

AWQAF: ITS SOCIO-ECONOMIC DRIVE AND LEGAL REGULATIONS IN NIGERIA

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ABSTRACT

Awqaf is one of the institutions of Islamic finance. It refers to the voluntary charitable trust or Islamic endowment which has unique presence under Shariah. In recent years, there has been a revival of interest in establishing Awqaf, spear-headed alongside the growing calls by many for implementing a holistic Islamic economic system across countries. In line with these developments' authorities in several countries have embarked on reforms aimed at harnessing the economic and social potentials through use of Awqaf, which also offers tremendous opportunities and prospects to Nigerians. The methodology adopted in this article is doctrinal research analysis and observation of all instruments related to Awqaf. To achieve the aim and objectives, this paper has been developed on the basis of collecting information relevant to the study from previous publications, journals, reports, research papers, website of various institutions and all other secondary data that are useful for this study. This paper shares and explores the legal regulations of Awqaf. The legal sources are examined from 1999 constitution of the federal

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republic of Nigeria (CFRN) and Islamic law which is the major pilot ever to regulate Awqaf as a civil society institutions. The paper further examines the way forward for Awqaf, socio-economic drive. The paper concluded that despite being prevalent with structures for centuries, Awqaf has remained largely under-utilized in the modern Nigerian economy and it recommends the establishment of Awqaf institutions to cater for real and financial assets based on Shariah compliance for economic and social development of the country.

Keywords: *Awqaf*, Socio-economic Drive, Legal Regulations, Islamic Finance, Constitution, and Nigeria.

1. INTRODUCTION

There has been a revival of interest in utilizing *Awqaf* or Islamic endowment structures by organizations across various jurisdiction. ² *Awqaf* or Islamic endowments are unique charitable trusts have permanence and continuity in their operations, enabling the beneficiaries to gain benefits for many years, generations, or even centuries. The founder of the *Awqaf* voluntarily endows the assets to the trust with the usufruct or profits from the assets earmarked for specified purposes. *Awqaf* institutions have historically been instrumental in providing various public services such as education, health and municipal services among others, leading to major economic and social contributions in the various territories of their establishment. Likewise, there has also been an increase in the involvement of the Islamic financial sectors in *Awqaf* organizations. In addition, Islamic financial institutions themselves have supported *Awqaf* activities by mobilizing funds in support of *Awqaf* institutions. The growing synergies between the two integral components of Islamic finance and economics enables an economically and socially rewarding partnership, which in turn has potentials to

² Raimi, L. *et al* "Financial Inclusion in Nigeria through Zakkat and *Awqaf*" *International Journal of Management Science*. Vol 3, No. 3. March (2016). pp. 68-83.

contribute significantly to the overall development of the Islamic finance industry.³ *Awqaf* have multiple financial requirements that are critical for their smooth functioning. Among the key financial needs are; development finance, liquidity/cash funds, capital, asset management/trustee services.⁴

The *Awqaf* sector offers tremendous opportunities which can further unlock new growth frontiers for the global Islamic finance industry and to countries like Nigeria in order to expand its market share given the synergies between the two sectors in socio-economic drive. Not only Islamic finance offers ethical and sustainable finance products, the two sectors share the same underlying philosophies from the guiding principles of Shariah. The objective of this paper is how to address the *Awqaf* requirements of alternative shariah – compliant structures in Nigeria. In order to achieve the objective of the study, the paper is divided into five parts. Following the introduction, part 2, examines concept and history of *Awqaf* and part 3 examines *Awqaf* in relations to socio-economic drive. Part 4 analyzes the legal regulators pertaining *awqaf* under Islamic and conventional law, while part 5 is an analysis for the way forward in Nigeria for *Awqaf* socio-economic drive.

2. CONCEPT AND HISTORY

Awqaf is charitable endowment, according to Islamic law.⁵ In this institution, a privately owned property is endowed for a charitable purpose in perpetuity dedicated to God. The ideological foundations of *Awqaf* in the Shariah is premised on the prime sources of law - Quran and Sunnan. Thus *Awqaf* is commonly translate as Islamic Trust, in Islam goes beyond the

³ Murstecizaka, A. "Incorporated cash *Awqaf* and Mudarabah: Islamic Non Bank financial instrument from past and future" MPRA paper 25336. 2004 http://mpra.us.unimuenchen.de/25336/1/Impra_Pdf Accessed on 21/09/2017. see Yusuff, Jalili *et al* "Mixed Methods of the Commercialization of Cash *Awqaf* in Nigeria: An Analysis of its implementation" *IORS Journal of Economics and Finance (IOSR-JEF)*. ISSN: 2321-5925. Vol. 6, Issue 3. Ver. II (May-Jun. 2015), pp90-97.

⁴ Ibid

⁵ Quran 2:267.

ordinary understanding of the western concept of trusts.⁶ In classical Islamic jurisprudence *Awqaf* has been classified into two namely: *Waqaf al-Ahli* and *Waqaf al-khayri*⁷. The term *Waqaf al-ahli* is an endowment set aside for the family of the dedicator of the endowment (Waqif). The *Waqaf al-Khayri* on the other hand refers to endowment set aside for general well-being of the poor widows, orphans and other economically disadvantaged people. Apart from welfare, it was reported⁸ the use of proceeds from *Awqaf* as seeds capital for business empowerment for the poor members of the society. Another proposition is the utilization of proceeds from *Awqaf* interest free loan for supporting productive small entrepreneurs in the society.⁹

Similarly *Awqaf* can be a gift of money, estates/land property and other valuable items dedicated fully to charity. The gift could be monetized as a leasing facility for the purpose of earning sustainable income, but cannot be sold. However, agricultural produce and crops harvested from a field held as *Awqaf* could be sold and the proceeds distributed as charity, while the field itself is held intact as the original investment.¹⁰ Imam Sha'fi and Imam Malik viewed *Awqaf* "as the extinction of the appropriator's ownership in a property/asset dedicated and the detention of the property/asset in the ownership of Allah, in such a manner that its profits should be made use of for good of mankind from beginning to the end"¹¹ The jurists viewpoint above presupposed that once assets are dedicated as *Awqaf*, the contract is irrevocable and the utilization of the

⁶ WIFM, *Awqaf: Powerful Socio-Economic Vehicle*. (World Islamic Finance Market Malaysia 2014) www.mifc.com p. 4. Accessed 12-7-2019.

⁷ Raimi *et al* "Tackling Poverty crisis in the Muslims majority Nations" *Advance Journal of Business Management and Entrepreneurship* 2013 (1) 1-12.

⁸ Cizaka, Cash *Awqaf* Alternative to NBFIs Banks, Seminar on Nonbuk Financial Institution Islamic Alternatives, March (2004) 1st – 3rd Kuala Lumpur, Malaysia.

⁹ Ahmed H. Role of Zakkah and *Awqaf* in Poverty Alleviation (Jedda 2007 IDB/IRTI)

¹⁰ Raimi, L. *et all* "Faith-Based Model as a Policy Respond to the Actualization of MDGs in Nigeria" *Humanomics*, 2010, 26(2), 124-138.

¹¹ Ibid.

assets would be strictly as proposed by the dedicators. *Awqaf* is a wealth sharing mechanism with the other person. *Awqaf* is one of the oldest charitable institutions in the world that represents the relationship between religion and economic life of Muslims. *Awqaf* serve as instruments for social safety in the society so that the poor could be ensured of basic needs and the wealth gap within and among the societies can be minimized. The *Awqaf* instrument is important and it plays a significant role in Muslim societies. It is used to support the aged, the poor and the orphans, with the provision of educational, health and religious foundation.¹² A foremost characteristic of *Awqaf* is perpetuity. It is a private possession or asset in any form that has been put under injunction from any form of transaction and its physical source remains intact and unchanged and the benefits of the *Awqaf* must be utilized for Shariah compliant purposes. It is distinct from ordinary *sadaqah*, the difference being the repeatability of the benefits that flow out of it. In *Shariah*, unlike *Zakah*, a *Awqaf* is a voluntary, permanent, binding dedication of a portion of one's wealth (in cash or kind) to Allah.¹³ According to the *Maliki* School, *Awqaf* is a recommended duty in Islam which is at best considered as *Sunnah*.¹⁴ When discussing the question of ownership of *Awqaf*, we shall focus on the distinction between the legal ownership and beneficial ownership in the *Awqaf* property. The position of the *Maliki* school is that the legal interest in the *Awqaf* property remains in the *Waqif* (endower) while the beneficial interest lies on the *mawquf alayhim* (the beneficiaries or *cestuis que trust*). Against this backdrop, the *Waqif* cannot, in any way, transfer the *Awqaf* property nor utilize any income derived from it; what is vested in him is just the legal ownership.¹⁵

¹² Yusuff Jelili *et al.* "Mixed Method on the Commercialization of Cash Awqaf in Nigeria: An Analysis of its Implementation" *Journal of Economics and Finance (IOSR-JEF)*. (May-June 2015) Vol. 6, No. 3. Ver 2 pp.90-97.

¹³ Muhammad Muhsin Khan, *Sahih Al-Bukhari*, (Arabic-English), (Madinah: Al-Maktabat al-Salafiat, n.d.), vol. IV, Hadith Nos. 33, 34, 38, pp. 27-28.

¹⁴ Ahmad al-Dirdir, *Aqrab al-Musalik*, (Khartoum: Dar al-Sudaniyyah Li al-Kutub, 1994), p.150.

¹⁵ Sheik Aftab Husain, "Classification and Condition of *Awqaf*", *Hamdard Islamicus*, 12, No. 3 (Autumn 1989), p. 13.

In a nutshell the view of *Maliki* on ownership of *Awqaf* property is that *Awqaf* deed is revocable. This means a temporary *Awqaf* can be created. In this situation, the reversion of the corpus, after the completion of the object of the *Awqaf*, to the *Waqif* or his legal heirs is permitted.¹⁶ This is contrary to the opinion of the majority of jurists who allow for perpetuity of *Awqaf*, and the ownership of such property absolutely vests in Allah.¹⁷

The importance of *Awqaf* whether private or public *Awqaf* (endowment), the purpose/goal for setting up *Awqaf* is the perpetual or long term charity. Its objective must be an act of benevolence. Such as compliance with the order of Allah Almighty in giving and spending, to achieve the principle of solidarity among members of the economic and *Ummah* and the social balance so that love, brotherhood, sustainability and stability can be spread. *Awqaf* ensure the existence of money and the perpetuation of utilizing the income of the endowment to achieve the goal of community development in the areas of social, economic, educational, health and other services. The perpetual nature of the *Awqaf* and its orientation to the welfare of the needy in the community make this dedication of part of the wealth to God an ultimate vehicle, to be established during the lifetime or at death by will.¹⁸

The first known *waqf* in the history of Islam is the mosque of Qubaa' in Madina. Mosques and real estate's confined for providing revenues to spend on mosques maintenance and their running expenses are in the categories of religious *Awqaf*. Though there was no division or categorization of *Awqaf* in the Prophetic period. But subsequently it was categorized into four types by the scholars of Islam: the religious *Awqaf* (*Awqaf* li-

¹⁶ Ibid.

¹⁷ Abdul-Wadud Al-Sariti, *Al-Wasayah wa al-Awqaf wa al-Muwarith*, (Beirut: Dar al-Nahdah al-Arabiyya, 1997), p. 201. Also see, Mohammad Yusuf, "Foundations of *Awqaf* Foundations: A Critical Study of Origin and Development of *Awqaf* in the Shari'ah and the Law". (Ph.D. Thesis Nagpur University, Nagpur, 2002), p.21.

¹⁸ Murachizaka *Op. Cit* p.10

Allah), the philanthropic *Awqaf* (*Waqf al-Khairi*, the family *Awqaf* (*Waqfal-ahli*)¹⁹ and cash *Awqaf*.²⁰

Religious *Awqaf*, in any society and for any religion, adds to the social welfare of the community because it helps to satisfy the religious needs of people and reduce the direct cost of providing religious services for any future generation.²¹

Kahf maintains that, philanthropic *Awqaf* is the second kind of *Awqaf*. It aims at supporting the poor segment of the society and all activities that are of interest to the community. Philanthropic *Awqaf* was begins by the Prophet Muhammad (PBUH). Drinking water used to be sold at a high price in Madinah. With the continuous inflow of migrants who fled their lands and towns to escape religious-based persecution it became difficult for the poor among the citizenry of nascent Islamic state to pay for water. The Prophet, (PBUH), called on people to buy the well and declare it as *Awqaf* for the benefit of whoever needed water. ‘Uthman Ibn Affan bought it and declared it as *Awqaf*.²²

A third kind of *Awqaf* started shortly after the death of the Prophet (PBUH), during the reign of ‘Umar Ibn Al-Khattab (RA).²³ When Umar decided to document in writing his *Awqaf* in khaibar, he invited some of the Companions of the Prophet (PBUH) to attest to this document. Jaber, another Companion, said that when the news broke out every real estate owner made certain *Awqaf*. Some of those put a condition that one part of the fruits and revenues of their *Awqaf* must be distributed to their

¹⁹ Monzer Kahf, “Shariah and Historical Aspect of Zakkah and *Awqaf*” (IRTI/IDB 2003)

²⁰ Alias, TA “ Venture Capital Strategies in *Awqaf* Fund Investment and Spending” *IJIF ISRA* (4): 99-126.

²¹ Kahf, Monzer “Role of Zakat and *Awqaf* in reducing poverty: A case for Zakat *Awqaf* based institutional setting of micro finance” *Awqaf* and Micro finance Bangladash. A Paper presented at a seminar in Bangladash (2007).

²² Ibid.

²³ Muhammad Kamal al-Din Imam, *Alwasayah wa al-awqaf fi muassasah al-Jami’iyah*, (1986) p. 161.

own children and descendants while the other part should be given to the poor.²⁴

The most important and illustrious role played for the formulation of the idea, policy, and principles of *Awqaf* is the incident attribution to Umar (RA) who got a land in Khaybar and then went to the Prophet (PBUH) and said: “Messenger of Allah! I got a land in Khaibar. I never got a property more precious to me than it. What do you advise me?” He said: “If you want, you can make *habs* on (bequeath) it, and give it as *sadaqah* (charity); provided that it should not be sold, bought, given as gift or inherited.” Ibn Umar, the narrator of the incident, said, “then Umar gave it as charity for the poor, relatives, slaves, wayfarers, and guests.” “There is no harm for the person responsible for it to feed himself or a friend from it but for free, without profiteering.” Ibn Umar observed.

Many actions of the Prophet (PBUH) also made clear-cut reference to the establishment of this unique Islamic institution. As *Awqaf* includes properties used to produce religious services as well as charitable services/revenues’, one can rightly argue that the first *Awqaf* creating action by the Prophet Muhammad (PBUH), was the purchase of the land and the construction of his mosque in Madinah (*Al-Masjid al-Nabawi*), *Masjid Qubā*, *Masjid Bani Harām*, *Masjid Bani Dinār*, *Masjid Bani Tufrah*, *Masjid al-Jum’ah*, *Masjid al-Rayah*, *Masjid al-Sabaq*, and *Masjid al-Sajdah* etc.²⁵ From Ibn Hisham maintains that seven orchards were left to the Prophet by his Companion Mukhayriq upon the latter’s death in the battle of Uhud, which the Prophet (PBUH) assigned as *Awqaf* and he used to spend their fruits on his household and for buying defense weaponry and equipment.²⁶

It is also claimed that Islamic *Awqaf* influenced the development of trusts in Western Europe. Most notable of which is the establishment of such venerable educational institutions as the

²⁴ This kind of *Awqaf* is called posterity or family *Awqaf*.

²⁵ Kahf, *Op. Cit.* pp.8-9.

²⁶ *Ibid.*

University of Oxford and Merton College,²⁷ where the institution of the trust emerge have in the 13th century, half a millennium after it struck roots in the Islamic Middle East'.²⁸

3. SOCIO-ECONOMIC DRIVE (CASH AWQF)

The concept of cash *waqf* can be traced back to as early as the second Hijra century (eighth century CE). Although the fatwa (legal ruling) of Imam Zufar is considered the most common reference on the permissibility of donating measurable or weighable properties including money as *Awqaf*.²⁹ Another account reveals that the issue of cash *Awqaf* was discussed among scholars even earlier. Imam al-Bukhari reported that Imam Ibn Shihab al- Din al-Zuhri was asked about the permissibility of a *Awqaf* in the form of 1,000 dinars held in perpetuity for trade with the profits being assigned to the poor and underprivileged.³⁰ Another account relating to cash *Awqaf* is found in the famous Maliki book, *al-Mudawwanah al-Kubrah* which documented the fatwa of Imam Malik that asserted the obligation of Zakah on 1000 dinars offered as *Awqaf* to be given as loans to people.³¹ The popularity of cash *Awqaf* has recently grown rapidly in the Muslim societies, such as India, Bangladesh, UAE, Malaysia and Indonesia. Many wealthy Muslims have been giving cash in the form of *Awqaf* to specific institutions; the funds are used for providing social services to the vulnerable groups of society.³² Because of its distinct advantages in fund mobilization and its liquid and flexible

²⁷ Sadeq, Abul Hassan, “ *Awqaf* perpetual charity and poverty alleviation” Paper delivered at a conference organized by IRTI in Bangladash.

²⁸ Kuran, Timur “ The provision of public goods under Islamic Law: Origin impact and limitations of the way of systems” *Law and society review* (2001) Vol. 22 No. 3.

Ci Zakca, M.K *Awqaf*: Its Contributed and basic operation structure (2011). *Whole.Igra.org.my/slide/igra%20waqf20101.pptx*. Accessed on 27 June, 2018.

³⁰ Al-Bukhari, M. *Salih al Bukhari*, Damascus, Dar Ibn Kathir Translated by Mohammed Muhsin Khan, Riyad. (2002).

³¹ Imam, Malik A; *Al mudawwanah al-kubra, dar al-kulib at nilmiyyah*. Translated by Sahnun (1994).

³² CiZakca, M. “ Cash *Awqaf* of Bursa” 1555-1823. *Journal of the economics and social History of orient*. vol. 38 No. 3 pp. 313-354.

nature, cash *Awqaf* has recently been integrated into several models that have been developed for improving socio-economic development and poverty alleviation.³³

It has to be noted that many poor families in the world have limited access to financial services such as Credit, Savings instruments, Insurance. One of the main reason why penetration ratios of the poor segment of the society are low is because the conventional banks and financial institutions consider the profitability of services designed for the poor to be low return include the unethical financial services such as *Riba* couple with high risk and lack of sound collateral.³⁴ So cash *Awqaf* is the latest product and also alternative to the poor in the realm of our banking sector particularly in Islamic economics and finance. Cash *Awqaf* provides a unique opportunity for making investment in different religious, educational and social services. Saving made from earning by the well-off and the rich people of the society can be utilized by purchasing cash *Awqaf* certificate. Income earned from there will be spend for different purposes like the purposes of the *Awqaf* properties itself.

In Bangladesh 8000 educational institutions and more than 123000 mosques are based on *Awqaf*.³⁵ In almost every Muslim country there is a department in charge of *Awqaf* administration and even some of the Non-Muslim countries have offices like that to maintain cash *Awqaf* fund may be utilized for all socio economic purposes.³⁶

Islamic Development Bank (IDB) set up the *Awqaf* Properties Investment Fund (APIF) in 2001 to prepare assets to advance and add to the *Awqaf* properties around the world. APIF puts resources into *Awqaf* properties that are socially, monetary, and

³³ WIFM *Op. Cit.*

³⁴ Zurina Shafi'I *et al*: Government Regulatory Framework for *Awqaf* in Selected Countries. Paper Presented at WBIF centre Istanbul/Turkey from 6th – 26th Feb. 2018.

³⁵ WIFM *Op. Cit.*

³⁶ Sadeq, Abulhasan “ *Awqaf* in Bangadash in: Rashid S. Khalid (ed), A paper presented at Kuala Lumpur, Malaysia (2005) p 7-9.

financially suitable for managing social issues, social effect and wander charity.³⁷

The three instruments analyzed above for fund accumulation of the *Awqaf*, which is: Cash and e- *Awqaf* fund are considered for small scale projects, per-square feet certificate value and *Sukuk* will be focused for the structure of medium and large scale projects. *Mutawalli* (cash *Awqaf* fund manager) collects the fund from *Awqaf* and invests the money in the real sector and in Shariah based investment opportunities. Nevertheless, another perspective for investing in cash *Awqaf*, the contract for *mudarabah* (partnership) is allowed in order to generate the funding.³⁸

One sample of an inventive *Sukuk* used to create *Awqaf* properties is that of King Abdul Aziz *Awqaf* in Makkah, Saudi Arabia. Utilizing a timeshare bond structure, USD 390 million was raised for a residency for a long time to develop the *Zamzam* Tower Complex ashore neighboring the Blessed Mosque in Makkah.³⁹

There is a source of social fund that is economically and politically free of charge, which is cash *Awqaf* under the Islamic socio-economic concept. Cash *Awqaf* is a special charitable endowment fund, it is expected to become one of the instruments for the property improvement programs worldwide mostly in Islamic countries.⁴⁰

Awqaf modes of investing and financing

The financial methods that have been found suitable especially for the development of *Awqaf* properties are inclusive in both

³⁷ Ramla Sadiq and Afia Mustag. "The Role of Islamic Finance in Sustainable Development" *Journal of Islamic though and civilization*. Spring (2015) Vol. 5 Issue I. p. 54.

³⁸ Jalil *et all* "*Awqaf* instruments for construction contract: Analysis of structure" (IBAR) Kudu Lumpur (2008) pp 2-4.

³⁹ Ramla Sadiq and Afra Mustag. *Op. Cit* p. 54.

⁴⁰ Aziz *et all* "Assessment on the willingness among public: in contributing for social Islamic *Awqaf*" *Australian Journal of Basic and Applied Science* (2013). pp. 15-21.

classical and contemporary modes. The classical modes are *hikr* (exclusive), *Hukr* modes are created by jurists to go around with the prohibition of sale of *Awqaf*. The term of *Hukr* means “monopoly” or “exclusive”. This exclusive right may be for a long time beyond the normal life span of human nature or it may be permanent, *Injaratain* implemented by creating term lease in which the rent consists of two part is a big lump developed for the reconstruction of the *Awqaf* property, and the second part is a small periodic payment paid, say, every year for the term of the lease, *murabahah* mode of financing is popular in the market; it is widely used by Islamic banks. The *murabahah* generally defined as: sale of a commodity at a price the seller has purchased, with additional gains realized known by both sellers and buyers. It is a cost plus profit sale where the seller expressly discloses profit, *Bai-bithaman aji* (BBA), a markup sale capable of being on installment is *murabahah*. Nowadays, it is connected with a credit sale settled on installments, called BBA.⁴¹ The BBA is a sale contract in which payment is deferred; he pays the price at some point in the future; it may be involved in any sales contract including *musawamah* and *murabahah*, *Istisna*, according to OIC Islamic Fiqh Academy Resolution, *istisna* payment deferred by mutual agreement is Shariah compatible contract.⁴² *Istisna* is a model that has a very wide scope in the industry, and one can benefit from the implementation of this model and generate appropriate profits and income.⁴³ *Ijarah* or lease is a form of contract to facilitate the needs of the public and provide convenience in life. Islamic law allows lease of certain assets which benefit is be derived by

⁴¹ Ali Abdulkadir and Abdulmajid Jamal “Islamic Finance as Leverage to Regulate Social Responsibility in Nigeria” Paper presented at AICODIS Conference, NSUK 2018. pp.80-81.

⁴² Ahmed, S.M. *Economic of Islam: A Comparative Study* (Delhi, Idarah-I Adabiyatil Qasim Jam Street, India 2009) p. 33.

⁴³ Ibid.

the lessee for rental payments.⁴⁴ The contemporary methods are the extension of new situations.⁴⁵

4. LEGAL BASIS FOR AWQF IN NIGERIA

Islamic Law

The primary legal bases for any Islamic scheme in Nigeria can be found in Shariah (Islamic law) and the constitution. In Islamic teachings, efforts to achieve legal property have been considered a kind of worship. Mechanism of eliminating poverty and distribution of wealth such as paying alms, taking care of the poor and orphans are, *Ihsan* and charity with vulnerable strata and all the more important friendly *Awqaf* tradition are all instituted in Shariah.⁴⁶ That is why all schools of fiqh Hanafi, Maliki, Shafi'i & Hanbali agreed upon immovable and movable properties as a subject matter of *Awqaf*.⁴⁷

The authorities upon which the jurist permitted *Awqaf* can be found from the Qur'an and Hadith have stipulated on any issue it has become a law in Islamic law. Proof from Qur'an thus:

*By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give of a truth God knoweth it well.*⁴⁸

In another Qur'an Verse provided:

It is not righteousness that ye turn your faces towards east or west, but it is righteousness to believe in Allah, and the last day, and the Angel, and the Book, and the Messengers, to spend of your

⁴⁴ Dauda *et al*, "Operation and Contributions of Islamic Finance in Emerging Economics" *Bayero International Journal of Islamic Finance (IIBF)* 2015 pp. 76-77.

⁴⁵ Zarqa, *Op. Cit*

⁴⁶ Abdullahi Saliu, "Legal Basis for Islamic Endowment System (*Al- Awqaf*) in Nigeria" Paper Presented at AICODIS Conference NSUK 2018.

⁴⁷ WBGIF. *Op. Cit.* p. 4.

⁴⁸ Qur'an 3:92

*sustenance out of love for Him, for your kin, for orphans, for needy, for the wayfarer, for those who ask, and for the ransom of slaves, to be steadfast in prayer and practice regular charity.*⁴⁹

Allah SWT says in Al-Quran:

*O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you.*⁵⁰

Awqaf is stipulated in the traditions of the Prophets Muhammad SAW. The Prophet Muhammad SAW said:

When the sons of Adam die, their deeds come to an end, except charity with enduring benefits, their knowledge which benefits others and their virtuous sons, they pray for them (bless them).

The Prophet Muhammad SAW said about the *Awqaf* in one Hadith; which through the saying of Caliph Umar said:

*Oh Prophet! I got wealth that I never got it before and I want to be closer to Allah through it. After that the Prophet answered. You tried to keep the origin wealth and making charity (by giving it to the needy people). Then the Caliph Omar R.A. donate his land which he get from the battle of Khaibar, seems the land can't be sell, even to bought as well as to inherit it.*⁵¹

Also another Sunnah:

Abu Hurairah (Allah be pleased with him) reported Allah's Messenger (pbuh) as saying: when a man dies, his acts comes to an end, except three things,

⁴⁹ Qur'an 2:177

⁵⁰ Qur'an 2:267.

⁵¹ Hadith narrated by Imam Al-Bukhari.

*recurring charity, or knowledge (by which people benefit), or pious offspring, who prays for him.*⁵²

The prophet (PBUH) emphasized on charity and dedication of one's wealth in anticipation of earning its reward in perpetuity by saying the following message:

*When a person dies, all his good deeds terminate except three (things): the establishment of continuous welfare, the benefiting knowledge and the pious children who will pray for them.*⁵³

In order to lay an example the prophet (PBUH) built a social infrastructure based on *Awqaf* and encouraged his companions to make *Awqaf*.

Conventional Law

Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (CFRN), contains fundamental rights, which every person should enjoy as a human being. They are accorded a special status in the Nigerian constitution. They are given special attention by the law courts. Among them is the right to freedom of thought, conscience and religion. The section of the constitution provide thus:

*Every person is entitled to freedom of thought, conscience and religion including..... manifest and propagate his religion or believe in public or private.*⁵⁴

The legal basis to regulate and advance *Awqaf* practice in the exercise of the right to freedom of religion. Furthermore, the

⁵² Sahih Muslim: Listed in Faith (Kitab al-Iman)

⁵³ Tirmidzi *Sahih al-Jamiah* (Hadith 793) "Chapter of Ruling Concerning *Awqaf*" <http://fercous.com/home/?q=en/art-mois-en-66>. Accessed on 7th May, 2018.

⁵⁴ S. 38 1999 CFRN Chapter IV.

United Nations Resolution on the permanent sovereignty of peoples over their natural resources and the charter of Economic and social rights, reads:

*All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall people be deprived of it.*⁵⁵

This is in line with fundamental principles and objective of state policy under chapter II of Nigerian constitution which stated:

*The state shall, within the context of the ideals and objectives for which provisions are made in this constitution provide that, it will exercise control on the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.*⁵⁶

Although this part is non-justiciable, Nigeria is signatory to the international laws and will remain guided by judicial activities for the full regulators of instruments such as *Awqaf* for the Economic benefit and prosperity of Nigerians.

Furthermore, the constitution has provided enabling environment for adjudication of Islamic subject matter such as *Awqaf* in Nigeria.⁵⁷ The final decision to put the Islamic law structure in place is still left to each state of the federation that desires the structure.⁵⁸ For example the Northern states have taken this benefit by establishing the Shariah Court of Appeal and enacting the relevant laws to actualize the structure among which is the laws are also enacted to establish lower courts from which appeals should go to the Shariah Court of Appeal. In line

⁵⁵ Art. 21UN International Covenant on Economic Social and cultural Right Declaration.

⁵⁶ S. 16 (1) (a) of 1999 CFRN.

⁵⁷ S. 260-264 and S. 275-279 of 1999 CFRN.

⁵⁸ S. 275 (1) of 1999 CFRN.

with the above practice Shariah law reforms introduced by some states in the Northern Nigeria, laws were enacted to regulate endowment practices. Both Zakah and endowment were combined together in the regulation with more focus on Zakah.

5. AWQAF AND SOCIO-ECONOMIC DRIVE: THE WAY FORWARD IN NIGERIA

Awqaf is powerful socio-economic drive which, if effectively and efficiently managed and utilized, it has the potency to establish socio-economic justice and achieve equitable distribution of wealth such as structured real underlying assets with have productive use,⁵⁹ and may even be structured as a cash *Awqaf* as examined in the above where financial assets are utilized to generate returns⁶⁰ and achieve the way of purposes. Furthermore, *Awqaf* institutions in Nigeria may potentially achieve powerful socio-economic objectives such as generating growth, income stream, social redistribution and provision of public services through these legal structures as follow:-

- i. Inadequacy of Existing Legal Framework to Establish Equity Institutions and Procedure: Laws provided a rather narrow scope for *Awqaf* activities. The current state of affairs in relations to *Awqaf* institution in Nigeria need adequate legal mechanism by promulgation of proper legislation in order to ensure management and regulation of *Awqaf* properties. It has to be noted that these are *Awqaf* properties lying idle, if such properties are utilize in a proper way may pave the way for socio-economic development in Nigerian societies.
- ii. In order to realize genuine socio-economic development through *Awqaf* potential properties, serious steps has to be taken in providing legislation which are essentials and worthy of development in the country. An agency has to

⁵⁹ Such as resident ice buildings, office, quarters office complexes, university of Al-Azhar in Cairo which was founded in the year 1972 was financed by *Awqaf* Mife conference. (Malaysia World Islamic Finance Market Place).

⁶⁰ Investment in Islamic securities (Sukuk) www.mifc.com

be created in the ministry of commerce and industry for that purpose.

- iii. Foretaste to raise capital for *Awqaf* investments; *Awqaf* objects have to be set to tap into the Islamic equity market by raising the public funds as longer term sources to meet their various developmental expenditure. This kind of financing is usually represented by cash *Awqaf* certificates which can be brought by individuals or corporate entries and may be subsequently endowed to a *Awqaf* trustee for management. The returns generated through the Shariah compliant investment activities using the raised cash should be directed towards the stated name financial channels of the *Awqaf*.⁶¹
- iv. Adequate funding of liquidity needs of *Awqaf*: This type of financial liquidity is largely for cash needs of *Awqaf* which may silently rely on mobilizing funds to expand on investment activities and generate returns which may serve its prescribed purposes. The opportunities for Islamic financial institutions in these kind of *Awqaf* are mainly in the term of collecting and maintain, *Awqaf* contributions as deposits.⁶²

6. CONCLUSION AND RECOMMENDATIONS

Despite being prevalent and potential structures for Islamic finance for centuries, *Awqaf* have remained largely underutilized in the modern Nigeria economy. Two notable reasons that can be attributed to this development are: On the contrary, *Awqaf* are powerful socio-economic structures that have potential to address many social deficiencies such as poverty, illiteracy, financial exclusion and inequality. *Awqaf* should be utilized both real and financial assets and can be established to serve any productive purposes that comply with Shariah and provide

⁶¹ For example contributions has been made by the state Islamic councils of Malaysia. www.mife.com Accessed on 9 May, 2018

⁶² In Indonesia the legislation governing cash *Awqaf* states that funds mobilization must be implemented through identified Islamic financial institutions.

economic and social benefits. The industry stakeholders now need to address the requirement of alternative Shariah compliant structures: There is need for harmonized prudential standards that should govern *Awqaf* institutions in order to regulate critical aspects which involve tax treatments and classification of *Awqaf* as separate legal entities with perpetual existence. There is also need to entrust a reliable trustee which should safeguard the interest of beneficiaries on operational aspects. In line with the above, professional management bodies or companies should be assigned in order to efficiently manage the operational day to day strategic aspects of the institution, given the multi-pronged usefulness of these institutions to the growth and development of the economy.