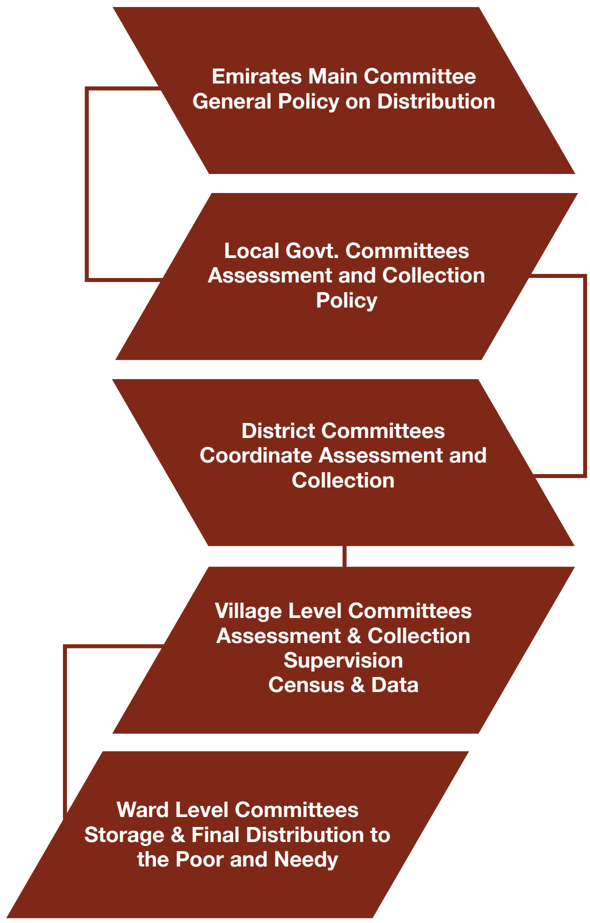
In Bauchi state, Section 3 of the law establishes a Commission for the purpose of zakah collection and distribution. In pursuance of its power to constitute committees in similar lines as in case of Zamfara, the Commission has constituted six Emirate level (for Bauchi Emirate, Katagum Emirate, Misau Emirate, Ningi Emirate, Jama'are Emirate and Dass Emirate), 20 local level, and 36 district level and 220 village level committees.

In Zamfara state section 3 of the law states that "there is hereby established in the state a body to be known as the zakah Collection (Distribution) and Endowment Board (that) shall be a body corporate with perpetual succession and a common seal (and that) may sue and be sued in its name." Section 4 provides the structure of the Board - a Chairman, a Treasurer, an Assistant Treasurer and not more than ten other members who shall be appointed by the Governor. Section 5 enumerates the objectives of the Board that include collection and distribution of zakah and empowers it "to constitute such number of committees as may be necessary." Currently, the board has 17 emirate level, 230 district level and 1700 village level committees. These are supported with 37 full time staff at the headquarters. Further section 6 provides for an Executive Secretary to the Board and not less than three Directors to be appointed by the Governor. The Secretary shall not be a member of the Board and shall be responsible for day-to-day activities of the Board (section 7). Section 31 of Zamfara law states that "there shall be established a zakah Board Committee in all Local Government Councils as may be determined by the Board." The Local Government zakah Committee shall exercise any powers delegated to it by the Board. (Sec. 31-1).

In Niger state, the law is similar in all respects to the Zamfara law. A mirror image of the zakah system in Zamfara, the Board of zakah Collection and Distribution and Endowment is the apex body in Niger state created by Section 3 of the law. The structure (Sec.4), power and functions (Sec.5) of the Board are similar too. The Board comprises of four standing committees. These are collection, distribution, staff disciplinary, finance, and general-purpose committees. Each committee has three members of the Board and Directors. In addition to this, the Board has set up zonal zakah committees at emirates and districts levels in all the eight emirates of the state. Each of these committees consists of six members nominated by the Emir and approved by the Board.

In Jigawa state, the government preferred a decentralized structure unlike the centralized Boards as above and established zakah Committees at Emirate levels, leaving zakah management in the respective Emirs' domain. Though there are five Emirates in the state, two of them in Dutse and Kazaure are the most active in collection and distribution of zakah. Section 3 of the law states that "there is hereby established in each Emirate of the state a Committee to be known as Emirate zakah Committee each of which shall be a body corporate with powers to sue and be sued in its corporate name." Section 4 provides the composition of the Committee as consisting of "(a) the Emir who shall be the Chairman, the Chief Imam of the Emirate headquarters, as well as the Chief Imams of all the local government headquarters of the Emirate, plus five other persons of unquestionable character to be appointed by the Emirate; and (b) all local government Chairmen of the Emirate, all Commissioners and Special Advisers of the Emirate." Section 5 outlines the responsibilities of the Committee, which include "(a) identification of eligible persons; (b) assessment of the amount of zakah payable by eligible persons; (c) collection of zakah from eligible persons; and (d) distribution of zakah to beneficiaries in the Emirate of the State in accordance with Islamic injunctions. Further, "each Committee shall have the power to constitute subcommittees and assign such of its functions and powers to subcommittees, as it deems necessary (Sec. 6)." In addition, "each Committee shall appoint a secretary who shall be responsible for day-to-day running of its secretariat and perform such other functions as the Committee may assign (Sec. 7).

Chart 6



Dutse

Dutse Emirate Zakah and Daawah Committee come into being in the year 2000 because of the enactment of "Zakah Collection and Distribution Bill 2000." The committee has the responsibility of assessment, collection and distribution from all eligible payers and to all eligible receivers. Dutse Emirates covers seven out 27 local governments in the Jigawa state with 13 districts. The establishment of the committee coincides with implementation of Shariah.

The Emirate of Dutse has a distribution policy based on Shariah injunctions and partly based on the realities of the local situation as follows:

1. Every collection must be distributed within the area or locality collected and.
2. A member of the main committee is assigned to each local government committees to ensure strict adherence to the guidelines.

Kazaure

The Kazaure Emirate Zakah Committee has 12 Islamic jurists as members entrusted with zakah collection, distribution and propagation of Islam. Other members of the committee include representative of the Emirate council, secretary as well as some administrative staff. There are also sub-committees at district levels comprising district heads, village heads and ward heads and four Islamic scholars as members.

Power to set regulations

Section 52-2 of the Sudanese law empowers the Board, with the consent of the Minister to make such regulations as may be necessary for implementation of the provisions of this Act. In Zamfara and Niger states, section 5-e empowers the Board of zakah and Endowments to make policies, plans, rules and regulations necessary for the conduct of its affairs and the realization of its objectives. This provision is covered in Section 3-2(b) in the law of Bauchi state where a Commission replaces a Board. As mentioned earlier, Jigawa state presents an interesting contrast from other states and leaves the responsibility at the level of Emirs. However, it also states "the Governor may from time to time issue directives and guidelines to the Committee for the efficient discharge of its functions and the exercise of powers under this law and the Committee shall give effect such directives and guidelines (Sec. 10).

Power to enforce zakah collection

According to section 6-c of the Sudanese law, the powers and functions of the Diwan include "collection of zakah as entitled through the means and methods prescribed by the regulations."

In Bauchi State, the law in section 3 subsection 2 (b) requires the Board "to collect zakah due from those who are eligible to pay zakah in accordance with the rules of Islamic law; provided that the Commission may leave 30% of what is due as zakah to the person paying zakah to share it to those he was used to giving before the coming into force of this law or to his relations who are entitled." However, both in Zamfara and Niger States sections five (b) of the law requires "to collect up to 60 percent of the zakah due, leaving 40 percent to the payer to be distributed to his close relations who are entitled."

According to section 5-i of Zamfara and Niger laws, the Board can exercise such other powers necessary for the due discharge of its functions in accordance with the provisions of Shariah. This includes a provision for "zakah officers to conduct physical assessment of zakah owners on farm products or livestock."

Power to seek information; to demand assistance from other agencies

According to section 6 d-e-f of the Sudanese law, the Diwan is empowered (i) to request and accept declarations of zakah payers and endorse the same (ii) to enter places, inspect and check records for the purpose of fixing the right assessment of zakah and (iii) to seek attachment of all types of property to such extent, as may guarantee payment of zakah that has failed settlement at its due time, with no advanced acceptable explanations. The same may be sold in auction subject to the ruling of the regulations.

A mechanism in the Sudanese law to enforce compliance is contained in Section 49 that makes a range of commercial and financial transactions contingent upon presentation of a zakah compliance certificate. Section 49 states:

"Notwithstanding any provisions in any other law, the concerned authorities shall not grant any documents or facilities which confer rights or financial privileges save after the applicant produces a certificate testifying settlement of zakah, issued by the Secretary General or State Secretary, as the case may be, in respect with the following matters,

a. Payments from the government treasury, states governments, institutions of local council, treasuries of public organizations and institutions, or companies to which the government contributes with any proportion of shares in consideration of commodities and services as the Minister may prescribe.

b. Registration, in companies, co-ownership, business names and trademarks register.

c. Registration or renewal of registration in the register for importers and exporters.

d. Registration of ownership of real estates.

e. To participate in government auctions.

f. Procedures of obtaining licenses, renewal and transfer of ownership thereof with respect to commercial and rental vehicles, harvesters and tractors.

g. Procedures of obtaining and renewal of trading licenses.

h. Procedures of seeking approval of erecting multistory buildings.

Any other procedures as the Secretary General may prescribe vide an order to be issued by him, that a certificate of payment of the zakah is a must, before completion of any other procedures."

Another provision with a similar intent is section 51 that confers a privileged status on zakah funds. It asserts, "The zakah funds are privileged over any other funds that the person is indebted to."

In Zamfara and Niger states section 5 c-d empowers the Board "to require, accept and approve zakah declarations from persons eligible to pay zakah; and to constitute such number of committees as may be necessary through which complaints of non-payment of zakah can be referred and determined." As a deterrent against non-compliance, the Board is empowered to prosecute, through the office of the Attorney-General, such persons who are eligible but refused to pay zakah (section 5-g). In Bauchi state, similar provisions exist in section 3 c-d and 3-g respectively. Further, section 3-j requires the Commission in Bauchi to compile from time to time the list of those that are eligible to pay zakah and those that are eligible to benefit from it at local government, district, village/ward levels of the State.

Power to punish unauthorized collection

Under none of the laws, any punishment is prescribed for unauthorized zakah collection. Nor do they empower the apex zakah body to punish erring individuals and institutions. This is in contrast to the Malaysian laws, which prescribe punishment to be meted out by State Islamic Religious Councils.

Power to enforce zakah distribution

According to section 6 l-m-n of the Sudanese law, the Diwan is empowered (i) to spend zakah on the legitimate prescribed items of expenditure on such bases as may be laid down by the Board (ii) to endeavor to provide the poor and destitute with means of living, if this be possible, so that these dispense with zakah and (iii) to participate in plans and programs focused to alleviate poverty and suffering.

According to the Nigerian laws also (where zakah is compulsory), the apex bodies are entrusted with zakah distribution as discussed earlier.

Power to punish unauthorized payment

None of the laws prescribes any punishment for unauthorized zakah payment. Nor do they empower the apex zakah body to punish erring individuals and institutions. This is in contrast to the Malaysian laws, which prescribe punishment to be meted out by State Islamic Religious Councils.

Chart 7

Rules and criteria for membership and executive positions

Sudan: Section 6 a-b states that the Diwan is empowered to organize its administrative and financial affairs and all other activities and appoint employees, determine conditions of their service subject to the organizational structure and service regulations as may be approved by the Board of Trustees in conformity with the requirements of work in the Diwan.

Under section 3-2-d of Bauchi law, the commission is empowered "to set up proper administrative and accounting machinery for the administration, collection and distribution of zakah and endowment funds." Section 5(a) of Zamfara and Niger laws have similar provisions.

Provision for Shariah advisory body

Section 11 of the Sudanese law provides for establishment of an Ifta Committee comprising individuals well informed in Fiqh (jurisprudence) and widely concerned with Islamic and Muslims affairs. The regulations shall determine the functions and manner as how to organize their business. Further, according to section 50 the Board or the Secretary General may seek a fatwa from Islamic jurisprudence Academy Council on any matter, which requires the same, and the Fatwa made thereof, shall be binding.

Financial provision for Agency

In Sudan, section 39-3 of the law states that the Board of Trustees shall prescribe the percentage of zakah share to the main Diwan as well as to the Diwans in the states. Section 40 requires an independent budget to be prepared for the main Diwan and to the Diwans at the states levels, subject to sound accounting principles and the budget must be ratified by the Board. One of the unique features of the Sudanese law is the emphasis it lays on sound on planning. Chapter 5 of the law deals entirely with how financial resources of the zakah management bodies will be raised and each body meticulously prepares an annual budget of how and how much zakah is going to be mobilized, shared among them and distributed. As sec.40-3 asserts, the Secretary General or the Secretary at the state level, as the case maybe, shall submit the annual zakah budget estimates, along with a report thereon, to the Board of Trustees or the State Board of Trustees for approval. Once the Board of Trustees approves the same at its final form, it will forward the same to the Council of Ministers. There is also a lot of emphasis on use of sound accounting practices. Sec.41 asserts, "The main Diwan as well as the Diwans at the state level shall keep proper accounts in conformity with sound accounting principles."

In Zamfara and Niger, sections 32-33 of the laws deal with all the above issues including the preparation, submission, approval and implementation of budgets, adherence to sound accounting norms, regular periodic and independent audit. Such provisions are not present in Bauchi law.

Zigawa state presents an interesting contrast in this regard and rules out use of zakah funds for covering the expenditure of the Committee. Section 8 (1) of the law stipulates, "The funds of the Committee shall include grants from the state government, local government of the Emirate which will be provided at the ratio of 40:60 percent of the budget of the Committee. Subsection (2) asserts that "funds from any other lawful source could be part of the fund but shall not include the zakah collected by the Committee."

Provision of appeal by muzakki against a wrong decision by Agency officials

Section 6-h of the Sudanese law states that the Diwan can constitute Complaints Committees, the number, functions and powers shall be prescribed by the regulations. Section 12 states that in the main Diwan as well as in each state-level Diwan, there shall be established a High Complaints Committee, composed of knowledgeable, just and competent individuals to be appointed by the Board or State Boards of Trustees as the case may be, and the resolutions of such committees shall be final. Under section 3-2-d of Bauchi law, the commission can set up committees "for the determination of issues and complaints on zakah matters generally." Similar provision exist under section 5(d) of Zamfara and Niger law.

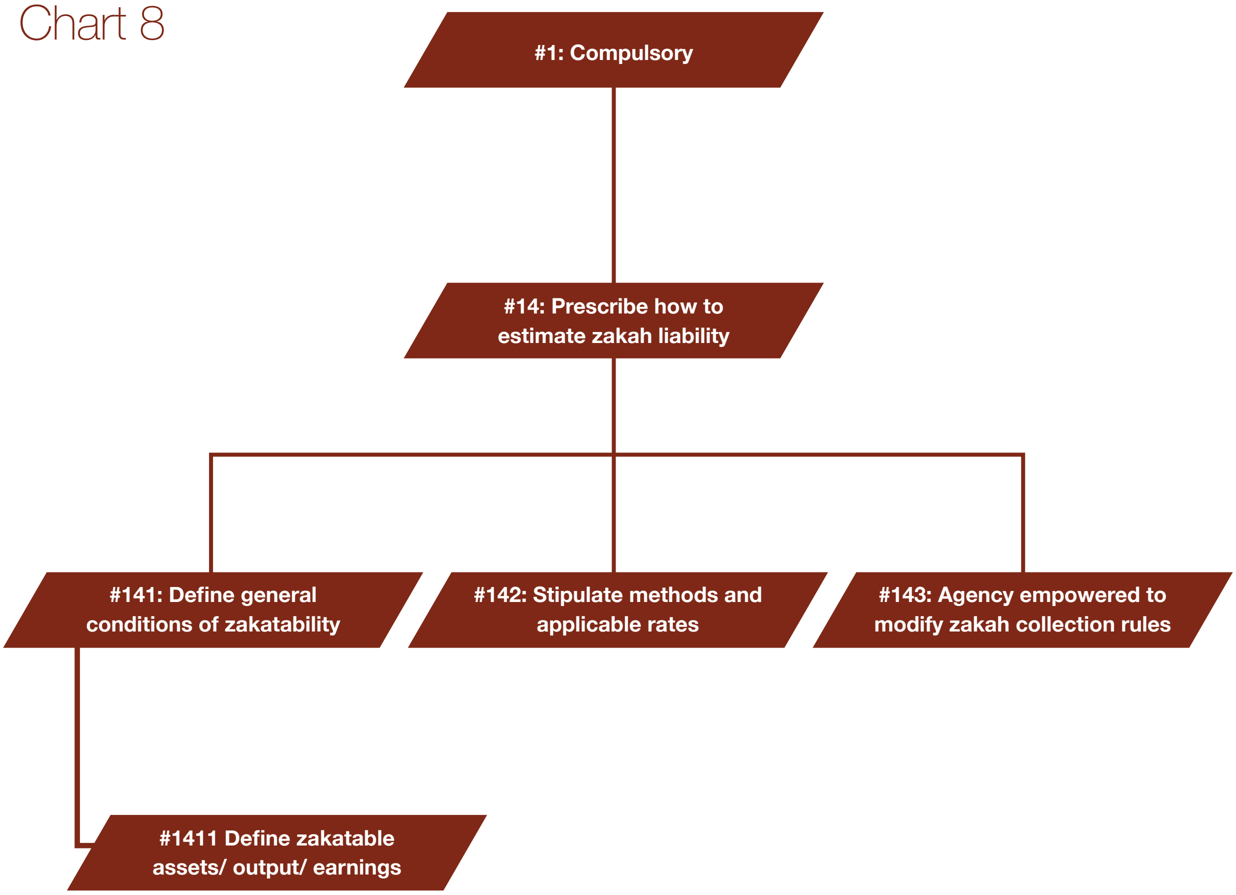
3.2.1.3. Zakah Collection Rules

General conditions relating to zakatability

Section 17-1 of the Sudanese law provides the general conditions e.g. possession of lawful nisab, elapsement of Hawl where applicable, non-personal use, deduction of debt as may be prescribed by the regulations. Section 17-2 says that in case of mixed ownership of a single asset, zakah shall be levied on the property as a whole when it reaches the nisab, as in the case of partnerships, community and family ownership (17-3). Section 14 (1-2) of Zamfara and Niger law and 5 (1-2) of Bauchi law have similar provisions.

Sudanese law clearly stipulates that the Nisab be determined from time to time by the Board (8-e).

Chart 8



Methods of Estimation of Zakah Base and Applicable Rates of Levy

The definition and treatment of zakatable items under Sudanese laws are presented in Table 3.16 and under Nigerian laws in Table 3.17.

Table 3.16: Definition and Treatment of Zakatable Items Under Sudanese Laws

Section	Name of Zakatable Item	Method and Applicable Rates
18	Minerals and Metals	Nisab proportionate to gold; at 2.5 percent of value upon extraction
19	Merchandize	Nisab proportionate to gold; deductions (debt etc.) to be defined by regulations; at 2.5 percent
20	Gold & silver	Nisab 85g of gold; 595g of silver; at 2.5 percent
21	Monetary assets	Nisab proportionate to gold; at 2.5 percent
22	Debts, stolen and extorted property	Only for one year even if the asset remain with debtor or extorter for more than one year
23	Buried treasure	20 percent upon extraction
24	Crops and fruits	Nisab 653 kgs; zakatable when matured and harvested; at 10 percent when naturally irrigated and 5 percent when artificially irrigated
25		Types and kinds to be grouped together for nisab
26		Zakatable even after act of sale or donation after maturity; buyer/ donee liable if sold/ donated before maturity
28	Livestock	To be collected at pastures and water places; male and female, young and adult all grouped together for nisab
29-31		Nisab and rates based on headcount of camels, cows and sheep
32	Combination of assets	Assets short of nisab should be combined and subjected to zakah if combined value exceeds nisab
33	Exploited assets	Net returns zakatable similar to cash
35	Salaries, wages, fees and other earned incomes	Net of deductions zakatable similar to cash; zakah paid to be deducted from any other tax under any other law

Table 3.17: Definition and Treatment of Zakatable Items Under Nigerian Laws

States	Bauchi	Zamfara	Niger	Jigawa
Name of Zakatable Item				
Minerals and Metals	Subsumed under buried treasure			
Merchandize	Sec.6	Sec.15	Sec.15	
Gold & silver	Sec.7	Sec.16	Sec.16	
Monetary assets	Sec.8	Sec.17	Sec.17	
Debts, stolen and extorted property	Sec.9	Sec.18	Sec.18	Not covered by law
Buried treasure	Sec.10	Sec.19	Sec.19	
Crops and fruits	Sec.11	Sec.20	Sec.20	
Livestock	Sec.14	Sec.23	Sec.23	
Combination of assets	Sec.16	Sec.25	Sec.25	
Exploited assets	Sec.17	Sec.26	Sec.26	
Salaries, wages, fees and other earned incomes		Sec.27 Omitted in 2003 version	Sec.27 Omitted in 2003 version	

Table 3.18: Exemptions From Zakah Under Sudanese Laws

Section	Name of Zakatable Item	What is exempted
17-C	Properties	Any property for personal consumption as defined by regulations
27	Crops and fruits	Consumption by owner of farm, passer-by
27	Livestock	Animals used for plough
33	Exploited assets	Costs on maintenance and others as determined by regulations
35	Salaries, wages, fees and other earned incomes	Expenditure required for basic necessities to be determined from time to time
37	Properties	a. Public property if not put for investment b. Alms property, voluntarily spent on benevolent or charity purposes c. Funds regarded as endowment put to continuous charity activities

Table 3.19: Exemptions From Zakah Under Nigerian Laws

States	Bauchi	Zamfara	Niger	Jigawa
Name of Item				Not covered by law
Property for personal consumption	Sec5(1-c)	Sec 14-f	Sec 14-f	
Public property	Sec 19-a	Sec. 29-a	Sec. 29-a	
Shares & Dividends held by state in corporations	Sec19-a	Sec. 29-a	Sec. 29-a	
Charitable property	Sec19-b	Sec. 29-b	Sec. 29-b	
Endowments	Sec 19-b	Sec. 29-c	Sec. 29-c	

Modification of Rules

As a good legal principle, the Agency should be empowered to modify the list of zakatable assets, the conditions and methods of zakah estimation from time to time. However, there is no explicit provision in the laws under consideration.

3.2.1.4. Zakah Distribution

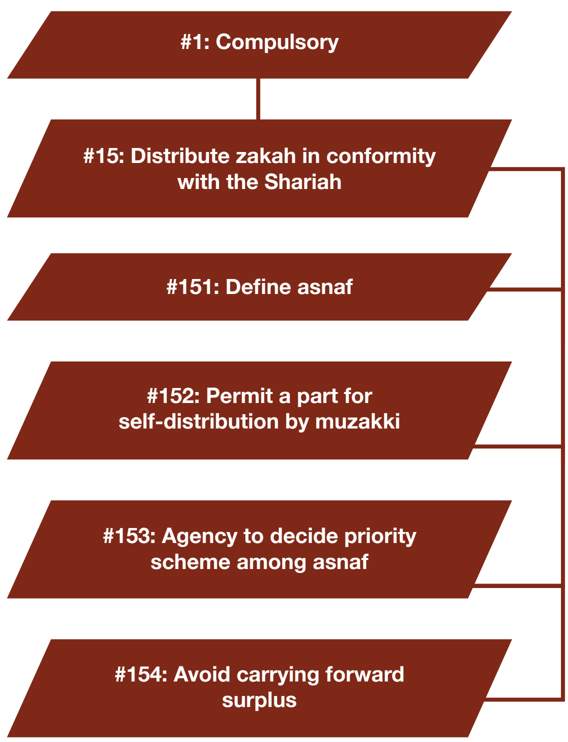
Distribution in conformity with Shariah

A clear concern for conforming to Shariah in matters of distributions is captured in section 21 of the law in Bauchi state, which states: "Nothing in this law shall preclude the application of other rules or principles of Shariah pertaining to zakah not mentioned in this law (21-1). Any rule of Shariah held to be applicable pursuant to subsection (1) above shall be deemed to have been provided for by this law even though same is not expressly mentioned by the law."

Defining the asnaf

Section 38-1 of Sudanese law clearly stipulates that "zakah shall be spent forth with, unless necessity requires otherwise, on the following lawful aspects subject to Shariah: the fuqara (poor), masakin (needy) , amilin alaiha (zakah collectors), muallafatul quloob (those whose hearts are inclined), fi-riqab (in bondage), gharimin (insolvent and indebted), fi-sabilillah (for cause of Allah) and ibn-sabil (wayfarers)."

Chart 9



Section 1 defines the above eight categories in the following manner:

Asnaf	Description
Faqir (poor)	• One who does not own food enough for one year; • A head of a family who does not have source of income; • A student who fails to meet his school fee related needs
Miskeen (needy)	• One who does not own food for one day; • One who cannot earn due to permanent handicap; • A patient who cannot meet cost of his/her medical treatment; • A victim of calamities
Aamilin alaiha (zakah employee)	Employee in the central or state Diwan and with the contributors
Mualafatul quloob (whose hearts are inclined)	One who has recently accepted Islam or inclined towards Islamic faith and expected to accept the faith
Fi-riqab (in bondage)	One who is war prisoner (zakah to be spent for release)
Gharimin (insolvent and indebted)	One who is indebted to others on lawful debts that he/she is unable to settle on the specified period; this does not include legal person or body corporate
Fi-sabeel Allah (for cause of Allah)	One who defends religion and the state; this includes dissemination of Islamic knowledge and Daawa (propagation).
Ibn-sabil (wayfarer)	A traveler on route unable to meet the cost of travel to his/her destination

Self-distribution by Muzakki

As indicated earlier, the Nigerian laws permit a part of the zakah to be retained by the muzakki and distribute the same among asnaf from his near and dear ones. In Bauchi State, the law in section 3 subsection 2 (b) requires the Board "to collect zakah due from those who are eligible to pay zakah in accordance with the rules of Islamic law; provided that the Commission may leave 30% of what is due as zakah to the person paying zakah to share it to those he was used to giving before the coming into force of this law or to his relations who are entitled." However, both in Zamfara and Niger States sections 5 (b) of the law requires "to collect up to 60 percent of the zakah due, leaving 40 percent to the payer to be distributed to his close relations who are entitled."

Priority scheme for distribution

Section 38-2 of Sudanese law articulates a clear priority for the poor and the needy as well as on local distribution. It states, "Despite the provisions of Section 1 above, the share of poor and needy shall not be tempered with or transferred to any other head." Further, "the central and the state Diwans, as the case may be, shall locally disburse the funds to the legitimate beneficiaries." With non-zakah charity contributions however, there are no such restrictions and these may be spent on any desirable charitable and beneficial activity (Sec. 38-3). Further, section 38-4 asserts that the regulations shall specify jurisdictions and priorities of expenditure. According to 38-5, the zakah paid by Sudanese abroad, shall be spent in accordance with the priorities determined by the Board.

In Bauchi State, the law in section 20 defines the asnaf and goes on to stipulate that the Commission shall have the power to make regulations on the priorities of the expenditure. Similar provision exists under Zamfara and Niger law (Sec.29 - 2).

Carrying undistributed surplus

Section 5 (f) of laws in Zamfara and Niger states however, takes a more liberal view in the matter and empowers the Board "to invest zakah and endowment funds or the surplus of zakah funds in ways that will meet the objectives of the Board and serve the purposes of zakah and endowments." Interestingly, in Bauchi law, the term "zakah" has been dropped.

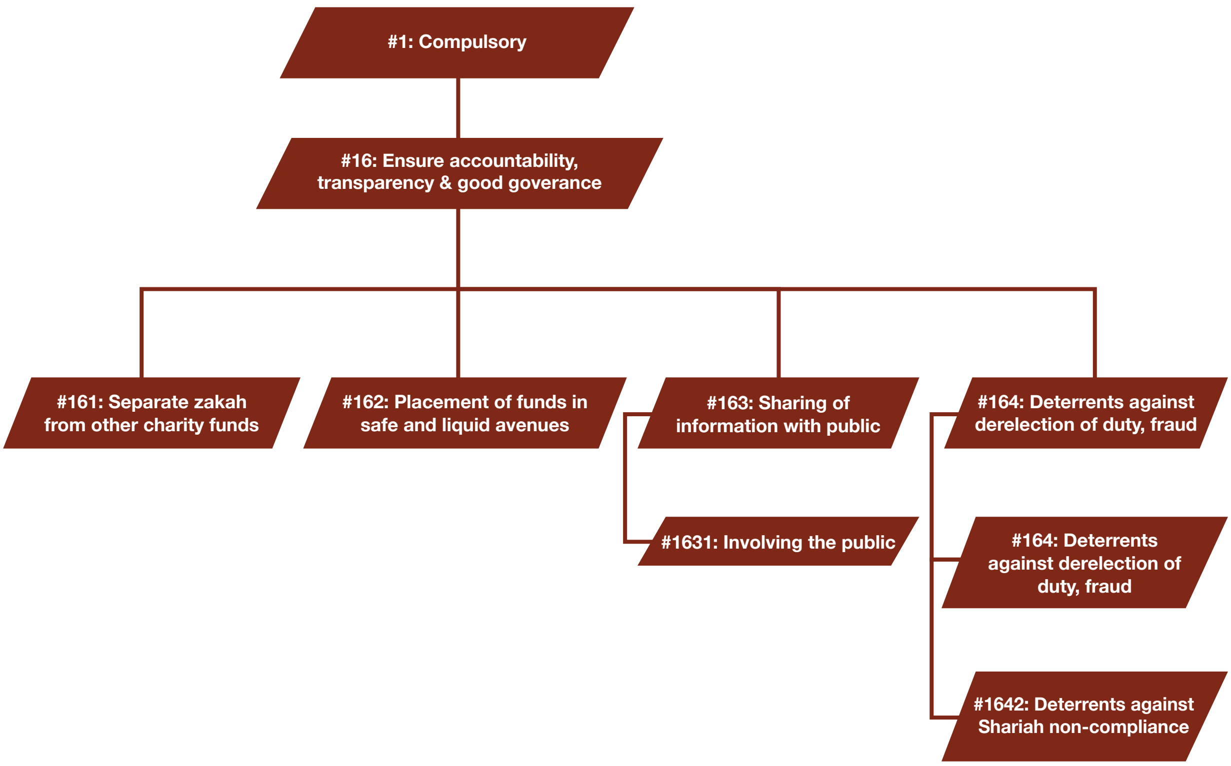
3.2.1.5. Accountability, Transparency & Governance

Transparency

Section 41-1 stipulates that the main Diwan as well as the state-level Diwans shall keep proper books of accounts in conformity with the sound accounting principles. It shall also keep special records that may be needed.

The institution of Diwan enjoys certain privileges too. Section 45 asserts that the property of the main Diwan and the state Diwans, are regarded as public property for the purposes of the Penal Code or Criminal Law. Further, these are exempted from all types of taxes and fees, including custom duties (Section 47). In Zamfara and Niger laws, both provisions are present in section 36.

Chart 10



Separation of zakah funds from other forms of charity funds

Zakah bodies in Sudan and Nigeria are empowered to collect other forms of charity funds in addition to zakah. Further, in Nigeria, there is a single body for zakah and awqaf. However, there is no explicit provision in the laws to segregate zakah funds from other forms of charity, e.g. sadaqa, infaq and waqf.

Placement of funds in safe and liquid avenues

Sudan: Section 6-g requires the Diwan to deposit zakah funds with the Bank of Sudan or with any other bank specified by the High zakah Board or the State Board of Trustees as may be the case. In Bauchi state, section 3-2(h) to requires the Commission to maintain account(s) with bank(s) into which zakah and endowment funds shall be paid where appropriate to exercise such other power(s) that may be necessary in the discharge of its functions in accordance with the rules of Shariah. Section 5 (h) of Zamfara and Niger laws has similar provisions.

Accountability to public

As a principle of good governance, the apex agency should share information about zakah collection and utilization with the public with utmost transparency and in a spirit of sharing on a continuous basis. However, none of the laws under discussion has any explicit provision regarding this. Again as a principle of good governance, the apex agency should be open to suggestions from the community regarding zakah management. However, none of the laws under discussion has any explicit provision regarding this.

Deterrents against dereliction of duty, fraud, dishonesty on the part of zakah officials

As a principle of good governance, law should provide for strong deterrents in the form of financial penalty and/or physical punishments for dereliction of duty, fraud, and dishonesty on the part of zakah officials. Dereliction of duty by zakah officials may take several forms, such as, the violation of confidentiality of information provided by zakah payers. In Sudan, the Diwan in Sudan is held fully accountable for ensuring confidentiality of the information provided by the individuals and businesses. According to section 46-1, all statements pertaining to zakah and spending thereof are regarded confidential and shall not be disclosed, save for the purposes of executing provisions of this Act. (Sec 36-1 under Zamfara and Niger law and 23-1 under Bauchi law)

Under Section 46-2 of Sudanese law, whoever deliberately discloses such statements shall commit a crime penalized under the Criminal Law, particularly if he is a temporary or permanent employee of the Diwan who exploits his office with the intention of harming the person in connection with such statements. Zamfara law goes on to prescribe punishment for such a crime as imprisonment for a term not exceeding three months or a fine of N10, 000 or both. (Sec 36-2). Under Bauchi law (Sec 23-2) and Niger law (Sec 35-2), the imprisonment is for not exceeding one year or with a fine or both.

Sections 9-12 of Zamfara and Niger laws seek to provide for good governance. Under section 9, a member of the Board including its chairman may be removed from office by the Governor on grounds of incapacity, disability, misconduct or failure to discharge his functions or responsibilities. However, according to section 11, the Chairman and any member of the Board shall not be personally liable for any act, omission or default by the Board so long as the act, omission or default is done in good faith and for the due discharge of his duty under this law. Further, the remuneration for the Chairman and members of the Board, will be by way of allowances determined by the Governor (Sec 10). Similarly, the salary of the Secretary and other staff of the Board shall be determined by the Governor (Sec 12).

Zakah laws in other countries, e.g. Indonesia provide for strict deterrents in the form of financial penalty and/ or physical punishments against fraud, dishonesty and misappropriation of zakah funds. There are also strict deterrents in the form of financial penalty and/or physical punishments against Shariah non-compliance. As principles of good governance, such deterrents should be explicitly provided in the law. However, none of the laws under discussion has any explicit provision regarding this.

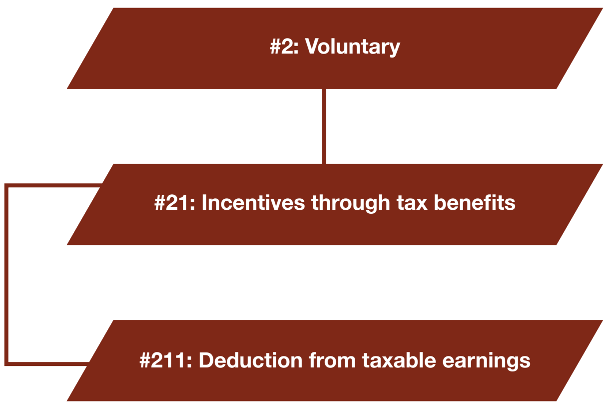
3.2.2. Nature of Zakah Obligation: Voluntary

Five states in Nigeria – Kano, Borno, Krebbi, Katsina and Yobe have dedicated zakah laws. The Zanzibar province in Tanzania also has a legal framework for zakah. In the remaining part of the countries and in other countries covered in this study, zakah management is entirely left to private initiatives.

3.2.2.1. Incentivizing zakah payment

Most of the countries across the globe provide some form of fiscal incentive, e.g. tax deductibility of donations made for philanthropic and benevolent objectives. This should naturally extend to zakah as well. As a legal principle, therefore, one would expect that the states where zakah payment is voluntary should incentivize the same through similar tax benefits. However, none of the Nigerian laws makes a mention of any such incentive for zakah payer.

Chart 11



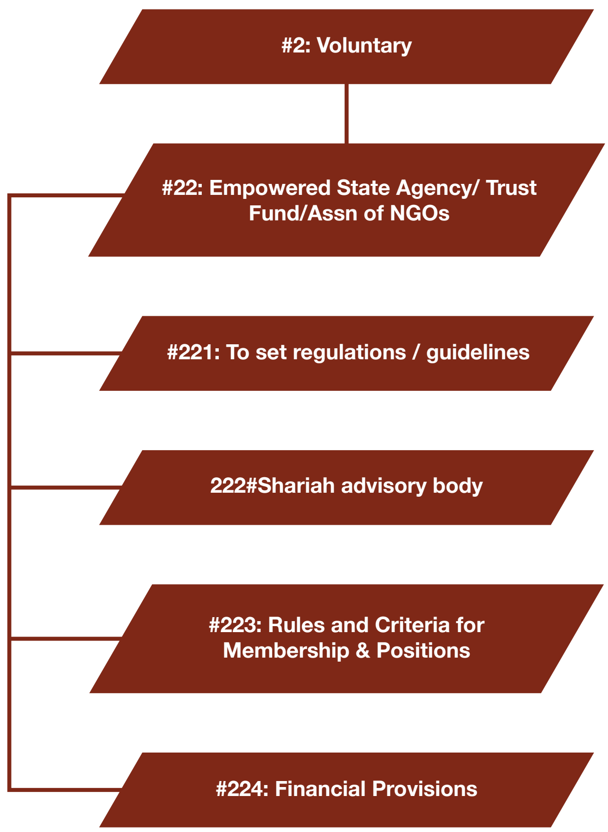
3.2.2.2. Infrastructure

As a sound legal principle, in a country with voluntary zakah payments, an apex body for zakah management should be created which may be (i) a state agency or (ii) an association/ committee of voluntary institutions.

In Kano state, section 3 of the law provides for establishment of the Kano State Zakah and Hubusi Commission. It is a corporate body, which may sue and be sued in its corporate name, hold, own and dispose of property and operate bank accounts. The law provides for a decentralized structure with agencies at state and village levels. Section 7 provides for establishment in each Local Government Area in the State a Local zakah and Hubusi Council . Further, section 9 provides for a Village Zakah and Hubusi. Committee in each village. Both are required to administer zakah, hubusi and other related issues as directed by the Commission. Section 6 empowers the Commission to establish such number of departments as may be desirable for the smooth running of its activities with the approval of the Governor. Section 8 (2) stipulates that the Local Zakah Council, on a regular basis shall furnish the Commission with its activities in the Local Government Area while section 10 (2) requires the Village Zakah and Hubusi Committees to furnish the Local Government Council with its activities on a regular basis. Section 11 describes the power and functions of the Chairman of the Commission as the chief executive responsible for the day-to-day administration of the Commission.

Katsina state provides an interesting contrast in terms of the infrastructure for zakah management. The zakah system owes its origin to an agreement between the government and related stakeholders to establish an independent non-government zakah and awqaf institution. The constitution of this institution provides the legal framework for zakah management in the state. It provides for establishment of a body called Katsina State Zakah and Endowment Trust Fund, which is a body corporate with perpetual succession and a common seal, and which may sue or be sued in its corporate name, and may acquire, hold and dispose of movable and immovable property (Section 1-1). Section 2 stipulates that the "constitution is supreme and

Chart 12



its provisions shall have binding force on all the trustees." Further, "the Trust Fund shall not be administered or managed, nor shall any person or group of persons take control of the Trust Fund except in accordance with the provisions of this constitution." All resident Muslims of the state shall be eligible for membershipof the Trust Fund (Section 3). Section 6 provides the structure of the Fund. The Fund has four organs: (a) the General Assembly; (b) the Board of Trustees; (c) the Advisory Committee; and (d) the Secretariat. The General Assembly comprises all registered members of the Trust Fund (Section 7). The Board of Trustees is the highest governing and policymaking body of the Trust Fund and consists of (a) a Chairman, and (b) not less than five, nor more than twelve other members to be elected by the General Assembly (Section 12). The Advisory Committee is appointed by the Board of Trustees and consists of fifteen members, three of which are members of the Board of Trustees (Section 17-2). Finally, the infrastructure is completed by the Secretariat of the Trust Fund, which shall be responsible for the implementation of policies and programs approved by the Board of Trustees (Section 20) headed by a Secretary who is the Chief Executive responsible for the day-to-day management of the Secretariat (Section 21).

In Kebbi state, section 3 of the Kebbi State zakah and Sadaqat (Collection and Distribution) Board Law, 2000 establishes a body "known as the Kebbi State zakah and Sadaqat Collection and Distribution Board which shall be a body corporate with perpetual succession and a common seal, with power to sue and be sued in its corporate name" for management of zakah. Section 6 provides for a State zakah and Sadaqat Collection and Distribution Committee and a Local Government zakah and Sadaqat Collection and Distribution Committee in each Local Government Area of the State. The Board will comprise 12 members including a Chairman. The State Committee shall have the following members: (a) a pious Islamic scholar who shall be the Chairman; (b) ten Muslims who are learned in both Islamic and western education as members; and (c) a civil servant learned in Islamic and Western education as Secretary. The members of the State Committee shall also be appointed by the Executive Governor (Sec. 7).

In Borno state, section 3(i) of the Borno State zakah and Endowment Board Law, 2001 establishes the Borno State zakah and Endowment Board with the objective of providing for a conducive socio-economic environment for the operation of Sharia in the State, improvement of the living standards of the poor. Another objective is to provide through public lectures, research, publications and other means the advancement of Sharia and its practical application (Sec.4). The Board consists of a Chairman; fourteen other members; and a Secretary who are appointed by the Governor subject to confirmation of the State House of Assembly (Sec.5). Further, section 9 specifically asserts, "the Board shall be an autonomous body and shall not be subjected to the control of any other authority or person save as provided by this law."

In Yobe state, section 9 provides for establishment of a Board of Trustees for Zakah and Endowment by the Executive Governor comprising notable and reputable representatives of the people of Yobe State drawn from different walks of life charged with the responsibility of overseeing all the functions relating to zakah and endowment and shall have power to form zakah committees at Emirate, District and Village levels.

In Zanzibar province of Tanzania, section 60 (1) of the Act empowers the Commission to supervise matters in relation to zakah. In addition, section 61 of the Act permits the Commission to create a special organization or trust or entity for the purpose of executing all functions relating to zakah management. This agency may have individuals, private firms and religious organizations as members (subsection 2). It will be an independent entity managed according to its charter or constitution (subsection 3), but will be fully accountable to the Commission. It will report to and follow directives of the Commission (subsection 5). The latter may dissolve the agency when deemed necessary (subsection 5). In addition, the Commission may also permit any organization, trust or entity to collect and distributed zakah (subsection 7).

Setting regulations and guidelines

In Kano state, section 4 (a) empowers the Commission to regulate all matters relating to zakah and hubusi. Subsection (f) empowers the Commission to perform "any other function that is incidental to the smooth running of the Commission as to the carrying out of its functions as well as any such function(s) that may be assigned to it by the Governor." Section 26 states that the Governor shall have the power to make regulations generally to give effect to any provision of this Law.

In Katsina, section 4 of the constitution stipulates that "the Trust Fund shall be a charitable philanthropic organization dedicated to the promotion of zakah as an institution, its advancement and the furtherance of the overall Islamic social and economic justice in the society." Section 5-1-d empowers to administer the funds for the purpose of zakah and endowments as enshrined in the Holy Quran and Sunnah within the state. The Board of Trustees sets the rules and the priorities and decides based on distribution of zakah. In this the Board is advised by the Advisory Board (section 16). Section 18-1 clearly outlines the role of Advisory Board in this words: "(1) There shall be an Advisory Committee, which will interface on behalf of the Trust Fund particularly in the following areas: (a) appropriateness of the programs of the Board of Trustees in tackling the socio-economic objectives of zakah and endowments in the State; and (b) prioritizing the programs of the Trust Fund to meet the objectives of zakah and endowments.

In Kebbi, according to section 5 (e) of the law, the Board is empowered "to do any other thing that is incidental to the proper discharge of its functions under this law."

In Borno, section 7(xiii) empowers the Board to make regulations on (a) staff matters; (b) mode of collection and distribution of zakah and endowment; and (c) such other matters related to the general object of the Board.

In Yobe, section 11 empowers the Board to work out and implement a program of collection and distribution of zakah in the State in accordance with Sharia injunctions.

In Zanzibar province of Tanzania, section 61 (5-c) empowers the Commision to give general guidelines for zakah management to the special agency created for the purpose.

Shariah advisory

In Kano law, section 5-1-i stipulates that the Commission will have a full-time Chairman who shall be an erudite scholar in Islamic jurisprudence and of proven integrity. Subsection v provides for a representative of the Sharia Commission to be a member.

In Katsina, there is no direct reference to Shariah supervision. Section 5(2) requires that "in the exercise of its functions, the Board of Trustees shall be guided by Islamic provisions and rulings in relation to zakah and endowments in addition to the provisions of this Constitution." Further, Section 16 (d) says, the Board will "liaise with the Advisory Committee as and when the need arises including holding a joint meeting" and that the Trust Fund will "encourage research and documentation of advancements and new fatawa on zakah and endowments as social institutions" (Sec. 5-1-f).

Kebbi law refers to the need for Shariah scholars supervising and guiding the implementation of zakah rules by requiring that Board be chaired by a person, "who shall be learned in Islamic Law and Western Education to be nominated by the Governor". The Board will also include three ulama; three Muslims who shall be successful businessmen; two representatives of the State Government who shall be learned in Islamic law and western education; two representatives of the State House of Assembly; and a Secretary (Sec. 4-1).

Borno law requires the Chairman of the Board to be a renowned Islamic jurist or scholar; and a person with impeccable record of piety (Sec. 6-1). Both the Chairman as well as the members may be removed from position by the Governor on the recommendation of the State Council of Ulama for misconduct (Sec.12).

Rules and criteria for membership and positions

In Kano law, section 5 provides details on the criteria for nomination of 21 members including the Chairman as well as their terms of appointment by the Governor. The appointment of any member may also be revoked whose conduct is unsatisfactory (subsections 3 and 4). Section 8 (1) provides criteria and terms of membership of the Local Zakah and Hubusi Councils while section 10 (1) provides criteria and terms of membership of the Village Zakah and Hubusi Committees.

In Katsina, section 12-13 provide details on the criteria for appointment of members of the Board of Trustees including the Chairman as well as their terms of appointment. The appointment of any member may also be revoked whose conduct is unsatisfactory (section 15-e & f)

In Kebbi, section 4-1 provides details on composition of the Board as well as the criteria for membership of the Board while section 7-1 provides the same for the State Zakah and Sadaqat Collection and Distribution Committees and section 9 provides the same for the Local Government Zakah and Sadaqat Collection and Distribution Committees.

In Borno, section 6 provides details on criteria for membership of the Board.

Financial provisions

As a sound legal principle, adequate provision of finance to cover operational expenditure of the apex zakah body should be in place (i) through budgetary allocation and/or (ii) through contribution of a part of zakah collected by the zakah institutions towards covering its operational expenditure.

In Kano law, section 14 states that "the funds of the Commission shall comprise: i. grant from the state government; ii. zakah; and iii. hubusi."

In Katsina, section 5 (1) empowers the Trust Fund to receive donations, grants, gifts, charities and endowments from governments, corporate bodies or individuals (subsection C); in addition of course to zakah and endowments. In the absence of any other information it is assumed that the administrative expenses of the Fund will be charged to the above funds at the disposal of the Trust Fund.

In Kebbi, section 11 deals with financial provisions and states that "the funds of the Board shall consist of (a) monthly allocation from the State Government; (b) monthly contribution from each Local Government; and (c) donations from individuals and organizations."

In Borno, section 3 (2) says, "The Zakah Board shall be financed by the funds from the consolidated revenue funds of the State." Subsection 3 says that "the remuneration of the Chairman and members of the Zakah Board, the Council of Ulama and Sharia Implementation Committee shall be funded from the consolidated funds of the State or moneys realized from the Zakah Board."

3.2.2.3. Zakah Collection

Good practices in zakah management demand that where zakah payment is voluntary, then the apex zakah body in consultation with Shariah scholars and other stakeholders (e.g. zakah institutions, professional bodies in accounting, financial planning, Inland Revenue authorities, and community leaders) should formulate guidelines for estimation of zakah liability of individuals and businesses.

In Kano state, section 4 (b) empowers the Commission "to collect zakah and hubusi from individuals and/or organizations."

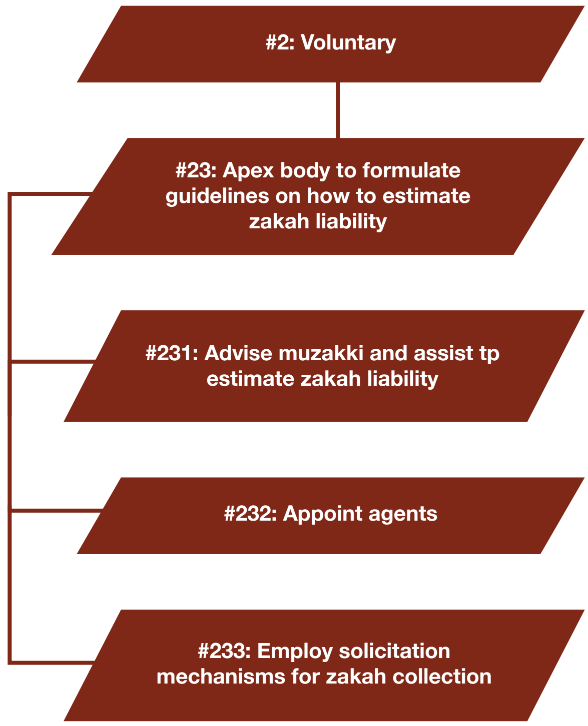
In Katsina, section 5-1-b empowers the Fund to collect zakah annually from all eligible Muslims residing in the State and those residing outside the State.

In Kebbi, according to section 5 (a) of the law, the Board is entrusted with the task of creating awareness amongst the Muslim ummah on the relevance of zakah as one of the pillars of Islam and on the need to give it out. Subsection (b) empowers the Board to collect and keep in proper custody zakah and sadaqat from individuals and philanthropic organizations" and subsection (d) "to ensure that all Muslims eligible to pay zakah shall do so as and when due in accordance with the Qur'anic injunctions." Section 8-e entrusts to state committees the task of compiling the names and addresses of well-to-do Muslims and philanthropic organizations and section 10-d entrusts the same task at a local level to local committees requiring them to forward same to the state committee.

In Borno state, section 7 identifies the powers and functions, which includes, inter alia, (i) to identify Muslims qualified to pay zakah and where the person voluntarily submits his assets, to qualify and assess the properties including finances, animals, movable and immovable properties for the purposes of zakah; (ii) to engage the services of valuers, technicians, surveyors and other persons or professionals the Board may deem necessary; and (iii) to recommend, based on the Quranic provisions, the zakah payable in respect of items mentioned in paragraph (i) of this section.

In Yobe state, section 13 provides for setting up of a Directorate of Zakah and Endowment whose functions include: (i) updating and announcement of nisab of zakah periodically; and (ii) assessment and verification of zakah items. However, the operational aspects of assessment is left to the individual

Chart 13



zakah payer, though the Committees as well as the Board shall carry out assessment on request using the prescribed form. The proportion to be paid to the collecting agency by the zakah payer is to be decided by the payer but should be at least 50 percent (Sec.9). Further, section 9.7 requires that all village area committees should register and keep comprehensive list of all zakah recipients in their areas using the prescribed forms. Similarly, a comprehensive register-containing list of all zakah payers should be kept. The State Board as well as Emirate and District Committees should inspect such register (Sec.9.8).

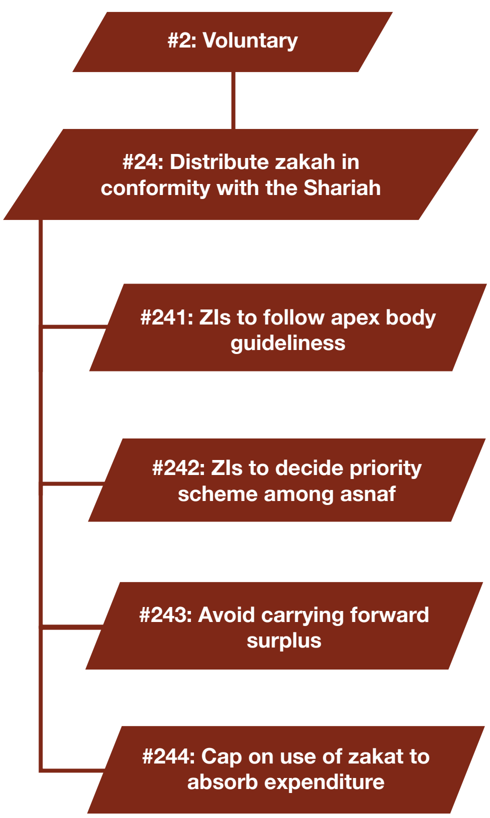
In Zanzibar province of Tanzania, section 60 (1) requires the Commission to ensure that the general public has sufficient knowledge about their zakah liability and that assistance is provided to all who are are liable and willing to pay zakah for assessment of their respective liabilities. Section 60 (2) seeks to ensure confidentiality of any information provided by the muzakki in course of the assessment.

Good practices in zakah management recommend that zakah institution (ZIs) should advise and assist the muzakki in estimating their zakah liabilities in conformity with the guidelines. ZIs may appoint agents for collection of zakah against payment of commission and may undertake zakah mobilization campaigns and use other solicitation mechanisms for creating awareness about zakah. It should be mentioned however that the five states in Nigeria where zakah payment is voluntary, the law does not provide for any role of voluntary organizations in zakah management. It is the state created body that is responsible for collection of zakah, the payment of which of course is voluntary. The body however, seeks the involvement of state and local committees in the process. In Zanzibar, however, the Commision may permit organizations, trusts and entities to engage in collection and distribution of zakah in addition to the specialized agency it creates for the purpose.

3.2.2.4. Zakah Distribution

Good practices in zakah management demand that zakah bodies must distribute zakah among asnaf in conformity with Shariah. Where zakah payment is voluntary and there are ZIs in the voluntary sector, they should follow the guidelines issued by the apex zakah body for definition of the asnaf and the methods for their determination.

Chart 14



They may decide on a priority scheme for distribution of zakah among asnaf. They should seek distribution of all zakah collected during the same lunar year and avoid carrying undistributed surplus. Further, while they may be permitted to absorb part of zakah to cover their operational expenditure, this should be subjected to a cap.

In Kano state, section 4 (c) empowers and requires the Commission to “distribute such collected funds to the deserving members of the public in accordance with the dictates of Shariah.”

In Katsina, law empowers the Trust Fund (section 5-1-d of its constitution) to administer the funds for the purpose of zakah and endowments as enshrined in the Holy Quran and Sunnah within the state. The Board of Trustees sets the rules and the priorities and decides based on distribution of zakah. In this, the Advisory Board (section 16) advises the Board. Section 18-1 clearly outlines the role of Advisory Board in this words: “(1) There shall be an Advisory Committee, which will interface on behalf of the Trust Fund particularly in the following areas: (a) appropriateness of the programs of the Board of Trustees in tackling the socio-economic objectives of zakah and endowments in the State; and (b) prioritizing the programs of the Trust Fund to meet the objectives of zakah and endowments.

According to section, 5-c of Kebbi law, the Board is empowered to (c) distribute zakah and sadaqat collected according to Qur’anic injunctions. Section 8-c entrusts to state committees the task of “identifying the eight categories of people who are eligible to receive zakah; ascertain and verify the genuineness of all requests for assistance brought before the Board”. At a local level, the local committees are empowered according to section 10 (a). (b) and (c), to identify the eight categories of people that are eligible to receive zakah; to identify the destitute and the needy in the Local Government for the purpose of sadaqat; and to ascertain the genuineness of requests for assistance in the local government before forwarding them to the state committee.

In Borno, section 7 identifies the powers and functions, which includes, inter alia, (i) to open and maintain register of persons eligible as beneficiaries of aid from the Board; (ii) to distribute zakah collected to eligible persons and institutions; and (iii) to maintain a bait ul-mal and other storage facilities and operate a system of food distribution to the beneficiaries

In Yobe, law stipulates certain clear provisions for proper storage and distribution of zakah as below:

- The committee should identify and acquire a warehouse for keeping zakah property, before distribution. Local Governments should be requested to assist in this direction. Where it is not possible to get Local Government assistance the committee can use its 5% to rent or build one (Sec.9.3).

- There should be a treasurer for each committee who should be a trustworthy person and be responsible for security and custody of all zakah property and funds (Sec.9.4).
- If it is deemed more convenient for handling purposes, the committee is free to convert zakah given in kind to money by selling it through a subcommittee appointed for that purpose (Sec.9.5).
- The local governments should shoulder logistical requirements for collection and distribution of zakah. Where is not possible, the committee should use part of its 5% share (Sec.9.6).

As mentioned before, in the five states in Nigeria, the law does not provide for any role of voluntary organizations in zakah management. The state-created body is responsible for distribution of zakah. The body however, seeks the involvement of state and local committees in the process.

In Zanzibar province of Tanzania, section 60 (1) requires the Commission to "manage and utilize zakah funds and property in accordance with established good practice."

3.2.1.5. Accountability, Transparency & Governance

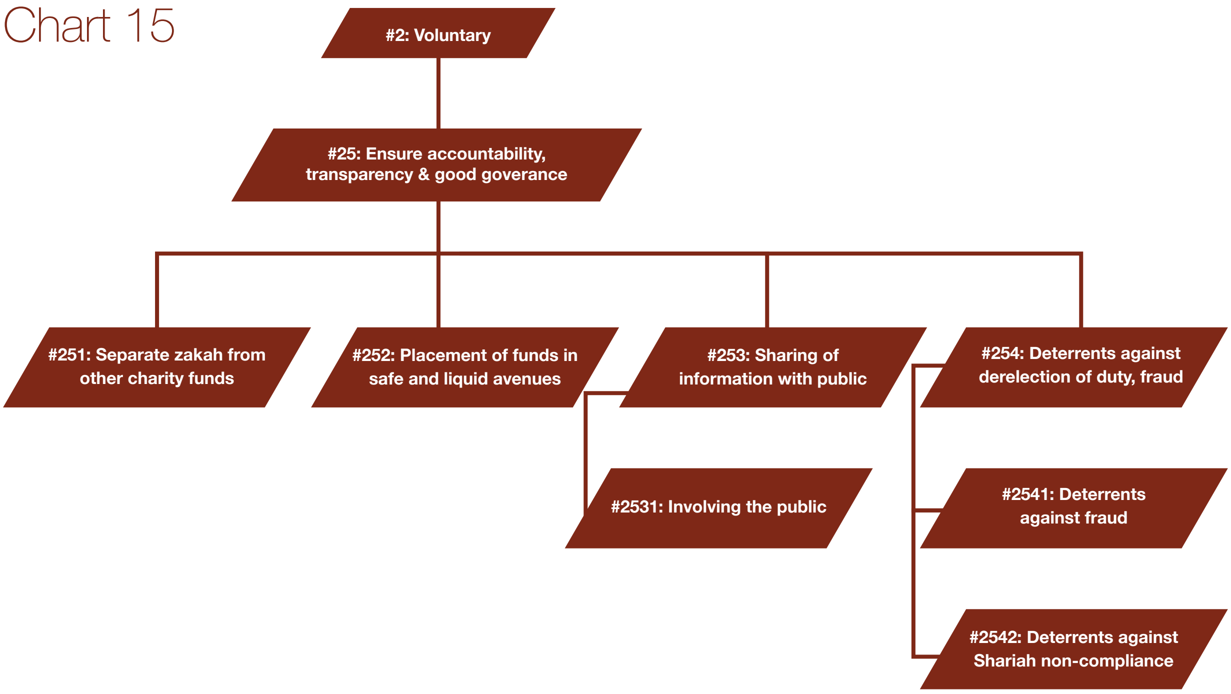
ZIs must disclose the figures of zakah collection and utilization by them to the community with utmost transparency and in a spirit of sharing at regular intervals.

The schedule of zakah distribution in Yobe is as follows:

	Asnaf	Percentage
1	Fuqara	50%
2	Fi sabilillah (ulama)	25%
3	Miskin	10%
4	Muallafatul qulubuhum	5%
5	Amilin alaiha	5%
6	District and Emirate Committee	5%

In Kano law, section 16 stipulates that "the Commission shall within three months after the expiration of each financial year prepare and submit to the Governor its annual activities for the preceding year and a statement

Chart 15



of account of the Commission." Section 17 requires the Commission to prepare and submit to the Governor its annual estimate. Sections 18-21 provide rules regarding conduct of meetings and voting procedures of the Commission. Section 22 stipulates that "the Commission shall keep proper accounts in respect of all monies with respect to other charges and personnel emoluments" and that "the accounts of the Commission for each year shall be audited after the end of each year by the Auditor-General of the State." Section 23 deals with the issues of remuneration of members of the Commission and states that the Governor will determine the same.

According to constitution of Katsina Trust Fund (section 16 - c) the Board of Trustee is mandated to circulate to members (who are residents of the state), the annual audited accounts of the affairs of the Trust Fund not less than 30 days before the annual General Assembly meeting including:

(i) full report on the activities and business of the Trust Fund since the previous meeting and plans for the future;

(ii) a statement of account and balance sheet for the previous financial year duly certified by the external auditors;

(iii) budget of revenues and expenditures for the next finances of the ensuing year.

Section 24 mandates that professionally qualified auditors shall audit the accounts of the Fund.

Sections 9-11 of the constitution of the Fund provide rules regarding conduct of meetings and voting procedures of the General Assembly. Section 17 deals with the same issues for the Board of Trustees and section 19 for the Advisory Committee. An interesting provision present in section 14 seeks to avoid any conflict of interest by stipulating that "no member of the Board of Trustees or the Advisory Committee shall be appointed to any salaried office of the Trust Fund or the contractor to it and no remuneration or benefit in money's worth shall be given by the Trust Fund to any member of the Board of Trustees or the Advisory Committee." Another interesting provision present in section 28 states, "The Trust Fund shall not be aligned to any religious sect, ethnic group or political party."

Further, section 5-1(g) requires the Trust Fund to "co-operate with Government and non-governmental organizations having similar functions, aims and objectives in the advancement of zakah and endowments in the State."

In Kebbi, section 20 of the law states that "the Board shall cause to be kept proper records of accounts that will give an accurate view of the activities of the Board.

In Borno, section 7 requires the Board to (ix) to appoint auditor(s) who shall annually audit the accounts of the Board. Further, section 7 (x) requires the Board "to submit annual returns on its activities to the State Council of Ulama; (xi) to render annual accounts to the public through the Council of Ulama; and (xii) to make and submit to the Council of Ulama annual budgetary estimates."

In Yobe, section 9 of the law provides for involvement of the public. Subsection 10 requires a public announcement of all collections and disbursements including names of payers and recipients as well as the amount paid and the amount given out to each recipient. All payers of zakah or endowment should be given the appropriate receipt. Similarly, records of the amount disbursed per each zakah recipients should be kept (Sec.9.9). There are further provisions to ensure transparency and accountability as follows:

- Before any disbursement is to be made in any unit, clearance from the next higher zakah agency (committee) should be sought and the latter should send its representative who will in turn submit a report on the disbursement made (subsection 11).

- Such summary reports should be collated as part of the required quarterly reports to be submitted by each committee (subsection 12).

- The recipients of zakah should collect their share in person and not through any representative (subsection 13).

- Emirate committees should notify the Board of Trustees of the major disbursements to be made within their areas so that the monitoring and verification committee can make random representations to witness some of the disbursements. Such notifications should be sent at least one week in advance by mails or radio message (subsection 14).

- All people to be involved in handling proceeds of zakah should be people of proven integrity and all should be made to understand that no fraud or any form of misappropriation shall be condoned (subsection 15).

In Zanzibar province of Tanzania, section 60 (1) requires the Commission to make available to public regular reports on collections and expenditure of the zakah account. Section 61 (4) requires the special agency created for zakah management by the Commission to prepare regular reports to the latter concerning its functions.

Separation of zakah funds from other forms of charity funds collected

In Kano Section 4 (e) act permits the Commission (in addition to its zakah collection function) “to act as a trustee of all funds, wealth and property entrusted in the Commission including, but not limited, to orphan children’s property, charity funds, alms and lost items.” In Katsina, too, section 5 (1) empowers the Trust Fund to receive donations, grants, gifts, charities and endowments from governments, corporate bodies or individuals. The laws however, fail to provide for any safeguards against commingling of zakah with other funds.

Placement of funds in short-term safe and liquid schemes of IFIs

In Kano, interestingly, section 4(d) empowers the Commission “to invest, in accordance with Islamic jurisprudence such resources at the disposal of the Commission, not immediately required for its purposes in such securities as may be approved by the Governor, and to dispose of such securities.” In Katsina too, section 5-1(i) empowers the Trust Fund “to administer and where applicable invest its financial resources in accordance with the provisions of Shariah”. While the concern for prudence in parking of funds is quite sound, the explicit permission to “invest” the resources runs contrary to the concern among scholars regarding the need to dispose of all zakah funds during the year of collection itself.

In Borno, section 7 (xvi) empowers the Board to invest idle funds subject to the Governor’s approval.

In Yobe, law does not provide for any investment of zakah. Rather it states that “where there are surpluses of zakah collections as compared to recipients, the District Committee or the Emirate Committee or the State Board of Trustees is allowed to transfer the surplus to areas of serious deficits (Sec. 9.16).”

Consultation and Engagement with the public

As a principle of good governance, the apex agency should be open to suggestions from the community regarding zakah management. However, none of the laws except in Borno has any explicit provision regarding this.

Deterrents against dereliction of duty, fraud, dishonesty on the part of zakah officials

As a principle of good governance, law should provide for strong deterrents in the form of financial penalty and/or physical punishments for dereliction of duty, fraud, and dishonesty on the part of zakah officials.

As per Kano law, section 5.4 says, “Notwithstanding the provision of subsection (2) of this section, the Governor may revoke the appointment of any member whose conduct is unsatisfactory. Unsatisfactory conduct includes: i. absenting himself from the meetings of the Commission for three consecutive periods without leave of the Chairman; ii. bankruptcy; iii. insanity; and iv. gross misconduct.”

In Katsina section 15 of the constitution of the trust asserts that a member of the Board of Trustees may hold office for life, but shall cease to hold office if he/she is convicted of a criminal offence involving dishonesty by a court of competent jurisdiction (subsection - e); or is removed on grounds of misconduct or incapacity as a result of ill-health or inability to discharge the functions of his office (subsection - e).

In Kebbi, the only deterrent exists in the possibility of removal of members from the Board or Committees. Section 14 states that “the Board members may be removed by the Governor if they cannot discharge their functions by reason of dishonesty, ill health or insanity, or if they are declared bankrupt or found guilty of committing an offence by a court of law, or are absent from three consecutive meetings without permission or genuine reason.”The provision is similar as above in Borno, whereas stated earlier; the Chairman as well as the members of the Board may be removed from position by the Governor on the recommendation of the State Council of Ulama for misconduct (Sec.12).

In Zanzibar, the law provides for punishment for zakah officials who disclose or share information submitted by the muzakki to the Commission in course of their assessment (Sec. 60-4).

3.3 Success Stories and Good Practices

3.3.1. South Africa National Zakah Fund

The South Africa National Zakah Fund (SANZAF) began its operations in the year 1974. In 1976, SANZAF had collected and disbursed USD $1,400. A merger with the Cape Zakah Fund in 1979 provided further strength to the organization. SANZAF was formally registered as a Section 21 Company in 1988. It was registered as a Non-Profit Organization (NPO 007-160) with the Department of Social Development of the Government of South Africa in 1999 and then as a Public Benefit Organization (PBO 930001714) with the South African Revenue Services in 2005. The latter status allows donors to qualify for up to 10% deduction on their annual income tax against their zakah. The vision and mission statements read as follows:

Vision

SANZAF aspires to be a leading faith-based NGO with operation excellence in transforming the lives of the communities it serves. This vision will be achieved through:

- Becoming a model Muslim organization, serving with integrity and transparency;
- Becoming the premier zakah collecting and distributing agency in South Africa;
- Delivering a service par excellence to our various constituencies.

Mission

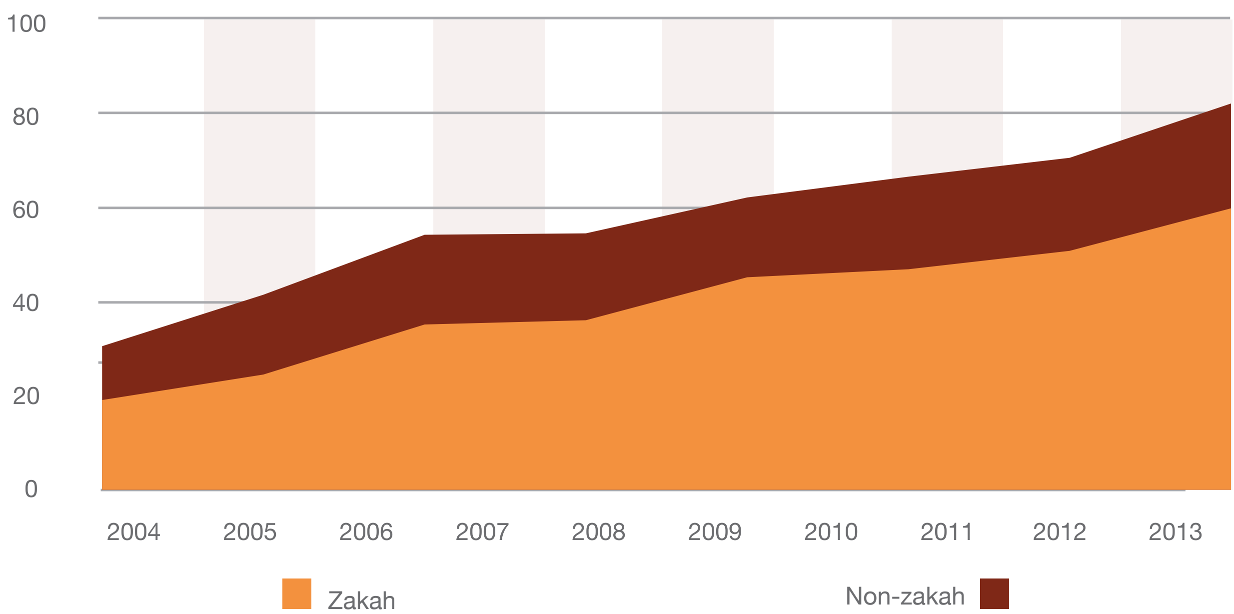
SANZAF's mission statement reads: "The South African National Zakah Fund (SANZAF) is a faith-based, socio-welfare and educational organization that strives to facilitate the empowerment of needy families through the efficient collection and effective distribution of zakah and other Sadaqat in a proactive and cost effective way through projects – with dignity, sincerity and a shared responsibility. All in the service of the community and for the pleasure of the Almighty."

Table 3.20: Time Series of Zakah Collection by SANZAF in South Africa (Million ZAR)

Year	2006	2007	2008	2009	2010	2011	2012	2013
Zakah	19	24.4	35	35.9	45	46.7	50.6	59.6
Non-Zakah	11.4	16.9	19	18.4	16.9	19.6	19.7	22.2
Total	30.4	41.4	54	54.3	61.9	66.3	70.3	81.8

The steady growth in zakah collection is also attributable to SANZAF's creative public education and awareness campaigns.

Figure 3.9: Time Series of Zakah Collection by SANZAF in South Africa



Contribution to Knowledge

SANZAF has produced and freely distributed thousands of booklets on zakah under different titles, as well as pamphlets, flyers and calculation guides. It also published an illustrated "comic book" type booklet, Zakiyyah on zakah, which was directed at the youth. The list of titles is as follows:

1. Zakah at a Glance (1985).
2. The Rules of Zakah (1986).
3. A Handbook on Zakah (1999).
4. Zakah Made Easy (2004).
5. Zakiyyah on Zakah (2010).
6. Counting on our Heritage: Understanding Zakah (2011).

SANZAF has produced a zakah calculation CD (2001), which included a soft copy of Shaikh Qaradawi's Fiqh Az-zakah on it. The zakah Calculator CD was amongst the first English zakah Calculator tools worldwide. It makes extensive use of electronic media and technology and has designed a user-friendly computer spreadsheet to help with zakah calculations. In 2012, SANZAF launched its first free mobile application, myzakahZA, which also aids in the calculation of zakah.

SANZAF has hosted several zakah workshops, talks and seminars. Most notable of which were those jointly hosted with the Islamic Development Bank (IDB) and Islamic Research and Training Institute (IRTI).

SANZAF hosts zakah programs on a local Islamic television channel as well as some of the Muslim radio stations in South Africa. These are generally hosted during Ramadan. It also operates a zakah Call Centre (usually active during Ramadan) and fields queries via email and through our website.

Contribution to Poverty Alleviation

SANZAF has transformed itself from a largely welfare-orientated to a more developmentally focused organization over a period of forty years. This forward-thinking move was driven largely by its own desire to transform its beneficiaries from recipients (Mustahiq) to payers (Muzakki) of zakah and was borne out of a realization that handouts (welfare) were not sustainable in the end.

In the matter of distribution of zakah, SANZAF is committed to utilizing the bulk of its resources directly on and for the benefit of the poor and needy. While in the initial stages, priority was given to meeting the basic needs of beneficiaries, such as the provision of food and clothing, payments of rent, water etc. SANZAF has been seeking to reposition itself as a developmental organization aiming to make a permanent dent on poverty through education, training and economic empowerment. The journey itself was not an easy one, especially in the early years when resources were limited but also because zakah was not understood and appreciated as an empowerment tool. It is now committed to allocate at least 60 percent of its collections towards developmental initiatives. It now spends 25 percent of its income for education alone. It allocated USD $1.2 million for bursaries at tertiary level for the 2014 academic year. Indeed SANZAF has been offering bursaries from early on in its history (minutes record that a bursary for USD $200 was granted as early as 1974). There were no notable empowerment initiatives until 1998 when it introduced the Family Assessment and Resources Development (FARD) program.

FARD was the first serious initiative by SANZAF that was designed to break the dependency culture among its beneficiaries. It sought to find a balance between the immediate and long-term needs of beneficiaries by providing them with their basic household needs if they commit to an empowerment program. The FARD program was cautiously adopted by most donors. However, as South Africa emerged from the isolation years of Apartheid (1990), so the Muslim professional class grow considerably. These new professionals were being exposed to community development experiences, both outside of the Muslim community and in other parts of the world and made it much easier to convince them of our development philosophy. Gradually, through education, donor attitudes towards the use of zakah for empowerment changed for the better.

SANZAF however, continues to assist qualifying beneficiaries, specifically the elderly and sickly. Currently 50% of its beneficiaries are wholly dependent on some form of regular welfare assistance, either because they are not trainable (due to health reasons), or they do not qualify for government welfare grants due to age, etc. It also assists with medical expenses and generally any basic household needs and in settling legitimate debts wherever possible.

Bursary Program: SANZAF runs one of the largest bursary funds amongst Muslim NGO's in South Africa. Hundreds of students have been assisted through the bursary program. With throughput (graduate) rates above 90% in some areas, the Bursary Program is one of its flagship programs.

Entrepreneurship Training and Funding: SANZAF established an Entrepreneurship Training Centre in 2006. The entrepreneurship program offers candidates an accredited short-course and an opportunity to access capital to start a micro-enterprise on presentation of a viable business plan. It has trained over 1000 candidates (in 7 years) and boasts a success rate of over 60%, i.e. 60% of all funded enterprises are still operating.

Vocational Skills Program: SANZAF assists beneficiaries with tools and/or the cost to attend any vocational training course. The Skills Training programs budget is uncapped and any qualifying beneficiary is assisted with minimum bureaucracy to fast track their aspiration to become self-sufficient.

Case Management Software: SANZAF has developed a customized case management computer program that allows easy management and tracking of beneficiary assistance. The Case Master Program is offered free to all NGO's (although not all of them use it) and can help reduce duplication of services.

Emergency Aid: SANZAF operates its own and/or supports several independent feeding schemes. We also offer emergency and/or disaster relief services, especially after natural (e.g. floods, winds, etc.) and manmade (e.g. fires, riots, etc.) disasters.

Zakat-ul-Fitr: SANZAF operates one of the largest organized collections and distributions of Zakat-ul-Fitr. In the Western Cape Province for example, SANZAF has developed a vast network of close onto 80 Masjids, which give their collected Zakat-ul-Fitr to SANZAF who in return uses it to purchase, pack and distribute groceries to beneficiaries within the precinct of the same Masjids.

Qurbani: SANZAF organizes one of the largest Qurbani programs in Southern Africa, facilitating the performance of Qurbani locally as well as in two neighboring countries, i.e. Malawi and Mozambique. It also collects and distributes Qurbani meat.

Waqf: SANZAF also manages several waqf initiatives, including a Water Waqf and Masjid Waqf. These and other waqfs are directed at serving the needs of poor communities.

Organization Structure

SANZAF has a federalist type structure. Yet, decisions are taken such that the interest of the organization as a whole are considered above the interests of individual regions. The Trust Deed is the principle document that guides the organization.

Structurally the organization comprises three tiers, namely a Board of Trustees (BoT), the National Management Board (NMB) and the Regional Management Board (RMB). Each board operates with different mandates and enjoys a degree of autonomy from the other.

Board of Trustees (BoT): The twenty-two member Board of Trustees (BoT) is the highest decision making forum of the organization. Membership to the BoT is by nomination by fellow Trustees. Nominees are generally recruited from lower level Boards that report to the BoT. The BoT is the highest decision making body of the organization and is charged with caring for the assets of the organization. It also approves policy and strategy developed by lower tiers. The BoT meet at least once a year to hear reports and review progress of the organization. Elections to office include a Chairperson, Vice-Chairperson, Treasurer and Secretary and take place every three years. The National office Bearers (NOB) are drawn from and elected by members of the BoT and are responsible for heading the National Management Board (NMB)

National Management Board (NMB): The National Management Board (NMB) is headed by the NOB, and includes representatives of the various Regional office Bearers (ROB) and other ordinary members. The NMB helps guide the work of the organization and is charged with developing strategy, formulating policies and providing general operational oversight. It is accountable to the BoT.

Regional Management Board (RMB): The Regional Management Board (RMB) consists of representatives of the various branches from within a Region. Elections to office include a Chairperson, Vice-Chairperson, Treasurer and Secretary and take place every three years. The Regional office Bearers (ROB) are drawn from and elected by members of the RMB and are responsible for heading the Regional Management Board (RMB). The RMB is accountable to both the NMB and BoT.

Branch Management Boards: Branch Management Boards (BMB) are charged with the responsibility of day-to-day oversight and running of the local branch. Elections are encouraged, depending on the size of the office and incudes a Chairperson, Vice-Chairperson, Treasurer and Secretary. They are accountable to the RMB, NMB and BoT.

Regional Administrator (RA): Each Region appoints a Regional Administrator (RA) who is a full-time paid staff member. They function like CEOs and are responsible for directing and implementing the vision of the organization at Regional level. RA's attend meetings of the RMB and NMB. They are accountable to the RMB, NMB and BoT; however, they are directed by their respective RMB. Regions have autonomy in most matters, including the appointment of staff, initiating, and implementing programs. They are also responsible for raising their own incomes and managing their own budgets. However, policy directives are agreed upon at NMB level and the RMB cannot deviate from national policy.

Stakeholder grievances, including those of employees, donors and beneficiaries are addressed by the Regional Administrator (RA) and/or the Regional Management Board (RMB). In some cases, the NMB or BoT are called upon to mediate on issues affecting Regions or Branches, etc. In exceptional cases, Patrons are called upon to mediate amongst the BoT and/or other tiers. Patrons can attend any/all Board meetings, including those of the BoT, but do not have voting rights. The outcome of their mediation process however is binding on all parties.

Governance at SANZAF

As at 31 March 2014, SANZAF had 29 offices in five provinces and over 120 full time paid staff. Its Board of Trustees comprises professionals who serve entirely on a voluntary basis, except for one staff member who is also a member on the BoT. It emphasizes strong oversight at branch, regional and national level and seeks to implement good governance principles with monthly reports and regular meetings.

Transparency: It is independently audited and strives to produce Annual Report and Audited Financial Report within 90 days of year-end. All its financial data are freely available on the web. This has resulted in a high level of social acceptance and in a steady growth of funds collected as presented in the following table.

Compliance:

SANZAF is one of a handful of Muslims NGO's that can offer tax-benefits to its donors due to its status as a Public Benefit Organization (PBO). It also satisfies criteria relating to the country's Broad Based Black Economic Empowerment (BBBEE).

Cost Control:

SANZAF continuously monitors its administrative and operational costs and seeks to minimize it, given the need to restrict the percentage of zakah that can absorb such expenditure to a cap of one-eighth. The following table shows how the costs as a percentage of zakah have steadily declined over the years, as total zakah mobilization has grown. SANZAF aspires to be a leading faith-based NGO with operation excellence in transforming the lives of the communities it serves. Its vision is to become a model Muslim organization, serving with integrity and transparency; the premier zakah collecting and distributing agency in South Africa; and deliver a service par excellence to our various constituencies. Its mission is to "facilitate the empowerment of needy families through the efficient collection and effective distribution of zakah and other sadaqat in a proactive and cost effective way through projects – with dignity, sincerity and a shared responsibility." Its record of accomplishment has been quite impressive so far, as it consistently has managed to keep its costs low while expanding its portfolio of programs and activities.

3.4 Lessons & Policy Implications

The present study has a very simple finding. Differences in geo-politic realities affect zakah management. There is thus, great diversity in the zakah management practices. Unlike South and South East Asian countries that were covered under the last issue of the Report, the present issue focuses on Sub-Saharan African countries where several factors clearly stand out. With the exception of South Africa, in all countries a major part of zakah is in the nature of in-kind zakah in the form of crops and livestock. zakah collected, as cash is very insignificant. Therefore, holding of zakah funds or investment of zakah funds is a non-issue. The same is a formidable issue in South and South East Asian countries.

Collection of in-kind Zakah from the actual locations, e.g. farms, which are stretched far and wide, entails huge collection costs. Therefore, a more liberal view is called for in relation to the cap on operational costs that is traditionally placed on one-eighth of zakah funds collected in South East Asia. Further, once zakah is collected, their transportation and storage of in-kind Zakah involves substantial costs, which justifies the strategy of on-the-spot distribution. Various good practices developed in the context of South and South East Asian countries may thus, need to be revisited in the context of the Sub-Saharan African countries.

Table 3.21: Time-Series of Cost as % of Zakah Collected

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Cost as % of zakah	15	19	18	10	17	11	13	10	12	10	10

The last issue of the Report identified a clear upward trend in the mobilization of zakah in countries in South and South East Asia and. Countries like Indonesia and Malaysia were observed to have experienced a steady growth in zakah mobilization, interestingly, under two distinct zakah management systems. While zakah collection is mandatory in Malaysia, it is voluntary in Indonesia. Other countries, e.g. India, Pakistan and Bangladesh displayed interesting variations too. In the present sample of countries in Sub-Saharan Africa, we find a similar variation. While in Sudan and four states in Nigeria, zakah is mandatory, the same is voluntary in other states of Nigeria as well as in the other countries under focus. In Sudan, zakah has been steadily increasing at an annual average growth rate of 19 percent. In absolute terms, zakah collected in Sudan is impressive. At around USD200 million per year, it ranks lower than Saudi Arabia, Malaysia and Indonesia. However, in term of per capita zakah collected, it fares better than Indonesia. The state bodies in Nigeria seem to be non-starters with annual zakah collection at just around USD3 million, especially considering the much bigger size of the Muslim community. This is perhaps explainable in terms of shorter history of these bodies as well as a steady decline in incomes of the Nigerian people over the period of their existence.

Sudan provides supporting evidence for compulsory zakah. The Nigerian states that have both compulsory and voluntary zakah provide modest supporting evidence in favor of compulsory zakah, with states like Zamfara and Jigawa reporting relatively better performance. However, the policy in these states may not have paid off well in view of lack of enforcement mechanisms, unlike Sudan. The voluntary nature of zakah may not itself have contributed to the poor performance of other states. A more important factor is perhaps the absence of a vibrant network of organizations at different levels. In Lagos (Southern Nigeria) for instance, where state plays no role and zakah management is in private hands, the handful of voluntary zakah organizations seem to have performed well. Similarly, in South Africa, the voluntary zakah organizations have reported excellent performance. Irrespective of whether zakah is compulsory or voluntary, a policy of decentralization seems to have paid off. Thus, zakah is observed to be institution-elastic. It is the presence of a network of healthy institutions at multiple levels – in public or private domain - that seems to lead to greater public awareness and greater public participation in the process of poverty alleviation through zakah.

The coexistence of public and private agencies as zakah collectors raises certain issues. Competition among multitude of zakah institutions brings efficiency and gives more choice to the muzakki. However, competition also presupposes a level-playing field for the players. Where the public agency also assumes the role of the regulator of the zakah sector, it should restrict itself to regulation only, leaving zakah collection to private agencies. Alternatively, the entire process of zakah management should be undertaken by the public agency, as in the Nigerian states, through its own decentralized network. Such a scenario does not preclude the involvement of private players as agents of the public body as is the case with Malaysian states.

The case for having standardized and globally acceptable definitions of zakatable assets and methods of estimating zakah liability does not appear to be a strong one. Since Islamic societies are typically characterized by multitude of madhabs and schools of thought, the zakah laws must retain enough flexibility to accommodate alternative views. The diversity in legal opinions should be respected. However, in societies like Sudan with great homogeneity in Shariah-legal positions, and where zakah is compulsory, the clarity provided by law in the definitions and methods seems to have imparted greater stability and added to enforceability. Where zakah is voluntary, it is more practicable to ensure that zakah estimation is an outcome of consultative process between the muzakki and the zakah collecting institutions.

It was found earlier in the context of South East Asian countries that zakah is sustainable, dependable and could be a growing source of funds for institutions that acquire the necessary professionalism in fund-raising and seek continued betterment in their social credibility through integrity, transparency and good governance. The evidence seems to have lost some rigor in the context of the agrarian economies of Sub-Saharan Africa that display volatility in zakah collections due to changing fortunes in the farming sector.

The zakah sectors in Sudan and South Africa provide supporting evidence that the success or failure of an institution as zakah collector and distributor is not so much dependent on whether it is in government or private hands, but on the credibility and trust it enjoys among the muzakki population. This, in turn is a function of the integrity, transparency and good governance reflected in its practices and as perceived by the stakeholders.

The issue of incentivizing zakah payment is quite crucial. Where zakah payment is made compulsory and non-compliance invites penalties and punishment, weak enforcement can cause zakah collection to be poor, as in case of some Nigerian states. With reasonably strong enforcement mechanisms, as in Sudan, positive incentives (e.g. tax incentives on zakah on salaries) as well as non-financial costs (zakah payment as precondition to other commercial transactions) in various forms work well.

At the same time, where zakah payment is voluntary, its mobilization has not been any less impressive.

Where zakah collection and distribution is entrusted entirely to the state, zakah may be seen as a component of aggregate resources available to the state. In this sense, zakah payment may be seen as a perfect substitute of the direct taxes to the state and may be allowed as deductions to tax payable. However, there must be absolute clarity on the issue as well coordination between zakah and Inland Revenue bodies. The absence of clarity seems to have affected zakah collection in Sudan adversely in the initial stages of operation of the Diwan, but sorted out later with tax incentive being made available only on zakah paid on salaries. In the Nigerian states, on the other hands, the difficulty in coordination between the agencies seems to have resulted in withdrawal of the incentive itself creating further confusion.

In the light of various legal opinions, relating to distribution of zakah among eligible beneficiaries there is a case in favor of a scheme of prioritization among different types of beneficiaries with highest priority being given to the needs of the ultra-poor. Basic consumption needs are, by definition, more urgent than needs that may be deferred to a future date. In this sense, zakah is traditionally viewed as a solution to the consumption needs of the poor. However, there is also merit in using zakah to enhance the wealth-creating capacity of the poor so that they are able to get out of the vicious circle of poverty and find lasting solutions to their needs. A complete neglect of the empowerment dimension is likely to perpetuate the dependency syndrome among the poor.

There is a case in favor of using zakah for covering genuine credit defaults by the poor, since such borrowers qualify as eligible beneficiaries in the eyes of Shariah. There is, however, need for adequate caution while designing an institutional mechanism for this purpose. It is not easy to differentiate between genuine and willful defaulters for any microfinance institution operating with inadequate and imperfect information. The simultaneous functioning of a micro-credit initiative and a zakah-based initiative to cover credit defaults by poor borrowers under the same organizational umbrella may involve serious conflict of culture and moral hazard issues. The Sudanese experiment of using zakah only as a third-level institutional guarantee to MF providers (after post-dated cheques and personal guarantors) is a step in the right direction for a zakah-based credit-default mechanism to evolve.

There is a need to revisit the Fiqh of minorities, as it relates to zakah. The interpretations of asnaf, the definition of zakatable assets, the legal and institutional infrastructure for zakah etc. are largely influenced by whether Muslims are account for a majority or minority among the population.

Zakah management in Sub-Saharan Africa in general seems to have suffered a great deal due to absence of meso-level organizations, e.g. networks, training and education providers, consultancy and standard-setting bodies and advocacy organizations. As a result, public awareness about zakah obligations is extremely low in many part of the region. Data is extremely scarce. Capacity building is extremely important but neglected and large percent of zakah should go to this. A major change in mindset of all stakeholders is needed. There is a lot to be done in the matter of improving the administration and governance and disclosures. Transparency and accountability is a precondition to credibility and fund raising.

Some specific policy recommendations may be made in the context of in-kind zakah like crops and livestock. Due to the vast expanse of agricultural areas and given the hugeness of the monitoring task, the zakah collection efforts may be timed with seasonality of crops, taking periodic breaks after zakah collection is completed for a given cycle of crops. Zakah mobilization should actively involve local committees as a way to build social capital and enhance community solidarity. Local participation should be sought in the collection of zakah on agricultural products of smallholdings, and inventorize merchandize and leased property in the locality. Zakah should be distributed in the neighborhood in order to encourage them to contribute to community solidarity. A large proportion of cattle collected as zakah should be distributed at the collection area itself to save on costs of transportation and storage. The workers engaged in the collection of zakah for cattle may be given a special in-kind incentive for making the rural poor owners of livestock livelihood projects. Zakah bodies should set up their own storage facilities and warehouses to save the crops and livestock.

4

AWQAF

4

AWQAF

Waqf is distinct from ordinary sadaqah in the sense that the benefits flowing from waqf are sustainable by definition. In addition, unlike ordinary sadaqah, zakah and infaq (forms of charitable spending) that are usually in the nature of specific financial flows, a waqf provides for flow of benefits on a sustained basis. Waqf is, thus, a mechanism for institutionalization of charity.

4 AWQAF

The history of waqf is no different from the history of Islam. Historically, waqf has thrived in all Muslim communities. In many societies, waqf-based institutions were the sole providers (with no state intervention) of education, health care, water resources, and support for the poor. The list of social services even included welfare of animals. Waqf by individuals was also supplemented by waqf by the rulers in Muslim-ruled societies. The institution witnessed a decline as Muslim rule ended in many parts of the planet with secular states replacing them. Nevertheless, laws of awqaf that were formulated at different points of time in history remain as a reference point in the context of a revival of interest in this institution with mainstreaming of Islamic economics and finance. It is interesting therefore, to examine the macro legal and regulatory environment of awqaf and the system of waqf management as it has evolved over time and undertake a comparative inter-country analysis to identify the good practices.

Waqf is variously known in different parts of the globe. In South East Asia, it is called "wakaf". It is called "wakf" In countries formerly under the British rule, such as, India, Pakistan, and Bangladesh in South Asia and in Zanzibar in Sub-Saharan Africa. In North Africa, it is called "habs" (plural: hubus). Fortunately, with increasing awareness, some of these differences are giving way to a more common usage. India in its latest legislation has opted for the term "waqf". Nigeria has been more comfortable with the term "sadaqa jariya" but has embraced the term "habs" in recent legislations. Notwithstanding the differences in the terms used to describe the institution, it has a single meaning. Doing a waqf, like ordinary sadaqah and unlike zakah, is a voluntary act. Waqf is distinct from ordinary sadaqah in the sense that the benefits flowing from waqf are sustainable by definition. In addition, unlike ordinary sadaqah, zakah and infaq (forms of charitable spending) that are usually in the nature of specific financial flows, a waqf provides for flow of benefits on a sustained basis. Waqf is, thus, a mechanism for institutionalization of charity. The

An interesting feature of the waqf law in Mauritius is the emphasis on poverty alleviation aspect of waqf through an explicit denial of waqf benefits to the rich.

mechanism of waqf should result in a corpus that is either intact or growing. It has a legal identity separate from its manager and therefore, it is most suitable for creation of an institution in the voluntary or not-for-profit sector. As a legal entity, waqf is also described as an "Islamic Trust". Waqf is also believed to be the precursor to secular trusts, endowments and foundations. Some scholars even see waqf as leading to the idea of modern corporations.

Waqf management broadly has two dimensions preservation and development. A waqf, by definition, creates a sustainable entity, governed by the fundamental principles of perpetuity, inalienability, and irrevocability. The institution of waqf by creating community assets has the potential to create robust sustainable entities that may address the education, healthcare and other social needs in Muslim societies. Therefore, the waqf assets must be preserved and waqf management involves decisions at both strategic and operational levels to preserve and protect the assets against possible attempts by the interested parties that may include the trustees, the public and even the government. Another aspect of preservation is to ensure that waqf assets continue to be put into use and benefits from waqf assets continue to flow to beneficiaries, as intended by the waqif or the endower and as stated in the endowment deed. The second dimension of waqf management is development. This essentially refers to enhancement of the waqf assets and its future benefits. This would include any decision that has this outcome, e.g. creation and addition of new waqf to existing waqf, increase in number of waqif, injection of temporary private capital for reconstruction, reconfiguration and redevelopment of waqf assets that after providing for fair returns to the capital provider, results in enhancement of benefits and returns meant for the intended beneficiaries.

Though the primary objectives of classical fiqh as well as waqf laws in various countries should have been to enhance preservation and development of awqaf, the present status of the institution is hardly encouraging. The potential of the institution of waqf remains largely untapped. Many existing awqaf have been lost. It is therefore considered imperative to revisit the existing laws and create enabling legal and regulatory frameworks at a macro level. There have been welcome developments in the frontiers of knowledge pertaining to waqf (including reinterpretations of fiqhi rules based on contemporary conditions). These can yield very positive results in terms of development of the waqf sector if national laws change to convert the possibilities into realities. Contemporary developments in the Islamic finance sector have also opened up many possibilities in terms of new structures for financing development of waqf assets. In this section, we focus on the six countries in Sub-Saharan Africa and examine the state of the waqf sector.

4.1 Overview of Awqaf Sector

The last issue of the Report focused on countries in South and South East Asia and identified a huge potential for waqf development in countries like India and Malaysia. Countries like Indonesia, Malaysia and Singapore were observed to have development some good practices worth replicating in other parts of the globe. Indonesia has an excellent set of waqf laws while the latter two reported innovative cases of waqf management. In the present sample of countries in Sub-Saharan Africa, we find a similar huge variation. While in Sudan the law has undergone continuous reforms, Mauritius and Zanzibar in Tanzania have well-established waqf laws. The Nigerian states have made recent legislations dedicated to waqf, which are yet to show their impact. South Africa offers a good example of waqf development in the private and voluntary domain.

4.1.1. Sudan

Awqaf have a long history in the Sudan [5]. The earliest Sudanese waqf was a mosque in Dongala al Aguz dating back to the Ninth Century. Another historically important waqf that exists even today is the waqf-al- Sinnariah that was established by the Sultan of Sinnar, in Mecca and Medina for the service of Sudanese pilgrims. Some historians have argued that awqaf in Sudan have been traditionally weak and were enhanced only after the joint Ottoman-Egyptian occupation. However, most of these awqaf were destroyed due to a variety of reasons. The resurgence of the waqfs in the Sudan is a relatively late development. More recently, the central mosque of Khartoum built in 1904, was largely financed by Egyptian awqaf.

The institution of waqf in Sudan, similar to its counterparts elsewhere, steadily deteriorated with changes in the political system. However, a major change in the status of waqf in the post-independence Sudan was the establishment of the Ministry of Awqaf and Religious Affairs and the enactment of the Awqaf and Religious Law, 1980 that conferred on the Minister the general trusteeship of all the awqaf in Sudan. These administrative changes however, had no significant effect until the onset of Islamic revolution in 1989. A federal waqf institution as a body corporate was established in the year 1987 that received legal backing by the waqf law of 1406H (1986). The structure continued under new waqf laws that came into force in 1996 and in 2008. The Waqf Institution called Islamic Endowment Corporation (IEC) has played a central role in the management and development of waqf assets. It is the sole trustee of all waqf assets and has been in the forefront of waqf development using many innovative mechanisms. A selected list of awqaf in Sudan is presented below.

5 This section 4.1.1. on overview of waqf in Sudan has been contributed by Dr Magda Mohsin, Associate Professor, INCEIF.

Awqaf Developed with Private Capital

As mentioned earlier, one of the early examples of waqf in Sudan has been the Waqf-al-Sinnariah in Makkah founded by the Sultan of Sinar in 1880s for the benefit of Sudanese pilgrims. On a later date, the original property was substituted for a developed property in Makkah for the same beneficiaries by the Saudi government under the Islamic mode of istibdal /substitution (since extension is needed for al-Haram in Saudi Arabia, the trustee agreed to this mode.

Waqf al-Baghdadi was established in 1930 on a piece of land. It is essentially 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. The mode involved redeveloping the idle waqf land into an 8-storied commercial building and giving it on a long lease contract for 99 years. Rentals on the ijara are based on market rates. Primary beneficiaries include the medical students of Khartoum University. Part of the waqf revenues is used for the maintenance of the medical faculty, and a part to create new awqaf.

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, situated in the capital city of Khartoum. Using the mode of Diminishing Musharakah the land was developed into a Gold Commercial Center situated in a good location. The new beneficiaries include gold traders, sellers, workers, customers and of course, the poor and needy to whom a part of the rent is channeled.

Still another example of waqf development took place on a piece of idle waqf land located in the city of Abu-Jinzir. The funds needed for development were raised by IEC through issue of waqf shares. Using this mechanism, the IEC raised an amount of SP 90 million towards the cost of building a 10-stored shopping complex with 88 shops. A part of the rent received is allocated to the poor and the needy.

Family Waqf

Sudanese law has always permitted the idea of family waqf (waqf ala-aulad). Below we provide four examples of family awqaf with family members of the founders as the trustees of the waqf.

The Sharwani Institute for Quranic Studies was founded by Abdalaziz Abdallah Sharwani in 1921 located in Khartoum. The property was redeveloped in 1972. Since its establishment, the Institute has been subject to maintenance cost in the range of 20 to 50 thousand Sudanese pounds. It was estimated that the budget needed to redevelop the Waqf was around 200 to 250 thousand Sudanese pounds. It received funds from the Sharwani Waqf committee as well as donations from individuals to cover the cost of redevelopment. The institute also has three commercial shops two of which are rented. The money generated from these shops goes to the institute to be spent on when needed. This waqf is currently under the administration and supervision of the Ministry of Education. Its curriculum revolves around Islamic studies, Quran, Narration of Hadith and all the sciences related to Islamic teachings. Its student intake is very small, roughly 100 students a year. Students who graduate from this institute are able to compete for seats at all of Sudan’s Universities. Regarded as one of the oldest Institutes specializing in teaching Quranic studies, its main objective is raising students who are equipped with enough knowledge to spread the word of Islam locally and internationally.

Alzaytona Hospital in Khartoum was developed from a house of 518 square meters, which was donated by Sakina Ahmed Hassan Abdalmoniem in 1977. The house was developed into Alzaytona Hospital in 2005 by the Federal Minister of Health Professor Mamoun Homeida. The mode of financing used was diminishing musharaka over a 100-year period and the monthly lease rental (determined according to market rates) was to be given to the beneficiaries of the founder. The waqf is supervised by the Awqaf committee of Abdelmoniem Mohammad, one of the family members, who is entrusted with overseeing and managing the waqf and to distribute the rental among the beneficiaries as specified by the late Hajah Sakina according to a formula: 25% for providing education to those in need of funding; 10% for providing healthcare services for the needy and less fortunate; 5% for distribution amongst her family members and the balance for the trustee. Social benefits also include specialized healthcare for patients, jobs for doctors, nurses, workers, ambulance drivers, chef, bakers etc.

The Alsalamabi Healthcare Center founded by Mohammed Ahmed Abdallah Alsalamabi in 1920 is another example of a family waqf located in Khartoum. The original property was developed in 1977 with a budget of 100 to 150 thousand Sudanese pounds that was financed by donations from the descendants of the founder and the Alsalmabi’s charity organization. The waqf falls under the supervision of the Ministry of Health in calibration with Alsalambi’s charitable organization and is run according to their policies and guidelines. It provides healthcare at low fees and includes a pharmacy and a clinical Laboratory to provide assistance when needed. In addition, there are general practitioners and consultants who provide their services at minimum charge if not covered by the insurance and pro bono if under an insurance plan. Alsheikh Mustafa Alamin School (Al-Qurania) is an education waqf founded by Alsheikh Mustafa Alamin in 1983. The recurring operational costs was estimated at around 50 thousand Sudanese pounds, which are financed through the commercial properties that are adjacent to the school and which are also part of the waqf. The shops include a dairy store, butchery and a hardware and depot store. The waqf falls under the supervision of the Ministry of Education and cooperates with the Sheikh Mustafa Alamin foundation. It continues to contribute to the spread of Islam and bring Islamic awareness to students through teaching Islamic sciences including Islamic principles and values to fulfil the purpose for which it was built.

Waqf Future Fund

Islamic Relief Worldwide has set a modern example of an innovative waqf project. This initiative called the Waqf Future Fund was set up in 2000. It is essentially a cash waqf that permits its donors to support numerous ongoing charitable projects. Its Water and Sanitation Waqf offers communities both the practical and educational means to overcome water and sanitation problems to improve their lives. Its Healthcare Waqf supports a range of integrated health and nutrition projects for impoverished people around the world. Various projects undertaken by the Waqf Future Fund in Sudan include; the 2003 Water Sanitation and Wells Project; the 2005 Fresh Meat Distribution Program; the 2003 Mother and Child Health Programme and the 2004 West Darfur Emergency Response Programmed.

4.1.2. Nigeria

The act of waqf is as old as Islam itself in Nigeria. However, the term waqf is not quite common as compared to "sadaka" that is widely used in northern Nigeria. In the northern states of Nigeria, the most popular form of waqf is rooted in the construction of mosques. A 2004 study by Tanko [6] found that fifty-nine per cent of waqf involve construction of mosques. This is followed by the construction of madrasah, Islamiyah or Qur'anic schools. An interesting historical information points to the popularity of the act itself. It is said "when the British colonial rulers in Northern Nigeria took over the administration of the area in early 1900's, they found there about 25,000 Qur'anic schools in the region, wholly supported by the local Muslim communities and lacking any form of government support."[7] With the reform of education in Nigeria after independence of 1960s, the government took over all schools. However, many Quranic schools in northern part of the country continue to thrive outside the purview of the state.

Even today, these Qur'anic schools exist in many areas of the Northern Nigeria. These Islamic schools provide education to low income earners, as there is no formal fee structure for attendance or enrolment. It is virtually free education offered for all. Thus, the contribution of these schools in educating the children is enormous. In fact, it was estimated that two-thirds of all school age children attend Islamic schools in Northern Nigeria (Theobald, 2007, cited in Akyeampong et al, 2009).

A 2010 study by Galadanchi[8] found that, in Kano state alone there were over 14,000 Quranic schools, 5000 Islamiyah schools and a little above 2000 secular schools. This showed the continued survival of these schools, though many sought to offer modern education along with religious education. From this figure, an estimate may be developed for entire Northern Nigeria. The number could be as high as 80,000 Quranic schools and 30,000 Islamiyah schools respectively. These schools are well rooted on the concept of waqf and doing good for the community.

Galadanchi systematically traces the development of modern Islamic education providers in Nigeria as follows:

- 1950s and early 1960s: At this stage, Islamiyah schools began to be established in some parts of the Northern Region. These schools which were generally at the primary level attending to young children had a curriculum that extended beyond Qur'anic recitation and memorization to cover other areas of Islamic knowledge
- 1980s: Islamiyah primary and secondary schools were established that attempted to integrate Islamic and secular western educational systems. These schools tried to combine the curriculum of the Islamiyah (General) schools (Islamic subjects such as Fiqh, Hadith, Seerah, Qur'an and Arabic) with that of the conventional secular schools (subjects such as Mathematics, English, Science and Social Studies).
- Late 1980s and early 1990s: General tahfeez, tahfeez primary and tahfeez secondary schools emerged that were modeled along the lines of the various variants of Islamiyyah schools with the distinction that special emphasis is given to the recitation and memorization of the Holy Qur'an.

6 Tanko, A. A. (2004) Waqf and socio-economic development in the North West Zone of Nigeria, Ph.D Thesis, Department of Business Administration, Usmanu Danfodiyo University, Sokoto.

7 Theobald, D., Umar, A., Ochekpe, S. & Sanni, S. (2007), Nigeria: Country Case Study, Country profile prepared for the Education for All Global Monitoring Report 2008 Education for All by 2015: will we make it?, UNESCO, Paris, 2008/ED/EFA/MRT/PI/75, 39 and Akyeampong, K. Sabates, R. Hunt, F. Anthony, J. (2009) Review of Research on Basic Education Provision in Nigeria, Centre for International Education University of Sussex.

8 Galadanchi, Bashir S. (2010) Synthesizing Traditional and Modern Knowledge: The Nigerian Experience, Delivered at the International Conference on Islam and Higher Education IAIS, Kuala Lumpur, Malaysia.

- 1980s and 1990s: Establishment of diploma programs in universities and other tertiary institutions that cater for the students of the traditional Islamic system
- 2000 to date: Establishment of Islamic universities and attempts to integrate the traditional system with the conventional system.

Besides being providers of education, examples of awqaf include donation and dedication of buildings by wealthy Muslims to be used as residences of guests on 'legitimate' trips, especially for visits to historical Islamic sites.

Zamfara was the first northern state government to establish a Waqf Fund and to disburse money and other services to the poor and needy. This was followed by governments of other northern states such as Sokoto, Kebbi, Kano, Kaduna, etc. As discussed in the section on regulatory and institutional framework for zakah, the infrastructure created for management of zakah also included that of waqf funds. The same set of laws, albeit with exclusive provisions defined the regulatory environment for both zakah and waqf. These are discussed in further detail in the relevant section below.

There are some good examples of waqf-based-organizations created in Nigeria. The list includes the Ahmed Deedat Foundation, named after the renowned international Islamic scholar, the late Ahmed Deedat of South Africa in Kano state in early 2007 by the Kano state government. The first Islamic University in Nigeria commissioned in Katsina state is also a waqf. Another example is the mosque complex in Damaturu, capital of Yobe State, which is regarded as the second largest mosque in Africa (the largest mosque being the one in Morocco). It consists of schools, staff residential quarters, research centers, libraries, shopping malls, etc., all as waqf.

Before the reintroduction of the Shariah in the northern states, however, a number of Islamic Trusts had emerged in the region. These included the Islamic Education Trust (IET) with its headquarters in Minna, Niger State. The other is the Islamic Education Trust (ITN) based in Zaria city, seat of the famous Ahmadu Bello University. There is also the Islamic Foundation, which is based in the city of Kano. Similar Trusts, registered and unregistered, big and small, are found all over the North. All the three Trusts cited above are registered with government. The Trusts operate primarily in the area of tertiary and higher education. A parallel development has been the establishment of modern madrasah complexes comprising schools, residential quarters for teachers, and shops to serve as means of generating funds to support the schools.

Zamfara State

As mentioned earlier, the State zakah (Collection and Distribution) and Endowment Board in the state of Zamfara has been collecting cash waqf in addition to zakah. The sources include individual charities, salary deductions through institutions/organizations in the public as well as private sector in the state. Waqf from individuals so far include cash of N3, 000,000 annually, 12 houses, 22 plots of land, 325 hectares of farmlands, 3 schools, 8 shops, 8 mosques, 9 boreholes and 2 motorcycles among others. The table below shows summary of waqf mobilization from 2003-2010

Table 4.1: Growth of Waqf Sector in Zamfara (Nigeria)

Year	Amount (mill.N)
2003	2.1
2004	26.2
2005	72.1
2006	54.1
2007	79.9
2008	81.8
2009	89
2010	90.5
2011	210.4
2012	351.3
2013	400

From the table above, it appears that the waqf funds mobilized by the state agency experienced a healthy growth year after year during 2003-13.

The waqf property that are economic and business related include 46 plot of lands; 40 shops; 304 farmlands and 16 schools. In terms of distribution, the state zakah and endowment board uses multiple methods including empowerment, cash transfers to the poor, education and training, food and medical assistance, building and farming assistance among others. For sustainability, the board has also invested N2million in Jaiz bank, the first and full fledged Islamic bank in the country. From the waqf, about 6000 orphans are assisted annually with N8, 000,000 ($50,000USD).

Over the last decade, the Board also generated 545,000,000 (3,406,250) from government contributions and the one-percent contract deductions (by law, for every approved contract in the state, one percent is deducted and remitted to the Board). Using waqf resources, the Board has executed various projects, such as, building and equipping of a modern hospital for the orphans and the less-privileges at the state capital of Gusau; building and equipping of 17 clinics for orphans in 17 emirates of the state; building of 8 primary schools for the less privileged. Other capital projects carried out include a Secretariat at the headquarters at a cost of N150million, a mixed development (business plaza and housing units) at a cost of N148million, a warehouse at a cost of N35 million.

Recently, the Board has embarked on generating livelihoods and supporting microbusinesses, such as, through providing machines to micro-entrepreneurs (grinding machines, and sewing machines) as well as motorcycles for transportation.

Bauchi State

As stated earlier, the state has a Commission to manage both zakah and waqf. As part of its efforts to realize the full potential of waqf in the state, the Commission has introduced various waqf accounts for different categories of people, particularly the high net worth individuals. These are: i. Emirate Endowment (Waqf) Accounts; ii. Political Leaders Endowment (Waqf) Accounts; iii. Women Endowment (Waqf) Accounts; iv. Business Endowment (Waqf) Accounts; and v. Government Endowment (Waqf) Accounts.

The funds so far received as cash waqf amount to N5.03 million and the plans for expenditure include building a house for Misau Local government; building and equiping of Misau general hospital.

4.1.3. Mauritius

The Muslim community of Mauritius represents 17 percent of the total population of 1.2 million people. Since the year 1805 when the first mosque was built, the community has contributed significantly towards establishment of mosques, charitable and educational institutions. A large number of awqaf were created by Muslims merchants and traders during a period of economic prosperity towards the end of the 19th Century.

The country was among the early states to create a modern and dedicated law of waqf, the Waqf Act 1941 under which it set up a Board of Waqf Commissioners to protect the community wealth and assets. As on date there are a total of 377 waqfs comprising 105 family waqfs, 150 religious waqfs, and 122 philanthropic waqfs. While some waqf properties have been developed and producing sustainable income to their beneficiaries, others due to lack of funds are in a deplorable state and are not meeting the purpose set by the waqifs.

Table 4.2: Number of Waqfs Registered with Board of Waqf Commissioners in Mauritius

Period	No. of Waqf-ul-Lillah	No. of Waqf –ul-Aulad	No. of Total Waqf
Before 1943	33	2	35
1944 -1953	49	51	100
1954 -1963	39	15	54
1964 -1973	48	11	59
1974 -1983	37	7	44
1984- 1993	36	5	41
1994- 2007	30	14	44
Total	272	105	377

Source: Board of Waqf Commissioners, Mauritius

In Mauritius the religious waqf and the philanthropic waqf are grouped under waqf-ul-lillah, the family waqf is classified as the waqf-ul aulad. The first waqf registered under the Waqf Act dated 26th February 1942 and was a family waqf (waqf-ul aulad).

Table 4.2 shows the evolution of different types of waqfs since the Waqf Act came into force. The awqaf–ul-lillah comprise 150 waqfs for mosques while the remaining 122 waqfs represent general purpose philanthropic waqfs. These philanthropic waqfs support largely educational, vocational, social, charitable and religious institutions. The waqf–ul-lillah has been developing at a faster rate than the waqf-ul aulad possibly due to an increasing number of mosques. However, during the period 1994-2007, there is a fall as many mosques, 52 in total, were not registered as waqf. Many religious organizations have found it more convenient to administer their mosques within the parameters of the Law of Associations rather than registering them as waqf properties. On the other hand, waqf-ul aulad appears to be much favored in the 1950s than over the recent five decades. A possible reason cited for the declining popularity of family waqf is the increasing number of conflicts among a growing number of beneficiaries after two generations[9].

4.1.4. South Africa

The Muslim community of South Africa has a similar history and equally impressive record of accomplishment in creative awqaf. The first waqf in the country is a religious waqf, the Auwal Masjid, Cape Town that dates back to 1798. It is estimated that there are currently close onto 1000 Masjids in the country.

South Africa does not have dedicated waqf law. However, its legal framework provides for establishment of public benefit organizations under which Islamic NGOs have been established. Efforts by some Ulama has led to the emergence of NGOs whose primary concern have been Islamic education, burial societies, halaal services, etc. They also established Darul-Ulooms to train Imaams/Moulanas. Today, many of South Africa's Darul-Ulooms train students from other parts of the world. Many Islamic NGOs have also been set up by businesspersons. These NGOs focused primarily on serving the welfare needs of the Muslim community, including establishing orphanages and feeding programs. Some of the well-known Islamic NGOs include Awqaf SA and Helping Hands.

4.1.5. Tanzania

The institution of waqf existed centuries ago in Tanzania, but its formal establishment was due to the settlement of Sultan Sayyid Said bin Sultan in Zanzibar in 1832. The British rulers enacted the legislation to regulate the awqaf institutions during the colonial time, which shows the presence of the waqf institution before and during the rule. In fact, in Tanzania, like in other colonial countries, all legislation including waqf laws were greatly influenced by the British rule. Tanzania inherited the Wakf Commissioners Ordinance of the British government, which continued for some time even after independence. The Zanzibar, which is a part of Tanzania, has made many changes and amendments in the waqf laws from time to time.

The full record of waqf property is not available. However, different reports on the waqf properties throw some light on the size of the sector. A study[10] reports that in 1944, the Waqf Commission managed 6.4 % of the total houses of the Zanzibar Stone town. The 1949 record of the Waqf Commission shows that it had 165 houses, 110 plantations and various pieces of land including graveyards. The revenue generated from the property was used for the purpose of maintaining the properties and making payments to waqf officials of various mosques in Zanzibar.

The Government Housing Department prepared a preliminary inventory of buildings in Stone Town in 2003–04, which recorded the following data[11] :

- Waqf tenants: 537 names;
- Housing department: 1,399 names;
- Standing buildings: 1,700; and.
- Number of doors: 2,400.

The old mosques in urban areas of Tanzania, and Dar es Salam, in particular, maintain most of the existing awqaf institutions, which have not properly been managed and have rather been misused over the decades. The income of the property is used for meeting the expenses of thee mosques. However, in most of the cases, the details related to revenue generation and the expenses are not open to outsiders [12] .

9 The above section draws on Najmul Hussein Rassool, Waqf: A Mauritius Case Study. This and the subsequent papers referenced in this section were presented at IRTI International Conference on Developing Waqf Institutions held at Cape Town, South Africa

10 Issa Ziddy, Experience and Challenges of the Administration of Waqf Institution in Zanzibar

11 Saad S. Yahya, Compassion and Development: Addressing Social Infrastructure and Poverty Issues in East African Cities through Wakf Endowments

12 Benhajj Shaaban Masoud, Towards Developing Waqf Institutions for Sustainable Community Development in Tanzania: Relevance of the Waqf Legislation and Current Practice

4.1.6. Kenya

The institution of waqf dates back to the time when Islam spread in Kenya, particularly in the coastal areas of Kenya. Since then, the institution of waqf has been used for social and religious purposes, such as financing of schools, madrasas, mosques, wells and graveyards. The British ruler established the Waqf Commission in 1899 to manage waqf property in the Protectorate-10 mile coastal strip, which was previously under the rule of Sultan of Zanzibar. The Wakf Commissioner Ordinance was passed in 1900, which provided the basis for the current Wakf Commissioner Act (Cap 109) that has been amended from time to time.[13]

A study reports that about 500 properties including townhouses, suburban plots and coconut groves have been recorded in the registrar's books. The waqf properties generally have been leased out at low rentals (a practice similar to other countries) despite their high market values. The Commission has largely been unsuccessful in raising rentals to market levels from their historical low levels. Over the years, there has been a significant reduction in new waqf creation as evident from the register that shows 17 registrations only during 1980-89 as against 31 in 1941 alone. The county has been experiencing stagnation in new waqf creation for the last 30 years[14].

4.2 Regulatory and Policy Framework

In this section, we undertake a comparative analysis of the institutional and regulatory environment for management of waqf across countries in the region under focus.

The law governing awqaf in Sudan is titled the law of Islamic endowment (1996). The current version of the law is an outcome of a long evolution. The Shari'ah Courts Law was promulgated in 1902. The bylaw of this law, issued in 1903, regulated these courts and Article 53 set forth that the Sudanese waqf system would henceforth be subjected to the Hanafi code. The next major development in the Sudanese waqf system occurred with the promulgation of the Islamic Charity-Waqf Law, 1970, according to which, the Ministry of Religious Affairs obtained the right to manage the waqf system and reserved the right to appoint a nazir. This law remained in power until 1980 when the promulgation of a new law; al-Awqaf and the Religious Affairs introduced further centralization. Accordingly, the Minister of Religious Affairs was appointed the General Administrator, nazir 'am, for the waqfs. A federal waqf institution as a body corporate was established in the year 1987 that received legal backing by the waqf law of 1406H (1986). The Waqf Institution called Islamic Endowment Corporation (IEC) has been playing a central role in the management and development of waqf assets. A comprehensive piece of legislation, the Islamic Waqf Authority Act of 1996 was enacted that retained the federal structure of awqaf management in the country. This was replaced in 2008 by a new law is called "the Diwan of the National Islamic Endowments Act of 2008".

In Nigeria, the constitution of the federal republic, section 272(2) (c) mandates Sharia court of appeal to decide on Waqf or "any question of Islamic personal Law regarding a Waqf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim." However, in most of the states there was a challenge of compromising this act with the land use act, which allowed the state government to allocate and take ownership of lands." Out of 12 provinces with significant Muslim population that have adopted Shariah as the source of their legislation 9 have already implemented the laws. Kaduna has already drafted the law and will be the 10th province to have a waqf law shortly. Sokoto as the 11th such province has initiated the process for enactment. Gombe is the only province that is yet to take any step in this regard. of all, only two provinces - Borno and Yobe – have enacted regulations and rules to facilitate waqf management. These developments were based on the section 4, sub section 7 of the 1999 federal constitution, which gives rooms for introduction of Shariah in any state that wishes to do so. The list of the laws covered in this section include the following:

13 Kahumbi Maina, The Wakf Commissioners Act (Cap. 109): Regulatory Perspectives and Impediments to the Growth of the Waqf Institution in Kenya.
14 saad S. Yahya, Compassion and Development: Addressing Social Infrastructure and Poverty Issues in East African Cities through Wakf Endowments.

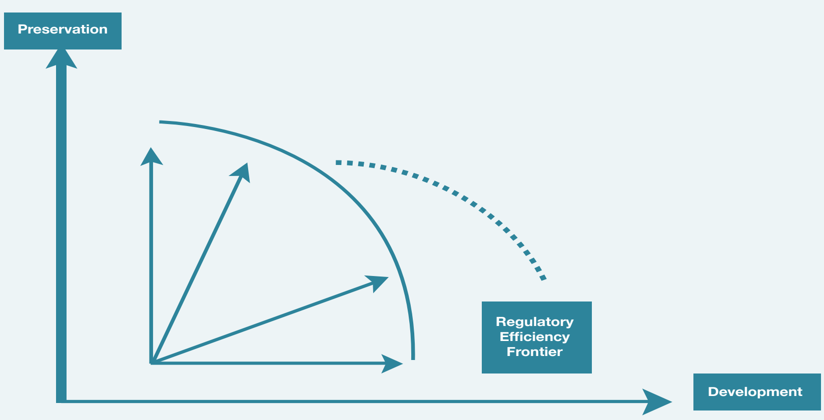
1. Bauchi State zakah and Endowment Fund Collection, Administration and Distribution Law, 2003.
2. Zamfara State Zakah (Collection andDistribution) and Endowment Board Law, 2000, 2003.
3. Niger State Zakah (Collection and Distribution) and Endowment Board Law, 2001.
4. Zakah Collection and Distribution Committee Law 2000, Jigawa State.
5. Kano State Zakah and Hubusi Commission Law 2003.
6. Katsina State Sharia Commission Law, 2000.
7. Borno State Zakah and Endowment Board Law, 2001.
8. Yobe State Religious Affairs Board 2001.
9. Kebbi State Zakah and Sadaqat (Collection and Distribution) Board Law, 2000.

As mentioned earlier, Mauritius was among the early states to create a modern and dedicated law of waqf, the Waqf Act 1941. This Act underwent major amendments in the year 1991-92.

Box 2: Understanding the Regulatory Trajectory

A careful analysis of the Shariah-legal framework for Islamic endowments across the globe reveals that the Shariah law as well as the national laws of awqaf are rooted in several considerations. Preservation of the endowed assets seems to be the overriding consideration, which has been interpreted variously as preservation of the assets in their physical form as well as preservation of benefits for the intended beneficiaries. While the former manifests in the form of stipulations such as, prohibition of sale, gift, mortgage that might lead to transfer of ownership of the waqf assets, the latter requires prudent management of the assets, efficiency in their investment as also, their development. Development may actually lead to expansion of the benefits for the intended beneficiaries and may at times require a degree of dilution in the stipulations concerning preservation. In the subsequent section, we present a framework for analysis of actual laws and regulations as they are put in place over time. A recent study with examples from Indian waqf laws demonstrates that these have often involved a tug-of-war and a trade-off between concerns about preservation of assets in physical form and concerns about development.

Figure 4.1. Regulatory Efficiency Frontier



In order to get a proper appreciation of the way the laws have evolved over time, it presents the concept of Society's objective function for laws-regulations-rules-policies. It hypothesizes that the objective function for laws-regulations-rules-policies pertaining to Islamic endowments is determined largely by the Islamic scholars who happen to lead the Muslim masses in matters of religion. In a democratic set-up, the laws simply seek to catch-up with and capture the objective function over time. We hypothesize that given the large-scale encroachment of awqaf assets by rulers, the scholars' and society's primary objective has been the preservation of assets. However, over a period of time one may witness a shift in the objective function from (i) preservation of assets to (ii) preservation of benefits for the intended beneficiaries and vice versa. For instance, such a shift in the objective function is believed to have taken place as one finds an increasing discussion of the concepts of ibdal and istibdal in the scholarly domain. Arguably, this may occur in the face of an increasing realization that the objective function may need to be modified to (iii) sustained enhancement in benefits for the intended beneficiaries. This would also ensure the fulfillment of (i) and (ii). Society's objective function may be presented in a two dimensional space as Regulatory Efficiency Frontier (REF) with the two dimensions being preservation and development. Creation of an enabling legal-regulatory-policy environment would involve a search for laws of the following types:

1. Laws that enhance both preservation and development: a movement towards the Regulatory Efficiency Frontier.
2. Laws that enhance preservation without adversely affecting development (a vertical move upwards).
3. Laws that enhance development without adversely affecting preservation (a horizontal move to the right).

Search for efficiency should involve movement of the 1-2-3 types. Society will optimize efficiency gains at the Regulatory Efficiency Frontier (see chart 1). Any further change would mean enacting laws that ensure greater preservation only at the cost of development and vice versa: a movement along the Regulatory Efficiency Frontier (trade-offs between concerns of preservation and concerns about development). A shift in objective function itself (relative importance attached to concerns about preservation and development) would mean a change in the shape of the REF.

Source: Obaidullah, M. (forthcoming) "A Framework for Analysis of Waqf Laws" International Journal of Not-for-Profit Law, International Center for Not-for-Profit Law .

South Africa has a law for non-profit-organizations that is relevant for its organizations engaged in mobilization of zakah and awqaf.

In Tanzania including Zanzibar, waqf laws have undergone many changes from time to time. While Tanzania has historically enacted waqf laws, these have not been applied in practice in the mainland and has been operational only in its Zanzibar province. Zanzibar itself has a long history of awqaf regulation, such as, the Wakf Validating Decree, Cap 104, Wakf Property Decree, Cap 103, Wakf Property (Amendment) Decree, No. 12 of 1966 and finally, the Wakf and Trust Decree No.5 of 1980 that have been repealed in favor of a new law, the Wakf and Trust Commission Act, No.2 of 2007.

In Kenya the Wakf Commissioners Act, Cap 109 (1981) administers waqf property. This Act has been revised several times since the first Wakf Ordinance was enacted in 1900. The Act amended previous laws relating to waqf property and established the Wakf Commissioners of Kenya as a quasi-autonomous body with corporate powers to administer the waqf property. For example, the 1900 Ordinance was revised and amended severally in 1935, 1951, 1964, 1971 and 1981. The latest 1981 version of the Act is spelt out as "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."

4.2.1. Institutional Infrastructure

Sudan

Sudan has a federal structure for management awqaf as well (similar to management of zakah). At the center, a general institution called the Diwan of National Waqf has been established as a body corporate (Section 4-1) for preservation, management and development of awqaf in Sudan. Subsection 2 permits the Diwan to establish different branches in other cities in Sudan and overseas with the approval of the competent minister (as determined by the President of the country). Subsection 3 establishes a Board of Trustees and subsection 4 entrusts the competent minister with a general authority in supervising the institution.

Section 10 empowers the Board of Trustees with full authority and autonomy required for implementation of the national policy of the Diwan in accordance with the provisions of this law. Members of the Board will be nominated by the Council of Ministers on the recommendation of the competent minister. The Board will have a Chairman, a Secretary-General, thirteen members who are intellectuals and men of standing and five members selected by the Board of Trustees. Section 14 provides for establishment of the General Secretariat of the Diwan. Section 14 provides for appointment terms, role and function of the Secretary General who is the chief executive officer of the Diwan.

Nigeria

In Nigeria, zakah and awqaf are managed by the same institutional mechanism. As mentioned earlier in the chapter on zakah, in Zamfara state the Zakah Collection (Distribution) and Endowment Board is established by law as the apex body for management of zakah as well as endowments. In Zamfara, the law relating to waqf has been added as an extension to the existing law on zakah in 2003. Section 5 of its law now includes in the list of objectives of the Board a new mandate "to make plans, rules and regulations for the good management of endowment."

In Bauchi state, section 3 of the law established a Commission for this purpose. In Niger state too, the Board of Zakah Collection, Distribution, and Endowment is the apex body created by law.

In Kano state, section 3 of the law provides for establishment of the Kano State Zakah and Hubusi Commission. The law provides for a decentralized structure with agencies at state and village levels. In Katsina state, a body called Katsina State Zakah and Endowment Trust Fund is entrusted with management of zakah as well as waqf funds. In Kebbi state, the Kebbi State Zakah and Sadaqat Collection and Distribution Board is the apex body. Thus, waqf funds are subsumed under sadaqa.

Mauritius

In Mauritius, the Board of Waqf Commissioners is the apex body for preservation, development and management of awqaf. The Board under the Prime Minister's office, comprises fifteen members. According to section 49, the President appoints at least four Muslim members as well as the Chairman of the Board (who may not be a Muslim) for a period of one year at a time. The Board acts as a corporate body. The Board functions as a supervisory body as the management of each waqf falls under the responsibility of a mutawalli. The President has the powers to make regulations for the Board.

The Board has a secretary who acts as its executive officer. It also appoints staff as well as members of three different committees, the Waqf committee, the Finance committee and the Election committee. Each committee has a special function, for example the waqf committee oversees all matters relating to the administration of all waqfs, the finance committee is mainly concerned with the revenues and annual audited accounts and returns of the waqfs and the election committee focuses on election of mutawallis of mosques as well as settling disputes in matters relating to the election. All the recommendations of the committees are submitted to the Board for approval. Once the Board approves the recommendations, they are executed by management.

The Board has the following powers according to section 50 of the Waqf Act 1941:

1. Supervise generally the administration of any waqf property by its mutawalli, in accordance with the terms of the Waqfnama, and for that purpose have access to the waqf property;
2. Supervise the finances of all waqf property, require the submission each year of properly audited accounts relating to every waqf, and submit to the President an annual report upon the financial position of all waqf properties;
3. Keep a register of all waqfs;
4. Call for all information, whether documentary, or oral, of which they may be in need, and summon by registered letter any person before them, including the mutawalli, for this purpose, and examine witnesses on oath;
5. Apply to the court in any of the cases of any alleged breach of trust in the management or administration of a Waqf, or where the direction of the court is deemed necessary for the management or administration of a waqf.

The Board does not receive any fund from the Government but the Waqf Act (section 49) makes provision for an annual levy of not more than 3% of the gross total income of each Waqf property for defraying any expenses that may be incurred by the Board in the execution of its duties. Since 1965, the levy was reduced to 2.5%, an indication of the extensive value of the waqf properties under its jurisdiction and supervision.

Section 62 entrusts the task of making regulations to the President for the purpose of this Act. Any party contravening of such regulations shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 6 months.

Tanzania (Zanzibar)

In Tanzania, waqf institution is regulated by the Wakf Commissioners' Ordinance. The legislation established the Waqf Commission of Tanzania, which consists of eight members, majority of whom must be Muslims, including a Chairman and a Secretary appointed by the President. In Zanzibar, section 3 and 4 of the law established the Waqf and Trust Commission to administer waqf and trust property as well as the estate of deceased Muslims. Section 5 establishes a Governing Board of the Commission comprising a Chairman, the Executive Secretary appointed by the President and not less than three and not more than five other members appointed by the respective Minister. This was a departure from earlier law of 2001, according to which the Mufti of Zanzibar was the Chairperson of the Waqf Commission.

Kenya

To manage the waqf property, the government of Kenya, under the Wakf Commissioners Act, June 1951, created an autonomous body called, the Wakf Commission of Kenya with corporate powers. Section 6 of the Act provides details on membership of the Wakf Commission. All eight members are appointed by the government and include the Chief Kadhi, the provincial commissioner and six other members. The other six members are nominated, after seeking the opinion of the Muslim community, by the provincial commissioner for appointment by the Attorney General. The Act is however, silent on how to gauge Muslim opinion and the composition of the commissioners weighs heavily in favour of the government. Hence, the Wakf Commission remains a tool of the government, liable to manipulation. All the commissioners are government appointees directly or indirectly. Section 6 of the Act gives the PC a lot of power in the appointments of the commissioners. The PC is a political appointee of the President, which ultimately translates in to making the Wakf Commission a political office.

4.2.2. Creation of New Waqf

In Sudan, section 5 outlines the objectives of the Diwan, which include scientific planning to expand areas of waqf to include all types of land and services and social and economic development, conducting scientific studies and research on awqaf, and carrying out training and capacity building and institutional development in the field of endowments at home and abroad in coordination with the Northern states. It specifically mentions that one of the objectives of the Diwan is to encourage citizens to do waqf.

In Zamfara state of Nigeria, section 32 of the law encourages the creation of new waqf by requiring that: (1) the Government pays 2% of the total revenue accrued to the Board monthly as endowment and (2) the contractors give 1% of the total sum of each contract awarded by the State Government to the Board as endowment. It goes on to identify other sources of waqf as: (a) estates; (b) farmlands; (c) shares in companies; (d) centers of learning like schools, libraries and institutions; (e) centers of worship like mosques; (f) social amenities like wells or boreholes; (g) orphanage homes; (h) part of salary; (i) special grants by Local and State Governments; (j) foundations; (k) social services like roads and hospitals; (l) lost and found items in all parts of the State; (m) inheritance of those who don't have heirs; (n) donations; and (o) other forms of sadaqa jariyyah.

In Zanzibar however, there are checks on creation of new waqf. Section 17(3) asserts that the creation of any private waqf after commencement of the Act shall be invalid unless registered by the Commission. Further, according to section 31 (2), neither the endower nor the trustee can build a mosque without prior consent in writing of the Commission.

4.2.3. Perpetuity, Inalienability & Irrevocability

Sudanese law section 19 asserts that waqf funds are like public funds, and must be preserved in their original state. Other provisions in law that enhance preservation include:

- Section 6 defines the key task of the Diwan as "supervision of the national endowments inside and outside the Sudan to ensure its preservation and efficient use"; and "ensuring the implementation of the conditions put by the endower" (subsection a-b).
- Section 25 exempts all national endowments - real estate, industrial, commercial, agricultural and services and its investments - from all duties and taxes imposed by the state and, in particular: the types of taxes, including VAT, other fees, the litigation fees, land and space charge registration fees and any other national fees, and the business profits tax.

In Nigeria, section 33 of Zamfara state law explicitly states, "Once dedicated for endowment, the property ceases to be under the control of the owner and: (a) such endowment cannot be inherited, donated or sold out by anybody unless to improve them; (b) there shall be witness and certificate to testify that the owner(s) have released the property and (c) the endowment department and the Board are the trustees to administer the properties in such a way that the benefit goes to the general public or those persons to whom the endowments are made.

According to law in Mauritius, a waqf must be in perpetuity. Further, in cases where a waqf is not expressed, or does not purport, to be limited in point of duration, it shall be presumed to be made in perpetuity, and effect will be given to it accordingly (Section 18). After the completion of a waqf, the subject passes out of the ownership of the waqif. It shall not be alienated or transferred, by either the waqif or the mutawalli, nor may their heirs take it by way of inheritance (Section 19). Where the subject of a waqf is unlawfully alienated, any person interested in the object of the waqf may apply to the court to have the alienation set aside and effect given to the waqf (Section 20).

Section 25 says that a declaration of waqf is void where it is made for a limited period. Section 26 asserts that a waqf cannot be revoked or altered. No portion of the declaration of waqf can be altered by the waqif after the waqf has been declared, unless the power to alter has been reserved in the declaration of waqf. However, a testamentary waqf may be revoked by the waqif at any time before his death. A waqf created with a power reserved to sell the subject of the waqf and to expend its proceeds on the waqif or where the waqif retains an option to revoke it, is void. At the same time, a declaration of waqf may validly empower the waqif to exchange any land forming the subject of the waqf for other land, or to sell the land and to purchase other land in exchange for it and the land so taken in exchange or purchased shall become subject of the waqf (section 27).

Further section 56 exempts all waqf property from attachment sale in execution of a judgment against the mutawalli, nor may the rents and profits be seized in execution.

In Zanzibar, section 22 of the law says that all waqf properties vested in any manner or under the control of the Commission shall be administered in strict accordance with the intentions of the dedicator. However, when the same is unlawful, impracticable, or unascertainable or when there is surplus after meeting the original objectives, the Commission can channelize the same towards benefit of Muslims. Section 23 even empowers the Commission to sell the property with approval of the Minister where the intentions of the endower cannot be reasonably carried out. Section 24 considers as invalid all case of sale, lease or any form of alienability of the waqf asset for over a year unless the sanction in writing of the Commission has been obtained.

Recovery of lost waqf

In Sudan, section 6 (i) empowers the Diwan "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. Section 24 excludes endowments from application of the provisions of the Civil Transactions Act of 1984 and any other superseding law. It also applies the provisions of the evacuation of public buildings Act of 1969 and subsequent amendments to endowments.

In Zanzibar, section 16 provides for recovery of all awqaf that had remained outside the purview of the Commission. It empowers the Commission to take control of administration of such property with a six-month' notice period. Subsection 5 stipulates that anybody seeking to restrain the Commission shall be guilty of an offence and upon conviction shall be liable to fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years. The law also requires the registration of all private awqaf with the Commission (Section 17).

4.2.4. Elements of Waqf

Waqif (Endower)

In Nigeria the Zamfara state law restricts making of waqf to Muslims only and states that endowments shall be received (by the Board) from any individual persons or groups who profess Islamic faith, and who is resident in the State or outside of any part of the Muslim World and who is the rightful owner of the property endowed (Section 31).

In Mauritius, the law differentiates between Sunni and Shia Muslims as waqif. While all waqf by the former will be governed by the law, the waqf in case of latter will be subject to the law as long as there is no conflict between provisions of the law and the Shia law, in which case, that matter shall be decided by the court in accordance with the Shia Muslim law of waqf.

In Kenya, the law differentiates between persons belonging to various races as waqif. The definition of a "Muslim" in section 2 of the Act remains the same as that of the 1951 Ordinance and other previous ones, which stated, "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". It is believed that this definition served the interests of the colonial government and the Muslims of the Coast Province then, in the current context, such differentiation is archaic, meaningless, narrow and divisive. This is because the provisions, scope and definition exclude Muslims from other parts of the country such as North Eastern, and others living in the interior urban centres and rural villages.

In Zanzibar, law is rather ambiguous regarding the identity of the waqif. However, section 2 defines waqf as "a transfer of the origin of the property in order that the benefits from that property are used for the purpose of Islamic religion."

The Process

Section 3 of the Sudanese law explicitly recognizes waqf khairy or philanthropic (social), waqf al-ahli or family waqf and waqf mushtarak or jointly owned waqf.

Section 5 of law in Mauritius permits a waqf to be registered through a declaration made overseas. Section 6 deals with declaration of waqf made by will subject to the condition that the waqf is purported to be made of property, which exceeds in value that portion of the waqif's estate, which may be bequeathed by will. It is valid and effective as to such portion, and void as to the excess, unless the heirs of the waqif consent to the waqf. Further, a waqf made for the benefit of a mosque is valid, if the heirs of the waqif consent to the waqf and void otherwise.

Section 9 provides the conditions under which a waqf shall be invalid as: (a) where a waqf is created or declared in such circumstances that the rights of creditors are, or may be, defeated or delayed; or (b) where at the time the waqf was created the waqif was interdicted, insolvent or bankrupt.

Any person claiming that his interests are prejudicially affected by the creation or declaration of a waqf, or otherwise, may, within 3 years from the creation of the waqf, apply to the court for an order declaring the waqf to be void.

In Zanzibar, section 17 (3) says that the creation of any private waqf after the commencement of the Act shall be invalid unless registered by the Commission.

In Kenya, the registration of waqf depends on whether the property is movable or immovable.

Waqf related to movable property is registered under the Perpetual Trust Act whereas waqf dealing with immovable property may be registered under the Registered Land Act or under the Registration of Titles Act.

Mawquf (Endowed Asset)

Section 32 of Zamfara law in Nigeria states that “items to be received as endowment include all lawful items permitted by Sharia and of any amount and quantity.”

In Mauritius, the law deals extensively with this issue. Section 21 stipulates, “The subject of waqf may consist of any property other than things which are consumed by use.” Section 22 states that “the subject of waqf must be owned by the waqif at the time when the waqf is made.” Further, “the subject of waqf may consist of an undivided part of property notwithstanding that the property is divisible except when the object of the waqf is a mosque or a tomb (Section 23).” Section 25 rules out waqf in an object, which will fail, which is prohibited by Islam, when it is not defined with certainty.

Section 28 sets the priority for application of the benefit, income, or proceeds of the waqf property as follows: (a) for the maintenance and repairs of the subject of the waqf, (b) for the specified object of the waqf, (c) for that which is necessary for the general purpose of the specified objects; and (d) for the benefit of the poor.

Where a waqf is created for mixed purposes, some of which are unlawful, effect shall be given to those purposes, which are lawful, and so much of the property as is dedicated for unlawful purposes shall revert to the waqif (Section 29). Where the beneficiaries under a waqf consist of a number of persons, and they all disclaim their interest under the waqf, the whole of the benefit shall be divided to the poor (Section 30)

Mawquf Alaihi (Beneficiary)

Section 7 of law in Mauritius lays down the provisions regarding family waqf.

It says, “Provision may validly be made in a declaration of waqf for the benefit of a succession of persons, during their lives, or during specified periods and notwithstanding that at the time of the declaration of waqf those persons are not in being.” Further, “provision may in particular be made in a declaration of waqf for the maintenance and support wholly or partially of the family, children, or descendants of the waqif and, where the person creating a waqf is a Hanafi Muslim, also for the maintenance and support of the waqif during his life time, or for the payment of his debts out of the rents and profits of the property dedicated.

The ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by Muslim law as a religious, pious or charitable purpose of a permanent character. The share provided by the waqif for the benefit of any of his male children or descendants may be double the share provided by him for the benefit of any of his female children or descendants respectively.”

An interesting feature of the law relates to possibility of a finite period for benefits to flow to intended beneficiaries.

Section 11 says (1) where the declaration of waqf refers to one or 2 generations of the descendants of a specified person as being entitled to the benefit of the waqf, the benefit shall be confined to those generations; and (2) where 3 generations or more are referred to, the benefit shall be for the descendants in perpetuity, so long as they exist.Indeed the law deals extensively with issues relating to family awqaf. For example, section 9 makes a mention of concurrence of wife before a husband may make a waqf. Section 12 names a list of relatives who may benefit from waqf and sets an order of priority among them.Section 15 deals with definition of a child and a descendant and related circumstances. Section 16 deals with how waqf benefits will be apportioned between children, descendants, and other possible beneficiaries across generations and between males and females. Section 17 states the conditions under which the benefits will lapse.

Section 25-1(g) considers a waqf made in favor of the rich alone as invalid. Subsection (3) says, “Where the beneficiaries consist of a class of persons some of whom are poor and others rich, the benefit of the waqf property shall be applied for the poor class alone.”

Ownership of Waqf Assets

In Sudan, section 22 (1) transfers to the Diwan all real estate assets and movable and money, rights and obligations of national awqaf inside and outside the Sudan, movable and inheritance money without heir. Subsection (2) devolves the rights and obligations of awqaf to state bodies.

In the Nigerian states, private endowments, e.g. mosques and madrasas are allowed to exist, while the Boards are empowered to collect new endowments (more in the nature of sadaqa contributions).

In Mauritius, all waqf properties vest with the corresponding mutawallis. A property for which there is no properly constituted mutawalli shall, pending the appointment of a mutawalli by the court or otherwise, vest in the Board as mutawalli of the property (Section 52).

In Zanzibar, all waqf properties vest with the corresponding trustees, but the Commission keeps a strict watch on all private as well as public waqf through a process of registration and other controls and is empowered to assume control of the properties under certain circumstances (Section 21).

4.2.5. Management of Waqf Assets

Sudan

Section 6(c) 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.

Section 8 clearly states that the Diwan will manage all national waqf assets inside and outside the Sudan, other forms of charity, family awqaf as stipulated by the endower, waqf assets under partnership between the Diwan and private parties as defined in the waqf deeds

Section 9 (1) explicitly asserts that the waqf funds must be managed in compliance with the provisions of Islamic Shariah. Subsection 2 further requires the waqf management authority in the Northern States to ensure the following:

- The relationship between the beneficiary and the administrators is fiduciary in nature.
- The management and investment of endowment funds must be compliant with the Shariah.
- The decision to invest the funds endowed will be by an absolute majority.

Responsibility: Section 11 entrusts the Board of Trustees with the responsibility to achieve the objectives of the Diwan. It is empowered to formulate the policies and plans for development of endowment investment projects, after studying their technical and economic feasibility, approve the budget submitted by the Secretary-General, accounting and monitoring the performance of the Secretary-General and the Diwan institutions, the approval of the contracts inside or outside Sudan, approval of financing for development of waqf assets.

Transparency: Section 20 of the Sudanese law stipulated the Diwan to 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 is mandated to produce a statement of accounts, including an account of all national awqaf at home and abroad accompanied by the report of the Auditor General within a period not exceeding six months from the end of the financial year.

Section 21 requires the trustees and principals of universities, associations, institutions and bodies and national organizations, the national endowments, submit to the Diwan the annual reports of revenues and expenses related to the endowments.

Accountability: Section 12 and 13 provide that the membership of the Board of Trustees is for four, but may cease if frequent absence from three consecutive meetings without an acceptable excuse is reported as well as in case of a conviction of an offense involving honor or honesty, in addition of course, to reasons of sickness, health or death.

Mauritius

Appointment and Removal: Waqf management in Mauritius is traditional with the prevision for appointment of private mutawalli by the waqif (section 31). A mutawalli is expected to do all acts, which are reasonable and proper for the protection of the waqf property and for the management or administration of the waqf property. A mutawalli may be a female or a non-Muslim or (b) the founder of the waqf himself, or (c) the children or descendants of the founder of the waqf but not a minor or a person of unsound mind. A successor to mutawalli may be appointed by (a) the waqif entitled to make the appointment; (b) the executor or the survivor of several executors of the waqif is so entitled by the mutawalli. Section 34 empowers the Board to remove a mutawalli if considered unfit, though the latter may appeal against the decision in the court of law.

Compensation: Section 36 provides for the right of the mutawalli to receive remuneration as authorized under the declaration of waqf may validly authorize the mutawalli appointed by the waqif, and each succeeding mutawalli, to receive the remuneration specified in it. However, the remuneration specified in the declaration of waqf shall only be payable to the first mutawalli, and the succeeding mutawallis are not entitled to it in the absence of an order of the court. Where no provision is made in the declaration of waqf, the court may fix the remuneration. Further section 37 stipulates that the remuneration to which a mutawalli is entitled shall not exceed one tenth of the income where the mutawalli has no beneficial interest in the subject of the waqf. However, the court is empowered to grant a higher remuneration in the interest of justice and propriety.

Section 38 empowers the mutawalli to employ agents for the administration of the waqf. of course, the authority of the agent-manager will cease on the death or removal of the appointing mutawalli. It also restricts the mutawalli from borrowing, or exchanging waqf assets without authorization of the Board. Any act of contravention by the mutawalli in this regard will be considered a breach of trust for which he may be removed by order of the court (Section 40).

Utilization/Investment of Waqf Assets: A mutawalli is duty bound to generate income by utilizing or investing the waqf assets, while taking due care for their preservation. Section 41 empowers the mutawalli to lease out the asset for a maximum of 3 years in case of house and 9 years in case of land. The court however, may authorize a lease for longer term if considered necessary for the purpose of the waqf. Further, law seeks to protect the interest of the waqf by asserting that “except as provided in the declaration of waqf, no person may occupy the waqf property without paying a reasonable rent for it, and if the mutawalli purports to allow any person so to occupy the waqf property, reasonable rent will nevertheless become due and payable by the person for occupation of the property.” Section 42 permits the mutawalli to erect buildings on the waqf property, or cultivate lands appertaining to the waqf, if it is beneficial to the objects of the waqf to do so.

Transparency and Accountability: Section 44 requires the mutawalli to prepare annual accounts of the waqf property in respect of the preceding year; get it audited and submit the same to the Board not later than 1 April of each year. Any mutawalli who fails to comply or who furnishes any statement of accounts which he knows or has reason to believe to be false, misleading or untrue, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees. Any such offences shall be within the jurisdiction of a District Magistrate.

It is also compulsory on the part of the mutawalli to register the waqf property with the Board within one month of his assuming the functions of mutawalli or the administration, control or possession of such waqf property. Failure to do so without a valid excuse is an offence and shall, on conviction, invite a fine not exceeding 500 rupees or imprisonment for a term not exceeding 6 months.

Zanzibar

In Zanzibar, section 4(3) asserts that the Commission shall conduct, coordinate or regulate its functions in accordance with the provisions of this Act, Islamic law, rules and good practices.

It requires all persons in possession of waqf assets to register with and obtain written consent from the Commission. Failure to do so is an offence, punishable by a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years.

Section 20 empowers the Commission to call upon the trustees or any person in control or in possession of any waqf property to account for his control or administration thereof, and produce any books or documents. Under section 21, the Commission may assume control of any waqf property if it appears that the trustee may have acted in an improper, unauthorized or unlawful manner. In such case, after giving the trustee an opportunity to show cause, may decide to vest the property with the Commission or appoint any trustee(s) on its behalf for administration of the same.

Section 29 of the law empowers the Commission to enter into agreement with any person, firm or organization to manage any waqf property for a period not exceeding ten years, but with an option to renew at its discretion.

With the enactment, the Commission terminated all existing leases and replace the same with new lease agreements that would take into account factors, such as, existing lawful tenants, market rates of rent, regular review of rent, convenient, prompt and advance recovery of rent (section 26). Section 27 exempts the waqf assets from the Rent Restriction Board decree and permits short leases of one year in general and with specific permission of the Board a maximum of five years.

Compensation: Compensation to members of the Board and staff is proposed by the Board and approved by the Minister (Section 7-3, 11-1). The Board (Section 13-3) determines benefits and remuneration to heads of units and sections. For the purpose of employment and termination of service, employees of the Commission are treated as employees of a public corporation (Section 14-3).

Accountability: Unfair dealing with waqf assets is punishable. officers engaging in sublease, or any undisclosed dealing resulting in undisclosed profits commit an offence, which is punishable on conviction by a fine not less than five million shillings or imprisonment of not less than two years and will be required to pay back to the Commission such profits (section 28).

4.2.6. Development of Waqf Assets

Sudan

Section 5 outlines the objectives of the Diwan, which include the maintenance and improvement of endowed funds and evaluation, construction and re-construction, and investment funds in all legitimate investments.

Section 6 empowers the Diwan to sell the endowed asset to replace it with better ones in accordance with Islamic jurisprudence as recommended by the Minister. It also empowers the Diwan to establish companies, partnerships and own the business names and other national endowments for investment funds in partnership with any party capable as per the provisions of Islamic law. The same section requires the Diwan to maintain an inventory of endowments, develop them and maximize returns on them taking advantage of commercial opportunities. Section 18 specifically deal with istibdal and an alteration or modification in the waqf deed. It stipulates that the same should be carried out based on recommendation competent minister and only the extent deemed necessary.

Nigeria

In Zamfara and Bauchi states the law briefly touches upon development aspects of waqf and mentions in sections 5 and 3 respectively that the Board/Commission must invest endowment funds in ways that will meet the objectives and purposes of the endowment. In Yobe state, section 9.18 of the law states that "amounts of money and assets received as waqf (endowment), should be used in a sustainable way through dividend-yielding halal investments.

4.3 Success Stories & Good Practices

4.3.1. National Awqaf Foundation of South Africa

The Muslim community in South Africa is known for its proactive, vibrant and developmental role in the country throughout its history of 350 years. The community is known to have established many successful organizations. These non-state non-profit organizations have been born out of a realization that the community must profess and practice benevolence through building a network of professionally managed institutions if it has to thrive and prosper in a multi-racial and multi-cultural society as in South Africa.

The National Awqaf Foundation of South Africa (AWQAF SA™) was pioneered in 2000 as an independent community-based and owned trust, dedicated to the establishment of the institution of Waqf and the empowerment of communities. It is a community based charitable organisation aimed at investing endowment funds for various community development programmes. These programmes are aimed at promoting self-reliance and sustainability. Though Awqaf SA was informally initiated in 2000, it was registered as a Trust under in 2003 under the Trust Property Control Act 57 of 1988. Subsequently, it was registered as a Non Profit Organization in 2004 and as a Public Benefit Organization in terms of the Income Tax Act in 2005. Prior to registration as a Trust, the organisation operated as an Association not for Gain. Awqaf SA has been involved in the development of the widely adopted NGO Corporate Governance Charter. It has also drafted its own Corportae Governance and Ethics Charter.

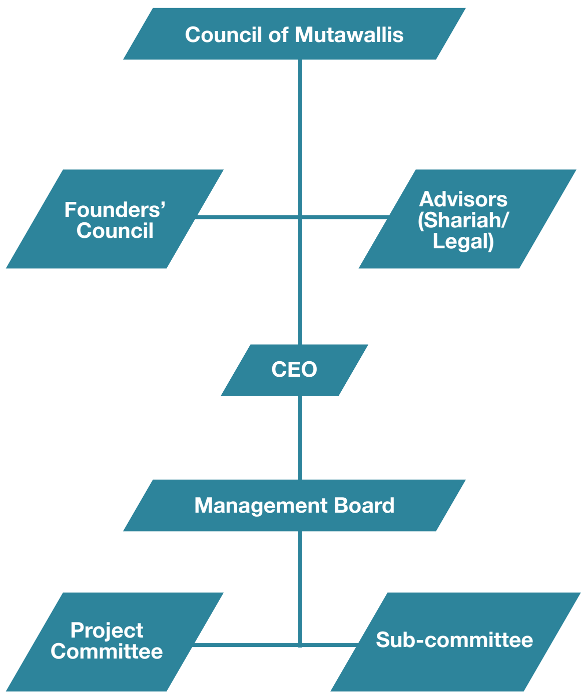
The vision & values statement of Awqaf SA is "to be the leading civil society waqf institution in Southern Africa having an exemplary financial and human capital asset base providing cutting-edge value-adding initiatives and services to empower people and communities towards the establishment of Social Justice, and excelling in all that we do with the highest standards of ethics and integrity".

The mission of Awqaf SA is "to popularise, mobilise, create, develop, and manage waqf and charitable endowment funds and assets; and to initiate and/or support worthwhile sustainable humanitarian, community development, and poverty alleviation projects and programmes.

Awqaf SA is based on the three pillars of People, Projects and Paisa (PPP). It ensures that all three pillars are developed on an ongoing basis.

- People are the lifeblood. They give of their wealth and of themselves. They help the organization in structures, in funding, in advising, and broadly in community service.
- Projects are the delivery instruments and leadership incubators of community development. Through projects Awqaf SA ensures that the organization achieves its mission and goals.
- Paisa is the core business of the organization – the mobilisation of funds in the form of Waqf, Lillah, and Zakah. Without a sustainable means of funding projects, Awqaf SA community development projects will cease to exist.

Chart 16



Waqf Endowments & Investments:

Since inception the organisation has been growing its waqf funds and corresponding investments. It follows a principle of "no capital usage", hundred percent investment of capital and utilization of returns alone keeping the awqaf corpus intact. This is in full compliance with the fiqhi principles of waqf. It raises waqf resources through the following products:

- Monthly debit orders (a given percentage of monthly earnings).
- Lump sum payments.

- Al-tijarah or giving a percentage of profis or equity in a business or transaction.
- Al-maal or donations of property; and Al-wasiyyah or bequests through wills.

The investment strategy guidelines adopted by Awqaf SA are as follows:

Location: Combination of community, provincial, national, and offshore.

- Returns: Balance of social and financial returns within constraints of strategy with a bias to maximisation of financial returns.
- Diversification/Risk: Spread risk with bias at low risk, diversified portfolio.
- Investment portfolio: Combination of property, equity (musharaka, mudaraba) and financial (ijara, murabaha, takaful).
- Equity participation: Public/awqaf/institutional partnership possibilities.
- Currency & Inflation: Hedge / factor into strategy.
- Restriction: Awqaf SA may not invest in unethical or Islamically unacceptable projects.

Box 3: Operational Policies of Awqaf SA

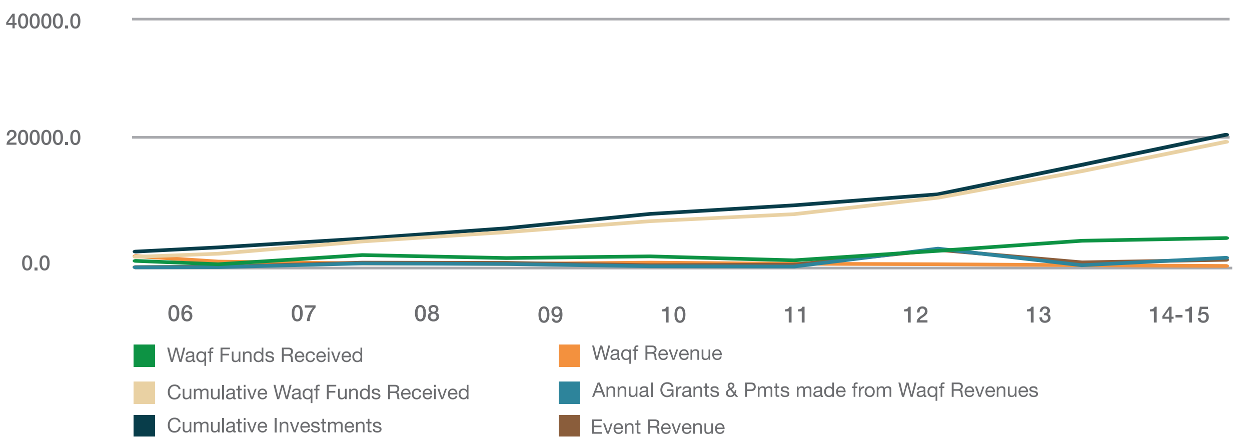
- In pursuit of the advancement of its vision, mission, and aims and objectives, Awqaf SA has developed the following operational policies and guidelines.
- Advocacy: to play an advocacy role in relation to issues affecting the empowerment of communities.
- Affirmative action and equity: to pursue employment, appointment, and other practices that would affirmatively and equitably represent members from diverse backgrounds, as far as is practicable.
- Conduct: to strive to our utmost to conduct our affairs in accordance with Islamic principles, values, and ethos.
- Confidentiality: to respect the confidentiality of waqifoon as well as beneficiaries and not to divulge confidential information without the express consent of waqifoon or beneficiary.
- Constructive engagement: to constructively engage with Muslim organisations, groups, or individuals, who have serious differences.
- Controls, checks & balances: to institute such internal control measures, checks, and balances within the administration of the organisation, so as to enable the minimisation and/or elimination of risk of failure, misstatement, mismanagement, or error.
- Co-operation and collaboration: to co-operate and collaborate with all sectors of society including existing organisations, interest groups, parastatals and state organs at national, provincial, and local level.
- Corporate governance: to govern the organisation, as far as is appropriate, in compliance with principles and practices recommended by the King Commission Report on Corporate Governance.
- Excellence/Ihsan: to pursue excellence/ihsan in all that we do.
- Existing resources: to utilise existing resources and facilities rather than re-invent or re-invest in new resources and facilities.
- Historical shortcomings: to be cognisant of errors of the past and to avoid any activity, action, or operation of the organisation that may cause such errors.
- Human Resources: to recruit volunteers and, where applicable, employ, competent and proficient candidates with the necessary skills to carry out designated functions and responsibilities and to reward them commensurately.
- Inclusive: to be inclusive and to create a unifying brotherly/sisterly spirit among stakeholders.
- Learning Organisation: to develop a learning organisation where everyone linked to the organisation is encouraged to learn and grow, and to contribute innovatively towards constant personal improvement.
- Mutual consultation/Shura: to take decisions on the basis of and with due consultation/ shura at appropriate levels of the organisation and with relevant persons internally and externally.
- Non-duplication: not to compete with existing organisations nor to duplicate services already being provided by existing organisations.
- Non-obligation: to receive donor or awqaf funds and/or revenues from any quarter on a non-obligation / no-strings-attached basis, and to make disbursements on the same basis.

- Partnerships and Joint Ventures: to initiate and/or execute projects in partnership or joint venture with existing organisations and institutions.
- Positive Neutrality: to maintain a neutral but positive stance in its relations with other groups and organisations.
- Projects: to initiate and establish new community development projects and/or to strengthen and support existing ones.
- Public relations: to build relations with all sectors of the community including professionals, ulama, business persons, students and youth, womens' and other interest groups.
- Quality service: to provide a high quality service to clients and stakeholders.
- Rotation: Wherever possible, members of committees, across the board, shall rotate responsibilities to avoid 'one-man' shows and 'life members'.
- Strategic relations: to establish and maintain relationships with Government, organisations, agencies, and communities, both nationally and internationally.
- Transparency and accountability: to underscore all activities and transactions by principles of transparency and accountability to our stakeholders.

Table 4.3: Trend in the Financials of Awqaf SA ('000 Rands)

Item/ Year	06	07	08	09	10	11	12	13	14-15
Waqf Funds Received	976.1	466.7	1862.1	1407.9	1664.5	1063.0	2501.0	4028.1	4439.5
Cumulative Waqf Funds Received	1596.2	2062.9	3925.0	5332.9	6997.5	8060.5	10561.4	14589.6	19029.0
Cumulative Investments	2388.3	3025.1	4360.2	5923.4	8101.4	9406.8	11073.5	15546.1	20103.0
Waqf Revenue	37.3	90.1	712.1	674.1	328.0	403.6	2650.9	753.1	1140.0
Annual Grants & Pmts made from Waqf Revenues	0.0	26.7	593.4	502.9	163.7	124.3	2834.0	317.9	1447.7
Event Revenue	1698.3	872.5	592.4	525.9	712.9	543.9	468.6	322.1	207.7
Operating Income (including recoveries)	61.9	47.1	43.5	56.8	68.3	73.4	64.0	329.8	585.1

Figure 4.2: Trend in the Financials of Awqaf SA('000 Rands)



From the financials, it follows that waqf funds received as well as investments have steadily grown in tandem over the years. During the last four years alone, waqf funds received has more than quadrupled. Waqf revenues as well as annual grants and payments have also increased in tandem and steadily. It seems the year 2012 was particularly a good year for Awqaf SA.

A donor could choose a specific Waqf Fund or Funds at his/her own discretion as offered by Awqaf SA according to the respective community development sector e.g.

- Education Waqf – scholarships, bursaries, tuition, schools, libraries, stationery, text books, fees.
- Health Waqf – special clinics, medicines, emergencies, equipment, programmes.
- Youth Waqf – youth tarbiyyah and leadership development programmes.
- Masjid & Madressah Waqf – masjids and madressahs in needy communities; subsidise imam & muezzin salaries, provide books and kitabs, upgrade facilities, support welfare and community development.
- Micro Finance/Investment, Trade, & Skills Waqf – small investment loans, self-reliance, and job creation programmes.
- Media & Publications Waqf – publication of literature, develop writers, journalists, and media in general.
- Dawah Waqf – dawah projects and programmes.
- Arts, Culture & Heritage Waqf – jalsahs,qira'a recitals, calligraphy, ceramics, crafts etc.
- Food, Trees & Water Waqf – planting of trees, food gardens, provision of seeds, provision of water & sanitation.
- Ramadaan Iftaar Waqf – provide iftaar meals & hampers during Ramadaan.
- Capacity Building Waqf – build organisational and administrative capacity, and infrastructure.
- Hajj & Umrah Waqf – services and subsidies for needy hujjaaj.
- Qur'an Waqf – printing and distribution of Qur'ans; Qur'anic education.
- Family Waqf – to support immediate or needy members of donor's family.
- Palestine Solidarity Waqf Fund – education and welfare of orphans and needy.
- CSWF Corporate Staff Waqf Fund – contributions to this fund are made by staff members of corporates.
- Discretionary Waqf – a general waqf to support any need within the community as deemed appropriate.
- Designated Waqf – a designated Waqf fund for any specific project or programme of donor's choice and for beneficiaries of donor's choice. Eg Dialysis Clinic Waqf.

Awqaf SA ensures that 100% of the donated waqf funds are invested and always remains capital. Only the income derived from the underlying investments is spent.

Tax Status: Awqaf SA is a registered Public Benefit Organisation (PBO) and enjoys various tax benefits. Donations to Awqaf SA, subject to certain limits, are also tax deductible by donors.

Projects & Activities: Since its founding Awqaf SA has engaged in a variety of projects and activities together with its local and international partners. These include:

- Held NGO Tax Seminars and launched the Muslim NGO Tax Commission to liase on tax matters with government on behalf of the Muslim NGO sector.
- Participated in the World Summit on Sustainable Development and organised the 1st Muslim Convention on Sustainable Development in Erasmia, Tshwane (Pretoria) in 2002.
- Initiated the Bicentennial Commemoration of the Unbanning of Islam and organised the "Children of Islam" Bicentennial Jalsah.
- Commenced Waqf Funds for Vlakfontein, Emdeni, Riverlea, & Kagiso, and will continue to seek partnerships in poor and disadvantaged communities.
- Participated in the: Symposium on Islamic Civilization in Eastern Africa, Uganda (2003); Gauteng Growth & Development Summit; Conference on the Rights of Cultural, Religious and Linguistic Communities in Cape Town, Jhb, and Durban, 2004. National Heritage Conference in Soweto, Benoni & Durban; Africa Human Rights Day; and other seminars and symposia.
- Developed policies that foster partnerships, cooperation, and working unity.
- Developed the institutional framework of Awqaf SA and commenced the Waqf Fund.
- Developed and produced the Arabic National Anthem.
- Conducted Project Management course in partnership with ISWA in Cape Town.
- Contributed series of articles on Waqf in Muslim Views.
- Volunteer and waqf workshops and training sessions.
- Developed the Trees, Food, & Water Waqf.

- Initiated the Awqaf SA/AMS Greening Project.
- Launched the “esaale sawaab” campaign.
- Provision of Executorship services in association with panel of attorneys and accountants.
- Assisting in the development of organisational and institutional waqfs and providing consulting services.
- Lead Member in hosting, planning and implementation of the international symposium on “Islamic Civilisation in Southern Africa in partnership with OIC/IRCICA and University of Johannesburg in 2006.
- Provision of Training, Mentorship, and Consulting services on, inter alia, projects, project management, governance, sustainable funding, and sustainable community development, to NGO’s, Municipalities, and Corporates.
- Collaborated with Green Crescent in Lesotho in the distribution of winter clothing to the poor in 2005.
- Facilitated the development of the Mombone Islamic Centre in Northen Mozambique.
- Funding a home-based care programme for Aids afflicted adults and children in Lesotho in collaboration with Green Crescent.

Governance: Awqaf SA is governed and managed by a volunteer Council of Mutawallees (Trustees) and a Board of Management. These structures are currently being expanded to become more representative of the community. The organization is also governed by a constitution and various legislation.

Footprint: Awqaf SA has chapters in Gauteng and the Western Cape and a network presence in other provinces, towns and cities in South Africa and in the SADC region.

International Association: Awqaf SA is associated with several international organisations such as the Organisation of Islamic Conference (OIC); Research Centre for Islamic History, Art & Culture (IRCICA); Islamic Research & Training Institute (member of the Islamic Development Bank Group); Muslim Religious Council of Singapore; IHH (Istanbul); Deniz Feneri (Istanbul) and the Kuwait Awqaf Public Foundation).

4.3.2. Islamic Education Trust Fund, Minna

A waqf-like organization for the development of education and socio-economic welfare of the Muslims in Nigeria is Islamic Education Trust Fund. It was founded in 1969 when Nigerian Muslims faced challenge of leadership with the death of Sir Ahmadu Bello, who was the premier in Northern Nigeria. The organization is well received across the country by Muslims. This is perhaps due to the contribution made by its founding father Sheikh Ahmad Lemu in the areas of education and publications on Islamic studies, mostly written in English. Through IET, over 3 million copies of Islamic books and booklets were published some of which were freely distributed to schools and public. The IET has three main areas: education, da`awa and social welfare. IET organizes workshops on empowering youth and women.

The IET human welfare department has been able to assist numerous segments of the financially less privileged in the society. It offers soft loans to widows between N15, 000 to N40, 000 payable in less than 3 years. It has a revolving loan for its staff as well. Among its major achievements from 1969 to 2005, as shared by one its directors Sheikh Nurudden Ahmad Lemu include the following:

- Over N5 million raised and spent on about 120 wells and water tanks for the public (urban and rural).
- Over N6.5 million raised and spent on medical aid to the poor.
- Over N1.3 million raised and spent on food aid to refugee children.
- Over 100 shade trees planted at Eid ground in Minna by students and staff of IET’s New Horizons College, Minna.
- Over 832 visits by IET staff to hospitals, prisons, orphanage and remand home.
- Free donation of over 100 bed sheets and pillowcases to public hospitals in Minna.
- Over 50 widows economically empowered through small business Enterprises.
- Over 100 refugees empowered through small business enterprises and skills training at Oru Refugee Camp, etc.
- Over N300 million worth of structures built as a Trust (Waqf) for the sole benefit of the Muslim Ummah, in the form of schools, halls, libraries, Islamic Centers, housing, shops, mosques, etc.
- Annual Ramadan feeding for over 1000 poor and needy.
- General relief (food, clothing, basic needs, etc.) provided to the needy during times of emergency and crises.
- N12 million raised and donated in form of food aid for Niger Republic.
- Over N5 million in miscellaneous aid to single mothers, widows, the aged, stranded travelers, converts, physically disadvantaged etc.

4.4 Lessons and Policy Implications

1. Waqf law should provide a comprehensive definition of waqf that includes both permanent and temporary waqf. However, it must be recognized that once the waqf has been declared, it is irrevocable. It must explicitly cover various types of waqf: family and social waqf, direct and investment waqf, cash waqf, corporate waqf. An interesting feature of the waqf law in Mauritius is the emphasis on poverty alleviation aspect of waqf through an explicit denial of waqf benefits to the rich. In fact, a waqf made in favor of the rich alone is invalid. Waqf laws in Sudan clearly provide for waqf khairy or philanthropic (social), waqf al-ahli or family waqf and waqf mushtarak or jointly owned waqf.

2. Preservation of waqf is undoubtedly the most important concern in waqf management. The legal framework must clearly articulate the permanent nature of waqf arising from the principle of "once a waqf, always a waqf". In case old laws fail to ensure protection, they must be replaced with new provisions that enable recovery of lost waqf assets. A good example is the Sudanese law that empowers the Diwan 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; that excludes endowments from application of the provisions of the Civil Transactions Act of 1984 and any other superseding law and that applies the provisions of the evacuation of public buildings Act of 1969 and subsequent amendments to endowments. Another example is the law in Zanzibar that empowers the Commission to take control of administration of such property with a six-month' notice period and anybody seeking to restrain the Commission is guilty of an offence and upon conviction is liable to fine up to ten million shillings or to imprisonment for a term up to five years.

3. While preservation is important, law must clearly recognize the importance of sustaining and enhancing the benefits flowing out of the waqf, this being the ultimate purpose of the act of waqf. This is possible only when the importance of development of waqf is clearly recognized. An undue emphasis on preservation (e.g. constraints on leasing) would lead to neglect of developmental possibility with private participation. Similarly, an undue emphasis on development, to the extent that it results in loss of full or partial ownership of asset to private developers) would dilute and vitiate the very concept of waqf. The regulatory framework must seek to strike a balance between concerns about preservation and development. A good example is the

4. Sudanese law that seeks to strike a balance between preservation and development aspects of investment by requiring the Diwan to undertake the maintenance and improvement of endowed funds and evaluation, construction and re-construction, and investment funds in all legitimate investments. Further, the issue of istabdal is explicitly dealt with by the law and the Diwan is empowered to sell an endowed asset to replace it with better ones "only to the extent deemed absolutely necessary."

5. The legal framework must not put undue restriction on creation of new waqf. Legal requirements that make the process more difficult, e.g. approval of the head of the state, are both unnecessary and undesirable. A simple process of registration with the regulatory body is both desirable and adequate. While obstacles to waqf creation must not be there, the legal framework should actually encourage creation of new waqf by minimizing financial and non-financial costs of waqf creation and management. 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. The case of Zamfara state is also quite interesting which require the government agencies and contractors to endow a certain percentage of their total revenues as waqf thereby, ensuring the continuous enhancement of waqf corpus. There are also cases of checks on new waqf creation, as in Zanzibar.

6. The legal framework should not restrict making a waqf only to Muslim individuals and should permit both non-Muslims and institutional waqif as long as the purpose of waqf is religious or charitable. While most laws restrict the identity of endower to Muslims only, the Kenyan law goes a step forward by defining a "Muslim" as 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. This is a classic example of colonial divisive law that persists even today and that must be amended.

7. The legal framework should not restrict the definition of the endowed asset to immovable tangible assets, such as, real estate, but should also explicitly recognize movable, financial and intangible assets, e.g. cash, stocks, bonds and financial securities, transportation vehicles, rights on land and building, rights of leasing, rights of intellectual property. A case in point is the Nigerian law that permits waqf of

all lawful items permitted by Shariah. In contrast, in Mauritius, the law requires that the subject of waqf may consist of any property other than things, which are consumed by use.

8. Most observers and scholars of waqf believe that the institution of family waqf must be revived. Sudan and Mauritius provide some excellent examples of family awqaf. 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 for concurrence of wife before a husband may make 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 between males and females, and finally, the conditions under which the benefits will lapse.

9. Waqf is an institution originally and always meant to be in the voluntary sector with management of waqf entrusted to private parties. However, state has often sought to play a role in the ownership and management of awqaf, at times governed by motives to expropriate and at other times, by need to curb corrupt practices of private trustee-managers. Whether ownership and management of awqaf should be in private hands or with the state has no clear answer. There seems to some be positive evidence that the state can indeed play the role of an efficient manager of awqaf. Contrary to general belief, state control may not necessarily hamper creativity and innovation in awqaf development e.g. Sudanese examples of large-scale development of existing awqaf in public-private mode. Interestingly, Sudan also provides excellent examples of family awqaf. There is mixed evidence from both public management (Zanzibar) as well as private management (Mauritius).

10. Where waqf management is in private hands as in case of Mauritius, 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. Given that the individual or institution so nominated meets the criteria, the regulator must respect the expressed intention the waqif or endower. 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 responsibility should also include transparent and honest reporting of financials. Laws must clearly stipulate the method of determination of remuneration of managers, sufficiently incentivizing sound and professional management of waqf assets. For example, law in Mauritius provides a good example of containing provisions pertaining to the above. The law stipulates that the remuneration to which a mutawalli is entitled shall not exceed one tenth of the income (similar to Indonesian law) where the mutawalli has no beneficial interest in the subject of the waqf. The court is also empowered to grant a higher remuneration in the interest of justice and propriety.

11. There is every reason for the state to take punitive action against mutawallis who fail the tests of efficiency, integrity, transparency. The measures must act as effective deterrent against further acts of apathy, neglect and misappropriation. At the same time, the state should not be allowed to wield absolute power to engage in irrational or whimsical action against the mutawalli. Instances of unfair and unlawful action by state are numerous, as are cases of corrupt mutawallis. There need to be effective checks and balances in the law against wrongful acts by both the state as well as the private mutawallis. Power has a tendency to corrupt and the possibility of such action can significantly increase the non-financial cost of creating new waqf. Endowers are likely to seek alternative forms of organizing their charitable activities if there is a possibility of undue state interference in the management of the endowed assets or outright usurpation of the endowed assets by the state. A case in point is the Kenyan law (similar to India), where the Muslim community is in minority while the Wakf Commission is essentially a political office.

12. The law must explicitly prohibit the waqf asset from being used as a mortgage, confiscated, given away, sold, inherited, exchanged or being alienated into any form of right. The waqf asset may however be exchanged as an exception to the above general rule, when this is deemed to be in public interest. Such exchange would however, require prior permission from the regulator with additional conditions that the same is (i) necessary or beneficial to the waqf; (ii) consistent with the objects of the waqf; (iii) against another asset of equal or higher value; (iv) and with due respect to the inalienability of religious awqaf. Laws are quite explicit in preventing the waqif/mutawalli from sale, inherit, exchange or use of the waqf assets as mortgage after the act of endowment, but permit leasing for varying periods (caps can be as low as one year in Zanzibar; three years in Mauritius; ninety-nine years in Singapore; three years in India, subsequently increased to thirty years etc.). However, they could be less explicit in preventing similar actions by state agencies. Sudanese

law for example, defines the key task of the Diwan as supervision of the awqaf to ensure its preservation and efficient use and ensuring the implementation of the conditions put by the endower, but permits istibdal to the extent considered necessary. Law in Zanzibar says that all waqf properties vested in any manner or under the control of the Commission shall be administered in strict accordance with the intentions of the dedicator. However, when the same is unlawful, impracticable, or unascertainable or when there is surplus after meeting the original objectives, the Commission can channelize the same towards benefit of Muslims. It even empowers the Commission to sell the property with approval of the Minister where the intentions of the endower cannot be reasonably carried out.

13. Awqaf in general, have fallen behind common trusts and other forms organizing charitable and not-for-profit activities in terms of responding to evolving societal needs. Creation and management of waqf is a relatively more complex and demanding process and involves additional financial and non-financial costs. Incentivizing waqf in a manner similar to secular trusts and other forms of not-for-profit organizations, e.g. tax rebate on contributions for the donor/ endower would make the system both efficient and fair. In Sudan for example, the law exempts all national endowments - real estate, industrial, commercial, agricultural and services and its investments - from all duties and taxes imposed by the state and, in particular: the types of taxes, including VAT, other fees, the litigation fees, land and space charge registration fees and any other national fees, and the business profits tax.

14. Waqf development must be a mandatory obligation of the waqf management. Innovating financing methods may be employed that bring in new waqf capital for development of existing awqaf. Innovative methods may also be employed that facilitate private-public partnerships (e.g. involving issue of sukuk) that involve transfer of rights to lease as distinct from ownership rights to private financing entities for finite, yet long enough period to provide a fair return on investment capital. Legal constraints motivated by preservation concerns, such as, on long-term leasing of awqaf assets should be removed. The Sudanese cases of partnership between the Islamic Endowment Corporation and private Islamic financial institutions are worth replication in other countries.

15. Financial penalties, especially when these are expressed in absolute numbers tend to lose their effectiveness as deterrents with time. These should either be subjected to continuous revision or be linked to the quantum of misappropriation. Physical punishments are potentially more effective. A case in point is the law in Mauritius (similar to India) which imposes a meagre financial penalty not exceeding 500 rupees upon conviction to an erring mutawalli who fails to comply (prepare annual accounts of the waqf property in respect of the preceding year; get it audited and submit the same to the Board) or who furnishes any statement of accounts which he knows or has reason to believe to be false, misleading or untrue.

16. It is compulsory to invest waqf assets, be it real estate or moveable assets like cash. Nigerian laws which have been formulated recently explicitly deal with the issue of investment. Specifically the law in Yobe state emphasizes three highly desirable dimensions of investing waqf assets - sustainability, stability and permissibility of returns – when it requires investment in a sustainable way through dividend-yielding halal investments. Indeed, sound investment can alone generate returns which may then be applied to the purpose for which the waqf has been created. Sudanese law empowers the Diwan to establish companies, partnerships and own the business names and other national endowments for investment funds in partnership with any party capable as per the provisions of Islamic law. It also requires the Diwan to maintain an inventory of endowments, develop them and maximize returns on them taking advantage of commercial opportunities. In contrast to these positive feature in waqf laws, there are also laws, which emphasize too much on physical assets and its preservation. The newly modified law in Zanzibar deals with investment entirely in terms of leasing of land and building and restricts the lease term to a maximum of five years, while the law in Mauritius restricts the same to 3 years in case of house and 9 years in case of land. In case of latter, the court however, may authorize a lease for longer term if considered necessary for the purpose of the waqf.

5

ISLAMIC MICROFINANCE

5

ISLAMIC MICROFINANCE

Livestock production is an important component of the local economy in Sudan, providing food, employment, foreign exchange earnings, a source of wealth, and supply of inputs and services.

5 ISLAMIC MICROFINANCE

The earlier sections have covered the flow of Islamic social funds through institutions based on zakah and waqf. These are institutions rooted in Islamic philanthropy. Cooperation and solidarity is a norm central to Islamic social behavior and collective ethics. This is strengthened through philanthropic behavior. However, the Islamic economy also includes other forms of initiatives and institutions that engage with the poor using a variety of contractual mechanisms. Indeed, it is possible to visualize three distinct possibilities in terms of the organizational structure of Islamic microfinance providers and the nature of contractual mechanisms that underlie their products and services. There are Islamic MFIs that use for-profit contracts (e.g. murabaha, ijara, mudharabah, musharakah, salam, istisna, wakala etc.), but seek to make modest profits to ensure sustainability of operations. Then there are not-for-profit Islamic organizations and member-based cooperatives providing microfinance services that are also based on for-profit contracts. There are also not-for-profit Islamic organizations and member-based cooperatives providing microfinance services that are based on not-for-profit contracts (e.g. qard, kafala, hawala etc.).

Of the various countries covered in this report, only Sudan has an Islamic microfinance system. However, other countries like Nigeria and Kenya are also included in this section for two reasons. One, both Nigeria and Kenya have embarked on ambitious plans to strengthen their microfinance sectors and see microfinance as a tool of poverty alleviation. Nigeria additionally, has shown inclination to use Islamic modes, especially in its Northern states and therefore, the potential for Islamic microfinance in Nigeria is quite high. In Kenya, on other hand, there have been excellent examples of technology-driven microfinance. A specific project that has major implications for Islamic microfinance is discussed as a case study in this report. This initiative, though not originally designed to be Shariah-compliant has been able to offer microfinance in a sustainable way at zero cost, something that effectively makes it Shariah-compliant. In the subsequent section, we provide a general overview of microfinance policy and regulatory frameworks in Nigeria and Kenya, dealing the case of Sudan in detail. We also provide case studies of some successful projects that fall in the domain of Islamic microfinance in these countries.

Formal microfinance is relatively new in Nigeria. Traditionally many poor families engage in one microfinance activitiy or the other particularly savings through Rotating Savings and Credit Associations (ROSCAs).

5.1. Overview of Microfinance

5.1.1. Sudan

The Islamic microfinance experiment in Sudan has been described by the World Bank's Consultative Group to Assist the Poor (CGAP) as "a laboratory for Islamic microfinance delivery where developments could shed light on effective Islamic microfinance practices"[15] . According to the above study, Sudan was observed to represent "a unique story of Islamic microfinance market development". In terms of client outreach via Islamic microfinance and among nineteen countries, offering Islamic microfinance Sudan was ranked second after Bangladesh. Sudan also ranked 4th (after Bangladesh, Indonesia & Lebanon) in terms of outstanding microfinance portfolio. This rapid expansion of the Sudanese market, according to the study, is largely due to an active Central Bank that prioritized microfinance lending by banks through a dedicated unit. Moreover, the growths of the Islamic microfinance sector in Sudan "reflects the government's push to provide financial services to the underserved"[16]. A recent International Monetary Fund (IMF) Report, the IMF Article of Consultation, 2013 (Sudan) has similar views about the sector in Sudan. According to the Report, "the microfinance sector is small but growing rapidly, thanks to the authorities' active promotion. The results of this push have been impressive to date. The number of MF borrowers went from 49,000 at end-2007 to 494,000 by 2012. In terms of active clients, Sudan and Bangladesh are easily the global leaders in Islamic finance microfinance, with Sudan likely to take top spot given current growth rates."[17]

In Sudan, the microfinance sector comprises informal finance providers, semi-formal providers (NGOs, civic associations, social funds, and rural development projects), and (3) formal providers (microfinance institutions and MF specialized banks, and commercial banks). A recent study by Badr El Din A. Ibrahim[18] describes several types of informal finance providers in Sudan. These include: istigrar or the grocer credit for household consumption guaranteed by salary; dalalia, or the provision of utensils for a short-term installments and premium installment; shail, or the sale of part of expected crops to village traders; and sandouk, which is the saving and borrowing informal system in which a payment of predetermined amount of money is periodically to be given to each member of the group to be used to cover the cost of marriage, give birth, tuition fees etc. In addition, there is nafeer, which is a social takaful system in cash or kind when villagers mobilize efforts to meet the social needs of individuals or a family.

The MFIs in Sudan are guided by the regulatory framework of 2011. In Sudan, there are currently 29 MFIs. 7 MFIs are federal (Al-Amal, Al-Shabab, Al-Ebdaa', Al-Mashien, Al-Watania, Al-Osra, and Iradaa'); 20 state MFIs (6 are in Khartoum states, 2 in the Red Sea State and 2 in South Kordofan State, in addition to one in other states, except Western Kordofan and Central Darfur; and 2 local MFIs). The MFIs are organized as: public entities as a state arm to combat poverty and that rely on respective regional governments for funding; NGOs transformed MFIs e.g. Port Sudan Association for Small Enterprise Development (PASED); MFIs with clients as shareholders (e.g. Al Mithal and Baraa' and Al-Garra in Sudan); and private sector for-profit MFIs.

5.1.2. Nigeria

Formal Microfinance is relatively new in Nigeria. Traditionally many poor families engage in one microfinance activities or the other particularly savings through Rotating Savings and Credit Associations (ROSCAs). However, this scheme has limited products and impacts and is considered as informal source of financing in the country. In Nigeria, a significant percentage of the population is excluded by the formal financial services. A recent study reveals that combining formal and informal financial services such as microfinance banks, savings clubs and moneylenders only 53.7 percent were financially included. This means that 46.3 percent or 39.2 million adult population were financially excluded in the country.

In 2005, the share of micro credit as a percentage of total credit was 0.9 percent, while it contributed a meager 0.2 percent of the GDP. Microfinance specific institutions in Nigeria fail short of overcoming this gap in terms of credit, savings and other financial services required by the micro entrepreneurs (Bamisile, 2006). As at 2008, the total deposits in the Microfinance Banks amounted to 50.28 billion Naira ($42, 745, 994.52 USD) while disbursements stood at 34.54 billion Naira ($29, 364, 491.86 USD) a utilization rate of barely 70 percent.

The fact that microfinance in Nigeria was largely informal, in 2005, the government through the apex bank and based on provisions of Section 28, sub-section (1) (b) of the CBN Act 24 of 1991 (as amended) and in pursuance of

15 CGAP, 2013, "Trends in Sharia-Compliant Financial Inclusion", Consultative Group to Help the Poor", CGAP, the World Bank, Focus Note, No. 84, March.

16 CGAP, 2013, "Trends in Sharia-Compliant Financial Inclusion", ibid,

17 Sudan: 2013 Article IV Consultation Staff Report; IMF Country Report 13/317; September 5, 2013.

18 The Information on Islamic microfinance regulatory and policy framework in Sudan has been culled from the works of Prof Dr Badr El Din A. Ibrahim, President of the Microfinance Unit of the Central Bank of Sudan.

the provisions of Sections 56-60(a) of the Bank and Other Financial Institutions Act (BOFIA) 25 of 1991 (as amended) released microfinance Policy, Regulatory and Supervisory Framework for Nigeria. This was revised in April 2011 to strengthen the policy. The policy recognizes existing informal institutions and incorporates them within the supervisory purview of the CBN creating a platform for the regulation and supervision of microfinance banks (MFBs) through specially crafted Regulatory Guidelines.

The notable microfinance policy measures carried out by the Central Bank of Nigeria and Ministry of Finance broadly include the following regulatory and promotional policies.

Regulatory policies

- License and regulate the establishment of microfinance banks (MFBs).
- Strengthen the regulatory and supervisory framework for microfinance banks.
- Strengthen the capital base of the existing microfinance institutions.
- Increase in the capital base of former community banks which become microfinance banks, from N250, 000 (USD2, 115.06) to N20 million (USD169, 204.80). Broaden the scope of activities of microfinance institutions.

Promotion policies

- Promote establishment of NGO based microfinance institutions.
- Promote the participation of Government in microfinance sector by encouraging states and local governments to devote at least one percent of their annual budgets to microcredit initiatives administered through MFBs.
- Promote the establishment of institutions that support the development and growth of microfinance service providers and clients.
- Promote sound microfinance practice by advocating professionalism, transparency and good governance in microfinance institutions.
- Mobilize domestic savings and promote the banking culture among low-income groups.

It was in 2004, that some sort of policy package about microfinance institutions was announced by the Central Bank of Nigeria, which became a guideline on the practice of Microfinance Institutions in the country. In addition to this, in December 2007, the new government policy gave licenses to 107 Microfinance Banks and converted 600 out of 761 community banks to Microfinance Banks, which raised the total number of Microfinance Banks to 707 in the country. The number has increased to more than 900 in 2009. However, to ensure compliance with microfinance policy the government intends to take actions by placing sanctions on Microfinance Banks that fail to comply with approved standards.

The existence of more than 900 microfinance banks and substantial number of informal moneylenders depict the degree of poverty and size of demand for microfinance services in Nigeria. Similarly, the dominant formal Microfinance Institutions are concentrated in the southern and eastern parts of the country. However, the poor majority in the predominant Muslim North area remain unattended. Out of the 36 states in Nigeria, 19 Northern states and the Federal Capital together account for 53.59 percent of Nigeria’s population, with the remaining 46.41 per cent in the 17 states of the south. of these 19 Northern states, most of them apply Islamic Shari`ah principles since its re-introduction in Zamfara State in 1999. The incidence of poverty in the three geopolitical zones found in the North is high compared to the other three geopolitical zones in the South. It was 71 percent in North West, 72 percent in North East and 67 percent in North Central. The corresponding figure is 43 percent in South West, 23 percent in South East and 35 percent in South.

Recently in 2013, the apex bank introduced Micro Small and Medium Enterprise Development Fund (MSMEDF) with the seed capital of N220 Billion to enhance access by MSMEs to financial services; increase productivity and output of microenterprises; increase employment and create wealth; and engender inclusive growth.

Some of the major challenges of microfinance in Nigeria include high interest rate, which ranges between 30-100 percent on the poor borrowers; rejection of conventional microfinance by largely Muslims population; low outreach among others.

5.1.3. Kenya

The microfinance sector in Kenya is relatively more developed with the presence of a number of commercial banks and growing numbers of formal and informal microfinance providers. The uniqueness of the Kenyan microfinance is its rapidly expanding mobile banking and payment system. Together, the banks, deposit-taking-MFIs (DTMs), credit-only-MFIs as also savings and credit cooperatives (SACCOs) have enhanced their penetration into rural areas. It is estimated that microfinance currently is offered in 566 branches, 1.73 million clients representing very low coverage but with growth potential due to high population (86 million, half of which are poor).

Microfinance in Kenya is regulated under the Microfinance Act (2006) and the Microfinance Regulations (2008). These two sets of legislation define the legal, regulatory and supervisory framework for the microfinance industry. It may be noted that SACCOs are regulated under a parallel system, the SACCO Societies Regulatory Authority under the SACCO Societies Act 2008. There are presently 73 deposit-taking SACCOs licensed and supervised by the Authority and over 15000 registered cooperative societies.

The banks and the deposit taking MFIs (DTMs) are subject to prudential regulations. Neither the prudential regulations nor the CBK's microfinance regulations apply to the credit-only MFIs on the ground that they do not accept deposits from the public.

However, another piece of legislation, the Financial Services Consumer Protection Bill, is expected to be a game-changer by bringing all financial services providers including the banks, deposit-taking-MFIs (DTMs), credit-only-MFIs as also savings and credit cooperatives (SACCOs) under the scope of consumer protection. It will also apply to mobile finance providers and insurance providers.

A few recent policy changes implemented by CBK suggest an agency model for deposit-taking MFIs whereby they

can appoint agents. They can also operate their marketing offices and branches as self-managed agencies. Thus, the deposit-taking MFIs may now expand their outreach without investing high set-up costs in branches.

The proposed amendment of the Microfinance Act (2006) is in advanced stages, which will enable the deposit-taking MFIs to offer a wider range of financial services and products including the issuance of third-party cheques, operating current accounts and foreign trade operations. Another significant step is to include deposit-taking MFIs in credit sharing systems with banks. The sharing of information will effectively increase credit access and reduce costs. The newly established Association of Kenya Credit Providers is expected to lead to greater integration in the market, whereby SACCOs will also be able to benefit from information sharing. A bureau to share information for credit-only MFIs is also under development.

In the table below, we juxtapose the key features and characteristics of microfinance in the three countries – Sudan, Nigeria and Kenya.

Table 5.1: General Characteristics of Microfinance in Sudan, Nigeria and Kenya

	Sudan	Nigeria	Kenya
The Regulatory Body	The Central Bank of Sudan	The Central Bank of Nigeria	Central Bank of Kenya
MF Providers	Banks, MFIs, and other institutions not regulated by the CBOS such as NGOs, Zakah Fund and other Islamic funds.	Microfinance Banks, NGO Microfinance Institutions, informal microfinance providers, Zakah and Waqf institutions	Banks, MFIs, other Non-Bank Financial institutions
Institutional Support	In addition to the regulator (the Central bank of Sudan), there are national councils, MF planning units	Central Bank of Nigeria, Bankers` Committee of Nigeria, National Microfinance Policy Consultative Committee (NMFPCC), Ministries, Departments and Agencies (MDAs) such as National Poverty Eradication Programme (NAPEP), Small and Medium Enterprises Development Agency of Nigeria (SMEDAN), National Directorate of Employment (NDE) Apex Associations of Microfinance Banks and Institutions, Donor Agencies and Development Partners.	Central Bank of Kenya, Association of Microfinance Institutions in Kenya
Wholesale Market and wholesale Guarantee Agent	Include funds from the CBOS,, commercial banks, statesfunds to MFIs, donors/ foreign sources and wholesale funds from partnership program (CBOS/ IDB partnership) . Works to establish a government-financed Wholesale Guarantee Agency is completed and the Agency will be launched soon.	Micro, Small and Medium Enterprise Development Funds (MSMEDFs), State Governments, MSMEDF was established where wholesale will be offered to commercial and retailing agencies, Nigeria Deposit Insurance Corporation (NDIC).	11 Non-Bank Financial Institutions, government financed agencies
MF Strategy	One CBOS strategy (the Vision for the Development and Expansion of the Microfinance Sector in Sudan, 2007-2011) as well as the National Comprehensive MF Strategy (2013-2017).	Microfinance Policy Framework for Nigeria, April 2011. Revised Regulatory and Supervisory Guidelines for Microfinance Banks in Nigeria February 2015.	Microfinance Act (2006), Microfinance Regulations (2008), Ministry of Finance

	Sudan	Nigeria	Kenya
Apex Institution/s	The Sudanese Microfinance Development Company (SMDC). The Microfinance Unit of the Central Bank of Sudan (MFU/CBOS) and the CBOS/IDB partnership are also taking the role of an Apex Institutions.	Central Bank of Nigeria, MSMEDF, Small and Medium Development Enterprise Agency of Nigeria (SMEDAN)	Central Bank of Kenya, Ministry of Finance, SACCO Societies Regulatory Authority (SASRA)
Microfinance Association	Non-exist.	National Associations of Microfinance Banks (NAMFB)	Association of Microfinance Institutions (AMFI), Savings and Credit Cooperatives (SACCO)
Loan Tracking System	Unified system exists.	Individual Management Information System [MIS] and loan tracking mechanism	Unified system using code-tracking method
Credit Bureau	Existing for all MFIs clients.	An MFB shall be required to supply information on all its credit clients to licensed Credit Bureau from time to time	Credit Bureau is partial among the MFIs
Technical assistance	Through the Sudanese Microfinance DevelopmentCompany, MFU/CBOS, and CBOS/IDB partnership program.	Central Bank of Nigeria/	Mobile banking payment system Dutch Co-financing Programme
Potential MF clients	1.5 million clients are expected to be reached in the Year 2017 (The National Microfinance Strategy). Estimates of the national potential MF clients by the writer is 7.2 million out of nearly 15 million poor, estimated officially (total population in Sudan is around 34 million).	Less than one million out of 40 million people have been reached by MFIs. Microfinance banks are unevenly spread in favor of the south with more than 70 I percent in the south while only 30 percent in the North.	566 Branches, 1.73million clients representing very low coverage but with growth potential due to high population (86 million, half of which are poor)

5.2 Microfinance Policy

In Sudan, microfinance is being practiced since the 1970s, throughout 1980s and 1990s. However, the real beginning was made in 2007 when the Microfinance Unit was established at the Central Bank of Sudan (CBoS) as a regulator and promoter of microfinance in Sudan. The Sudanese regulatory framework to establish MFIs was issued in 2011. Any applicant to establish an MFI has to satisfy the requirements to get the operation license, including capital requirement, the premises, business plan, and market study. Applicant is also required to constitute a Board of Directors to be approved the CBOS. Moreover, policies on reserves, profit distribution, classification of assets and accounting policies, liquidity, depositors' safety, auditing and transparency are also specified by the regulatory framework in accordance with CGAP and IFSB principles.

The regulatory framework covers MFIs, but the CBoS also give directives and annual policies for banks to extend MF in a certain ratio out of total bank›s portfolio to MF clients. In 2008 financing policies directives were issued to encourage banks to use mobile banking and specialized branches and MF institutions in accordance with the 2006 framework for licensing MFIs (amended 2007). In 2008, CBoS financing policies directed banks to allocate at least 12% of banking portfolio to MF. This policy continues even today. Moreover, the CBoS encouraged the banks to establish MFIs and undertake training activities, and to encourage MF guarantee funds, simplify procedures and guarantees, search for alternative guarantees and extend the third party guarantee via civil societies associations and workers unions. Over the subsequent years, the banks were directed to keep the allocation ratio of microfinance at the same level. Banks were allowed to establish their own MFIs in accordance with the framework to establish non-banking micro finance intuitions. MFIs capitalized by banks, social funds & civil societies were encouraged to diversify MF products (saving & transfers), ease lending procedures & guarantees & using guarantees of civil societies, associations, unions and MF guarantee networks. In 2011, CBoS financing policies specified that the CBoS would establish MF units at each CBOS branch. Moreover, the policy specified that efforts would be made to establish solidarity institutions to guarantee MFIs. The 2012 policy mentioned the establishment of a wholesale guarantee institution, and the need to contribute to upgrade program.

The 2013 policy allocated funds to MF & social dimension finance (infrastructures, women empowerment, electricity & water, cheap housing, housing maintenance, & financing associations & unions). This allocation, the policy mentioned, should be encouraged by the extension of the comprehensive micro-insurance documents as a guarantee & the use of income & pensions guarantees & through regulation of the wholesale market via the Wholesale Guarantee Agency & establishing partnerships with the private sector to attract wholesale funds on account of social responsibilities. In addition, this policy ensured financial inclusion via e-transfers and mobile banking, encourage the establishment of Business Development Centers (PDCs), and set a priority of finance to productive & comparative advantage projects for graduates, women & youth.

The 2014 policies maintained the continuity of regulations while directing finance to productive sectors and finance graduates, rural women, artisans, youth, vocational training graduates, extending the Comprehensive Insurance Document as a guarantee. Moreover, for the first time this policy specified that murabaha- sales-based lending should not exceeds 70% and direct banks to set reasonable murabaha margin, the use non-traditional guarantees, ensure clients protection, awareness & and spreading saving and build micro-insurance culture among MF clients & activate associations, cooperatives & agricultural & animal productions unions.

The 2015 policies encourage MFIs to increase their capital & consolidate their governance relationship with banks, & to activate mediators, to enhance the comprehensive insurance documents as a guarantee, to ensure clients' protection & issuance of Clients' Protection Manual, to establish the second generation of MFIs that is directed to youth, graduates, women and small enterprises and crafts, and to encourage MFIs to use the services of Registry Agency. Finally, this policy specified that the CBoS would apply directives of the High Council for Microfinance directives.

5.3. Regulatory Framework

In conformity of the MF policies in Sudan, a major goal of which have been to create and nurture an enabling environment in which microfinance institutions may grow and play an effective role in poverty alleviation, the CBOS issued different regulations at regular intervals to support the sector.

Licensing

A regulation relating to licensing of MFIs and banks was put in place in 2006-07, which encouraged investors to establish MF specialized banks and MFIs in state capitals in accordance with the minimum capital specified. A modified regulatory framework to establish deposit-taking and non-deposit-taking or credit-only MFIs in Sudan was put in place in 2011. The 2011 framework includes the following:

- Documents required for final license include business plan for 5 years, market study, administrative structure, manuals for internal working conditions, audit, accounting and financial, names and CVs of the Director and the Board of Directors etc.
- Applicants for setting up MFIs should be one of the following: public organization, private or public company registered under a Law, registered NGO, registered credit association, registered cooperatives or any other entity approved by the CBOS.
- Three types of MFIs may seek licensing - federal, state and local.
- No MFIs should start operations before obtaining final license, and getting the approval from the CBOS/MFU of the requirements of the building, the Board of Directors, the administrative structure and the paid up capital.
- Minimum required capital is SDG 20 million for federal deposit-taking MFI, SDG 10 million for State deposit -taking MFI and SDG 4 million for local deposit-taking MFI; and 1 million, SDG 700000 and 500000 for non-deposit-taking respectively.

Depositor Protection

The following regulations apply to deposit taking MFIs only.

- Deposit-taking MFIs should be a member of Deposit Guarantee Fund.
- Deposit-taking MFI must put at least 5% of annual profits in reserve.
- Deposit-taking MFIs must place a minimum of 10% and a maximum of 40% of all deposits in liquid assets. Overall, minimum capital adequacy ratio should not be less than 12% of risky assets, and 8% of total deposits.
- Non-Performing Loans (NPL) should be classified in accordance with the number of past due days (less than 30 days zero provisioning, 31-91, 20% provisioning, 91-180 days 50% provisioning and over 181days 100% provisioning).
- Reporting.
- In Sudan, the reporting standards are somewhat weak. None of the MFIs accepts one - PASED - report data to MIX Market. None of MFIs has been subjected to rating, either local or international.
- All MFIs are required to submit monthly reports before the 15th of each month, in accordance with specific format to be dictated by the CBoS. However, the same is not usually verified through site supervision.
- On-site supervision of MFIs is usually conducted when there is wholesale lending or when that is necessary. The CBoS regional branches (MF Units) do this visits and supervision.

Each MFI should have an internal qualified auditor to submit his auditing report to the Board of Directors. The internal auditing should include branch inspections twice a year at least, and checking fulfillment of the CBoS financing policies and regulations specified by the Board of directors.

The MFI should assign an independent auditor acceptable to the CBOS to audit its accounts annually. The results should be submitted to the NBE within 4 months from the end of the financial year. Branches can be opened, closed or change locations but a prior approval from the CBoS is required. Finally, penalties for not complying with prudential regulations are set in accordance of the CBoS structure of penalties.

Board Composition

Regulations also prescribe and specify the eligibility criteria or Directors of the microfinance institutions and the Board of Directors. Directors of the MFIs must submit their credentials to the CBoS for approval. They must have a minimum first degree in social science or equivalent and a minimum of 15 years' experience in a financial institution. Members of Board of Directors should not exceed 10 and should be experienced and honest with good historical records in accordance with the conditions to be determined by the CBOS.

Prohibited Areas

A few other prohibitions also apply to MFIs in general. They are restricted from dealing in foreign exchange, accept deposits from government or public (without prior approval from the CBOS), accept deposits (applies to non-deposit-taking MFIs only), engage in real estate ownership or trading, and invest reserve money in the financial market without the approval of the CBoS.

Clients

A Microfinance client in Sudan is defined by the CBoS is one aged between 18-70, and with a monthly income of less than double the minimum wage, or has ‹productive assets' less than SDG 20 thousands, and, above all, has not benefited from any official lending sources. S/he is described as economically active poor. Thus, the term includes many targeted clients in different microfinance categories such as productive families, craftsmen, technical and vocational training graduates, university graduates, professionals, rural women, pensioners, craftsmen etc.

Products

As mentioned earlier, the CBoS has included MF as a priority sector for banking finance, with a minimum allocation of 12% of the banking portfolio & project finance of 20 thousands SDG (Sudanese pound; approximately US$ 4000) as a fund of ceiling. It has identified several Islamic lending modes of microfinance. Considering specific products like murabaha, it has set a reference margin of around 15%. The MFIs can set their own rate working around this margin that is suitable for clients in a given. The rate hover in the range of 15%-18%. There is no interference with the sharing ratios in case of partnership-based modes like musharaka and mudaraba. Remittance services and mobile banking are yet to take-off in a big way. The CBOS also identified 15 types of guarantees/ collateral suitable for microfinance.

Islamic micro-insurance in Sudan is dominant. There are presently 13 micro-insurance providers in the country. The concept is gaining further momentum because of the CBoS issuance of the Micro Comprehensive Insurance Document. Sudan has a relatively long history of micro-takaful and the present comprehensive takaful which covers credit, assets, physical disability or death is a step forward.

5.4. Success Stories & Good Practices

5.4.1. Kiva Zip, Kenya [19]

It is a long-standing debate among contemporary Islamic banking and finance scholars and professionals. Should Islamic banking and finance carry the "Islamic" label? There are financial institutions with clear "Islamic" labels that engage in spurious transactions that are Islamic in form but not in spirit. andthere are financial institutions with clear "Islamic" labels that engage in spurious transactions that are neither Islamic in form nor in spirit. Indeed, opinion is deeply divided on whether the label that confers a distinct identity to the model also confers a distinct advantage or not.

This section does not purport to evaluate the arguments for and against the use of the "Islamic" label. It presents an experiment that may be an ideal model to be emulated and replicated in Islamic societies. The experiment did not purport to be meant for Muslims, yet it is perhaps Islamic both in form and in spirit. Kiva Zip provides zero-cost microfinance. It therefore should not surprise anyone to learn that the jury for the Islamic Economy Award 2013 chose Kiva as the world's best provider of Islamic microfinance.

Kiva Zip is a pilot program launched by Kiva, the world's first and largest micro-lending website. It is credited with mainstreaming the idea of "crowd funding". It enabled anyone with an internet connection to lend as little as $5 to alleviate poverty. Kiva Zip takes this model even further by making it possible for lenders to send funds directly to the entrepreneurs they support. It essentially takes care of three important considerations in provision of finance to the poor – affordability, convenience and low credit-worthiness as reflected in credit scores.

Kiva Zip operates online and uses mobile payment technologies to move money. It is thus, able to expand its outreach to remote areas and to the marginalized poor. It is also able to slash the cost of making microfinance loans to the level of zero.

Kiva Zip ties loans to borrowers' characters. Here trustees play an important role. Every borrower must be endorsed by a trustee. Trustees can be individuals or organizations, and are responsible for identifying borrowers that would be a good match for Kiva Zip loans. They do this by assessing the character and creditworthiness of borrowers. Trustees can then publicly endorse them on the Kiva Zip website, and provide ongoing support over the course of their loans. Trustees never handle the money. andtheir public reputation is tied to the repayment record of the borrowers they endorse.

Kiva cultivates a community between borrowers and lenders. Kiva Zip strengthens these relationships even more by letting borrowers and lenders exchange messages, including words of encouragement, updates from borrowers as they succeed, and notes about how loans have helped businesses thrive.

How does the transaction between lenders and borrowers at Kiva Zip executed? Lenders visit the Kiva Zip website, browse loan profiles, get more information on individual loan pages, and choose which borrowers they want to make a loan to. Once a loan is fully funded, Kiva Zip sends the loan amount directly to the borrower. Over the course of the loan term, the borrower promises to pay their lenders back in regular installments. As the lenders get their money back, they can relend the money, or withdraw it from Kiva Zip.

It may be noted that the success of zero cost direct loan model is heavily dependent upon availability of advanced mobile payment technology.

It is quite obvious that the Kiva Zip lenders come forward to lend purely out of benevolence. They do not receive any financial returns, while being exposed to many risks – risk of default that may be due to poor execution of a business plan, or to the borrower experiencing a catastrophic accident, or even to fraud on the part of the borrower or the trustee. Additionally, Kiva also makes the lender bear the

19 Extracted from http://sadaqa.in/2014/04/19/an-islamic-microfinance-program-without-an-islamic-label/

exchange rate risk involved in multi-country transactions. The borrower is kept insulated from adverse movements in exchange rates in a spirit of benevolence.

As of the end of April 2015, the Kiva Zip pilot had disbursed loans to about 8,700 small businesses via about 50,000 trustees in Kenya and USA. Repayment rates is a satisfactory 89.4 percent.

Kiva Zip was never meant to be an "Islamic" microfinance experiment. But it is adjudged now as one of the world's best Islamic microfinance experiment because it shares the ideals and goals of an Islamic economy – of a "riba-free" world – for its poor borrowers and aims to achieve this in a sustainable manner through enhanced efficiency. This is in sharp contrast to the world of "high-cost" conventional loans by mainstream MFIs as well as murabaha loans by Islamic MFIs.

Kiva Zip has some great lessons for management of zakah, sadaqa and cash waqf funds. zakah, waqf or sadaqa-funded microfinance experiments may emulate the Kiva Zip model with a view to achieving efficiency and offer zero-cost Islamic loans in a sustainable manner. For instance, setting up a waqf may absorb the initial cost of the internet-based portal and related technological solutions while the recurring returns from a dedicated cash waqf may absorb the recurring but low operational expenditure because of employment of advanced technologies.

There is another positive dimension of the Kiva model as well for Islamic social funds. In case of zakah, sadaqa and cash waqf, Shariah emphasizes on flow of funds either to beneficiaries designated by Shariah (as in case of zakah), or by the donor himself/ herself (as in case of sadaqa and waqf). For instance, the Kiva Zip model if replicated for zakah can transparently bring together the muzakki (zakah payer) and mustahiq (zakah beneficiary) on an M2M platform. It would help fulfill the Shariah conditions relating to distribution of zakah as well as the governance requirements of sadaqa and waqf (compliance of donor's intentions) in a more effective manner.

5.4.2. Al-Anaam Microfinance, Sudan[20]

An abundance of fertile arable land, water resources on the shores of Nile and the presence of a hardworking farming community in the region have led a Sudanese microfinance outfit, the Al-Anaam Microfinance Company to partner with several financial institutions, e.g. the Bank of Sudan, the Islamic Development Bank, the Farmers' Bank, the Investment Bank and the United Capital Bank to embark on several agri-based social empowerment projects. In a recent initiative, the partnership was expanded to include producers of seed potatoes from the Netherlands. Through the partnership, Al-Anaam provided to 104 farmers in Alshahynab region in Khartoum state with the inputs for production of potatoes. The inputs by the overseas partner included provision of improved seeds as well as the transfer of technology for highly mechanised farming. The size of financing for the pilot project amounted to SDG1,908,466 (USD325,000). The financing amount per farmer was pegged at around SDG20,000 (USD3375) to cover the cost of the seeds, fertilizers as well as jute for storage. Al-Anaam introduced highly mechanised farming in the form of seeders, furrowers and potato harvesters leading to substantial savings in cost of manual labor. The production cycle for the crop was 3 months and 3 weeks. Al-Anaam also provided new solutions for guaranteeing and marketing through a contract between the farmer and the owner of cold-storage. Under this contract, the latter provided for direct storage of the crops and became the guarantor of the former with Al-Anaam; the crops were to be released only when the farmer paid back to the company. The pilot project indicated that the ROI for one feddan of imported seed varieties was 121 percent compared to 78 percent for local varieties. This indicates a promising and sustainable future for this crop. The in-built guarantee mechanism also ensured in a repayment rate of 97 percent in case of seed funding and 98 percent in case of jute funding.

Al Anaam Microfinance is an initiative of the Al-Anaam Commercial Company. It was established on 19th January 2012 as a private company registered under the Sudanese Company Act 1925 as the first company owned by the private sector offering microfinance services with a vision "to be one of the best practionerss in the field of microfinance" and "make provision of appropriate technology and expansion of microfinance, leading to a greater increase in production and income for farmers, thereby reducing poverty and achieving a decent life for beneficiaries." It aims to provide access to credit services to about 12600 customers by 2017. Its various products include financing of needs arising out of cultivation of vegetables on small farms, animal production, house construction and renovation, the needs of craftsment, artisans, students and professionals. Various non-financial services include: training for MF beneficiaries, staff of banks and MFIs, preparation of feasibility studies and evaluation studies and technical support for MSMEs and performance evaluation of MFIs.

The pilot project involved financing for growing potatoes in Alshahynab village in Karary locality of Khartoum State. It involved financing to 104 farmers for purchase of potato seeds and jute for storage. A total number of 5088 sacks, each sack weighing 50kg of imported varieties (Pliny, Ageeba, Mondial, Safari) were provided involving a funding of SDG 1908465.6 (actual payment SDG 1855905.6) for a

20 Extracted from http://sadaqa.in/2015/03/30/growing-potatoes-on-the-shores-of-nile-a-successful-experiment-in-islamic-microfinance/

period of eight months. The guarantee mechanism involved personal guarantees plus contract with cold-storage facility (requiring direct storage of crops at the facility) under which the crops would be released to farmers against payment to the MFI. The project also involved financing of jute alone to 30 farmers for purchase of 7720 sacks involving a funding amount of SDG 506280 (actual payment SDG 494730) for a period of 6 months against personal guarantees backed by group trust collateral.

The following table provides the financial details on the cost and revenue of one feddan grown by imported potato seeds as compared to local potato seeds.

The Model:

The model essentially involves the following contracts and arrangements:

1. A smart partnership between Al-Anaam Microfinance Company (AMF), the Islamic Development Bank (IDB), the Central Bank of Sudan (CBOS) and other FIs to form a mudaraba with AMF as the Mudarib. IDB extends a qard hasan loan to the mudaraba.
2. An industrial salam between Al-Anaam Commercial Company (ACC) and the Mudaraba managed by AMF for import of potato seeds by former.
3. A cash purchase of potato seeds by ACC from Steta of Netherlands that also transfers the technology of mechanized farming to ACC.
4. A salam between farmer and AMF under which farmer receives seeds and jute from AMF.
5. A storage agreement between farmer and cold-storage-owner for direct lifting and storage of potatoes against issue of warehouse receipts.
6. Warehouse receipts are instruments for settlement of salam debt between farmer and AMF.

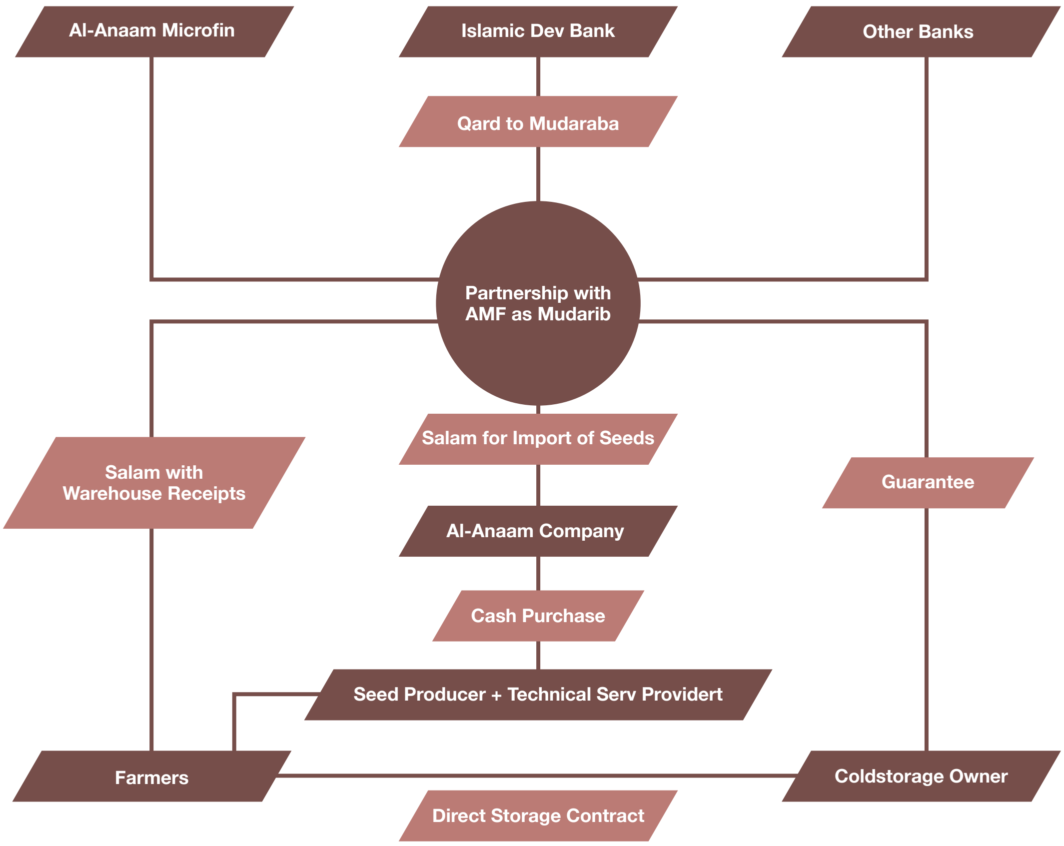
Table 5.2: Comparison of Costs and Revenues

	Particulars	Cost (SDG)		
		Local Variety	Imported Variety	%age
1	Land rent + land preparation by tractor + field operation (sowing, weeding, cleaning etc.)	2840	2840	100
2	Pesticides + fertilizers	980	980	100
3	Seeds	2100	3300	157
	Total (A)	5920	7120	120
4	Harvesting costs (cutting + collecting etc.)	500	650	130
5	Marketing costs (transport + backing + cold storage)	3700	6475	175
	Total (B)	4200	7125	170
	Total (A+B)	10120	14245	141
6	Revenues	18000	31500	175
7	Profits	7880	17255	219
8	Return on Investments	78%	121%	155

Advantages of Model

The hardworking smallholder famers received a package of financial, technical, warehousing and marketing services leading to a significant enhancement in productivity and in the incomes of the farmers. The cost of one feddan of imported seeds was 14245 SDG compared to 10120 SDG of local seed. However, the Net Profit and ROI for the former was SDG17255 and 121% compared to SDG7880 and 78% respectively. For the microfinance providers and funds, here is a low-risk investment with repayment rates at 97-98 percent with high social impact. The ratio is expected to move higher. Hitherto, agriculture was perceived as a high-risk investment compared to trade and industry.

Chart 17



Under the model, the crops are to be store in cold storage and not to be released until the farmers repay back to the MFI. The storage allows matching of supply with changing demand conditions in domestic as well as overseas markets, so that prices are not unduly depressed and the farmer realizes normal prices.

ACC that imported potato seeds and worked directly with farmers earlier faced a credit denial by foreign seed producers is now able to finance the purchases with funding by the Mudaraba.

Potato is a promising crop with a high potential for horizontal and vertical expansion. It has the potential of being a staple food as well as a cash crop. The experiment has demonstrated that the risk associated with potato cultivation can be reduced to fairly low and acceptable levels. Indeed the experiment is an excellent example of safe, efficient and sustainable production along with sustainable Islamic microfinance.

5.4.3. IRADA Microfinance [21]

The microfinance program of Bank of Khartoum, known as IRADA, is experimenting with new and innovative models of intervention to make inroads on chronic social problems, such as, poverty and unemployment. As part of the Sudanese economic system, it operates as a Shariah

21 This section draws heavily on Obaidullah, M. "Enhancing Food Security with Islamic Microfinance: Insights From Some Recent Experiments" Agricultural Finance Review, Vol 75, Iss 2, Emerald Insights

compliant bank. At the same time, it uses participatory modes within a model that is rooted in cooperation to create and share wealth in the agriculture sector.

Bank of Khartoum (BoK) was established in 2002 while its microfinance program (IRADA) was established in 2009 with the support and assistance from the Islamic Development Bank. The department was given the mandate to implement the SDG 200 million Al-Aman fund for Microfinance. The fund was formed by a strategic partnership between the Diwan zakah (apex body of zakah management in Sudan) and 32 Sudanese Commercial Banks.

IRADA was set up with a vision "to alleviate poverty and hunger by realizing the potential of the poor through development of limited resources and affordable financial facilities", and a mission "to increase the numbers of poor people involved in entrepreneurial activities through Islamic finance and expanding income generating activities, creating sustainable livelihood and employment". Its programs and activities are influenced by its strategic approach theme, which states, "Today the poor are our clients, but tomorrow they will be our business partners." Since inception, IRADA identified and focused on "economic empowerment through group finance and partnership".

Innovative Use of Zakah

In perhaps the first documented example of utilization of zakah for gharimeen (indebted) in an organized manner, globally speaking, a security portfolio was created through a partnership between the Diwan zakah (apex body for zakah management in Sudan) and commercial banks. The portfolio has a capital of 200 million pounds with 25 percent contributed by the former and the balance by the banks. The portfolio provides an insurance to the program against genuine defaults by clients at the second level. At the first level, the default is covered by individual personal guarantor(s) brought in by the client. The portfolio covers all productive sectors (commercial, agricultural and vocational) across Sudan.

Business Development Services

IRADA has carefully developed a network of providers of business development services on its payroll to provide a range of additional services to its clients. In many ways, these officers are key to the overall success of the program with their ability to source and procure the assets needed for the income-generating microenterprises and their role in monitoring the clients. In fact, each client is assigned a business development officer who is responsible for ensuring that the relevant asset is delivered to client, that the supplier is paid, and that the client makes timely repayment to the bank. The business development officers are also entrusted with the task of advising the clients on how their business can be more profitable. They also use their network in order to facilitate mutual exchange among their clients. The provision of business development service is adequately incentivized.

5.4.3.1. Abu-Halima Greenhouses Project

The Abu-Halima Greenhouses Project of IRADA, designed in 2011, uses a composite model of intervention that combines several "smart" factors and is designed to address several critical social issues including lack of food security, unemployment and poverty. It aims to open new economic opportunities for young university graduates with formal education in agriculture. The project in its current phase, targets economic empowerment of 125 educated unemployed graduates and their families. The project involves setting up 25 productive units of greenhouses with annual capacity production of 1200 tons of off-season vegetables using latest technology in the industry and professional expertise using the partnership-based mode.

The business plan of the project is rooted in the economic peculiarities of the local market for vegetables, which witnesses a major spurt in the vegetable prices because of adverse weather conditions. The greenhouses would enable the micro-entrepreneurs to grow high-value vegetables all through the year, while smoothening the supply of vegetables in the Khartoum market. The greenhouses can now grow vegetables that usually witness many-fold price rise during summer and other high-value vegetables during winter, thus, reducing price volatility. The underlying model for the project is presented in chart 2.

The Model (Restricted Mudaraba Partnership)

Unlike the regular micro-credit products, or even the commercial mudaraba products, the partnership between the bank and the micro-entrepreneurs extends well beyond that of a creditor and debtor or that of a rabb-al-maal (fund provider) and mudarib (fund manager). The bank assumes responsibility for provision of financial as well as a range of non-financial services to the micro-entrepreneur in the form of technical, marketing and business development services. The latter involves direct investment in creation of assets for supply of electricity, water as well as for vegetable cooling, storage and other services.

A beneficiary of this project must come from low-income strata of the Sudanese society and the income of the household should not exceed two times the minimum wage of USD 207 per month according to the law of Central Bank of Sudan. The beneficiaries are organized into jointly liable groups of households (headed by graduates, preferably in agriculture) in the form of a cooperative society registered according to the Sudanese Cooperative Law. These groups enter into the restricted mudaraba partnership contract with BoK. The micro-entrepreneurs receive the required technical training from experts, managerial and marketing support from the bank. They are eventually organized into a co-operative, which allows them to benefit from common facilities while retaining their right to do business activities.

Other stakeholders and partners in the project include: (i) Ministry of Finance, which has made a social contribution of 6.5 percent of capital (ii) the State Ministry of Agriculture, which helps get fertilizers and assists in technical capacity building; (ii) the Ministry of Social Affairs, which nominates the beneficiaries through its Graduate Fund; and (iii) Sanaa food hypermart and home center - a major Supermarket Chain - which has committed to off-take the vegetables. A technical Turkish firm, specializing in the technical aspects of greenhouse projects is a significant contributor to the success of the project.

Financing Method

The financing product is structured using the mudaraba mode with profit and loss features. Losses would be absorbed by the bank while profits would be shared in the ratio of 40 percent for the micro-entrepreneur and 60 percent for the bank. Profit distribution would take place twice in a year. The “restricted” mudaraba involves total financing to the tune of SDG 15 million (USD 4.50 million), which accounts for about 6 percent of the total portfolio of IRADA. It involves financing of working capital to purchase the 25 greenhouses, supporting infrastructure, technical feasibility, technical capacity building, agricultural inputs and living allowances. As stated above, the Ministry of Finance has contributed 6.5% of mudaraba capital as a social contribution with a view to lower the costs borne by the beneficiaries.

IRADA’s product package includes the services of an administrative coordinator, and an agricultural expert to supervise the production process and technical matters, ensure quality control and providing training. Such costs are included with the direct cost of the product. IRADA would retain control of the venture for 5 years, essentially to ensure its profitable operation. During this implementation period of 5 years, the graduate micro-entrepreneurs would be trained to manage the ventures. IRADA would cede control of the project assets to the Cooperative as a gift or sale at a nominal price after 5 years. Depreciation of assets is calculated at 20 percent per year over 5 years. The only collateral that the bank would be seeking for this financing is a personal guarantee against mismanagement and lack of commitment. There are no financial or physical collaterals required. However, the households, through the cooperative society, are required to submit a check as a security for default and infringement. The title of the assets is in the name of BoK as the rab-al-mal during the finance term, thereby, mitigating the asset-related risks. BoK, being the provider of the funds (rab al mal), has an insurance contract with the Islamic Insurance Company to cover the assets against any loss.

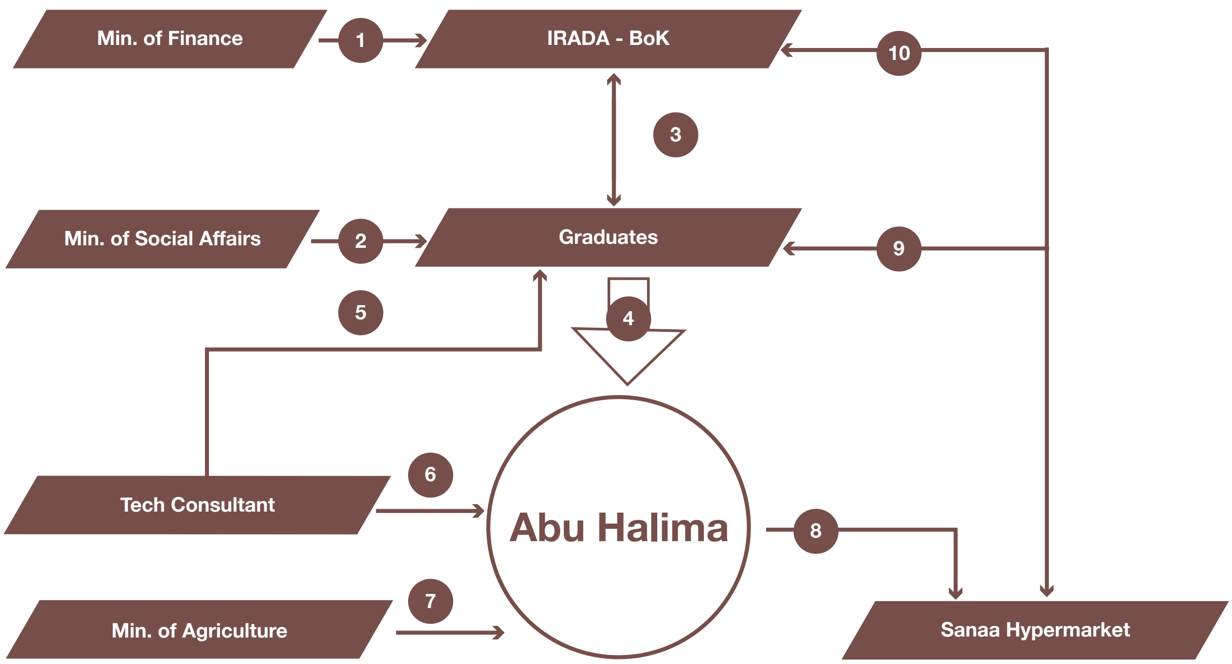
The returns on investment to IRADA would come in the form of 60 percent of profits made on the sale of 1200 ton of high value vegetables and fruits annually. This is expected to generate an ROA of 18 percent and IRR of 22 percent for the bank. Returns to the micro entrepreneurs would come in the form of balance profit share, estimated at SDG 2100 per family plus an additional living allowance of SDG 300 to 600 per family during the implementation period. The returns are expected to increase to SDG 7000 per family, since IRADA would withdraw after this period and the micro entrepreneur would receive full profit share.

A unique feature of the design of this microfinance model is the safety net during the implementation period of 5 years. This makes enormous sense as the mudaraba profits may display volatility while the basic needs of the micro entrepreneurs must be taken care of on a priority basis.

Non-financing services

Another unique feature of this project is the magnitude and variety in the provision of a multitude of non-financing intervention/ services to the micro entrepreneurs. These may be listed as under: (i) assistance to source and hire technical firm to construct greenhouses and related infrastructure and to provide technical support throughout project lifetime; (ii) pre-production support in the form of seeds, fertilizers, pesticides, machineries, electric and water sources; (ii) at-production support in the form of living expenses allowance, operational expenses, harvest expenses, technical support; (iii) after-production support in the form of cooling storage and grading room; (iv) assistance to source large customers such as DAL and Home Centre to purchase produce; (v) assistance to manage the project accounts; (vi) formation and registration of Cooperative of farmers; and (vii) transfer of ownership to the Cooperative upon its readiness to manage the business.

Chart 18



Arrows denote specific activities as follows:

1. Financial partnership between Ministry of Finance and BoK
2. Nomination of agriculture graduates for the project by Ministry of Social Affairs
3. Mudaraba agreement between IRADA (BoK) and the micro entrepreneurs (agriculture graduates)
4. Setting up of Abu Halima greenhouses
5. Technical consultancy to micro entrepreneurs
6. Technical consultancy to greenhouse establishment and operation
7. Provision of fertilizers and other services by Ministry of Agriculture
8. Sale of vegetables output to Sana Hypermarket and others
9. Sharing of profits (40% for 5 years and 100% after that) by micro entrepreneurs
10. Sharing of profits (60%) by IRADA-BoK for 5 years

Risk Management

An agri-venture like Abu Halima faces several risk factors, many of which may lead to crop failure and consequently to failure of the project. The success of the project hinges on mitigating these risks. Below we list some major risk factors identified by BoK and the various measures contemplated to address them:

- Inability to sell produce: Contractual agreement with major customer(s) is in place to purchase products at market price.
- Crop failure due to disease: Program has provided the micro entrepreneurs with fertilizers and ensured that they have the capacity to use appropriate amounts.
- Crop failure due to heat: Greenhouses have automatic temperature control.
- Crop failure due to lack of humidity: Greenhouses have automatic humidity control.
- Crop failure due to lack of water: Drip Irrigation system is developed to provide water. Well is constructed to provide sufficient water.
- Electricity blackouts: Program has provided generators that run on diesel to function as backup electricity.
- Unmet consumption needs leading to a lack of commitment: Families are provided SDG 300 to SDG 600 as living allowance every month all through the five-year implementation period.
- Lack of commitment by beneficiaries: BoK has retained an option to remove a given beneficiary and replace them with another. Beneficiaries have to sign into work and their performance is monitored. Bank has the prerogative to distribute a larger proportion of profits based on performance and commitment.
- Conflict during distribution of profits due to different yields- Profits of the micro entrepreneurs and bank is based on the total production of all the greenhouses and not on an individual greenhouse basis.

Challenges

Notwithstanding the apparent success of the model, several challenges remain. The first set of challenges relates to the beneficiaries. First, the project assumes that the beneficiaries come with the qualities and characteristics of a micro-entrepreneur, especially when it relates to the agriculture sector. This is a strong assumption. Many of the beneficiary-entrepreneurs may turn out to be deficient in terms of their abilities, notwithstanding the training and capacity building inputs provided to them. Behavioral traits, such as, indolence, apathy, negligence and impatience are hard to change. To get over their deficiencies, several farming tasks are outsourced and the cost is charged to the beneficiaries according to mudaraba rules. Further, lack of financial acumen on the part of the beneficiaries is likely to deter a proper understanding of the mudaraba contract and its implications in terms of rights and obligations of the parties. The second set of challenges is institutional. Compared to traditional banking and microfinance products, micro-mudaraba is a new financing methodology that requires developing much of the procedures and mechanisms de novo. At the same time, these are likely to be more complex, especially when these involve multitude partners. The third set of challenges come from a lack of an enabling environment, such as, weak mudaraba laws. A major challenge may be in the nature of political interventions that send a wrong signal about the product being non-commercial. Macro-economic developments, such as, high inflation rates may also wreak havoc on financial estimates.

5.4.3.2. Wad-Balal Livestock Development

Livestock production is an important component of the local economy in Sudan, providing food, employment, foreign exchange earnings, a source of wealth, and supply of inputs and services, such as draught power, manure and transport. The livestock subsector however, faces numerous constraints, including a heavy disease burden, low productivity exacerbated by drought and insecurity, the lack of adequate marketing infrastructure, and poorly organized and informed livestock owners and traders. The Wad Balal cattle fattening project of IRADA involving an investment of SDG 9.30 million (about USD 1.68 million) aims to curb poverty by addressing many of the above problems. The project aims to produce 7,000 cattle annually meeting export standards, link the poor livestock herders with international markets utilizing contacts of the Sudanese diaspora and increase incomes of an estimated 250 to 300 poor families. The model underlying the project is presented in chart 3.

The Model

The model of intervention involves three parties – IRADA of BoK; the Wad Balal Company owned by a group of Sudanese diaspora in the GCC; and the Wad Balal Association with cattle farmers as members. Under the arrangement, IRADA will have a diminishing musharaka agreement with the Wad Balal Company to invest in the required physical assets and create a facility for fattening of the calves. The Company will provide the technical services for the project. The Musharaka will provide the facility/ assets on ijara or lease to the Association comprising the farmers. IRADA and the Company will share the lease rentals from the farmers, as received by the Musharaka. The latter will buy out the share of the former over a period of 5 years by using a share of its profits. Further, a pre-agreed share of the profits of the Company would be used to provide social benefits to the local community. The Association will sell all the cattle post-fattening to the Company, which will ensure quality standards and export the same to international markets. At another level, IRADA will provide murabaha financing for purchase of calves to the Association. Murabaha financing in bulk reduces the cost of purchasing calves. The project, by facilitating the production of 7000 export quality cattle every year and, by linking the farmers to the international markets, enhances incomes of 250-300 poor families.

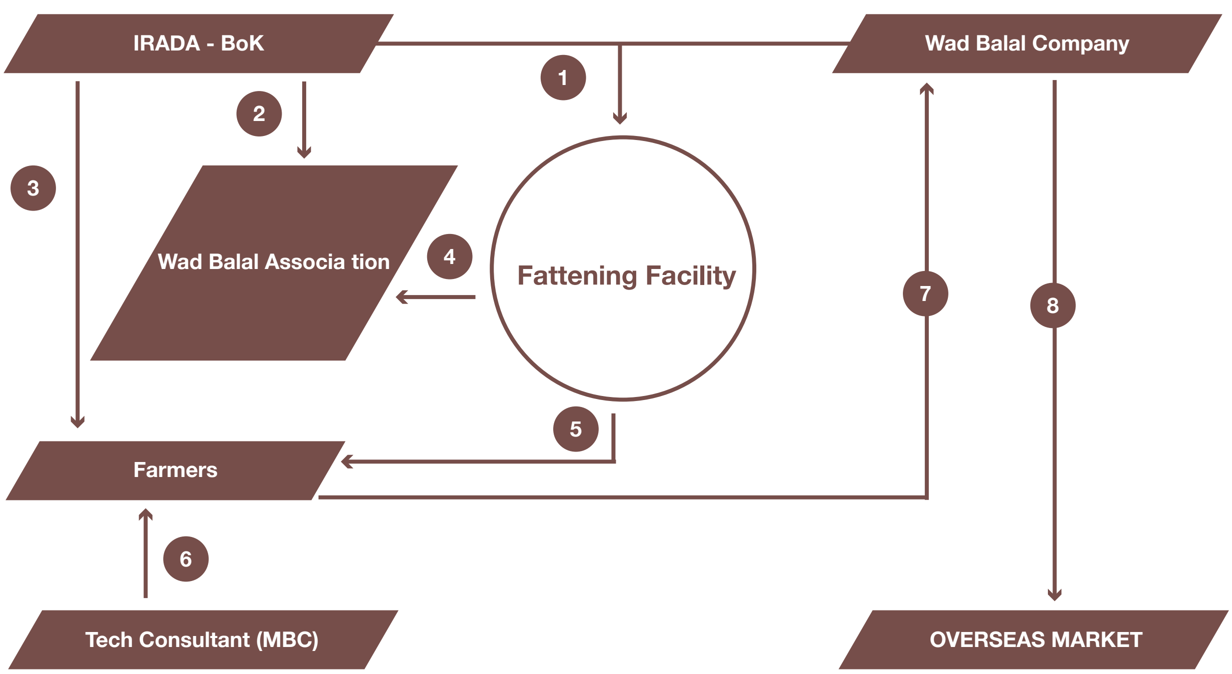
Financing Method

The musharaka between IRADA and Wad Balal Company was formed with 95 percent of capital contributed by the former (amounting to SDG 5.04 million) and 5 percent by the latter. The musharaka would make direct investments in hangers, electric sources, water sources, and fattening supportive investment that include cooling storage, services facilities, securities facilities, living allowance of beneficiaries and technical support. The financing tenure is 5 years. The lease of the cattle fattening facility to the association would bring in rentals at 18 percent per annum on ijara of assets used for cattle fattening to the association. The revenues from ijara is shared between Wad Balal Company and BoK as per the agreed terms of diminishing musharaka. The murabaha financing amounting to SDG 4.26 million will involve murabaha to purchase calves for Wad Balal Association at 15 percent profit margin. BoK will provide 100 percent financing for calves in the first 2 years; which will gradually reduce to 25 percent in the fifth year.

Non-Financing Services

As before, this initiative also involves a multitude of non-financing intervention/ services that include the following: technical support throughout project lifetime to ensure production quality and cattle vet services, establishing linkage with Wad Balal Company with access to market in GCC countries, assistance in managing the project accounts, and formation of Wad Balal Association of farmers.

Chart 19



Arrows denote specific activities as follows:

1. Financial partnership between Ministry of Finance and BoK.
2. Nomination of agriculture graduates for the project by Ministry of Social Affairs.
3. Mudaraba agreement between IRADA (BoK) and the micro entrepreneurs (agriculture graduates).
4. Setting up of Abu Halima greenhouses.
5. Technical consultancy to micro entrepreneurs.
6. Technical consultancy to greenhouse establishment and operation.
7. Provision of fertilizers and other services by Ministry of Agriculture.
8. Sale of vegetables output to Sana Hypermarket and others.
9. Sharing of profits (40% for 5 years and 100% after that) by micro entrepreneurs.
10. Sharing of profits (60%) by IRADA-BoK for 5 years.

Risk Management

An agri-venture like Wad Balal faces several risk factors, many of which relate to the marketability of the cattle that are reared by the farmers. The success of the project hinges on mitigating these risks to acceptable minimum. Below we list some major risk factors identified by BoK and the various measures to address them.

- Diseases: The project provides on-site veterinarian services to treat and prevent cattle diseases.
- Lack of quality and specifications (e.g. health, weight) for export market: On-site technical services are provided to educate farmers how to raise the quality of their livestock and meet international standards.
- Unmet basic needs of farmers: Families are provided living allowance.
- Inability to market: The Wad Balal Company, which has strong export links with the GCC countries, has committed to purchase the cattle at a fair price.
- Lack of commitment by farmers: This risk is mitigated considerably by retaining the right with BoK to remove a shirking beneficiary and replace with another committed worker. This is backed by stringent performance monitoring. Good performance is also incentivized with BoK having the right to distribute a larger proportion of profits based on performance and commitment. Performance of individual farmers is also monitored at the Association level.

5.4.3.3 Building Strategic Food Reserve

Under another program involving multiple partners, IRADA microfinance aims to purchase goods efficiently from farmers for sale to the Government of Sudan's strategic food reserve. This would replace the intermediary and ensure a better price for farmers for their produce based on official advance purchase rates determined by the Ministry of Agriculture. This ensures that the farmers' incomes increase and more farmers are motivated to produce for livelihood in addition to subsistence. The other partners in this program are the Ministry of Agriculture and the Ministry of Social Welfare of the government of Sudan, the zakah Chamber of Sudan and the World Food Program.

Under this program, IRADA provides salam financing with a tenure of a maximum of 8 months. Its target beneficiaries include 73,000 smallholders under 878 Farmers Association in seven states (23,677 through direct contract, and 48,396 through mudaraba with other commercial banks). The program involves multiple parties in a multitude of roles. IRADA serves as the link between the farmers and other partners and in grouping the farmers into associations. The Ministry of Agriculture provides technical assistance for product quality and building the capacity of farmers groups. The World Food Program provides food for farmers during the planting period. Finally, IRADA provides for coordination and monitoring of partners activities and links farmers to local, regional, and global markets.

5.4.4. Al Hayat Relief Foundation, Nigeria [22]

There has been a few moves in Nigeria to initiate Islamic or semi-Islamic financial operations. Jaiz International Plc made a giant stride about eleven years ago in this direction. Jaiz went as far as selling shares to Nigerians, individuals and corporate bodies to raise funds to meet the conditions imposed by the Central Bank of Nigeria, which has been changed several times. Barely two years ago, Jaiz was issued a license to commence operations after ten years of its establishment because of the adverse Nigerian environment for Islamic Banking. This approval was greeted with stiff opposition by several Nigerian groups who viewed the approval as an attempt to Islamize Nigeria and Nigerians. Al-Hayat Relief Foundation was established under such adverse circumstances in an attempt to curb the evils of riba, promote trading and investments in business and agriculture and to give out loans on interest free basis to enable people work conscientiously for the money collected with less anxiety of paying back any accumulated interest. The issue of giving out loan on interest free basis is what many Nigerians saw as utopian,

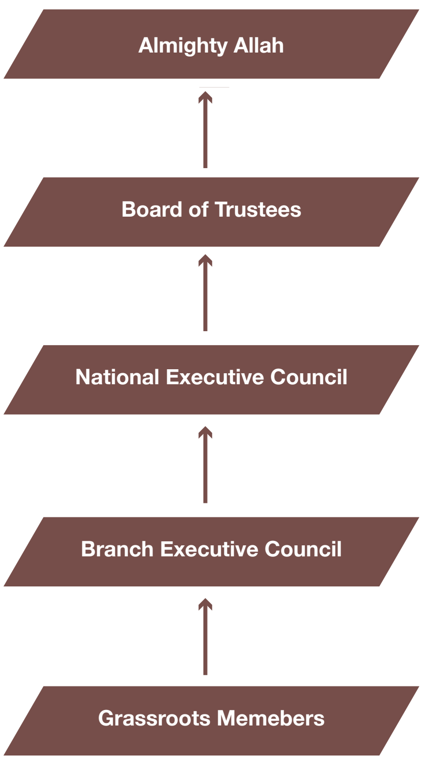
22 Contributed by Dr Salako Taofiki Ajani

which can never work in an environment like Nigeria. It is in this adverse scenario that Al-Hayat Relief Foundation floated its Islamic micro financing operations to contribute to grassroots economic development.

Al-Hayat Relief Foundation is a non- governmental, interest free microfinance organization established in March 15 1997 and registered with the Corporate Affairs Commission, Abuja, Nigeria. The foundation has its head-office in Ogun State, Nigeria. The motto of the foundation is “assidiku amanat” which translates as “truth is trust.” The foundation has attempted to put into practice some Islamic financial theories in its eighteen years of existence in spite of all odds. The foundation champions the cause of Islamic economic system and grants interest free loans to registered members of the foundation. Membership of the foundation is open to trustworthy and working- class Muslim males and females. Presently, the foundation has about (56) branches across Ogun, Lagos, Oyo, Osun, Ondo, and Kwara states of Nigeria with a population of about (10,000) members. With this number of branches and the various requests for more branches, Al- Hayat has grown into a household name in Shariah principled microfinance activities. The branches of the foundation meet once in a month. The meeting affords the members the opportunity of interacting with one another, fulfilling their financial obligations, listening to lectures and offering prayers for spiritual development. Strategically, the meeting is also a forum for dawah. The Missioners of branches give sermons and lectures on very topical issues. This is expected to rejuvenate the mind and build characters.

Chart 20: Al- Hayat Organogram

Chart 20



The grassroot-level members are responsible to branch executive council. The branch executive council members are responsible to national executive council, who in turn, are responsible to the Board of Trustees. Members of the BoT owe allegiance to Allah.

The business activities of all the branches conform to the principles laid down in fiqh muamalah.

Products of the foundation: The foundation carries out the following among members:

1. Interest free loans (Qardh Hasan).
2. Takaful- Group Life Insurance scheme.
3. Murababah – Cost + Profit.
4. Musharakah – Partnership business.
5. Mudarabah - Entrepreneurship.
6. Housing scheme for members. (Al – Hayat Golden Estate).

Qardh Hasanah: Members enjoy long and short-term interest free loans to the tune of one million naira. Loans between #1000 and #200,000 are repaid within twenty months; loans between #200,000 and one million naira are repaid within thirty months. Loans above #200,000 attract the bank cost of transaction (COT) and value added tax (VAT) depending on the amount charged by the bank on the varied amounts of loans granted by the foundation. Total loan issued to members in the last financial year was #517,259,450 purely on interest free basis for personal and commercial developments. (Internally Audited Account 2014).

Takaful: The foundation also manages Group Life Micro Takaful Scheme (GLTS). It is a pool created to cater for the immediate next of kin of any deceased member of the foundation. As at 31 March 2012, total premiums paid by members to takaful fund was N10,051,000.00. Part of this money was invested on Murabahah business and other business projects, which generated a profit N1,308,200.00. Indemnity paid so far to the relatives of deceased members was N820,000. With this, the main takaful fund remains intact. (Al-Hayat Takaful account 2012).

Mudarabah: The term Mudarabah is a special kind of business partnership where one partner gives money to another for investing it in a commercial enterprise. This investment comes from the first partner who is called Rabbul mal while the management and work is an exclusive responsibility of the other, who is called "Mudarib". Partners in this sense may involve more than two people. The foundation attempted this by selling shares to members to raise fund for the establishment of a pure water factory in the year 2009. About ten million naira was raised for this project, which has since commenced production.

Housing scheme: The foundation also acquired about 23 acres of land at Ilefun along Iperin Ijebu ode, Ibadan Road. Branches subscribed to acquire the land and constructions have commenced on the area. The aim of embarking on this project is to make Al-Hayat members become private owners of their houses without getting involved in interest-based mortgaging housing schemes.

Murabah: The foundation offers murabahah or cost + profit financing.

Musharakah: The foundation enters into partnership business, rental, transport and a host of others to generate money. Profits made are shared among members annually based on the amount of shares they have in their share accounts.

Al-Hayat activities are operated at two levels

- National level where the National Executive Council takes care of the branches.
- Branch level – where the branches take care of individual members at the grassroots levels. The foundation uses the branch levels to get to the grassroots where the needs of individual members are met and catered for.

Challenges facing Al-Hayat Relief Foundation in its eighteen years of operation are as follows

Loan Defaulters: A small percentage of members do not pay back loans as and when due. This sometimes delays other intending loan seekers or business participants to get theirs on time. To solve this problem, the foundation put in place a debt recovery committee, which seems to have helped in reducing the problem. It is important to note that Al-Hayat Relief Foundation has not recorded significant bad debts in its past eighteen years of operation.

Betrayal of Trust: Trust and sincerity are great elements in Islamic financing. Al-Hayat has suffered in the past due to

Financial Analysis Table 5.3: Financials of Al-Hayat

ITEMS	2012/2013	2013/2014
Investment on Land and Building	16,869,310.00	31,779,210.00
Investment on Al-Hayat Golden Estate	18,535,630	39,461,406
Shares Capital in AL HAYAT Microfinance Bank Ltd.		30,000,000.00
Interest free loan to members	305,040,955.00	517,259,450.00
Members Shares Capital	84,944,180.00	117,210,203.50
Members Savings	364,650,403.00	499,472,596.25
Investment on Yat Water Factory	9,201,000.00	10,500,000.00
TOTAL	799,241,470.00	1,245,682,865.75

betrayal of trust reposed in them. Such staff were however, detected and removed from office. They were made to pay back the money mismanaged or face legal charges.

Lack of Islamic Financial Experts: Another challenge facing the foundation is the dearth of skilled Islamic finance personnel to work in key posts. This has made it difficult for the foundation to meet demands for more branches. It is the foundation's practice to appoint an experienced person to build a new branch in a unique way.

Bank Policies and Regulations: The foundation faces a great challenge from its bankers. The foundation's investment is about N1,195, 737,959 and the foundation gives out loans through these banks. In the last financial year that ended March 2014, the consolidated account of all the branches revealed that a total sum of N517, 259,450 interest free loan was given out to members. Most of the banks charged COT and VAT on cheques issued to members amounting to # 1, 495,138. This was the amount paid to banks even when the foundation gave out interest free loans. There is no doubt that the challenge would have been overcome more easily if the banks were Islamic.

Account Policies / Auditing: Audit firms, which have western background, audit Al-Hayat account. This has always posed some challenges as they subject the accounts to all the rudiments of unIslamic principles. Efforts to make western auditors align towards Islamic accounting procedures have always been difficult. Specific areas of contention are issues of depreciation of fixed assets like land, building, and machinery.

Al-Hayat Microfinance Bank Ltd.: Recently, the foundation established a Microfinance Bank with the approval of the Central Bank of Nigeria. There is no doubt that with a solid financial base and committed membership, the foundation has taken a step forward towards achieving its vision and corporate mission. However, a major challenge facing the bank now is to get an Islamic expert as a technical adviser to enable it to be transformed into a full-fledged Islamic microfinance bank.

5.5 Lessons and Policy Implications

- A major challenge confronting conventional microfinance is related to the belief systems of the poor. Conventional microfinance involves interest-based savings and loans to farmers, which is against the tenets of Islam, the predominant religion in the countries under focus. A CGAP (2008) study based on a survey of the poor in Muslim societies concludes that Islamic microfinance, which complies with the religious tenets "has the potential to combine the Islamic social principle of caring for the less fortunate with microfinance's power to provide financial access to the poor. Unlocking this potential could be the key to providing financial access to millions of Muslim poor who currently reject microfinance products that do not comply with Islamic law." Islamic microfinance, therefore, is seen as a solution to the challenge of self-exclusion.
- Small-scale farmers are the "economically active" poor who witness grave food insecurity and abject poverty. Agriculture is highly dependent on the local conditions: availability of and access to good land, soil, water, climate and market. Further, crops vary widely in terms of duration, perishability, and seasonality. Therefore, provision of microfinance requires different products, diverse and tailor-made approaches. Recent best practices in conventional microfinance advocate "local" interventions based on a value chain approach.
- Several Islamic microfinance experiments have been undertaken in recent times in predominantly Muslim countries. These poverty alleviation initiatives by the Islamic microfinance institutions (IsMFIs) in the rural areas have sought to counter food insecurity and generate livelihoods by focusing on the agricultural and livestock sectors. IsMFIs have used diverse models and tools of Islamic microfinance, as they seek to provide financial and non-financial support to the farming communities. A majority of Islamic microfinance institutions (IsMFIs) focus on provision of micro-credit alone to the farmers, following an approach similar to that of the conventional microfinance institutions. of course, the IsMFIs that offer micro-credit must additionally ensure that the credit product(s) offered by them are based on Shariah-compliant modes, such as, murabaha, bai muajjal and bai salam. Other IsMFIs prefer a more comprehensive and challenging approach. These IsMFIs believe that they must play the role of an anchor and a facilitator in a process of transformation, and in the economic and social empowerment of the farming communities. They prefer to adopt a "project" approach and provide support in a multitude of areas other than finance, such as, technology, production, marketing, business development, capacity building, and thus, ultimately steering the project to success. Sudan provides interesting cases of both types of interventions.
- Agricultural growth has a direct impact on poverty by raising farm incomes. It indirectly affects poverty through generating employment and reducing food prices. When centered on smallholder farmers, it requires creative and innovative interventions that involve provision of a range of financial and non-

financial services to them. The latter include technical skill enhancement of the farmers as well as their empowerment through producer organizations. The case studies in this section present a range of interventions that have been undertaken in recent years to achieve the same in the Islamic framework. The key lessons from the case studies included in the paper are highlighted below.

- A review of various Islamic modes that are used for provision of finance to farmers reveals that there is no one-size-fits-all mode, even though bai salam is widely seen to be the appropriate mode for agricultural finance. Further, Shariah-compliance of a mode does not by itself ensure freedom from exploitation. As the examples show, salam can often involve exploitation when the advance price paid to the poor farmer is artificially pegged at low levels due to his/her weak bargaining power. Identifying appropriate organizational structure, e.g., a farmer's cooperative, may replace the vendor and thus prevent exploitation of individual farmers by the latter. Similarly, rates on murabaha and ijara financing can be and often are exploitatively high. In case of participatory modes, e.g. mudaraba, musharaka and muzara'a the sharing ratio could be unfairly biased against the poor beneficiary because of their low bargaining power. Prudential regulation of markets is an important pre-condition to ensure healthy and adequate competition among the players and thereby, remove abnormal and/or illegal profits through mispricing. of course, these "exploitation" concerns apply to for-profit modes only and call for a greater reliance on not-for-profit modes of microfinance.

- Islamic finance discourages debt-based products and encourages equity and partnership based products in general. Given that conventional MFIs derive their income from interest, they seem to be inclined to push their clients into larger and larger amounts of debt. In the Islamic approach, debt is not just discouraged; there are built-in mechanisms, such as zakah to address over-indebtedness of an individual. The paper documents the cases in Sudan where an institutional mechanism exists for use of zakah for curbing indebtedness.

- Islamic finance requires "simplicity" in contracts where the rights and obligations of the parties are well understood by them. Even where an Islamic finance model includes future obligations, or composite structures, the uncertainty and ambiguity factor is kept to the minimum. The diminishing musharaka based models used in Sudan are apparently complex but quite "definitive" in terms of transfer of ownership of the key assets into the hands of farmers over a finite period.

- While credit and finance are key inputs for transforming the lives of the farmers, they often require a wide range of non-financial services. Identifying these non-financial needs and finding creative and innovative solutions thereto is critical for success of any intervention. The case studies document a range of such services provided in Sudan including: technical assistance, skill enhancement, procurement, production, warehousing, processing, packaging and marketing support that underlies the success of these interventions.

- A related question is how these non-financial services are to be funded. Should they be priced? Should the farmers pay for these services? The cases highlight both commercial and philanthropic approaches to the issue. In the Sudanese examples, the costs are duly accounted for in the determination of profit-share for the farmers, while the contribution by the Ministry helps absorb certain costs.

- MFIs that focus on financing the need for physical assets by farmers through conventional or Islamic credit, or through leasing often ignore the importance of providing for basic consumption needs. It should not come as a surprise if farmers resort to diversion of funds from the so-called income-generating project or even distress sale of the assets (funded by MFIs) if the basic consumption needs remain unfulfilled. Indeed, in case of the Sudanese projects the provision of safety net by IRADA is perhaps a significant contributor to the success of the projects.

- The projects discussed in this study not only seek to leverage existing skills, but also develop new skills. Specifically, the Sudanese interventions seek to take the technical skills of farmers to a completely new level, which should enable them to create wealth by applying better farming technology on a sustained basis. The projects use an approach similar to conventional venture capital funding (with some differences, of course) and focus on the economic viability of project. They carefully seek to identify risks and mitigate them. They also provide a unique example of combining benevolence with commercial viability.

- In confronting the multitude of challenges facing the poor farming communities, the MFIs may have to limit their outreach significantly. While in case of credit-based finance, the size of financing per beneficiary is very small, perhaps in the range of USD100, the same is very high in case of project-based approaches that seek to finance the entire value-chain. Such partnership-based agri-finance may require large upstream investments; perhaps placing them in a distinct category of social impact investment and not in that of microfinance. For instance, the size of financing per beneficiary is capped at USD32, 000 in case of Abu Halima Green Houses project. No wonder, while salam-based microfinance by IRADA directly targets over 23000 farmers, Abu Halima targets a meagre 125 agriculture graduates. This naturally raises the question: Is salam financing the best that Islamic finance can offer in the field of agriculture? At the same time, it is important to note that projects like Abu Halima and Wad Balal may have a far more significant long-term impact in terms of building capacities of farmers as also in enhancing food security. Such projects help create a new generation of technically superior and highly skilled farmers increasing the supply of and stabilizing prices of high-value foods. Further replications of such projects would also bring down the marginal costs. Another unexplored possibility in Islamic finance is the establishment of awqaf or endowments to take care of the upstream investments that create permanent or long-lasting facilities for use of farmers. Such investments need not be funded with bank finance. If so, the quantum of financing per beneficiary will significantly go down and the outreach of IsMFI may be significantly increased.

- Another interesting dimension of the Abu Halima and Wad Balal projects is the contribution of grant money by the Ministry of Finance to the Mudaraba, which makes it possible to offer murabaha financing at a modest rate of fifteen percent. Given the widely expressed concern about affordability of high-cost microfinance, such a possibility offers great promise. In a modified model, the Ministry may easily be replaced with a dedicated Waqf, which can pave the way for affordable microfinance for the poor.
- A unique dimension of the Wad Balal project is the fact that a pre-agreed share of the profits of the Wad Balal company (that serves as the pivot in the structure and would be eventually owned entirely by the Sudanese diaspora) would be used to provide social benefits. One may draw a line of comparison between such a corporate entity and a waqf, which dedicates a certain percentage of its profits for provision of specific social benefits. Indeed, with minor variations, the two project structures could easily fit in new situations and find acceptance in a variety of countries and regions. In the Sudanese scenario, several ministries of the government contribute significantly to the success of the projects. The active involvement of the ministries of the government in other countries may give rise to apprehensions and concerns about coordination and efficiency. As an alternative, the substitution of the institution of waqf for government may be explored.

Glossary

Awqaf	Islamic endowment (plural of waqf)
Asnaf	Types or categories (of eligible beneficiaries of **zakah**)
Amil	Worker
Amilin alayha	Workers (employed in **zakah** collection and distribution)
Baitul Maal	House of funds, treasury
Salam	Deferred delivery sale with advance full payment
Faqr	Poverty
Fiqh	Corpus of Islamic jurisprudence
Fatawa	Juristic opinions
Farḍ Kifayah	Collective societal obligation
Fuqara	Poor (plural)
Fi sabilillah	In the path of Allah
Gharimun	Those overburdened with debt
Habs	Waqf
Hadith	Sayings and Traditions of the Prophet (pbuh), also a primary source of Islamic law
Halal	Permissible
Haram	Forbidden

Hawl	One lunar year = 354 days
Hawala	Transfer of debt (also remittance)
Hiba	Gift
Hijri	Islamic calendar
Hukr	Indefinite lease
Ibdal	Exchange of the waqf asset for cash (sale)
Istabldal	Exchange of the waqf asset for another asset (of higher value)
Ijarah	Leasing
Ijaratayn	Dual leasing
Infaq	Charitable spending
Iqrar of waqf	Waqf deed or legal document; also Waqfiyyah
Ibn al-sabil	Wayfarer
Istisna	Sale by manufacturer
Khayrat	Voluntary donation
Kafalah	Guarantee
Manfa'a	Benefit
Masakin	Needy (plural of miskeen)
Mawquf	Object of Waqf
Mawquf Alaihi	Beneficiary of Waqf
Muḍarabah	Trustee partnership

Musharakah	Joint venture
Mustadiq	One who is eligible to receive zakah
Muzakki	One who is liable to pay zakah
Murabaḍah	Cost-plus sale
Mutawalli	Person appointed custodian and manager of the waqf
Muzaraah	Crop sharing
Muallafat al-qulub	Those whose hearts are inclined towards Islam
Nazir	Person appointed custodian and manager of the waqf, also mutawalli
Nazara	Waqf management or administration
Niṣab	Minimum level of wealth beyond which **zakah** is liable
Qur'an	Holy Book of the Muslims, the primary source of Islamic law
Qard al-hasan	Islamic loan, a good or beautiful loan without any material benefits to the lender
Riba	Excess in a debt or a loan, commonly understood as interest
Rikaz	The zakah on minerals, hidden wealth
Riqab	Bondage, slavery
Ṣadaqah	Voluntary donation
Sunnah	Sayings and traditions of the Prophet (pbuh), also a primary source of Islamic law
Shariah	Islamic law
Shura	Consultative Body
Sukuk	Islamic financial securities

Sukuk al-Intifaa	Islamic time share bond
Takaful	Mutual guarantee
Taawuni	Cooperation-based
Tamleek	Imparting ownership
Tamweel	Financing
Uruḍ tijarah	Merchandize of trade
Ushr	One-tenth rate of zakah on agricultural products when irrigated by rivers or sky
Ulama	Islamic scholars
Wakalah	Agency
Wakaf	Waqf, popular usage in SE Asia
Waqf	Islamic endowment
Waqif	The donor or founder of a waqf
Waqf ala Aulad	Family endowment
Waqf al Ahli	Family endowment
Waqf Khayri	Philanthropic endowment
Waqf Aam	Philanthropic endowment for the society
Waqf Khas	Endowment with restricted beneficiaries
Waqif	Endower or donor or founder of a Waqf
Waqfiyyah	Waqf deed or legal document; also Iqrar of waqf
Zakah	Compulsory levy on wealth also known as the primary institution of Islamic charity

Islamic Development Bank (IDB)

Establishment

The Islamic Development Bank is an international financial institution established in pursuance of the Declaration of Intent issued by the Conference of Finance Ministers of Muslim Countries held in Jeddah in Dhul Qa'dah 1393H (December 1973). The inaugural Meeting of the Board of Governors took place in Rajab 1395H (July 1975) and the Bank was formally opened on 15 Shawwal 1395H (October 20, 1975).

Vision

By the year 1440H Hijrah, IDB shall have become a world-class development bank, inspired by Islamic principles that have helped significantly transform the landscape of comprehensive human development in the Muslim world and help restore its dignity.

Mission

The mission of IDB is to promote comprehensive human development, with a focus on the priority areas of alleviating poverty, improving health, promoting education, improving governance and prospering the people.

Membership

The present membership of the Bank consists of 56 countries. The basic condition for membership is that the prospective member country should be a member of the Organization of Islamic Cooperation (OIC), pay its contribution to the capital of the Bank and be willing to accept such terms and conditions as may be decided upon by the IDB Board of Governors.

Capital

As per the decision of the 38th Annual Meeting of the Board of Governors, the authorized capital of the IDB is 100 billion Islamic Dinars and its subscribed capital is 50 billion Islamic Dinars.

Group

At present the IDB Group is made up of the Islamic Research and Training Institute (IRTI), International Islamic Trade Finance Corporation (ITFC), Islamic Corporation for Insurance of Investments and Export Credit (ICIEC), and Islamic Corporation for the Development of the Private Sector (ICD).

Headquarters and Regional offices

The Bank's headquarters is in Jeddah in the Kingdom of Saudi Arabia. It has four regional offices in Rabat, Morocco; Kuala Lumpur, Malaysia; Almaty, Kazakhstan; and Dakar, Senegal. It also has two country gateway offices in Ankara, Turkey and Jakarta, Indonesia; and field representatives in 14 member countries, namely Afghanistan, Azerbaijan, Bangladesh, Burkina Faso, Guinea, Iran, Mali, Pakistan, Sudan, Turkmenistan, Uzbekistan, Yemen, Mauritania and Libya.

Financial Year

The Bank's financial year is the lunar Hijra Year.

Accounting Unit

The accounting unit of the IDB is the Islamic Dinar (ID), which is equivalent to one SDR – Special Drawing Right of the International Monetary Fund.

Languages

The official language of the Bank is Arabic, but English and French are also used as working languages.

ISLAMIC RESEARCH AND TRAINING INSTITUTE
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