

THE LEGAL AND REGULATORY FRAMEWORK FOR ZAKAH AND WAQF ADMINISTRATION IN KUWAIT: LESSONS FOR NIGERIAN ZAKAH AND WAQF INSTITUTIONS

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ABSTRACT

In strategies for poverty alleviation from the Islamic legal perspective, there have been continuous efforts to make zakah and waqf instrumental in the processes in Nigeria. While there has been number of studies addressing such poverty alleviation strategies from the economic and Shari'ah perspectives, a holistic focus on the legal transplant from one of the leading zakah and waqf jurisdiction in the Muslim world, the Kuwait will complement the effort, particularly when it comes to proper administration. This paper therefore examines the dynamics of the legal and regulatory framework for zakah and waqf administration in Kuwait. The methodology used in this study is mainly qualitative legal research which draws significantly from relevant laws and policies on zakat and waqf through induction method to identify the viability of such models in addressing the economic needs of the poor in Nigeria. One key aspect examined in this study is the effectiveness of the existing laws in encouraging people to give charitable donations and the adequacy of such laws in furthering the noble cause of poverty alleviation. The study concludes that a robust legal and regulatory framework is necessary in the Nigerian zakah and waqf arena to ensure their maximum benefit in the long run. In addition, effective administration of zakah and waqf requires a sound and appropriate legal framework. While one may conclude that the existing laws are largely adequate, learning from experiences of other laws such as the Kuwait Law on Zakah and Waqf will enhance the existing initiatives.

Keywords: poverty alleviation, zakat, waqf, administration, Nigerian Zakah and Waqf, Kuwait.

Introduction

Since 1999 till 2003 a good number of Muslim States in Nigeria has enacted laws on zakah and waqf administration. While some of these laws appear adequate for a good zakah administration, the opposite is true in the case of waqf. Even those of zakah, the effectiveness still remains unproven. This is based on the available statistics obtained from Zamfara State Zakat and Endowment Board that is seen as the most performing of the Zakah and Endowment Institutions in Nigeria. For example, since the year 2000 till 2014 only total amount of zakat collected is N175, 037, 358 (879,667.05 USD), while the total zakat of heads of livestock collected is 7,005. The total zakat collected in cereals is 118, 545 bags.¹ All these seeming achievements are in a period of 13 years. Therefore a thorough look and transplanting of an internationally recognised and accepted system of zakat and waqf administration like Kuwait is paramount in Nigeria.

Be that as it may, as in any other Kuwaiti laws, section 51 of the Constitution of the State of Kuwait states that the legislative powers lie in the Amir of the State of Kuwait and the National Assembly.² By virtue of this The Kuwaiti authority has enacted two different zakah laws to provide for effective zakah administration in the State of Kuwait. The first law was the zakah law no. 5 of 1982/1403AH which established the Kuwaiti Zakah House in 1982 as a government agency under the jurisdiction of the

¹ Zamfara State Zakat and Endowment Board Annual Report.

² Constitution of the State of Kuwait, section 51.

Ministry of *Waqf* and Islamic Affairs.³ The second *zakah* law was enacted in 2006, the *zakah* law no. 46 of 2006. This law grants the Ministry of Finance the jurisdiction to administer *zakah* on business corporations in Kuwait.⁴ The effect of the co-existence of the two laws is that the *zakah* administrative powers in Kuwait are shared between two Ministries, namely; the Ministry of *Waqf* and Islamic Affairs and the Ministry of Finance.

Furthermore, in 1993 the functions of the former medical aid law no.15 of 1993 were transferred to the *Zakah* law no. 5 of 1982 and the medical aid law was consequently repealed.⁵ This action displays the perspectives at which the Kuwaiti *zakah* system covers the areas of medical assistance by *zakah* proceeds. This is a far-reaching restructuring of the administrative framework and the responsibility of the *Zakah* House as an Islamic source of financial and socio-economic assistance to the society.

This is part of what this paper is trying to investigate, the possibilities of having similar operational structure in Nigerian *Zakah* System. in addition the waqf system of Kuwait also is one of the best performing in the world, it is against this and *inter alia* this paper focuses on Kuwaiti *zakah* and waqf laws.

This paper is mainly divided into four sections, after the introductory section, the second section seeks to examine the legal framework of *zakah* administration in Kuwait and the powers of the Kuwaiti *Zakah* house, the effectiveness in poverty alleviation and the annual report on *zakah* received by the house in 2014. The section also looks at the strategies employed by the house in encouraging people to pay *zakah* and modus operandi poverty alleviation. Section three delves into the legal framework of waqf administration in Kuwait, the role of the Kuwait Awqaf Public Foundation in poverty alleviation in Kuwait, analysis of the Kuwaiti Laws on waqf and their effectiveness. Section four is the conclusion and recommendation. It was concluded the Kuwaiti system of *zakah* and waqf administration is worthy of being a model and so the Nigerian *Zakah* and Waqf Institution should copy from the system.

Objective of the study

The main objective of this study is;

To explicate Kuwaiti system of *zakah* and waqf administration as a general guideline on effective *zakah* and waqf administration in Nigeria.

Literature Review

There are two types of *zakah* laws and one Waqf of law in Kuwait. The first *zakah* law is the *Amiri* Ordinance no.5 of 1982 while the second *zakah* laws is the *Amiri* Ordinance of the *zakah* law no. 46 of 2006 and the waqf of law is the *AmĒrĒ* Ordinance no. 257 of 1993. The review the literature will be based on the literature that is related to these laws and any other laws in Kuwait and Nigeria in connection with the subject matter of this paper.

Ibrahim Ahmad Khalil at el (2014) find that waqf in Kuwait is far developed more than many other Muslim countries. They found that the hedge the Kuwaiti waqf administrative system has over others is the adequate funding and commitment of the management.⁶ Ahmad al-Hijji al-Karkhi wrote in Arabic on the Kuwaiti *Zakah* Law of 2006. His finding was that the Law did not comply with the Shariah in beneficiaries of *zakah* and that the Kuwaiti Fatwa Council did recommended that the *Zakah* House should be the appropriate administrator of the *zakah* collected from commercial companies.⁷ This is justifies why the author choose Kuwait as a model to Nigeria. Ostien (2011) in his book, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook -Volume VI Ulama Institutions* in which he discussed *zakah* and waqf institutions in the Northern Nigeria. His findings concise with Umar Oseni (2012) who found that that prior to 1999 and since independence there had not been waqf laws in Nigerian apart from the general constitutional provision in section 277 (2) (C) of the 1999 constitution of Nigeria which grant the jurisdiction on waqf matters to SharĒah Court of Appeal without any further regulation in form of an Act was not enough.⁸

Methodology

³ Kuwaiti *Zakah*house, "Summary Introduction"

<<http://beta.zakahhouse.org.kw/ar/About%20Us/Pages/default.aspx>> (accessed February 14th 2015).

⁴ The Kuwaiti *zakah* law on Public Liability Companies and Private Companies (Law no. 46 of 2006), section 2.

⁵ See the Kuwaiti Medical Aid Fund Law no. 15 of 1993.

⁶ Ibrahim Ahmed Khalil, Yunus Ali and Mohammad Shaiban, "Waqf Fund Management In Kuwait And Egypt: Can Malaysia Learns From Their Experiences", *Proceeding of the International Conference on Masjid, Zakat and Waqf* (IMAF 2014) held on 1-2 December 2014, Kuala Lumpur, Malaysia.

⁷ Ahmad al-Hijji al-Kurdi, "Mada Shaiyyah Masarif al-Zakah allati Nasa Alayha Qanun al-Zakah al Kuwaiti Raqam 46, 2006," a paper presented at the 9th International Conference of Islamic Financial Institutions on 11-12 January, 2009 in Kuwait.

⁸ Umar A. Oseni, "Towards The Effective Legal Regulation Of Waqf In Nigeria: Problems And Prospects" in *Waqf Laws & Management (With Special Reference to Malaysia)* edited by Syed khalid Rashid and Arif Hassan (India: Institute of Objective Studies, 2012), at 339; Philip Ostien, "SharĒnah Implementation in Northern Nigeria 1999-2006: A Sourcebook", *Sharia-in-Africa.net*, < <http://www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria-volume-six/Chapter%209%20Part%20II.pdf>> Date accessed, 25th, Oct, 2013.

With the nature of this topic as implied by the title, content analysis using inductive method is best suitable to get the expected findings. This is to generate the lessons from the Kuwaiti system in order to suggest the replication to the Nigerian zakah and waqf institutions. The primary and secondary sources of Islamic law were consulted. In this regard the primary sources are the Quran and Hadith while the secondary sources are the *tafsir* (exigency of the Quran), books of Islamic jurisprudence. Other sources of data were mainly from website of the Kuwait Zakat House, Kuwait Awqaf Public Foundation, constitution of Kuwait and statutes, and journals. It becomes necessary to use Kuwait as the model to Nigeria because of its international recognition on zakah and waqf efficient administration.

Powers of the kuwaiti zakathouse in zakah administration

The Kuwaiti *zakah* law no.5 of 1982 contains total number of five sections. Its section 1 provides for the establishment of the *Zakah* House as a corporate body and equally grants the Minister of *Waqf* and Islamic Affairs the jurisdiction to supervise the House. This makes the house a semi-autonomous body. Based on this law the *sÉÑÊ* of *zakah* in Kuwait is an institutional *sÉÑÊ* represented by the staff of the *Zakah* House and the Board of *Zakah* Administration.⁹ The members of the Board are appointed by the law makers and the Amir,¹⁰ unlike some of the Nigerian *Zakah* Board whose members are unconditionally appointed solely by the Governor.¹¹ The *zakah* law of 2006 which also contains five sections provides for an institutional *sÉÑÊ* which is the Ministry of Finance, but it has differed from the *zakah* law of 1982 in its exclusive area of jurisdiction, which is the *zakah* administration on business corporations and the power to compel on the payment. This is contained in section 1 of the law which imposes imprisonment of three years for evasion of the said amount.¹² The *Zakah* House has no powers to compel individuals to pay *zakah* but it has only persuasive powers and the right to receive the *zakah* from anyone who pays it out of his own free volition.¹³ This is another aspect where the Kuwaiti *zakah* law of 1982 is different from some of the *zakah* laws in Nigeria.¹⁴

Section 2 of this law also detailed the sources of proceeds of *zakah* to the *Zakah* House as the following: the *zakah* paid by individuals and the likes; gifts and grants from organisations, companies and government annual aids.¹⁵ Since the Kuwaiti *Zakah* law no. 46 of 2006 came into force the section 2 of the *zakah* law of 1982 must be read together with section 1 of the Kuwaiti *Zakah* Law of 2006; as it makes the payment mandatory on companies only¹⁶ where the *zakah* law no. 5 of 1982 makes it voluntary to all.¹⁷ The *Zakah* law of 1982 also grants the powers to make policies and regulations to the Board of *Zakah* affairs and not the leadership of the *Zakah* House.¹⁸ From this it is clear that the internal policy making body of *zakah* administration in Kuwait is separated from the administrators in the *Zakah* House.

How effective the kuwaiti zakah laws have been in poverty alleviation?

Pursuant to the powers given to the *Zakah* House by section 3 of the *zakah* law of 1982 and section 36 of the interpreting memorandum which empowers the Council of *Zakah* House to make policies deemed suitable for the smooth running of *zakah*

⁹ Section 3 of the Kuwaiti *Zakah* Law no. 5 of 1982 and the Ministerial regulation no. 16 of 1994 orders the House to constitute a body of *zakah* as the highest level of the *zakah* administration in Kuwait. The Board is headed by the Minister of *Waqf* and Islamic Affairs as the Chairman, permanent Secretary of the Ministry of *Waqf* and Islamic Affairs as a member; permanent Secretary of the Ministry of Social Affairs and Work as a member; General Manager of Kuwaiti Insurance Social Insurance Institutions, Director of the Underprivileged Affairs and six other Kuwaiti Nationals that have experience who are not engaged in any public job and must be appointed by the Council of Ministers for a tenure of three years. See the Kuwaiti *Zakah* Law (Law no. 5 of 1982) section 3 and section 36 of Ministerial regulation no. 16 of 1994.

¹⁰ See section 51 of the Constitution of the State of Kuwait read together with section 3 of the *Zakah* Law no. 5 of 1982.

¹¹ See for example the Zamfara State *Zakah* and Endowment Board Law 2003 (as amended) section 4(2); Niger State *Zakah* and Endowment Board Law 2001; see Kano State *Zakah* and Hubusi Commission Law 2003, section 5(1).

¹² The Kuwaiti *zakah* law with regards Public Liability Companies and Private Companies (Law no. 46 of 2006), section 1.

¹³ Section 2, of the Kuwaiti *Zakah* Law (Law no. 5 of 1982).

¹⁴ The Zamfara, Bauchi and States *Zakah* laws provide for compelling on payment of *Zakah*. However the statistics presented in the introductory part of this paper show that the law has not been very effective. See section 5 (g) Zamfara State *Zakah* and Endowment Board Law 2003 (as amended); Bauchi State *Zakah* and Endowment Fund Law 2003 section 22 (1).

¹⁵ Section 2, of the Kuwaiti *Zakah* Law (Law no. 5 of 1982).

¹⁶ Kuwaiti *Zakah* Law on Companies (law no. 46 of 2006) Section 1.

¹⁷ Section 2 (a), of the Kuwaiti *Zakah* Law (Law no. 5 of 1982).

¹⁸ Section 4 of the Kuwaiti *Zakah* Law (Law no. 5 of 1982)

affairs,¹⁹ the House had been performing successfully. The effectiveness and efficiency of the system are evidenced by the huge amount of *zakah* being realised, the numbers of beneficiaries and the project being delivered.

Some annual report of *zakah* received

Table 1: A table showing the amount of *zakah* realised in Kuwait from the year 2012 to 2014.²⁰

Year	Cash <i>Zakah</i> (KWD)	Charity(KWD)	Total
2012	30, 419, 058	3, 420, 190	33, 839, 248
2013	28, 468, 167	4, 462, 849	37, 931, 016
2014	20, 207, 780	5, 802, 816	26, 010, 596
Ground Total	79, 095, 005	13, 685, 855	92780860.

The table above shows the amounts of cash *zakah* received by the Kuwait *Zakah* House for the last three years, 2012, 2013 and 2014. As the figures appear, the total amount of *zakah* in the last three years is seventy nine million, ninety-five thousand and five cents of Kuwaiti Dinar (KWD79, 095, 005). This is equivalent to two hundred and sixty-three billion, five hundred and eighty nine million, three hundred ninety seven thousand and ninety-nine cents dollars (USD263, 589, 397.99). Beside the *zakah*, there are also accruals of general charities as *al-khayrat* (charities) which, according to the table, amount to thirteen million six hundred and eighty five and eight hundred and fifty five Kuwaiti Dinar (KWD13, 685, 855).

It is pertinent to note that the *zakah* proceeds realised under the *zakah* law of 2006 do not accrue to the *Zakah* House that is operating on the 1982 law, but to the national treasury²¹ and to be used for the benefit of any public interest that is requested by the corporate body.²² However, in 2007, the Kuwait Fatwa Council ruled against this provision of the law with respect to the beneficiaries of the *zakah*. The council directed that the *Zakah* House should be the proper channel through which *zakah* should be distributed.²³

The question now is that what are the factors responsible for this success in the Kuwaiti *zakah* administration, even though the law does not compel on payment of *zakah*?

Strategies employed by the *zakah* house to ensure payment of *zakah*

The Kuwaiti *Zakah* House mentioned two methods of receiving the *zakah* from the members of the public, namely; direct cash payment of *zakah* and Monthly deduction from the account of the *zakah* payers.²⁴ According to the house, the motivational factors for the high responses, are the result of the following strategies: working towards the satisfaction of those paying *zakah* to the house by heightening their expectations in terms of performance; high standard of governance; active application of the rules and regulations for efficient management and unwavering adherence to a high level of security of information of *zakah* payers; strict adherence to shariah rules and regulation and laws; adoption of the concept of strategic planning as a fundamental method of service delivery of the *Zakah* House; quality assurance of *shariah*, financial and administrative governances in activities and services of the house; making the best use of the resources of the *Zakah* House; concentrating on the practical application of the concept of *shËra*²⁵ and group work in all the activities of the house; working towards a higher level of institutional performance and productivity; and collaboration with other institutions that have some connections with the *Zakah* House.²⁶

In line with the concept of corporate governance the above mentioned strategies of the Kuwaiti *Zakah* House reflects good corporate governance in the administration of *zakah*. This is because these strategies are implementation of the Kuwaiti laws²⁷

¹⁹ Section 4 of the Kuwaiti *Zakah* Law (Law no. 5 of 1982) and section 36 of the Interpreting Memorandum.

²⁰ Source: Qism al-*Ihsa Wa Tahalil al-Bayanat*, "Ihsaiyyah ÔÉdÉh al-Zakah Wa al-Khayrah Fi al-Fatrah, 2012-2014," *Zakah* House, <https://www.zakahhouse.org.kw/AxCMSwebLive/upload/eradat12-14_3823.pdf> (accessed 16 March, 2015).

²¹ See the *Zakah* Law no. 46 of 2006, Section 2.

²² Ibid. Section 1.

²³ Ahmad al-Hijji al-Karaji, n.7

²⁴ See Bayt *Zakah*, "MashËrË RiËyah al-ÏËËiyah" Bayt *Zakah*, <http://www.zakahhouse.org.kw/AxCMSwebLive/ar_projects_loc_2_1.cms> (accessed 17 March, 2015); Bayt al-*Zakah*, "MashrËË RiËyah al-TaËËËmiyyah" Bayt al-*Zakah*, <http://www.zakahhouse.org.kw/AxCMSwebLive/ar_projects_loc_2_2.cms> (accessed 17 March, 2015).

²⁵ The concept of shura is one of the building blocks of Islamic corporate governance. See Mervyn K. Lewis, "Islamic Corporate Governance", *Review of Islamic Economics*, v. 9, no.1, (2005): p. 19.

²⁶ Bayt al-*Zakah*, "Annual Report 2010," Bayt al-*Zakah*, <http://www.zakahhouse.org.kw/AxCMSwebLive/upload/AnnualReport_2451_3488.pdf> (accessed 20th January, 2015).

²⁷ As mentioned in the body of the body of this paper the laws of *zakah* in Kuwait are two, namely; the *Zakah* law no. 5 of 1982 which established the *Zakah* House with its mandates and the *Zakah* law no. 46 which makes the

- 3- **Social welfare program:** this programme is used to solve the problem of poverty and deprivation in Kuwait. Under the programme, the *Zakah* House provides basic needs for poor families in a manner that transforms them from being liability families to productive families. The programme also caters for all the underprivileged in Kuwait.³⁴

The above three programmes are part of the eight *al-ĀnĀf* of *zakah* mentioned in the Quran.³⁵ In observing the three programmes, the *al-ĀnĀf* of the poor, the needy and *fiṣabilillah*³⁶ clearly manifest. The remaining *asnaḥ*, even though no specific project is tagged with their name; they are captured by the general term of social welfare programme mentioned above. More importantly, the interpreting memorandum expressly mentioned all the eight *asnaḥ* with the conditions to be fulfilled before they deserve to be given *zakah*.³⁷

Besides these three programmes that are focussed on by the Kuwaiti *Zakah* House, there are also others that are too many to mention and outside the scope of this research.³⁸ The focus given to these three are justifiable from the Quran, where Allah says, "Or do you think that you will enter Paradise while such [trial] has not yet come to you as came to those who passed on before you? They were touched by poverty and hardship³⁹ and were shaken until [even their] messenger and those who believed with him said, "When is the help of Allah?" Unquestionably, the help of Allah is near."⁴⁰

In this verse all the above mentioned three *zakah* programmes of the Kuwaiti *Zakah* House are reflected. This is because the verse mentioned poverty and disease. The presence of these two correlates with presence of education deprivation, as unhealthy person cannot seek for knowledge. The smoothness of these three will allow the *zakah* receivers to manage whatever *zakah* is given to them as an economic empowerment.

The legal framework of *waqf* administration in Kuwait

There are two types of *waqf* in Kuwait: the *Sunni* and the *Jaafari* (the *Shi'ā'at* Islamic School of jurisprudence) *Awqā'if*.⁴¹ The legal framework of both *awqā'if* passed through several legal regimes and administrative developments. Its first phase of development was the institutionalisation stage through the establishment of the Directorate of *Awqā'if* in 1921 and ended in 1948. This directorate was officially saddled with the responsibilities of supervising and developing the *waqf* in Kuwait to its best ability. The second phase of the development started from 1949 till 1961. At this stage, the Directorate of *Waqf* was able to extend its tentacles in charity works, by assisting in the areas of health care services for the needy and constitution of board of *waqf* that included members of the public in the administration of *waqf*.⁴² During this phase, the Mosques were put under the supervision of the Directorate with the responsibility of maintaining, renovating, building them and paying of regular salaries to the Imams and the callers to prayers. By 5th of April 1951 a *MarsĀm AmĀrĀ* (Royal Ordinance) was issued for the administration of *waqf* in Kuwait.⁴³ The most important rule of this *MarsĀm AmĀrĀ* are two; firstly, it ordered *waqf* administration must be subject to *awqā'if* rulings that are obtainable in the four *sunni madhhab* and secondly, in those matters that are not captured by the *MarsĀm AmĀrĀ* reference should be made to the Maliki School of jurisprudence.⁴⁴

By the year 1962, the directorate of *awqā'if* evolved to a full fledge ministry, 'The Ministry of *Awaqif*', and in 1965 it was saddled with additional responsibilities of Islamic Affairs and the name became the Ministry of *Awqā'if* and Islamic Affairs. Under this

³⁴ Bayt al-Zakah, "MashĀrĀ RiĀyah al-IjtimĀ'Āyyah, Bayt al-Zakah <https://www.zakahhouse.org.kw/AxCMSwebLive/ar_projects_loc_2_3.cms> (accessed 17 March 2015).

³⁵ Quran, *al-Tawbah*: 60.

³⁶ The interpretation of *fiṣabilillah* is very broad; it has been interpreted also to cover those seeking for knowledge.

³⁷ See Kuwait *Zakah* House, *LĀiĀtu TauzĀ' al-Zakah Wa al-KhayrĀt*, (Regulation on Distribution of *Zakah* and Charities), (Kuwait: *Bayt al-Zakah*, 2010), 35-8.

³⁸ For example, the House, in addition to the above three areas, it also engages in what it terms as *mashĀrĀ' al-Khayriyyah Dakhila* al-Kuwait (charitable projects inside Kuwait): under this project, there is student portfolio, *zakah al-fitr*, *alĀĀ* (Eid Kabir feast), breaking of fast, reception of all kinds of tangible asset and distributing same to the deserving members of the society, provision all required edible items for fasting the month of Ramadhan from begging to the end to about 8000 families in Kuwait, bottle water gift distribution at every place of people gathering, etc. see *Bayt al-Zakah*, "mashĀrĀ' al-Khayriyyah Dakhila al-Kuwait," *Bayt al-Zakah*, <https://www.zakahhouse.org.kw/AxCMSwebLive/ar_projects_loc_1.cms> (accessed 17 March, 2015).

³⁹ Hardship here was translated by Ibn Abbas as diseases. See Ibn Kathir Abu al-FidĀ' Ismail Ibn Umar, *Tasir al-Quran al-Azim*, ed. SĒmi Ibn Muhammad Salamah (Dar al-Taybah, 1999/1420AH), v. 1, p: 571.

⁴⁰ Glorious Quran, *al-Baqarah*: 214.

⁴¹ *al-AmĀnah al-Āmmah Lil Awqā'if, al-Waqf al-Ja'āfari, al-AmĀnah al-Āmmah Lil Awqā'if*, (accessed 8 May 2015)

⁴² Kuwait Public *Waqf*, "al-Nash'ah (Historical Development)," <<http://www.waqf.org.kw/Arabic/AboutMunicipality/GeneralSecretariatOfWaqf/Pages/Establishment.aspx>> (accessed February 14th 2015)

⁴³ Ibid.

⁴⁴ Ibid.

stage, the most notable developments were division of the administrative divisions of the *waqf* in the ministry into two sub-divisions namely, division for *waqf* administrative affairs and division of *waqf* resources management.⁴⁵ This stage was however interrupted by the Kuwaiti-Iraqi war, but upon the return of peace to Kuwait, there was another development in the *waqf* sector; the establishment of the Kuwait Public *Waqf* by virtue of the Royal Ordinance that was issued on 13th November 1993.

The legal framework of the kuwait *waqf* public foundation (kapf)

The KAPF was established by the *AmĒrĒ* Ordinance no. 257 of 1993.⁴⁶ The basis of this law was the Constitution of the State of Kuwait;⁴⁷ the Amiri Ordinance of 1951 that subjected administration of *waqf* to jurisprudence of the *sunni* four *madhhab* regardless of *sunni waqf* or *jaĒfari*, and the Amiri Ordinance of 1979 with regards to the Ministry of *Waqf* and Islamic Affairs.⁴⁸ The title of the ordinance no. 257 of 1993 reads as follows; *MarsĒm AmĒrĒ* no. 257 of 1993 *Bi Sha'ni Inshai' al-AmĒnah al-ĒŌmmah Lil AwqĒf* no. 257 (Amiri Ordinance with regards to Establishment of KAPF no. 257 of 1993).⁴⁹ The Ordinance of the Establishment of KAPF, the *Marsum Amiri* no. 257 of 1993 was legislated purposely to transfer all the *waqf* affairs under the Ministry of *Waqf* and Islamic Affairs to the KAPF with reasonable autonomous administration.⁵⁰

Analysis of the kuwaiti *waqf* law

The *MarsĒm AmĒrĒ* no. 257 of 1993 that governs *waqf* administration and management in Kuwait contains 13 sections.⁵¹ The section one of the law clearly states that all the *waqf* functions of the Ministry of *Waqf* and Islamic Affairs have been transferred to the KAPF from the coming into law of this *Marsum Amiri*.⁵² It would be recalled that what is presently obtainable in Nigeria is that each state has its own *waqf* institution, as against the Kuwaiti system that is unified under the Ministry of *AwqĒf* and Islamic Affairs through the KAPF. The section 2 of the *Marsum Amiri* mandates the KAPF to take all possible steps that serve the interest of *waqf*; to publicize its awareness, manage its funds, invests it, distribute the revenues in line with the conditions stipulated by the settlors, actualise the *MaqĒsid Shariah* of *waqf*, develop the society in a civilized manner, develop the cultural values and carry out societal development with the aim of providing succor to the needy in the society.⁵³ Similarly, section 3 of the *Marsum Amiri* specifies *waqf* affairs under the jurisdiction of the KAPF as follows;⁵⁴

- 1- To create the avenue for public participation in the development of *awqĒf*,
- 2- To administer and invest resources of both charitable *waqf* and *waqf dhuri (family)*⁵⁵ in Kuwait subject to the conditions stipulated by the settlors if the *awqĒf* fall under the following categories;
 - a. *AwqĒf* whose trusteeship is granted to the Ministry of *AwqĒf* and Islamic Affairs;
 - b. A *wqĒf* that are settled for mosques;
 - c. A *wqĒf* that lack any *mutawalli*, either there had been none or the criteria to qualify as their *mutawalli* have ceased to exist;
 - d. *AwqĒf* with an appointed *mutawalli* from the settlor but the law has given the KAPF authority to be part of the trusteeship;
 - e. *AwqĒf* whose *nĒzir's* trusteeship is in the meantime barred from the a *wqĒf*;

⁴⁵ Ibid.

⁴⁶ Council of Ministers General Secretariat, "Amiri Ordinance of 1993 (*Marsum Amiri* no. 257)", Establishment of KAPF<<https://www.cmg.gov.kw/Electronic-Services/Decrees/Decree-Result.aspx?qry=%D8%A7%D9%84%D9%88%D9%82%D9%81&sMode=0&sOption=0&pSize=5>> viewed 28 February 2015.

⁴⁷ Section 2 of the Constitution of the State of Kuwait states that "the religion of the State is Islam and the Shariah is the primary source of legislation." This means that the Constitution of Kuwait guarantees the practice of *waqf* in Kuwait. Also section 51 of the Constitution of the State of Kuwait states that "the legislative powers lie with the Amir and the House of Assembly." These are the constitutional bases of the *Marsum Amiri* no. 257 of 1993 that governs *awqĒf* in Kuwait.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ *Marsum Amiri* (Ordinance) of the Establishment of KAPF (Ordinance no. 257 of 1993), section 1; ĒAbd al-MuĒsin al-Uthman, "Tajrubah al-Waqf Fi Dawlah al-Kuwait" in *NiĒĒm al-Waqf Fi al-TaĒbĒq al-MuĒĒir (namadhaj Mukhtarah Min TajĒrub al-Duwal Wa al-MujtamaĒĒt al-Islamiyyah)*, edited by Mahmud Mahdi Ahmad (Jeddah: IRTI-IDB, 1423AH/2003), 94.

⁵¹ Council of Ministers General Secretariat, "*Marsum Amiri* no. 257," Council of Ministers General Secretariat, <<https://www.cmg.gov.kw/Electronic-Services/Decrees/Decree-Result.aspx?qry=%D8%A7%D9%84%D9%88%D9%82%D9%81&sMode=0&sOption=0&pSize=5>> (accessed 8 May 2015)

⁵² *Marsum Amiri* (Ordinance) of the Establishment of KAPF (Ordinance no. 257 of 1993), section 1.

⁵³ Ibid, section 2.

⁵⁴ Ibid, section 3.

⁵⁵ This is another major lacuna in the present Nigerian *Waqf* Laws; there is none of them that put the interest of *waqf dhĒri* into consideration.

- 3- Establishment of projects with the proceeds of *waqf* subject to the conditions stipulated by the settlors.
- 4- Collaboration with the government agencies and individuals in building projects of *awqÉf* with the aim to meeting the expectations of the settlors and actualization of objectives of *waqf*;

This point is of immense importance whether in Kuwait or in Nigeria and elsewhere since there is no law that compels contribution for *waqf*. With this legal backing, the institution of *awqÉf* have access to the government organizations and the ordinary citizens to convince and encourage them to contribute their token for the development of *awqÉf*.

In the same vein, the Section 4 of the law states that the KAPF is authorized, within the sphere of the *SharÉÑah*, to carry out the following developmental projects;

- a. Establishment of business corporations, either as a sole owner or in partnership;
- b. Permission to solely take-over an already exiting companies either as a single owner or in partnership;
- c. Possession of stocks in the stock market, moveable and immoveable assets;
- d. Participation in any means of investment of *waqf* funds;
- e. Active participation in commercial, manufacturing and agricultural works;
- f. May purchase for the eligible beneficiaries from the account of the charitable *waqf*

It is expedient to note that the above section 4 of this *Marsum Amiri*, if properly implemented in Nigeria will go a long way in alleviating poverty which is one of the objectives of this paper. The seemingly corresponding sections⁵⁶ in the Nigerian *waqf* Laws have not been harnessed. Moreover, such sections need to be broadening to ordinarily allow and push the management towards working to achieve the objectives of the contents of this section 4 of the Kuwaiti *MarsÉm AmÉrÉ*.

Section 5 of the law requires constitution of a board of *awqÉf* affairs that consists of the following personalities;

- | | | |
|------|---|----------|
| i. | Minister of <i>AwqÉf</i> and Islamic Affairs | Chairman |
| ii. | General secretary of the KAPF | Member |
| iii. | Secretary to the Ministry of <i>AwqÉf</i> and Islamic Affairs | Member |
| iv. | General Manager, Kuwait Institution for social security | Member |
| v. | General Manager, <i>Zakah</i> House | Member |
| vi. | Representative of Ministry of Finance | Member |
| vii. | Representative of the Kuwait Investment Authority | Member |

Viii. Three other experienced members who shall be appointed for a period of three years.

The same section 5 also allows the board to coopt any useful person in the *waqf* affairs without right of voting in the affairs of the board. The members of this board are entitled to annual compensation at amount determined by the Council of Ministers.

From the lessons learnt from Nigeria *waqf* administration, it was clear that there is one board for both *Zakah* and *Waqf*. It would then be better to adopt the Kuwaiti system of having separate board for each.

Section 6 of the *Marsum* states that the Board of *Waqf* Affairs is the highest authority in the supervision and designation of policies for *waqf* affairs in Kuwait. It reserves the right to choose any of the reliable auditing office to audit the account of the KAPF. The provisions of sections 5 and 6 guarantee good corporate governance for the KAPF; as the staff of the KAPF inclusive of the secretary cannot enforce any major decision except the board has approved it and the personalities of the board also add value to the type of actions being taken by the KAPF in carrying out its affairs.

Section 7 of the *marsum* states that the board must meet, at least four times in a year and beside, the chairman reserves the powers to call for any emergency meeting as additional sittings. The section 8 of the *marsum* states that attendance of majority of the board members forms a quorum if the chairman is available and the decision is taken by majority opinion, at the absence of majority the side of the chairman will prevail. Section 9 states that the KAPF is headed by the Secretary General, with one or more deputy. The appointment of the Secretary General is through the *Amiri* Ordinance subject to the advice of the Minister of *AwqÉf* and Islamic Affairs. Section 10 instructs the board to constitute permanent committees that consists members of the board and non-members of the board to carry out the following duties;

- 1- *Shariah* committee whose function is to give sharia views on issues pertaining to religious affairs of KAPF.
- 2- Committee on investment and development of *waqf* resources; strategic plans; policy formulation on investment of *waqf* resources and follow-up for the project under execution.
- 3- Committee on *waqf* projects. It is concerned about strategic plans; policy formulation for the spending of the *waqf* revenues in line with *maqasid Shariah* and to fulfill the conditions of the settlors, with the aim of meeting findings of the studies and conforming with the projects and *waqf* program.

The section 11 of the law obliges the KAPF to prepare account of its total annual incomes and expenditures of all the *waqf* under its jurisdiction with unqualified trusteeship and those under it with qualified trusteeship. The section 12 states that the KAPF is entitled to special budget from the budget of Kuwaiti Ministry of *Waqf* and Islamic Affairs. Interestingly, the last

⁵⁶ For example, section 5 of Zamfara State enactment 2003 (as amended) provides for the boards to make rules, regulations and policies for the good management of endowment. The performances so far are short of the requirements of this provision. If this is the situation in Zamfara which is for the time being performing ahead of other states the situation is definitely worse in other states of Nigeria.

section, section 13 mandates all the Ministers to enforce the provisions of this law where affected. This is another key point that will guarantee the cooperation of the public in the development of *waqf*, both government staff and non-government staff.

How has the kuwaiti *waqf* law been effective in poverty alleviation?

The inherent *shariah* objective of *waqf* is to provide succor to the poor segment of the society as well as uplifting the socio-economy of the people. To this end, by virtue of section 2 of the Kuwaiti *MashrÉÑ AmÉrÉ* no. 257 of 1993 which mandates the KAPF to do all possible means to achieve the *SharÉÑah* Objectives of *waqf* the KAPF has been dynamic in devising various strategies tailored at achieving this aim. As a matter of fact, the KAPF expressly said that the concept of *ÖanÉdÉq "Al-Waqfiyyah"* and the concept of *al-MashÉriÑ al-Waqfiyyah* are the most viable strategies devised as instruments to actualizing the *maqÉfid SharÉÑah* of *waqf*.⁵⁷ Nevertheless, the author also understands from the ongoing that, in addition to *ÖanÉdÉq "Al-Waqfiyyah"* and *al-MashÉriÑ al-Waqfiyyah* the success of the KAPF heavily lies on good corporate governance.⁵⁸ In light of this, it should be concluded that there are three *waqf* strategies devised by the KAPF to actualize the objectives of *waqf*, namely; good corporate governance framework, the concept of *ÖanÉdÉq "Al-Waqfiyyah"*, and the concept of *al-MashÉriÑ al-Waqfiyyah*. Below are the details of these strategies.

Good corporate governance of the kuwaiti *waqf*

The Kuwait Public AwqÉf Foundation put in Place an elegant corporate governance⁵⁹ system that helps to provide a good result of *awqÉf* administration in Kuwait. This is done through the following organs of regulations: self-induced monitoring to beware of Allah's wrath; *SharÉÑah* governance through the *SharÉÑah* committee on governance; the public concern of the fate of their pool of resources in the cause of Allah; official governance machinery under the auspices of the honourable Minister of AwqÉf; State Audit Bureau of Kuwait;⁶⁰ other Auditors, a befitting information networking that allows for online payment of *waqf*, transparency, making of enquiries, keeps data base consisting of knowledge of *awqÉf* and all *awqÉf* activities in Kuwait and outside Kuwait.⁶¹ Based on this, the law that established the KAPF provides for the guarantee of the interest of the stakeholders in all aspect of *waqf* administration in Kuwait. For example the law requires that there should be a constitution of a board as the highest authority of the administration of *awqÉf* under the KAPF.⁶² Similarly, the law subjects all internal decisions of the KAPF to the approval of the board.⁶³ So also, the KAPF is required to prepare annual report of all its expenditures and income and submit to the board.⁶⁴ This is a factor that assists on accountability and transparency.

It is worth noting that the website of the KAPF represents a high level of transparency so that all its activities are viewable by all the stakeholders of *waqf*. Furthermore, one important aspect of corporate governance in the KAPF is the division of the board into three permanent committees assigned with various duties: committee on addressing of *SharÉÑah* issues; committee on

⁵⁷ *al-AmÉnah al-ÑÓmmah Lil AwqÉf*, "*Al-ÖanÉdÉq "Al-Waqfiyyah"*" *al-AmÉnah al-ÑÓmmah Lil AwqÉf*, <<http://www.waqf.org.kw/Arabic/AboutMunicipality/EndowmentFunds/Pages/default.aspx>> (accessed 8th March 2015)

⁵⁸ This is inferable from the provisions of the *Marsum Amiri* no. 257 of 1993, the composition of the Board and its leadership, as evidenced in section 5 *Marsum*; the powers of the Board mentioned in section 5 as evidenced by section 6 which states that, the Board is the highest Body of authority in the administration of affairs of *waqf*, it has the powers to design the best policies for KAPF as deemed fit and in particular, it has the following functions; 1- designing the general governance framework for the managing and investing of *waqf* resources, 2- drawing of regulations and policies that will guarantee the development of proceeds of *waqf*- this is another subtle way to forcing the KAPF to do everything in its disposal for the development of *waqf*, 3- the internal arrangement of the KAPF is subject to the approval of the Board, 4- the KAPF internal regulations and policies that are connected with finance and administration are subject to the approval of the Board, 5- to propose any law deemed suitable for *waqf* and give an opinion to justify any project that is associated with the proposed law, 6- annual report of incomes and expenditures of the KAPF is subject to the approval of the board, 7- only the reserves the right to choose an auditing firm to audit the account of the KAPF, 8- the Board is to review the rotational reports on the KAPF with regards to day-to-day affairs, 9- to review any new topic being presented by chairman (the Minister of *Waqf* and Islamic Affairs) of the Board. Furthermore, is of constitution of specialized committees, as evidenced by section 10 of the *Marsum*.

⁵⁹ In its Islamic form it is not different from the definitions that agreed on the common notion that it is a system by which corporations are controlled and directed to protect the interest of the stakeholders of a corporation. This includes accountability, fairness and transparency.

⁶⁰ Audit Bureau of Kuwait was established by *marsum* no. 30 of 1964 to protect public funds, monitor how they are being spent and where they are spent. See State Audit Bureau, "*Kalimah RaÉs*" Audit Bureau, <<http://www.sabq8.org/sabweb/home.aspx>> (accessed 6 March, 2015).

⁶¹ DÉÍÉ al-Fadhli, *Tajrubah al-NuhÉl Bi Dawr al-Tanmawi Lil waqf Fi Dawlah al-Kuwait*, (Kuwait: Kuwait Public Waqf Foundation, 1998), P: 74-6.

⁶² See section 5 and 6 of the *Marsum Amiri* (Ordinance) of the Establishment of KAPF (Ordinance no. 257 of 1993).

⁶³ See Section 6 of the *Marsum Amiri* no. 257 of 1993.

⁶⁴ *Ibid.*, section 11.

designing policies for investment of *waqf* resources and committee on policies and strategy for matter relating to execution of projects earmarked for *waqf* resources and distribution of *waqf* resources to the beneficiaries in order to actualize the objective of *waqf* and fulfilling the intentions of the settlers.⁶⁵ This is another aspect that can be mirrored to the Nigerian *waqf* arena. Moreover, the strategic plans document of the KAPF that is issued to all the *waqf* funds in Kuwait make it make a common practice for annual meeting of the all the stakeholders. This includes the chairman of the board of the KAPF, that is, the Minister of *Waqf* and Islamic Affairs, the general secretary of the KAPF and his subordinates, all the leadership and members of boards of *waqf* funds. This meeting is said to be tantamount to company's annual general meeting.⁶⁶

AL-ØANØDØQ AL-WAQFIYYAH (WAQF FUNDS)

'*Al-ØanØdØq*' '*Al-Waqfiyyah*' is two Arabic words out of which the first one, '*al-sanØdØq*' is the noun and plural of *al-ØundØq* and the second one '*al-waqfiyyah*' is the adjective which describes the nature of the '*al-ØanØdØq*'. In Arabic Language, *al-ØundØq* refers to box in which books or clothes are kept. Over a time the word evolved to connote additional meaning and usage which is a pool of money that enjoys safekeeping. The English Literal translation is *waqf* Fund. Technically, it refers to a legal entity consisting of appointed professionals of fund management, established by the law of its jurisdiction as a *waqf* with specific societal developmental purposes, to pool together, amount of money from cash *waqf* or *waqf* shares, from donors who may come from the general public domain, corporations or government so that the donated amount would be invested and administered in accordance with Islamic rules of cash *waqf*.⁶⁷ The idea is based on creating various offices with each of them focusing on one specific *waqf* fund that targets a specific societal development. By virtue of this specified office, the office will be responsible for calling the public to donate *waqf* for the specific societal development, managing the donations and using the profit to fund the targeted societal development. For example, a *waqf* fund may be established for the welfare of the orphans and the widows; or the poor, or the old people who no longer work for their own sustenance; or for the treatment of a specific segment of the society.⁶⁸

Historically, the concept of *al-ØanØdØq al-waqfiyyah* was part of the KAPF initiatives of good *waqf* administrative strategies after its establishment in 1993, and in 1994, 1995 and 1996, KAPF successfully established several *al-ØanØdØq al-waqfiyyah*.⁶⁹ These Kuwaiti *waqf* funds, called *al-ØanØdØq al-waqfiyyah* are regulated by the Marsum Amirir no. 257 of 1993. The section 6 (2) of the Marsum empowers the Board of the KAPF to make any regulation and policies that will guarantee the development and investment of *waqf* resources and proceeds.⁷⁰ By virtue of these powers, the board issued two set of regulations, the *al-NiØØm al-NØm* (the general regulatory framework for the administration of *al-ØanØdØq al-waqfiyyah*) and the *al-LawØiØ* (the interpreting memorandum of the general regulatory framework). The regulatory framework contains 32 sections, while the memorandum contains 59 sections.⁷¹ With this, *al-ØanØdØq al-waqfiyyah* is regulated by three set of legal documents namely; the *Marsum*, the general regulatory framework and the interpreting memorandum.⁷²

Conclusion and recommendations

Summary of findings

The study found that the success of the Kuwaiti system of zakah and waqf is attributable to the following;

- 1- Imbibing fear of Allah in the administration of zakah and waqf since they are charitable funds given because of Allah;
- 2- The legal and regulatory frameworks, though very brief, but very efficient because they hit on the point-directive and focus
- 3- The corporate governance of the both zakah and waqf is another thing the inductive method of this study reveals as being another thing responsible for the success of the two institutions. This is because the personalities involve in the Board cannot allow the staff of either Zakat House or Kuwait Awqaf Public Foundation to play negligent in the process of delivery their service such personalities are naturally awful to every person that reports to them and so, to save himself from shame of failure he has to be very hardworking and sincere, hence the progress of the system.

⁶⁵ See *ibid.* section 10.

⁶⁶ DØØØ al-Fadhli, n. 58 at 11.

⁶⁷ Muhammad al-Zuhaili, *al-ØanØdØq al-waqfiyyah al-MuØØirah*, (al-Sharjah: N.p, n.d), p:3-4; Husain Abd al-Mutalib al-Asraj, "Dawr al-ØanØdØq al-waqfiyyah" *Majallah Buhuth al-Islamiyyah Wajtimaiyyah Mutaqadimmah* 2, no. 4, (October, 2012): 375; *al-AmØnah al-NØmmah Lil AwqØf*, "*al-ØanØdØq al-waqfiyyah*" *al-AmØnah al-NØmmah Lil AwqØf*, <http://www.waqf.org.kw/Arabic/AboutMunicipality/EndowmentFunds/Pages/default.aspx> (accessed 7 March, 2015).

⁶⁸ Muhammad al-Zuhaili, *al-ØanØdØq al-waqfiyyah al-MuØØirah*, n. 64 at 5.

⁶⁹ DØØØ al-Fadhli, n. 58 at 18-27.

⁷⁰ Section 6 of the *Marsum Amiri* no. 257 of 1993.

⁷¹ *al-AmØnah al-NØmmah Lil AwqØf*, "*al-ØanØdØq al-waqfiyyah*".

⁷² DØØØ al-Fadhli, *Tajrubah al-NuhØØ Bi Dawr al-Tanmawi Lil waqf Fi Dawlah al-Kuwait*, P: 17; *al-AmØnah al-NØmmah Lil AwqØf*, "*al-ØanØdØq al-waqfiyyah*".

- 4- Due to the good result of the concerted effort of the leadership, the board and the staff of the two institutions, the members of the public have confidence to continue to give their charities for the purpose of assisting the less privileged.

Conclusion and recommendation

In the light of the forgoing, the Kuwait zakah and waqf institutions have been discussed and analysed. The study has shown that the system is well rooted and became a model for others to follow. The zakah laws which are divided into two; the one of 1982 and the one of 2006 which deals with individuals and companies respectively attract a huge collection of zakah. In the case of waqf, the system put in place in the administration which create waqf funds and waqf projects are worthy of being transferred to Nigeria as they have been proven by Kuwait and testified by the Muslim world as a good system of waqf management. Against the above the objective of this study as stated earlier is achieved since the study has exhibited administrative framework of the Kuwaiti Zakah and Waqf institutions. Therefore the Nigerian Zakah and Waqf Institutions need to copy from the Kuwaiti System of administration of these two institutions.

Furthermore, the study shows that good corporate governance is paramount for a successful zakah and waqf administration, as proven by the Kuwaiti system. Therefore, the Nigerian Zakah and waqf would have to borrow a leaf from this jurisdiction for a robust zakat and and waqf laws that would guarantee the production of a vibrant corporate governance system in the zakah and waqf arena in Nigeria.

The study also shows that fear of Allah is the key ingredient for good governance that will bring success into any system. This is evidenced in the covenant of commitment to duty of 2011 which is about good service delivery. The leadership of the Nigerian Zakah and waqf are therefore called upon to imbibe fear of Allah and inculcate it in the staff in the administration of zakah and waqf. The call to fear of Allah here means that the leadership must wake up to its responsibility to protect the interests and rights of every stakeholder of zakah and waqf. This becomes more demanding looking at the two institutions are religious duties and the reward that awaits those working in favor of the poor. The limitation of the study is the inability of the author to have one-on-one interview with the officials of the Kuwaiti zakah and waqf institutions, which will definitely reduce the data and consequently, the findings cannot will exhaustive.

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