

THE NEED FOR HIGH CORPORATE GOVERNANCE IN NIGERIAN *ZAKĀH* AND *WAQF* INSTITUTIONS

**Mahadi Ahmad¹
Syed Khalid Rashid²**

ABSTRACT

Since the collapse of the Sokoto Caliphate at the hands of the British imperial power, zakāh and waqf in Nigeria have remained underdeveloped. In 1999, when the Zamfara State government declared the implementation of Shariah, these institutions were reestablished. Since then, laws have been enacted for these institutions; particularly between 2000 and 2003. However, annual reports presented since 2000 till date have not been impressive. Owing to this low performance, it is certain what is missing is a high level of corporate governance that protects the interest of all stakeholders, which can help facilitate a institutions' success. Therefore, zakāh and waqf cannot be neglected. It is against this background that this research examines the corporate governance of Nigerian zakāh and waqf institutions within the context of their existing laws, primary and secondary sources of Islamic law, and contemporary studies on the subject. The methodology applied in this study was a qualitative research method using library

¹ Ph.D holder, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, almahdi_2k2@yahoo.com

² Professor of Law, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, skrashid@hotmail.com

materials and the internet. This paper concludes that the zakāh and waqf sectors will perform better and actualize their inherent objectives if high levels of corporate governance are entrenched in these institutions.

Keywords: *corporate governance, zakāh, waqf, Nigeria*

INTRODUCTION

Zakāh and *waqf* institutions are generally left unmonitored by Islamic corporate governance.³ Corporate governance is the process by which management of a corporation is controlled and directed to protect the interest of all its stakeholders. Nevertheless, the Anglo Saxon principle of corporate governance is biased towards prioritizing the protection of shareholders because they are corporation's funders.⁴ On the other hand, Islamic corporate governance is concerned about the interest of all stakeholders; the fund providers and other segments that take part in the running of the corporation. It is to this effect that the AAOIFI Governance Standard states that "The Governance structure will aim to align, as nearly as possible, *the interest of the stakeholders*, of those charged with governance and *of the society*." ⁵ (Emphasis added). Despite AAOIFI's extensive consideration of corporate governance⁶ in the Islamic financial institutions, there is still a need for detailed and specific standards on

³ See generally, Syed Khalid Rashid, 'Necessary Considerations in the Development of Awqaf Properties,' in *Issues in Waqf Laws and Management (with focus on Malaysia)*, ed. Syed Khalid Rashid (Malaysia: IIUM Press, 2015), forthcoming..

⁴ Zulkifli Hasan, 'Corporate Governance,' *International Review of Business Research Papers*, 5/1 (January 2009): 280.

⁵ See AAOIFI, *Accounting Auditing And Governance Standards for Islamic Financial Institutions* No. 6, 4/5, para. 29, (Bahrain: AAOIFI, 2004), 55.

⁶ There are seven governance standards rolled out by AAOIFI namely, G S 1-Sharia Supervisory Board: Appointment, Composition, Report; G S 2- Shari'a Review; G S 3- Internal Shari'a Review; G S 4- Audit & Governance Committee for Islamic Financial Institutions; G S 5- Independence of Shari'a Supervisory Board; G S 6-Statement on Governance Principles and Disclosure for Islamic Financial Institutions; G S 7-Corporate Social Responsibility Conduct and Disclosure for Islamic; Financial Institutions. See AAOIFI, *Accounting, Auditing, And Governance Standards for Islamic Financial Institutions 1431 H -2010*, (Bahrain: AAOIFI, 2004), 1-96; See also, AAOIFI, "Governance Standard" AAOIFI, <<http://www.aaofi.com/en/standards-and-definitions/shari%E2%80%99a-standards/governance-standards.html>>, accessed on 10th February 2015.

zakāh and *waqf* to help strengthen the functioning of these two Islamic social institutions.

It worth mentioning that Islamic corporate governance is embedded in the principle of *Tawhid* (oneness of Allah). This means that knowing Allah will instill piety and consciousness of Allah in the management thus pushing it towards being trustworthy, fair, and honest to all the stakeholders, including beneficiaries of *zakāh* and *waqf*. This is one of the distinct features of Islamic corporate governance, as against its conventional counterpart which does not consider the relationship between man and his Creator.

In Nigeria, some state governments have established *zakāh* and *waqf* institutions since the year 2000 with Zamfara State being the first region to do so; other states in northern Nigeria soon followed. Despite this bold effort, unfortunately, the issue of corporate governance of *zakāh* and *waqf* has yet to be seen as important in the Nigerian *zakāh* and *waqf* institutions, and this is one of the causes of their underperformance. As the Nigerian *zakāh* and *waqf* system is presently going through revitalization, corporate governance also needs to be taken into consideration for an aggressive development of the institutions as well as actualizing their primary objectives.

It is against this background that this paper aims at studying the general concept of corporate governance in *zakāh* and *waqf* with a view to linking it to the Nigerian *zakāh* and *waqf* institutions for an improved performance in actualizing their objectives.

OBJECTIVE OF THE PAPER

The main objectives of this paper are:

1. To understand the general concept of corporate governance.
2. To apply the concept of corporate governance to *zakāh* and *waqf* administration in Nigeria.

RESEARCH QUESTION

1. What is the general concept of corporate governance?
2. How to apply the concept of corporate governance to *zakāh* and *waqf* administration in Nigeria?

SCOPE AND LIMITATION

This paper focuses on the implementation of corporate governance at the highest levels in the Nigerian *zakāh* and *waqf* institutions. However, the focus is limited to the northern part of Nigeria only. Also, the paper will not delve into corporate governance in the mainstream Islamic financial institutions except as a supplementary point of reference.

METHODOLOGY

The method employed in this paper is a qualitative research method, relying on content analyses of literature and online materials, including Islamic primary and secondary sources, articles, books, and Nigerian laws on *zakāh* and *waqf*. Also, this research also relies on interviews with some stakeholders in the field of *zakāh* and *waqf*.

DEFINITION OF CORPORATE GOVERNANCE FROM CONVENTIONAL AND ISLAMIC POINT OF VIEWS

The Organization of Economic Cooperation and Development (OECD) defined corporate governance as the “Set of relationships between company’s management, its board, its shareholders and other stakeholders.”⁷ This definition covers all parties that are affected by the governance of a corporation. Despite the fact the nonprofit organizations such as *zakah* and *waqf* were not the intended target of this definition, its objective was to serve the interests of every corporation that has a diverse set of stakeholders. Similarly, Wolfensohn, the former president of World Bank defined corporate governance as “Fairness, transparency and accountability”.⁸ This definition compliments the above OECD definition which focuses on the parties’ relationship with the management of a corporation without clearly stating its essential elements. His definition is very precise on the objectives of corporate governance and its characteristics, being suitable for *zakāh* and *waqf* institutions as well.⁹ Such institutions require high levels of fairness, transparency, and accountability if the economically able are to be encouraged to give more from their wealth.

⁷ M. Umer Chapra and Habib Ahmad, ‘Corporate Governance: Basic Concept and Issues,’ *Occasional Paper no. 6* (Jeddah: Islamic Development Bank, 2002), 13.

⁸ M. Umer Chapra and Habib Ahmad, ‘Corporate Governance: Basic Concept and Issues,’ 13.

⁹ Syed Khalid Rashid, ‘Necessary Considerations in the Development of Awqaf Properties.’

Zulkili Hasan defines Corporate Governance as “A system by which companies are directed and controlled with a purpose to meet the corporation’s objectives by protecting all stakeholders’ interests and rights.”¹⁰ In the context of *zakāh* and *waqf* the stakeholders are: Allah the Exalted,¹¹ Muslim leaders,¹² the management which comprises of the *sai* and the *mutawalli* (corresponding to the *zakāh* and endowment boards/committees in the context of Nigeria),¹³ the *zakāh* and *waqf* payers who want to see the impact of their donations respectively,¹⁴ the beneficiaries of *zakāh* and *waqf*, the Muslim society itself

¹⁰ Zulkifli Hasan, ‘Corporate Governance,’ 278.

¹¹ Allah the Exalted is stakeholder in *zakāh* and *waqf* in the sense that He commands for the care of the underprivileged. He undertook upon Himself to feed everything He created as in *Qur’ān* chapter 11, verse 7. But it is clear that Allah would not descend to feed by Himself but rather He entrusted this action on some of His slaves, hence not keeping the trust amounts to breach of the covenant we gave to Him before our birth as He refers to in *Qur’ān* chapter 6, verse 172. This covenant is also part of the obligation we are asked to fulfill in *Qur’ān* Chapter 5, verse 1. With all these evidences Allah is stakeholder in *zakāh* and *waqf*.

¹² The Muslim leaders are first and foremost the human stakeholders in *zakāh* and *waqf* corporate governance. They have been entrusted to manage these institutions with the utmost integrity. The leaders are also prohibited by Allah from appointing incompetent hands on the management of the affairs of the Ummah of Muḥammad (PBUH) in a *ḥadīth*, the Prophet (PBUH) said that, “*The curse of Allah be upon any Muslim Leader who enthrones incompetent on the affairs of the Muslims because of favouritism.*” See Abū ‘Abd Allāh al-Ḥakim Muḥammad Ibn ‘Abd Allāh, *Mustadrak al-Ḥakim ‘ala al-Sahīḥayn*, vol. 4, ed. ‘Abd al-Qādir Atau (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1990/1411AH), 104.

¹³ The board of *zakāh* and *waqf* must be accessible to the beneficiaries and be transparent to the *zakāh* payers by telling them the actual value of their *zakāh* and avoiding duplication of payment. Otherwise they will fall under the warning in the *ḥadīth* in which the Prophet (PBUH) said, “*Anyone who is enthroned on affair of the Muslim and made himself inaccessible to the weak and the poor Muslims, Allah shall deny him access to Him on judgement day.*” See al-Ṭabarānī Sulaymān Ibn Aḥmad, *Mu’jam al-Kabir*, vol. 20, ed. Hamdi Ibn ‘Abd al-Majid (Cairo: Maktabah Ibn Taymiyyah, 1994/1415AH), 152. Also, the Prophet (PBUH) said that, “*Anyone who is appointed as manager of the Muslims’ affairs and refused to do the right thing to them as he will do in his home that person should prepare his seat to live in hell fire by himself.*” See al-Ṭabarānī Sulaymān Ibn Aḥmad, *Mu’jam al-Kabir*, 221.

¹⁴ The *sai* and the *mutawalli* are urged to pray for the *zakāh* payers as the Prophet (PBUH) used to do as a token of appreciation and encouragement. The Prophet used to pray for anyone who brought him *zakāh*. See Al-‘Aynī, *Sharḥ Sunan Abū Dawūd li al-‘Aynī*, vol. 5 (Riyād: Maktabah al-Rushd, 1999/1420AH), 444; Al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, vol. 4 (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1392), 127.

that risks Allah's wrath for denying the *zakāh* or by not assisting with *waqf*,¹⁵ and consequently risks associated with criminals if people are abandoned without assistance.¹⁶ The above definitions are some of those conventionally used to describe corporate governance.¹⁷

From the Islamic point of view, it is argued that corporate governance presents distinct feature and characteristics, referring to "A special case of a broader decision-making theory that uses the premise of Islamic socio-scientific epistemology which is premised on divine oneness of Allah."¹⁸ In the same vein Lewis observes that the concept is not much different from the conventional perspective. Therefore, he defines corporate governance as, "The relationship between the corporation and its suppliers of funds, customers, competitors and employees, embracing the spiritual as well as the temporal needs of the Islamic communities."¹⁹

One will notice that Zulkifli and Lewis's definitions have similar characteristics; the Islamic features of corporate governance. While Zulkifli has coined these features into the broad title of "Oneness of Allah" and "decision-making theory that uses the premise of Islamic socio-scientific epistemology", Lewis however used detailed terminologies to explain the concept of *tawhīd* and the Islamic socio-scientific epistemology made up of '*shūrā*', '*hisbah*', and the '*Shariah*' supervisory process and religious audit. He concluded that these elements are the building blocks of Islamic corporate governance.²⁰

¹⁵ The Prophet (PBUH) said that, "*You shall not be given victory by Allah and shall not be provided with sustenance not because of the economically low-class people among you.*" See Al-Bukharī, *Ṣaḥīḥ al-Bukharī*, vol. 4, ed. Muḥammad Zuhayr Ibn Nasir al-Nasir (n.p.: Dār Tauq al-Najah, 1422), 36.

¹⁶ The Prophet (PBUH) said, "*He is not among us, he who slept comfortably while his neighbor wallows in hunger.*" The *ḥadīth* is adjudged authentic. See Abū Bakr Ibn Abī Shaybah, *Musannaf Ibn Abī Shaybah*, vol. 6, ed. Kamal Yusuf al-Hut (Riyād: Maktabah al-Rushd, 1409AH), 164; Imam Aḥmad Ibn Hanbal, *Musnad Imam Aḥmad*, vol. 8, ed. Shuaib Arnaut (Damascus: Muassasah al-Risālah, 2001), 486; al-Ṭabarānī Sulaymān Ibn Aḥmad, *Mu'jam al-Kabīr*, vol. 1, 259; Muḥammad Ibn Ismā'il Ibn Ṣalah al-Kahlani, *Sharḥ al-Jami' al-Saghīr*, vol. 9 (Riyād: Maktabah Dār al-Salām, 2011/1432AH), 324.

¹⁷ Researchers have stated that the Western model of corporate governance is protection of shareholders' interest first and foremost. This is the practice adopted by USA and the UK. See Zulkifli Hasan, 'Corporate Governance,' 280.

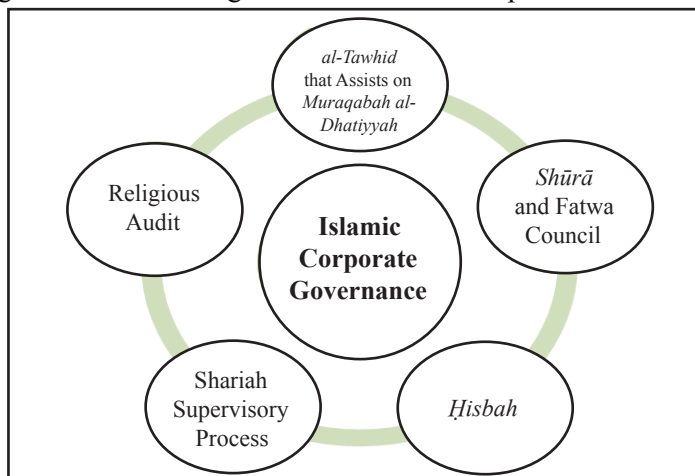
¹⁸ Zulkifli Hasan, 'Corporate Governance,' 278.

¹⁹ Mervyn K. Lewis, 'Islamic Corporate Governance,' *Review of Islamic Economics*, 9/1 (2005), 5.

²⁰ Mervyn K. Lewis, 'Islamic Corporate Governance,' 19.

However, to compliment these five, the acclaimed *tawhīd* that is advocated by researchers in this field must be taken as cornerstone. As such, the following figure depicts the building blocks of Islamic corporate governance:

Figure 1: The Building Blocks of Islamic Corporate Governance



Source: Adopted by the researcher from Zulkifli Hasan’s theory of corporate governance.

This is extendable to *zakāh* and *waqf* institutions. It means that for *zakāh* and *waqf* institutions to have comprehensive corporate governance, the operational structure of the corporation must contain these five elements for rules and regulations in the form of laws and policies at the highest levels.

Undoubtedly, there is a nexus between profits organization and nonprofit organizations such as *zakāh* and *waqf*.²¹ The first and foremost aim of the former is to please the shareholders,²² while the priority of the latter is to please Allah on Whose Behalf the management is acting - the end result is the pleasure and comfort of the beneficiaries as well as society. On this note, the author strongly agrees with Lewis’s definition of corporate governance mentioned above; it contains elements of the conventional definition and additional elements from the Islamic point of view on what should be the intention of a Muslim who is running the affairs of a corporation.

²¹ Syed Khalid Rashid, ‘Necessary Considerations in the Development of Awqaf Properties.’

²² Zulkifli Hasan, ‘Corporate Governance,’ 280.

In light of the above, the management of a *zakāh* and *waqf* corporation must be characterized by an unwavering principle of *tawhīd* because this is what will assist it to do justice to its work and increases its *muraqabah dhatiyyah* (cautioning of oneself against Allah's wrath). The management also must constitute a *shūrā* and *fatwa* council to do researches and come out with the best opinion that is most compatible with the *Maqāṣid al-Sharī'ah* (objective of Islamic Law). This is because new issues not yet addressed by Islamic Law will always arise.²³ The Shariah supervisory process also should lie on resolutions rolled out by the *shūrā* (consultative forum) and *fatwa* council, and then the *qaḍī* (judge) will have overriding powers over all the decisions of the *zakāh* and *waqf* based on advice from the *shūrā* council. On the aspect of religious audits and *zakāh* collection, protecting the *zakāh* assets and public sensitization should be part of the functions of *hisbah*. The governor of a state should perform his constitutional role by protecting and defending the law and ensure an absence of impunity for corrupt *zakāh* and *waqf* officers.

It worth noting that Lewis's definition mentioned above has already been implicitly considered in the *Qur 'ān*:

وَقُلْ أَعْمَلُوا فَسَيَرَى اللَّهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَتُرَدُّوكَ إِلَىٰ عِلْمِ
الْغَيْبِ وَالشَّهَادَةِ فَيُنَبِّئُكُم بِمَا كُنتُمْ تَعْمَلُونَ ﴿١٠٥﴾

“And say, “Do [as you will], for Allah will see your deeds, and [so, will] His Messenger and the believers. And you will be returned to the Knower of the unseen and the witnessed, and He will inform you of what you used to do...”

(Surah al-Tawbah, 9: 105)

Thus, the management of *zakāh* and *waqf* must be transparent, uphold the principles of accountability, and be fair to all stakeholders.

It is also worth noting that some of the eight states' enactments of *zakāh* and *waqf* in Nigeria take cognizance of some of the above elements of

²³ For example, in Nigeria there is large production of tubers, either from yam or from cassavas. The farmers of these do not pay *zakāh*. And if *zakāh* was imposed on them it would be a reasonable value that will accrue for the poor. The reason may be that tubers are not measurable by *mud* or *awsuq*. For this reason, there is need of *shūrā* and *fatwa* councils for research on *zakāh* and *waqf*. But tubers are *mal* (property) which has even more economic value than many other farms produce, such as maiz and guinea corn. Therefore, there is a need for indepth research on *zakāh*; the same in regards to *waqf* issues.

corporate governance mentioned by Lewis.²⁴ The states include Kano, which enactment contains participation of the institution of *hisbah* in the state *zakāh* administration,²⁵ and Borno, which enactment contains the participation of *shūrā* council in the administrative process.²⁶

CORPORATE GOVERNANCE IN THE ADMINISTRATION OF *ZAKĀH* AND *WAQF* IN ISLAM

Historically, there is no name for ‘حوكمة’ (*hawkamah*) which is a newly coined Arabic word for “corporate governance”. However, this term has been approved by the Egyptian Department of Linguistics.²⁷ Despite this, there can never be a practice of corporate governance on *zakāh* and *waqf* like that practiced by the Prophet (PBUH) and his companions.

Since the revelation of the *Qur’ān* 9: 60 and 9: 103, which ordered the administration of *zakāh*, and chapter 2: 177 which gave the right to accept voluntary donations²⁸ in addition to *zakāh*, the Prophet (PBUH) left a model of Islamic corporate governance on Islamic revenues out of which is *zakāh* and *waqf*. This is because protecting the interest of stakeholders is the bedrock of corporate governance, as well as transparency and accountability, as emphasized by the former president of the World Bank.²⁹ All these were practiced by the Prophet (PBUH) in the best way they could be practiced.

²⁴ See Mervyn K. Lewis, ‘Islamic Corporate Governance,’ 5.

²⁵ S.7(4) (v) of Kano State Hisbah Board Law 2003.

²⁶ The Borno State law uses the term council of ‘*ulama* instead of the Arabic term, *shūrā*. See Section 7(x), (xi), (xii) and (xv) of Borno State *Zakāh* and Endowment Board Law 2000.

²⁷ Mervyn K. Lewis, ‘Islamic Corporate Governance,’ 5.

²⁸ This is the ambit that captures *waqf* and any other donation that is not *zakāh*, out of one’s volition, or imposed by the leader as a circumstantial tax. See Muḥammad Nasir al-Dīn al-Banī, *Silsilat Aḥādīth al-Ḍa‘ifah wa al-Mawḍū‘ah*, vol. 9 (Saudi Arabia: Dār al-Ma‘arif, 1992), 371; Abū ‘Abd Allāh Muḥammad Ibn Aḥmad al-Qurtubī, *al-Jāmi‘ li Aḥkām al-Qur’ān*, vol. 2, ed. Aḥmad al-Barduni and Ibrahim Atfis (Cairo: Dār al-Kutub al-Misriyyah, 1964/1384AH), 241.

²⁹ The main focus of the definition of the former World Bank President is fairness, transparency, and accountability. The Prophet (PBUH) is the exemplar in all of these. And other definitions focus on the protection of interest of all stakeholders which is in consonance with the Islamic view of all types of contractual relationships for profit oriented institutions and relationships of agent/trustee, and principal in non-profit oriented institutions like *zakāh* and *waqf*.

The high standards set by the Prophet (PBUH) encompass all aspects of corporate governance in that the need for accountability, fairness, transparency, and the protection of all stakeholders are the ingredients of justice which he preached and practically implemented. In practice, the Prophet (PBUH) exemplified the high moral rectitude and integrity that should be required from *zakāh* administrators. On the aspect of corporate governance that is concerned with protection of interest of all the stakeholders, the Prophet (PBUH) announced that, the *zakāh* is taken from the rich and returned to the poor, and even he as the head of the Islamic State and his family, were forbidden from taking from *zakāh*, no matter how little.

Also, since accountability is an aspect of corporate governance, if there was no other *ḥadīth* except the *ḥadīth* of Ibn al-Llutbiyyah. it would suffice. To this effect, al-Bukhari narrated on the authority of Abū Humayd al-Sā'īdī that the Prophet (PBUH) employed a man called Ibn al-Lutbiyyah from the tribe of Al-Asad for *zakāh* collection and when he came back he told the Prophet (PBUH):

“This is yours while this (another one) was given to me as a gift.”

In a swift disapproval of this (by claiming it was given to him as a gift) the Prophet (PBUH) gave a sermon in which he censured the action of this man:

*“Why has he not stayed in his mother’s house to see who will give him the gift?”*³⁰

Imam Bukhari entitled the Chapter under which he reported this *ḥadīth* as *Muḥasabah al-Musaddiqin* (Accounting and Auditing of *Zakāh* Collectors).³¹

Also, as part of the principles of corporate governance laid down by the Prophet (PBUH) is that he used to appoint some of his companions to guard the collected *zakāh*. On this, Abū Hurayrah reported that the Prophet (PBUH) assigned him to guard the *zakāh* of Ramadhan and someone came to steal from it and when he apprehended him and threatened to take him to the Prophet (PBUH), the latter inquired:

*“Do you know whom you have been talking to for the past three days O Abū Hurayrah? And he replied: “No.” He said “That was the Shaytan.”*³²

This *ḥadīth* underscores another principle of corporate governance established by the Prophet (PBUH), which is protection of the interest of the

³⁰ Al-Bukharī, *Ṣaḥīḥ al-Bukharī*, vol. 2, 130-1; vol. 3, 159; vol. 8, 130; vol. 9, 70.

³¹ Al-Bukharī, *Ṣaḥīḥ al-Bukharī*, vol. 2, 130-1; vol. 3, 159; vol. 8, 130; vol. 9, 70.

³² Al-Bukharī, *Ṣaḥīḥ al-Bukharī*, vol. 3, 101.

interest of the *zakāh* recipients. The authority must protect the property of the beneficiaries of the *zakāh*.

It worth noting an example against the standard set by the Prophet (PBUH) on the necessity to protect the *zakāh* beneficiaries' funds mentioned above. In 2013, the Nigerian media reported missing Naira 100,000,000 (above RM5Million Ringgit), an incident that caused the Governor of the state to call for setting up of a board of inquiry and also ordered a police investigation.³³ This is an evidence of weak corporate governance which has the tendency to erode public confidence in the system. And yet the state of Zamfara's *Zakāh* and Endowment Board was branded as the most developed of all the Nigerian *zakāh* and *waqf* institutions.

SOME QURANIC PRINCIPLES AND PROPHETIC SAYINGS ON CORPORATE GOVERNANCE IN *ZAKĀH* AND *WAQF* INSTITUTIONS

The following provisions of the Glorious *Qur'ān* and *ḥadīth* of the Prophet (PBUH) should be the bedrock of any Islamic corporate bodies, including institutions of *zakāh* and *waqf*.

1. In Surah al-Mā'idah says, "*O you who have believed! Fulfill all obligations*". By virtue of this verse the management of a *zakāh* and *waqf* corporation must fulfill all of its obligations towards its ultimate Employer, that is, Allah the Exalted through what is termed as *murāqabah al-dhātīyyah* (cautioning oneself of Allah's wrath); fulfills its duty towards the *zakāh* payers and the beneficiaries, through a just and fair distribution of *zakāh* and free access of the *waqf* beneficiaries to its management. This will create mutual confidence and trust.
2. In Surah al-Tawbah Allah says, "*And say, 'Do [as you will], for Allah will see your deeds, and [so, will] His Messenger and the believers. And you will be returned to the Knower of the unseen and the witnessed, and He will inform you of what you used to do.*"³⁴ According to commentaries on this verse, Allah informed His slaves that He will see their deeds and will expose what they conceal in their hearts, be it good or evil. And if it is good Allah will crown the doer with affection in the hearts of his fellow beings, and if it is a bad He will create disaffection for him in the hearts of his

³³ Ifeanyichukwu Nwanna, 'Ramadan: Hundred Million *Zakāh* Cash disappears in Zamfara *Zakāh* Board,' *Online Freedom*, <<http://freedomonline.com.ng/ramadan-n100m-cash-disappears-in-zamfara-zakāh-board/>>, accessed on 5 February 2015.

³⁴ Surah al-Tawbah: 105.

fellow beings. The Prophet (PBUH) said that even if a person carried out an action secretly inside a rock that has no entry point or exit point his act shall still be revealed to the people no matter how hidden he feels it was.³⁵ This makes the issues of corporate governance a serious matter in administering the affairs of others.

3. In Surah al-Ḥajj, Allah says, “[And they are] those who, if We give them authority in the land, establish prayer and give zakāh and enjoin what is right and forbid what is wrong. And to Allah belongs the outcome of [all] matters.”³⁶ This verse emphasizes the need for an authority that will ensure the manifestation of justice and fairness. This applies to the governance of *zakāh* and *waqf*, where it is expected that the management would show a high level of integrity and accountability and would not undermine the confidence reposed in it.
4. In Surah al-Nisā’ Allah says, “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people, judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing...”³⁷ The ‘ulama are unanimous that the verse was revealed in connection with the key to the Holy Ka’abah when Allah commanded the Prophet (PBUH) to return the key to a man called Uthman Ibn Talhah al-Hajabi who has been the trust keeper of the key to Ka’abah before the advent of Islam.³⁸ This individual episode, if applied generally, constitutes the principle of rendering trust to those whom it is due. Trust is important to all human dealings including good management and the disbursement of *zakāh* and *waqf* income among the beneficiaries. Breaches of trust were regarded by the Prophet (PBUH) as an indication of the approach of the day of *Qiyāmah*.³⁹
5. A *ḥadīth* reported that the Prophet (PBUH) said that an intelligent person is one who holds himself accountable in this world before being held accountable in the hereafter. ‘Umar Ibn al-Khaṭṭab explains this by saying, “Exercise accountability on yourselves before you will be called upon to come and give account in the hereafter.”⁴⁰ This *ḥadīth*, and ‘Umar’s

³⁵ Abū al-Ḥasan ‘Alī Ibn Aḥmad al-Naysaburi, *al-Tafsīr al-Basīt*, vol. 11 (Saudi Arabia: Jami‘at al-Imam Muḥammad Ibn Saud, 1420AH), 40.

³⁶ Surah al-Ḥajj: 41.

³⁷ Surah al-Nisā’: 58.

³⁸ Abū al-Ḥasan ‘Alī Ibn Aḥmad al-Naysaburi, *al-Tafsīr al-Basīt*, vol. 6, 535.

³⁹ Al-Bukharī, *Ṣaḥīḥ al-Bukharī*, vol. 8, 104.

⁴⁰ Al-Tirmidhī Abū Īsā Muḥammad Ibn Īsā, *Sunan al-Tirmidhī*, vol. 4, ed. Aḥmad

explanation, are indicative of the nature of Islamic corporate governance. Self-realization and correction are the best ways - far superior than state imposed rules which are sometimes circumvented by some people.

6. The *ḥadīth* of Ibn al-Lutbiyyah is treated by Ibn Taymiyyah as the bedrock of what is termed as the *al-Mustawfi al-Jami'* (accounting and auditing officer of *zakāh*) in the subject of *zakāh* and *waqf*.⁴¹

THE STATES ENACTMENTS ON *ZAKĀH* AND *WAQF* IN NIGERIA

Pursuant to part 2, second schedule of the concurrent list of the Constitution of the Federal Republic of Nigeria 1999, the State Houses of Assemblies are also conferred legislating powers on matters regarding taxes and to regulate said taxes so as to ensure that it is not levied on persons by more than one local government council.⁴² On these grounds, eight states from the Northern part of Nigeria have so far enacted laws on *zakāh* and *waqf* at varying degrees.⁴³ This means that the remaining 26 states in Nigeria and the Federal Capital Territory, Abuja, have yet to construct laws on *zakāh* and *waqf*.

1. Analysis of Features of the Nigerian *Zakāh* and *Waqf* Enactments

For thorough understanding of the strength and weaknesses of these enactments the table below presents their salient features:

Shakir (Egypt: Maktabah Muṣṭafā al-Bābī al-Ḥalābī, 1975), 638.

⁴¹ Ibn Taymiyyah, *al-Fatawā al-Kubrā*, vol. 4 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1408H/1987), 284.

⁴² Paragraph 9 and 10, part 2, second schedule of the concurrent list, of the 1999 constitution of the Federal Republic of Nigeria.

⁴³ These enactments are, Bauchi State *Zakāh* and Endowment Fund Collection; Administration and Distribution Law 2003; Borno State *Zakāh* and Endowment Board Law 2001 and Borno State’s Administration of Justice Law, 2000; Jegawa State *Zakāh* Collection and Distribution Committee Law 2000; Kano State *Zakāh* and Hubusi Commission Law 2003; Kebbi State *Zakāh* and Sadaqat (Collection and Distribution) Board Law 2000; Niger State *Zakāh* and Endowment Board Law 2001; Yobe State ministry of religious Affairs Laws 2003 in sections 9, 11, 13, and Zamfara State *Zakāh* and Endowment Board Law, 2000 (as amended in 2003).

Table 1: The Major Sections of the Enactments

S/N	State	Total No. of Sec.	Sections on <i>Zakāh</i>	Sections on Sai's Role	Section on <i>Waqf</i>	Sections on <i>Mutawalli's</i> Role	Accountability of Board
1.	Bauchi	23 sections & schedule	Sec.1-23, schedule & s.8, Shariah Commission Law 2001.	Sec.3, 22 and 23.	Sec.1 and 3, (2)(f)	Sec. 3	Sec. 3 (2)(a), (h)
2.	Borno	17	Sec.1-17 & s.25 (3) of Administration of Justice law (AJL) 2000.	Sec.3 (1) and 7.	Sec.1, 2, 3 (1) 15 & 25 of AJL 2000.	Sec. 7 (viii), s.7 (xiii) b, and 10.	Sec. 7 (ix),(x), (xi)
3.	Jegawa	10	Sec.1-10	Sec.1, s.2, s.3, s.4, s.5, s.6, s.7 and 9.	Nil	Nil	Not found
4.	Kano	26	Sec.1, 2, 3, 4 and 47) (v) of <i>Hisbah</i> Board Law 2003	Sec.3, 4, 7, 8, 9 and 11	Sec.1, 2, 3 and 4.	Sec. 3, 4, 7, 8, 9 and 11	Sec. 11, 16, 17 and 22 (1)(2)
5.	Kebbi	22	Sec.1, 3, 5, 6, 8, s.9 and 10.	Sec. 3, 5 and 8	Sec. 3	Sec. 3, 5, 8.	Sec. 20
6.	Niger	37	37	Sec. 5	Nil	Nil	Sec. 7
7.	Yobe	3	Sec. 9, 11 and s.13	Sec.9, 11 and 13.	Sec. 13 (1) (v)	Sec. 13 (1) (b)	Not found
8.	Zamfara	38	Sec. 1, 3, 13, 14, 15, 16, 17, 18 and 22.	Sec. 5 and 6.	Sec. 1, 3, 5 (f), 31, 32, and 33.	Sec. 5, 6 and 33©	Sec. 34.

Source: Researcher based on the laws.

In analyzing the table above, Zamfara's laws on *zakāh* and endowment will be the basis for comparison, given that they were the first of their kind in Nigeria and eventually copied by other states, especially Niger and Bauchi.

It is clear that *waqf* has minimal recurrence in the enactments, whereas it is completely absent in some other enactments. For example, the Zamfara State enactment of 2003 (as amended) contains 38 sections, out of which only five sections and one subsection are direct provisions on *waqf*. Interestingly, section 3 gives an unambiguous definition of endowment as being synonymous to *waqf* as understood in the Shariah. The section reads:

*“Endowment means giving out money, items or properties in part or in whole out of the ownership of oneself, transferring it permanently or for a fixed period of time to the ownership of Allah, and dedicating it all or its proceeds to the use of others or the Muslim ummah...”*⁴⁴

This definition is all encompassing; taking into consideration of all the approved types of *awqaf* in Islamic jurisprudence: perpetual *waqf*, temporary *waqf*, cash *waqf*, and other intangible and intangible *waqf*. The definition is also justified by some scholars' opinion that, *waqf* is anything that is accepted by the custom of the people so long it does not perish.⁴⁵

However, the Kano State enactment expressly uses the Maliki terminologies of *waqf*, *'hubusi'*, and contains 26 sections, but it is only section 4 which provides for the function of the commission that mentions collection of *hubusi* along with *zakāh* from individuals and organizations, as well as the investment of funds that are not immediately needed. Along with this, section 2 gives an unsatisfactory definition of *hubusi* as “Endowment or a voluntary gift of wealth more especially property.” This definition is very incoherent given the contemporary trend of *waqf* as envisaged by section 3 of the Zamfara *Zakāh* and Endowment Law, 2003. Based on this weakness the Kano State enactment cannot allow the commission to do much in collecting *zakāh* and *waqf* from individuals and organizations.

This is accentuated by the committee's apparent lack of authority to compel individuals for the payment of *zakāh* and encourage them to donate *waqf*. For example, section 32 of the Zamfara Law, 2003 (amended) imposes a payment of 1% on contractors for each contract awarded to them to the *zakāh* and endowment board of the state. Closer to Zamfara is the Borno

⁴⁴ See section 3 of Zamfara State *Zakāh* and Endowment Board Law 2003.

⁴⁵ Al-Shirazī, *al-Muhadhdhab fi Fiqh al-Shāfi'ī*, vol. 2 (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.), 322-3.

State enactment, 2000 which defines endowment as “Funds or permanent or temporary pecuniary provisions for the maintenance of public institutions or charity.”⁴⁶ Also, nearer to Zamfara and Borno is the Yobe state enactment of 2003, which laws on *waqf* are: s. 9 (3), 13 (1) (e) (v). While section 9 (3) establishes the directorate of *zakāh* and endowment, section 13 (1) (e) (v) details its function by stating that, “*The Directorate of Zakāh and Endowment shall have the following functions...Management of Islamic Endowment (waqf) funds,*⁴⁷ *properties and investments donated by individuals, group or corporate bodies in accordance with Shariah injunctions.*”⁴⁸ This is the only specific section on *waqf* administration in the Yobe State law which is nearer to section 32 of Zamfara enactment of 2003.

The Niger State *Zakāh* and Endowment Board Law of 2001 contain 37 sections.⁴⁹ However, the enactment focuses more on *zakāh* while completely devoid of provisions relating to *waqf*.⁵⁰ This lack of provisions that reflect *waqf* is a setback to the institution of *waqf* in the state. Issues regarding management of *waqf* in case one wants to donate *waqf* to the poor through the state government will become a problem due to lack of law or regulations.

Similarly, Kebbi State’s enactment is completely devoid of provisions relating to *waqf*. Although, the title of the law uses the word ‘*ṣadaqat*’ (alms) which means all types of donations, out of which *waqf* is one.⁵¹ In the Kebbi State’s enactment, sections 3,5, and 8 only contain provisions on the establishment of the board, functions of the board and committees in which the word used is ‘*zakāh*’, and ‘*sadaqat*’ - not *zakāh* and endowment. Despite the fact that the term ‘*ṣadaqat*’ includes *waqf*, from Shariah and legal interpretation it is difficult for one to assert that the word *ṣadaqat* used by the law refers to *waqf*.

⁴⁶ Section 2 of Borno State *Zakāh* and Endowment Law 2000.

⁴⁷ This emphasis is added by the Yobe State Law itself.

⁴⁸ Section 13 (1) (e) (v) of Yobe State Ministry of Religious Affairs Laws 2003.

⁴⁹ The absence of provisions on *waqf* in the Nigeria State Enactment 2001 is attributable to its being copied from the Zamfara State enactment 2000 before its 2003 enactment that gave a clear-cut definition of *waqf*.

⁵⁰ It should be recalled that *waqf* is also popularly known as *ṣadaqat al-jāriyyah* as used in the *ḥadīth* of the Prophet (PBUH). See Muslim Ibn al-Ḥajjaj, *Saḥīḥ Muslim*, vol. 5, ed. Muḥammad Fuad (Beirūt: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.), 73.

⁵¹ It should be recalled that *waqf* is also popularly known as *ṣadaqat al-jāriyyah* as used in the *ḥadīth* of the Prophet (PBUH). See Muslim Ibn al-Ḥajjaj, *Saḥīḥ Muslim*, vol. 5, 73.

This is because *zakāh* is also popularly called '*sadaqat*'.⁵² The implication therefore is that there will be confusion between the Shariah rulings regarding the usual *ṣadaqat* and *waqf*. Therefore, based on this lack of clarity that exists in the Kebbi State *Zakāh* and *Ṣadaqat*, the prudential principles of *waqf* can hardly be adhered to, whereby the board may distribute whatever comes to them in the name of *ṣadaqat* instead of managing it as cash *waqf*.

At present however, traces of *awqāf* existence in the activities of the Kebbi State *zakāh* and *ṣadaqat* committee are: two houses donated by emir of Argungu and one guest house dedicated as a lodge for wayfarers.⁵³ Section 14 of the Kebbi State enactment does emphasize that the governor shall remove the board for not performing its duties, but this provision was further narrowed down by the reasons given that may lead to such removal, such as 'dishonesty', 'ill health', or 'insanity'. It would have been expedient for the law to also state that the non-development of funds through lawful investment and job creation as 'failure to perform one's duty'.

Closer to Kebbi in this aspect is the Jegawa State enactment which is completely devoid of the express terms 'endowment' or '*waqf*'. Nevertheless, one interesting feature of this enactment is that it is very straight forward, precise, and is directly reference as the "Jegawa State *Zakāh* collection and Distribution Committee law 2000". This is unlike the Kebbi State enactment which has a very broad definition for *ṣadaqat*.

2. Looking for Corporate Governance in the Nigerian *Zakāh* and *Waqf* Enactments

Based on the argument presented in the preceding subsections on the centrality of corporate governance on the protection of stakeholders by the management,⁵⁴ it is observed that all the Nigerian enactments provide for such. For example,

⁵² Surah al-Tawbah: 60.

⁵³ (Kebbi State *Zakāh* and *Sadaqat* Board, Birni Kebbi, Kebbi State Nigeria), in interview with author, on 14 November 2014.

⁵⁴ In the case of *zakāh* and *waqf* the stakeholders and interests have been mentioned above.

pursuant to the relevant sections⁵⁵ on the boards and committees relationships with the stakeholders, some of the *zakāh* and endowment boards and committees in Nigeria do distribute informational booklets (see appendixes 1 and 2) containing the religious obligation to pay *zakāh* or donate *waqf*.⁵⁶ On protecting the interest (efficient collection and administration of *zakāh* and *waqf* proceeds) of the beneficiaries the interview conducted by Philip Ostien reveals that the Zamfara State's *zakāh* and endowment boards, and committees in its capacity as the management, protect the right of beneficiaries by opening different doors to payment of *waqf*: the office of the endowment department and payment through phone calls and through any of the committees' offices at the 33 local government branches of the board.⁵⁷

In addition, the board also makes periodic distributions of the proceeds of *zakāh* and endowment to the beneficiaries.⁵⁸ All the northern states with laws on *zakāh* and *waqf* have this type of success, but at a very minimal level when compared to the level of poverty and the numbers of people currently dwelling in it.

In line with the established Shariah position on accountability of *zakāh* officers,⁵⁹ and an element of corporate governance, virtually all the enactments

⁵⁵ For example, see sections 5 of Zamfara State enactment 2003 on the powers of the Board to relate with the public in collecting and distributing the *zakāh*, and section 7 (c) which states that "*the secretary to the Board shall prepare an annual report on the performance of the Board and submit same to the Governor.*" The governor is a stakeholder, being the one represented by the Board. See also sections 3-6 and 10 of the Jegawa State *Zakāh* Collection and Distribution Committee Law 2000 on the committee's role in collection and distribution of the *zakāh*. Section 7 of the Borno State *Zakāh* and Endowment Board Law 2000 on the relation with all the stakeholders and the subjectivity of any of its action to the approval of the council of '*ulama*'; section 12 on the removal of a member of the board by the governor if the council of '*ulama*' so advises on the grounds of misconduct; section 4 of the Kano State *Zakāh* and Hubusi Commission law 2003 on the commission's powers to relate with all stakeholders in matters relating to *zakāh* and endowment; and section 16 which states that "the commission shall within three Months after the expiration of each financial year, prepare and submit to the governor the annual activities for the preceding year and statement of account of the commission.

⁵⁶ Philip Ostien, *Shariah Implementation in the Northern Nigeria 1999-2000: A Source Book* (Nigeria: Spectrum Books Limited, 2007), 16, 102 and 106.

⁵⁷ The existence of various points of payment of *zakāh* and *waqf* is replicated in all states that have enacted laws on these institutions, starting from state offices through local governments to wards or villages. See the table below on the hierarchical structure of the boards and committee.

⁵⁸ Id., p: 110-11.

⁵⁹ Syed Khalid Rashid, 'Necessary Considerations in the Development of Awqaf Properties.'

provide for the *zakāh* and endowment boards' accountability and audit,⁶⁰ except the Jegawa State *Zakāh* Law 2000, which surprisingly contains no single section on accountability.⁶¹ With this the boards are bound to relate with the appointing state government for periodic scrutiny of their activities. It is also worth noting that some of the state governments have dedicated financial support to the boards.⁶²

The board also carries out assessments of *zakātable* items of potential *zakāh* payers in order to ascertain whether he or she is obligated to pay *zakāh* or not. In this regard, the boards or committees are compelled by law to operate bank accounts for the *zakāh* and endowment proceeds. Then the beneficiaries are normally called to the board or committees to collect their rights from the *zakāh*.⁶³

In addition, one important point in some of the enactments is that Kano, for example, takes cognizance of involving the *hisbah* board in the affairs of its *zakāh* and *hubusi* commission, but at minimal strength.⁶⁴ Similarly, the Borno state enactment is probably the only enactment that involves the '*ulama* as the council of *shūrā* whereby the governor's decision on any matter pertaining to *zakāh* and endowment is subject to the council's recommendation.⁶⁵ Nevertheless, how well these boards of *zakāh* and *waqf* of all the states actualize the concept of corporate governance is better judged by the annual reports of two of the states in northern Nigeria.

⁶⁰ See for example, Section 34 of Zamfara State *Zakāh* and Endowment Law 2003; section S. 3 (2)(a), (h) of Bauchi State *Zakāh* and Endowment Fund 2003; section S.7(ix), (x), (xi); section 11, 16, 17, 22 (1), (2) of Kano State *Zakāh* and Hubusi Commission 2003; section 20 of Kebbi State *Zakāh* and Sadaqat Laws 2000.

⁶¹ See table above.

⁶² For example, the Department of Endowment of the Zamfara State *Zakāh* and Endowment Board has donations managed by some banks in Nigeria with the condition that the money should not be invested in interest bearing loans.

⁶³ The tables below show the number of beneficiaries in each state.

⁶⁴ The enactment simply says a representative from the *hisbah* board. See Section 5 (1) vi of the Kano State *Zakāh* and Hubusi Commission 2003.

⁶⁵ See Section 7 (x), (xi), (xii), (xv) and section 12 of Borno State *Zakāh* and Endowment Board Law 2000. Also, the *sai* at the local *zakāh* committee shall submit a report to the *zakāh* committee every two weeks; the *zakāh* committee shall submit report to the board every three months; the Board must submit a report to the council of '*ulama* every six months; and the Council of '*ulama* must submit a report to the governor every nine Months. See Philip Ostien, *Shariah Implementation in the Northern Nigeria 1999-2000: A Source Book*, 23.

Table 2: The Annual Reports of Zakāh Collected in Zamfara State

S/No	Year	Zamfara		17 Emirates and the Headquarters		Farm Produce in Bags	
		Cash in Naira	Headquarters	Emirates	Headquarters	Emirates	Headquarters
1.	2000	Emirates	2,324,927	Emirates	1	Emirates	260
2.	2001		3,266,709		23		391
3.	2002	7000800	2,057,996	200.00	25	400	150
4.	2003	15000050.5	2,067,079	230.00		650	32
5.	2004	17000400	2,433,870	340.00		2,030	29
6.	2005	20,060,000.30	1,713,763	500.00	2	4,400	61
7.	2006	24,0060.00	1,910,578	460.00		8,006	24
8.	2007	24,030,030.10	1,226,507	350.00		9,000	21
9.	2008	26,500,090.00	1,895,153	670.00		10,040	57
10.	2009	28,040.50	2,895,153	300.00		10,200	101
11.	2010	30,600,000.00	2,184,891	900.00		9,003	60
12.	2011	29,000,000.60	912,74.00	1,004		19,000	68
13.	2012	23,600,000.89	1,938,431	1,020.00		23,120	47
14.	2013	22,800,700	3,662,280	980		21,345	50
	Total	145,460,022	29,577,336	6,954.00	51	117,194	1,351
	Grand Total	175,037,358	7,005.00	118,545			

Source: Zamfara State Zakāh and Endowment Boards.

This table depicts *zakāh* collections in Zamfara State from the year 2000 to 2013. The total cash *zakāh* collected was N175,037,358, while the total *zakāh* of heads of livestock collected was 7,005, and the the total *zakāh* collected in cereals was 118,545 bags. All these seeming achievements took place in a period of 13 years, and yet this is the most active and most administratively effective state in terms of *zakāh* administration and the highest in the whole Nigeria in which state governments are responsible for *zakāh* administration.

Generally, in view of the data presented above, Nigerian *zakāh* is underperforming and consequently is proportionate to the level of poverty in the country.

Table 3: Some *Waqf* Properties owned by Zamfara State *Zakāh* and Endowment Board Some *Waqf* of landed properties in Zamfara State.

S/N	Endower	Property Type	Location	Year
1.	Alhaji Shuaib Shinkafi	Islamic School	Shinkafi	2002
2.	Alhaji Yusuf Ja'fara	Islamic School & Mosque	Gusau	2002
3.	Hajiya Hafsatu Dalhatu Gwadabawa	One Shop (1)	Gusau	2005
4.	Alhaji Ibrahim Birnin Tsaba	One shop (1)	Gusau	2005
5.	Alhaji Yusuf Ja'afar	Two Shops	Gusau	2005
6.	Alhaji Musa K. Kawashi	Islamic School	Zamfara	2007
7.	Alhaji Yusuf Ja'fara	Islamic School & Mosque	Gusau	2008
8.	Alhaji Ibrahim Ajiya	School &Shop	Shinkafi	2009
9.	Alhaji Lawali Abubakar	School &Shop	Kaura Namoda	2013
10.	Alhaji Jijji Rawayya	Islamic School	Zamfara	2013
11.	Hajiyar Dije Ahmad Zabarma	Mosque	Gusau	2013
12.	Alhaji Sani Gwamna Mayanchi	School	Zamfara	2013

Source: Adopted from Zamfara State *Zakāh* and Endowment Board.

The above table shows the *waqf* properties so far realised by the Zamfara State Endowment Board between 2002-2013. In 2005 alone, four warehouses

were donated to the Board as *waqf*. In 2002, 2008, and 2009, an Islamic school, a school and a Mosque, and another school and a Mosque were respectively donated to the Board as *waqf*. In 2007 an Islamic school building was donated as *waqf* to the Board, while in 2013 another Islamic School was also donated to the Board as *waqf*. Similarly, in the same year, two Mosques were donated to the Board.

It should be noted that all these *awqaf* are tangible assets, without any mention of intangible assets like cash *waqf*, which certainly means that it has not been very popular among donors in Nigeria.

Table 4: The *Zakāh* and *Waqf* Collection in Kebbi State

KEBBI					
S/No	Year	Livestock	Cereals (bags)	Cash	Beneficiaries
1.	2000	No record	No record	No record	No record
2.	2001	No record	No record	No record	No record
3.	2002	No record	No record	No record	No record
4.	2003	No record	No record	No record	No record
5.	2004	No record	No record	No record	No record
6.	2005	No record	No record	No record	No record
7.	2006	No record	No record	No record	No record
8.	2007	No record	No record	No record	No record
9.	2008	No record	No record	No record	No record
10.	2009	No record	500	61,000,000.00	
11.	2010	No record	500	50,912,000.00	
12.	2011	No record	500	101,250,000.00	
13.	2012	No record	500	100,805,000.00	
14.	2013	No record	500	101,305,000.00	
15.	2014	No record	500	100,731,000.00	
Total		No Record	6,000.00	516,003,000.00	

Source: Kebbi State *Zakāh* and *Sadaqat* Commission.

In Kebbi, there is lack of proper documentation on the performance of *zakāh*, but the available records have stated that: “*The people do not pay zakāh even when they are asked to do so, however the following is what is on ground.*”⁶⁶ As the table showing *zakāh* collection in Kebbi State appears from 2000 - although the law was enacted in 2008 - there is no reliable record of the *zakāh* collected in all the three categories of *zakāhable* items. This situation remains the same in the aspect of livestock till 2014. But there is an improvement in the aspect of cash and cereals from 2009 to 2014; the total bags of cereals collected being 6000. Also, the total *zakāh* of cash collected

⁶⁶ Faruk Muḥammad (Kebbi State indigene with Master Degree in Islamic Studies), personal email interview with author, on 19 November 2014.

was N516,003,000. These figures show evidence of weak *zakāh* administrative system in the state.⁶⁷

The *waqf* system of the state, based on the following data, is also very weak. The following properties are held by the Board as *waqf*; “*The board has two houses at Argungu town donated by the emir of Argungu. The board also has one guest house in Birnin Kebbi, the state capital, which was bought by the board for strangers who are on a journey and new converts.*”⁶⁸ This is also clear evidence of the weaknesses of the system. There is also no evidence of a cash *waqf* system which is flourishing in the contemporary period.

DISCUSSION OF FINDINGS

The findings show that of all the Nigerian enactments on *zakāh* and *waqf* none has a provision to the effect of removing members for not performing their duties properly. This is an issue which must be addressed if these institutions are to deliver on their mandates. In this respect, Syed Khalid Rashid said that India *Waqf* Act 2013 is probably the only Act in the world that compels the *mutawalli* (trustee of *waqf*) to develop *waqf*.⁶⁹

In addition, none of the enactments give the Shariah court judges supervisory roles on *waqf* and none of the enactments neither take cognizance of *waqf al-ahl* (private *awqaf*).⁷⁰ This is yet another major issue that has caused the underdevelopment of the *waqf* system in Nigeria. Similarly, there are scant private *awqāf* in Nigeria that lack development and their economic potentials are not known due to a lack of government supervisory roles through Shariah court judges. For example, in Katsina State there is a notable old house which is known as *gidan wakafi* (*waqf* house) which has lack development as there is

⁶⁷ This is notwithstanding the fact that the state was the home of the second man in command in the defunct Sokoto Caliphate. These figures tender evidence of weak *zakāh* system in the state.

⁶⁸ Faruk Muhammad (Kebbi State indigene with Master Degree in Islamic Studies), personal email interview with author, on 19 November 2014.

⁶⁹ Syed Khalid Rashid, *Waqf Laws and Management with Special Reference to Malaysia*, 6-8; Syed Khalid Rashid, ‘Islamic Financing Techniques for the Development of Awqaf: with Special Reference to India,’ *IIUMLJ*, 10 (2002): 185-6.

⁷⁰ It is virtually agreed upon by jurists that *waqf al-ahli* subsequently reverts to *waqf khayri* that is owned by the public; this was what prompted Qadhi Tawbah to invoke the right of Shariah courts judges on supervisory role on *awqaf*. Syed Khalid Rashid, *Waqf Management in India* (New Delhi: Institute of Objective Studies, 2006), 99; IDB-Kuwait Public *Awqaf*'s Sample *Waqf* Law, (2012): 3.

no legal authority over it.⁷¹ Also, none of the enactments mention issuance of *saham waqf* (*waqf* shares) to raise money for the purpose of cash *waqf* or for the purpose of developing a real estate or orchard. This is yet to be introduced into the Nigerian *waqf* system. In fact, some of the sections have shown that these boards are mostly funded by their respective state governments.⁷² These problems emphasize the need to review the law in line with the best practices.⁷³

For example, a section authorizing the board to issue *waqf* shares should be established by the government or open accounts with banks so that prospective donors may deposit into it at their will. In general, the current state of *zakāh* and *waqf* administration in Nigeria is very poor. This is better evidenced by the following tables of annual reports of *zakāh* and endowment boards since the laws were enacted.

On the aspect of *zakāh*, the Zamfara State and Endowment 2003 is more elaborate, with 38 sections spanning from *zakāh* and *waqf*. It is the most detailed law that elucidates all the *zakāhable* items.⁷⁴ Only Zamfara,⁷⁵ Bauchi,⁷⁶

⁷¹ Dikko Bature (International Islamic University, Malaysia), in interview with author on 22 December 2014.

⁷² Yahya Tanko (Former Director General, Kano State *Zakāh* & Hubs Commission), in interview with author, on 14 January 2013; section 11 of Kebbi State *Zakāh* and *Sadaqat* Laws 2000.

⁷³ Gooden observes that the “Best practice is not just about attaining maximum profitability or economic efficiency or fair dealing, but is about endeavouring to make sure that companies are directed and controlled according to moral standards acceptable to the general community”. Gooden, cited in Mervyn K. Lewis, ‘Islamic Corporate Governance,’ 13-14.

⁷⁴ This responsibility should be given to the *‘ulama* through a specific section allowing the board to roll out statutory regulations based on resolutions and recommendations made by the former. This is because there are always emerging issues that may not be captured by the present enactment. This is one aspect of the Borno State enactment which is better than other enactments: it gave a far-reaching consideration to the involvement of council of *‘ulama* in *zakāh* and *waqf* matters. See Section 25 (3) of Administration of Justice Law 2000; section 7 (xiii) (b) of Borno State *Zakāh* and Endowment Board 2000. Also the Similarly, section 21 of the Bauchi State *Zakāh* and Endowment Fund Law 2003 is very concise, that noting in this enactment shall preclude the application of other Shariah ruling from other *madhhab*.

⁷⁵ See section 35 of the Zamfara State *Zakāh* and Endowment Board Law 2003 (as amended).

⁷⁶ See section 22 of Bauchi State *Zakāh* and Endowment Fund Law 2003.

Niger and Jegawa⁷⁷ State's laws provide for the power to compel payment of *zakāh*, while Kano, Borno, Yobe and Kebbi States do not. The two legal regimes in this aspect, both the ones that compel and the ones that do not, have been lackluster. Therefore, there is need for a better corporate governance and leadership structure that gives more confidence to the people, and a reorientation on the Islamic position of the obligation to obey the leaders if their commandments do not violate the Shariah.⁷⁸

A major issue in Nigerian *zakāh* laws is the lack of law on collection of *zakāh* from salaries, incomes from businesses, traders, and self-employed professionals. The Zamfara 2003 amendment repealed its section 27 which earlier imposed *zakāh* on salaries, income of self-employed professionals, and craftsmen.⁷⁹ This trend was later replicated by all other states' enactments. This makes the enactments less effective as their focus is limited to farmers, the Fulani herders, and traders - all whose actual volume of income can hardly be assessed. There is no doubt that such advertent neglect of *zakāh* on salaries of self-employed professionals, business community, private organizations, and craftsmen is an anomaly in the administration of *zakāh*. It is worth noting that in Malaysia salaries are subject to *zakāh* and a tax rebate is given in lieu of *zakāh* paid.⁸⁰ This is also the practice in Sudan.⁸¹

CONCLUSION

Zakāh and *waqf* administration requires strong corporate governance like the mainstream financial institutions such as Islamic Banks. The concept of corporate governance has been long established by the *Qur'ān* and the Prophet (PBUH) in the administration of *zakāh* and *waqf* as evidenced in the above mentioned verses and the *ḥadīth* respectively. The concept mandates the managers of the two institutions to work assiduously for the purpose of

⁷⁷ Section 9 of the Jegawa State *Zakāh* collection and Distribution Law 2000.

⁷⁸ Who the leaders are is another issue; in the North is it the constitutional governors of each state or the traditional rulers that were the Muslim leaders before the interruption of the imperial powers that collapsed the Islamic leadership system. See Sanusi Lamido Sanusi. Similarly, in the South where the majority of the governors are not Muslims, what will be the proper leadership structure for *zakāh* and *waqf* - the Muslim Imams or the head of the State supreme Council for Islamic affairs?

⁷⁹ Zamfara State *Zakāh* and Endowment Board Law, 2003 (as amended).

⁸⁰ Section 6A (3) of Income Tax Act 1967 (Act no 53 of 1967).

⁸¹ Section 35 (1a and b) and 35 (2) of the Sudanese Dewan *Zakāh* Law, 2001 (as amended).

actualizing the inherent objective of *zakāh* and *waqf*, which is the alleviation of poverty within society.

The Nigerian enactments on *zakāh* and *waqf* have provisions that contain some elements of corporate governance, but the figures of the *zakāh* and *waqf* proceeds presented above are very low, proving weaknesses in the laws. In observing the above tables, the first two represent the *zakāh* and *waqf* of Zamfara State which is the best performing and the most active in the whole Northern States, while the third table represents Kebbi State which is one of the least performing and less active in terms of *zakāh* and *waqf*. It is therefore possible, in view of a period of 13 years, to conclude that the corporate governance of *zakāh* and *waqf* institutions in the Northern States of Nigeria is very weak and needs rigorous improvement.

REFERENCES

- Al-‘Aynī, *Sharh Sunan Abū Dawūd li al-‘Aynī*, vol. 5 (Riyād: Maktabah al-Rushd, 1999/1420AH).
- AAOIFI, ‘Governance Standard,’ AAOIFI, < <http://www.aoifi.com/en/standards-and-definitions/shari%E2%80%99a-standards/governance-standards.html>> accessed on 10 February 2015.
- AAOIFI, *Accounting, Auditing, and Governance Standards for Islamic Financial Institutions 1431H - 2010* (Bahrain: AAOIFI, 2004).
- Abdul Sattar Abu Gudah, ‘Comments: In OIC Fiqh Academy,’ (Proceeding of the OIC Conference on Investment of *Zakah* Funds in Profit Generating Projects without Conferring Personal Ownership to Anyone, held in Jordan, 1986).
- Abū ‘Abd Allāh al-Hakim Muḥammad Ibn ‘Abd Allāh, *Mustadrak al-Ḥakim ‘ala al-Sahīḥayn*, vol. 4, ed. ‘Abd al-Qādir Atau (Beirūt: Dār al-Kutub al-‘Ilmiyyah, 1990/1411AH).
- Abū ‘Abd Allāh Muḥammad Ibn Aḥmad al-Qurtubī, *al-Jāmi‘ li Ahkām al-Qur‘ān*, vol. 2, ed. Aḥmad al-Barduni and Ibrahim Atfis (Cairo: Dār al-Kutub al-Misriyyah, 1964/1384AH).
- Abū al-Ḥasan ‘Alī Ibn Aḥmad al-Naysaburi, *al-Tafsīr al-Basīt* (Saudi Arabia: Jami‘at al-Imam Muḥammad Ibn Saud, 1420AH).
- Abū Bakr Ibn Abī Shaybah, *Musannaf Ibn Abī Shaybah*, vol. 6, ed. Kamal Yusuf al-Hut (Riyād: Maktabah al-Rushd, 1409AH).
- Advertisement, ‘al-Ashum al-Waqfiyyah Istithmar li al-Akhirah,’ *Mawhopon.net*, <http://www.mawhopon.net/ver_ar/static_page.php?id=3>, accessed on 27 January 2015.

- Badr al-Dīn al-‘Aynī, *‘Umdat al-Qārī* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n. d.).
- Al-Bukharī, *Ṣaḥīḥ al-Bukharī*, vol. 4, ed. Muḥammad Zuhayr Ibn Nasir al-Nasir (n.p.: Dār Tauq al-Najah, 1422).
- Ibn ‘Abd al-Barr, *al-Kaḥfi fī Fiqh Ahl al-Madinah*, vol. 2, ed. Muḥammad Muḥammad Ahid (Maktabah al-Riyāḍ al-Ḥadīthah, 1980/1400AH).
- Ibn Muflih Ibrahim Ibn Muḥammad, *al-Mubdi ‘ fī Sharḥ al-Muqni’* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1997).
- Ibn Taymiyyah, *al-Fatawā al-Kubrā* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1408H/1987).
- Ifeanyichukwu Nwanna, ‘Ramadan: Hundred Million *Zakāh* Cash disappears in Zamfara *Zakāh* Board,’ *Online Freedom*, <<http://freedomonline.com.ng/ramadan-n100m-cash-disappears-in-zamfara-zakāh-board/>>, accessed on 5 February 2015.
- Imam Aḥmad Ibn Hanbal, *Musnad Imam Aḥmad*, vol. 8, ed. Shuaib Arnaut (Damascus: Muassasah al-Risālah, 2001).
- Al-Khatābbi Abū Sulaymān Hamd Ibn al-Khaṭṭab, *Ma‘alim al-Sunan* (n.p.: al-‘Ilmiyyah, 1922).
- M. Umer Chapra and Habib Ahmad, ‘Corporate Governance: Basic Concept and Issues,’ *Occasional Paper no. 6* (Jeddah: Islamic Development Bank, 2002).
- Majma’ al-Fiqh al-Islamic al-Dawli, via Fiqhacademy <<http://www.fiqhacademy.org.sa/>>
- Al-Mawardī Abū al-Ḥasan ‘Alī Ibn Muḥammad, *al-Aḥkām al-Sulṭāniyyah* (Cairo: Dār al-Ḥadīth).
- Mervyn K. Lewis, ‘Islamic Corporate Governance’, *Review of Islamic Economics*, 9/1 (2005).
- Muḥammad Ibn Aḥmad Shams al-Aimmaḥ al-Sarakhsi, *al-Mabṣūṭ Lisarakhasi* (Beirut: Dār al-Ma‘rifah, 1993).
- Muḥammad Ibn Ismā‘il Ibn Ṣalah al-Kahlani, *Sharḥ al-Jami’ al-Saghīr*, vol. 9 (Riyāḍ: Maktabah Dār al-Salām, 2011/1432AH).
- Muḥammad Nasir al-Dīn al-Banī, *Silsilat Aḥādīth al-Ḍa‘īfah wa al-Mawḍū‘ah*, vol. 9 (Saudi Arabia: Dār al-Ma‘arif, 1992).
- Muslim Ibn al-Ḥajjaj, *Ṣaḥīḥ Muslim*, vol. 5, ed. Muḥammad Fuad (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.).
- Al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, vol. 4 (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1392).

- OIC Fiqh Academy, 'Resolution 15 (3/3) Regarding Investment of *Zakāh* Proceeds in Profit Generating Projects with Conferring Ownership to an Individual,' *Journal of OIC Fiqh Academy*, 1/3 (1986): 309.
- Philip Ostien, *Shariah Implementation in the Northern Nigeria 1999-2000: A Source Book* (Nigeria: Spectrum Books Limited, 2007).
- Al-Qarafī, Abū al-‘Abbas Aḥmad Ibn Idris, *al-Dhakhirah*, ed. Muḥammad Hajji (Beirūt: Dār al-Gharb al-Islāmī, 1994).
- Sahih International Translation.
- Al-Shirazī, *al-Muhadhdhab fī Fiqh al-Shāfi‘ī*, vol. 2 (Beirūt: Dār al-Kutub al-‘Ilmiyyah, n.d.).
- Syed Khalid Rashid, 'Islamic Financing Techniques for the Development of Awqaf: with Special Reference to India,' *IIUMLJ*, 10 (2002): 185-6.
- Syed Khalid Rashid, 'Necessary Considerations in the Development of Awqaf Properties,' in *Issues in Waqf Laws and Management (with focus on Malaysia)*, ed. Syed Khalid Rashid (Malaysia: IIUM Press, 2015), forthcoming.
- Syed Khalid Rashid, *Waqf Management in India* (New Delhi: Institute of Objective Studies, 2006).
- Al-Ṭabarānī Sulaymān Ibn Aḥmad, *Mu‘jam al-Kabir*, vol. 20, ed. Hamdi Ibn ‘Abd al-Majid (Cairo: Maktabah Ibn Taymiyyah, 1994/1415AH).
- Al-Tirmidhī Abū Īsā Muḥammad Ibn Īsā, *Sunan al-Tirmidhī*, vol. 4, ed. Aḥmad Shakir (Egypt: Maktabah Muṣṭafā al-Bābī al-Ḥalābī, 1975).
- Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu* (Damascus: Dār al-Fikr, 2008).
- Zakariya Ibn Muḥammad Ibn Zakariya al-Anṣārī, *Asna Maṭālib fī Sharḥ Rawāq al-Ṭālib* (n.p: Dār al-Kitāb al-Islāmī, n.d.).
- Zulkifli Hasan, 'Corporate Governance' *International Review of Business Research Papers*, 5/1 (January 2009).

Statutes

- Bauchi State *Zakāh* and Endowment Fund 2003
- Bauchi State *Zakāh* and Endowment Fund Collection, Administration and Distribution Law 2003.
- Borno State *Zakāh* and Endowment Board Law 2000
- Borno State's Administration of Justice Law, 2000
- Constitution of the Federal Republic of Nigeria 1999.

IDB-IRTI-Kuwait Public Awqaf Sample *Waqf* Laws 2012
Income Tax Act 1967 (Act no 53 of 1967).
IRTI-IDB-Kuwait Public *Awqaf*'s Model *Waqf* Law, (2012); at 3.
Jegawa State *Zakāh* Collection and Distribution Committee Law 2000.
Kano State Hisbah Board Law 2003.
Kano State *Zakāh* and Hubusi Commission law 2003.
Katsina State *Zakāh* and Endowment Trust Fund 2005.
Kebbi State *Zakāh* and Sadaqat (Collection and Distribution) Board Law 2000.
Kebbi State *Zakāh* and Sadaqat Laws 2000.
Niger State *Zakāh* and Endowment Board Law 2001.
Sudanese Dewan *Zakāh* Law 2001 (as amended).
Yobe State Ministry of Religious Affairs Laws 2003.
Zamfara State *Zakāh* and Endowment Board Law, 2000 (as amended in 2003).

Interview

Dikko Bature (International Islamic University, Malaysia), in interview with author on 22 December 2014.
Faruk Muḥammad (Kebbi State indigene with Master Degree in Islamic Studies), personal email interview with author, on 19 November 2014.
(Kebbi State *Zakāh* and Sadaqat Board, Birni Kebbi, Kebbi State Nigeria), in interview with author, on 14 November 2014.
Yahya Tanko (Former Director General, Kano State *Zakāh* & Hubs Commission), in interview with author, on 14 January 2013.

Appendix 1: Zakāh Collection Enlightenment Form



Appendix 2: *Waqf* Collection Enlightenment Form

