

Significance of Granting Legal Personality to Waqf Establishments in the Republic of Guinea

Mohamed Sano

Abstract. *It is seen that while some countries have figured out the elements necessary to ensure the effective operation of waqf entities, most have yet to do so. The situation in the Republic of Guinea is that all waqf facilities in the country, with the exception of Waqf IDB Guinea, have been deprived of a 'legal personality' status, putting a cap on the great potential that could be realized. To address this issue, the study has looked into and cross-examined the status of waqf in different countries and has, accordingly, proposed that the 'legal personality' status be awarded to waqf facilities in Guinea so as to attract the relevant stakeholders, render legal recourse available to aggrieved parties, register the beneficial interest of relevant participants, and lastly create job, investment and other opportunities for interested parties. Such measure, as has been proven, would greatly benefit the Guinean society and other communities.*

Keywords: *Waqf, legal personality, Republic of Guinea, Islamic finance*

Abstrak. *Terlihat bahwa sementara beberapa negara telah menemukan elemen-elemen yang diperlukan dalam kerangka tata kelola wakaf mereka, yang lain belum melakukannya. Di Republik Guinea, entitas wakaf tertentu yang diakui secara hukum yang dikenal sebagai Wakaf IDB Guinea telah memprakarsai banyak proyek. Namun, terlepas dari entitas tersebut, fasilitas wakaf di negara ini telah dicabut status 'subyek hukum'-nya, yang telah membatasi potensi besar yang dapat direalisasikan. Untuk mengatasi masalah ini, penelitian mengusulkan agar status 'subyek hukum' diberikan kepada fasilitas wakaf di Guinea untuk menarik minat para pemangku kepentingan, memberikan jalan hukum yang tersedia bagi pihak yang dirugikan, mendaftarkan manfaat waqaf bagi para pihak yang berkepentingan, dan terakhir menciptakan lapangan kerja, investasi dan peluang lain untuk para pihak yang berkepentingan. Pemberian status badan hukum kepada lembaga-lembaga wakaf, sebagaimana telah dibuktikan, akan sangat bermanfaat bagi masyarakat Guinea dan masyarakat lainnya.*

Kata kunci: *Waqf, Subyek Hukum, Republik Guinea, Keuangan Syariah*

Introduction

By now, it is indisputable that the impact of waqf institutions on a community, if effectively operated, is significant. With different countries across the globe – both Muslim majority and minority – conducting studies and introducing policies to ensure the efficacy of their waqf operations, we've witnessed significant developments in various governance aspects of the practice. While countries such as Malaysia have bestowed complete dominion over waqf under their respective religious authorities, others, such as Nigeria, have granted its administration to a corporate commission but have left its management to the trustee(s) appointed by the founder(s). Furthermore, states such as Senegal and Kuwait have created special vehicles to manage waqf affairs in their respective countries. This – amongst many other governance aspects – indicates that countries have adopted different measures and are still experimenting with different elements within their waqf/trust operations.

One major concern regarding the operation of waqf affairs is pertaining to the legal status offered to registered waqf establishments. It seems that within the legal framework of a lot of countries in which waqf is widely practiced, registered waqf have not been given the 'legal personality' status. This, unfortunately, has brought about numerous issues and challenges that have impeded the development of the practice in the respective countries. A state in particular impacted by this deficiency in its waqf operations, amongst others, is the Republic of Guinea. This research, therefore, aims to explore the existing status given to waqf establishments in the said country and highlight the issues within it. Furthermore, this study offers recommendations with the help of literature and other case studies that would significantly improve and enhance the current practice of waqf in the West African nation.

Literature Review

According to Kuran (2001), Waqf is a practice that pre-dates the advent of Islam and was carried out by previous communities, such as the Byzantines and Jews. The word 'waqf' literally means 'to detain' or 'to prevent.' In a technical sense, it is the act of dedicating a property/ies to Allah to fulfill a particular societal issue. Once established, the dedicated property is referred to as a 'waqf.' The appointed trustee/manager(s) of the said waqf property is strictly required to abide by the objective(s) set by the dedicator/founder(s) of the waqf (Mughniyyah, n.d.). Once a property is declared a waqf, it is considered to have an identity of its own. Also,

it has the appointed trustee or managers acting on behalf of and for the benefit of the establishment and its beneficiaries (Mohammad, 2016).

Moreover, in relation to the duration of a waqf property, Mughniyyah (n.d.) mentions that all the major Islamic schools except the Maliki are of the view that a waqf must be dedicated permanently. In other words, a declared waqf property cannot be revoked in the future by the founder or anyone else for that matter. Furthermore, when speaking on the different kinds of waqf in terms of their productivity, we know that there are two (2) kinds, namely, waqf 'istihlaki' (referred to as consumptive waqf) and waqf 'istithmari' (referred to as investment/productive waqf). Consumptive waqf refers to waqf that is not invested, while productive waqf refers to those that are done so (productively) in line with the principles of the Sharia (Asnaini, 2008).

We understand from these definitions that the installation of carpets in masjids or electronic devices in school computer labs are considered the former kind of waqf. In contrast, the collection of waqf funds invested in economic projects and expected to generate a return refer to the latter kind of waqf. The waqf referred to in this research is both kinds, depending on their functionality and the context.

Apart from the word 'waqf', another term that requires adequate explanation and understanding before delving into the major issues and challenges is the term 'legal entity'. Business Dictionary has defined a legal entity to mean "an association, corporation..., or individual that has legal standing in the eyes of the law" (Business Dictionary, 2020). The online dictionary highlights that this legal entity title enables the said entities to establish contractual rights and obligations and sue and be sued in its own capacity. This gives us a clear understanding that the main aim behind the legal entity concept is to distinguish the established body from its members (Law Teacher, 2013).

Within the ambit of legal personality discussion, it is essential to understand that although a distinction made between such an entity and its members, in certain cases, the courts would be required to do what is referred to as "lift the corporate veil." The example is where the members abuse this separation of identities, such as in cases of fraud or other criminal acts done in the name of the legal entity. This is a simple process in which the said veil is exposed, and the persons in charge (i.e. owners) of the legal entity are held responsible for the acts carried out by the legal entity (Law Teacher, 2013). And so, with this brief exposure to the concepts of 'waqf' and 'legal entity,' we will now delve into the

relevant issues and challenges impeding the development of waqf in the Republic of Guinea, particularly concerning the absence of the legal entity status for waqf establishments.

Results And Discussions

Status Quo of Waqf in Guinea

Before discussing the findings from the studies that highlight the issues and challenges that arise from the lack of legal personality being afforded to waqf establishments in Guinea, it is important that the study briefly but concisely familiarizes the reader with the said country's historical and current waqf situation.

The Republic of Guinea (not to be confused with Guinea-Bissau, Equatorial Guinea or Papua New Guinea) is situated on the far west coast of the African continent and shares borders with Mali, Senegal, Ivory Coast, Liberia, Sierra Leone as well as Guinea Bissau. The country is a sub-Saharan nation with a population of roughly 13 million (Worldometer, 2020). Despite the constitution upholding its secular nature, the overwhelming majority (roughly 90%) of its inhabitants practice Islam (O'Toole, 2019).

It is quite known that Islam had found its way into the West-African region through traders and religious scholars. They came from the northern part of the continent, particularly western Maghreb (modern-day Morocco), in the 11th century during the reign of the Almoravid, a Berber dynasty that spanned across Spain to the western Maghreb with Marrakesh as its capital city (New World Encyclopedia, 2016). It may be seen that the prevalent Islamic school of thought is that of the Maliki madhab since it was regarded as the official state law during the aforementioned dynasty. Travelers coming from the Maliki dominated dynasty were Maliki themselves and, thus, spread the religion through the said madhab's lenses (Word Disk, 2020). We use this historical analysis to indicate that Islamic practices like waqf are recognized and upheld in the Guinean community.

However, when speaking on the status given to waqf properties in the said Republic, it is unfortunate that general waqf properties lack legal recognition (legal entity status). They are also not governed by any specific legal framework or legislation. In simple terms, waqf is only upheld through customary practices.

As it stands now, there exists only one waqf facility known as Waqf IDB Guinea that has been awarded legal personality pursuant to a law signed in 1997 by the Guinean government and the Islamic Development Bank (IsDB) entitled "Law 1997 Relating to the Institution of Waqf Charity" (herein referred to as Waqf

Law 1997). In addition to this law, another Accord was passed the following year (1998), listing out the aforementioned parties' obligations and introducing the Waqf Act 1998, which was specifically meant to regulate the affairs of the said facility/entity. Collectively they form the 1998 Accord.

To sum up, it's been made clear that apart from Waqf IDB Guinea, other waqf establishments in the country are not given the legal entity status. We will now discuss the issues and challenges related to the non-legal recognition of waqf entities.

Issues and Challenges

In this section, the problems that have come about from the non-legal recognition of waqf properties would be discussed under two separate headings: its deterring effect on potential founders and investors and its rendering of waqf properties ineligible to attain certain legal benefits.

Deterring effect on founders and investors

The first detrimental effect that comes from the lack of associating a legal personality to waqf properties is in relation to its perceived vulnerability in the eyes of relevant stakeholders. This concept would be explained under a number of separate headings, namely, the rendering of waqf projects illegitimate, disentitlement of relevant stakeholders to legal claim/action, and exposing relevant stakeholders to loss of their respective interest.

Illegitimacy of Waqf Projects

This issue may be considered the ultimate challenge that arises from the non-legal recognition of waqf establishments by awarding them a distinct legal personality. The simple reason is owing to the fact that founders and investors primarily look into the legitimacy of a project to determine whether or not it is worthwhile embarking on. Furthermore, seeing that waqf is a collective practice, i.e., involving multiple parties, the legal issue of owing a duty of care – or responsibility – comes into the picture. This is especially when an involved party suffers damage or loss. The afflicted party takes legal action (whether a beneficiary, investor, etc.) against a person(s) in charge of the establishment, exposing them to maximum liability.

Moreover, even in a situation where a waqf is already running, its non-legal recognition or illegitimacy in the country would denote or spell the cessation of

its activities upon the death of its founder(s). For example, if a waqf is established to devise or execute the *wassiyah* (will) of Muslims in a certain locality, the fact that the said establishment is not legally legitimate would mean that the deceased's will/bequest cannot be executed in favor of the therein beneficiaries or enforced against false claimants. In other words, the establishment and its founder's bequest die with the deceased founder or testator.

Disentitlement of Stakeholder to Legal Claim/Action

Moreover, despite waqf, in its conventional sense, being an act of charity, it is still not immune to fraud, corruption, theft and other forms of misconduct. Hence, with waqf founders and investors being disentitled from taking legal action against their appointed representatives or trustees, the aforementioned stakeholders are repelled from getting involved in the practice that has been left exposed. This would leave founders and investors to resort to none other than customary measures, which potentially end up wrecking homes without having restored the legal rights of the aggrieved party/ies and punishing the party/ies at fault. With the current situation, the relevant stakeholders get involved in waqf projects with no real expectations of a successful outcome.

Exposure of Stakeholders to Loss of Interest

In conjunction with the abovementioned issues, another co-related concern from the non-legal recognition of waqf entities is that it exposes waqf beneficiaries to loss of beneficial interest and waqf investors/contributors to loss of investment/contribution. This point slightly differs from the above one. Here, the damage is taken a step further as the relevant stakeholders are not only disentitled from taking legal action against perpetrators. Instead, they lose all their interest in the said establishments due to the waqf entities ineligibility to take legal action. This negative trait is already amplified by the fact that an entity that does not possess a legal personality is not eligible to own properties or conduct other forms of dealings under its own name. Rather, the assets associated with it – as well as itself – are considered to be owned by the original purchaser, which is either the founder or donor – if distinguishable. Therefore, we see that parties that do not have a legal ownership interest in the asset would potentially be stripped of their beneficial interest in it.

Becker (2004) contributes to the subject at hand by categorizing waqf establishments – and other similar entities – within an area referred to as the

“informal economy/sector.” He defines them as entities that “rarely comply with all the regulations that apply to their trade,” those that are not legally or formally recognized in a particular jurisdiction but are not necessarily operating illegally or unlawfully. Furthermore, individuals operating within the informal sector, whether by choice or through necessity, are called micro-entrepreneurs since the sort of businesses or activities they engage in are small in terms of size and income (MicroWorld, n.d.; Your Dictionary, n.d.).

Moving forward with these terminologies, we realize that the non-legal recognition of entities, such as waqf, in the informal sector affects a number of parties, namely, the beneficiaries that could no longer be allowed to access or derive benefit from the properties they were entitled to and the investors/contributors that would be deprived of witnessing the outcome of or receiving the expected return on their contribution. Moreover, as other entities in the informal economy, waqf establishments tend to contribute to the economy by employing members of the community that were cut back from their jobs or even those who have had difficulty finding jobs. However, the absence of legal identity for the said entities leaves members of their workforce that play the role of trustees, managers or micro-entrepreneurs, potentially exposed to not receiving their expected or agreed upon remuneration from their appointers.

Hence, it can be seen that the stakeholders of the said sector, particularly the workers, beneficiaries, founders and investors, are all left unprotected with the absence of legal identity for such establishments.

Ineligibility of Attaining Legal Benefits

Another major issue that arises from waqf properties not having the legal entity status is their ineligibility of obtaining legal benefits, such as tax incentives, social security schemes, and investment or fundraising opportunities.

Generally speaking, tax may be categorized under one of three (3) headings: income tax, property tax and goods & services tax. They are either imposed on capital or returns (Fay, n.d.). In regards to waqf establishments, we come to understand that all three (3) kinds of taxes are relevant here as waqf initiatives may involve properties, income, and goods and services. Furthermore, the involvement of a property and/or any generated income would determine the nature of the waqf, whether consumptive or productive.

So far, in the said Republic, tax incentives are only offered to newly established enterprises, whether small and medium or others, that are looking to

finance their business through a certain threshold of capital investment (Deloitte, 2019). It is unfortunate that since waqf establishments are not recognized as small and medium enterprises or corporate entities, they are not entitled to any form of the tax incentive. The sole waqf entity in the entire country considered an exception to this is Waqf IDB Guinea. This is by virtue of Clause 17 of the Waqf Law 1997 and Paragraphs 7(2)(a)(b)(c) of the 1998 Accord that, conjunctively read, stipulate that the said institution has been exempted from all kinds of taxes and levies, such as stamp duty, income tax, property tax, goods and services tax, etc. The unavailability of tax reliefs to waqf establishments that ultimately contribute to society and the economy discourages contributors from investing and/or partaking in initiatives to uplift a segment of society (Forstater, 2017).

Social security schemes

Furthermore, apart from waqf entities not benefiting from tax reductions or exemptions, individuals employed by waqf establishments are not entitled to benefit from the social security system. While the scope of the said system, which is mandatory on all employers pursuant to the National Social Security Fund, covers occupational hazards, health care, pensions and family benefits, the entities that are covered by it are employees, school students, public servants – and those hired as contractors for them – as well as employees in quasi-government agencies or institutions (PWC, 2014). Seeing that these social security schemes are only available to employees (and employers) in legally recognized organizations, individuals operating or involved in waqf establishments are not entitled to these benefits.

Investment and fundraising opportunities

Finally, in relation to the deterring effects of the non-legal recognition of waqf establishments on waqf founders and investors, it may be added that there is the phenomenon of waqf founders or managers struggling to raise the necessary funds after a certain period of time, seeing those waqf entities, as stated earlier, do not fulfill the criteria to request for funds from financial institutions, such as capital ventures or banking institutions. As a result of this ineligibility, they often resort to requesting loans or donations or entering into partnerships with entities based on unfair terms. This would range from anyone between members of the general public to their next kin and close friends. However, as contributors are unable to safeguard their contributions through registering them, there would be

some form of reluctance on their part when getting involved in such projects. With these standing issues, waqf establishments are confronted with a lack of capital or are handicapped from upscaling or growing the establishment (Becker, 2004).

In conclusion, therefore, we may observe how waqf establishments and persons involved in them are missing out on the many legal benefits offered exclusively to legally recognized institutions.

Recommendations and Way Forward

Upon identifying the abovementioned issues and challenges, it is quite clear that the primary remedy to the problem would be for the Guinean government to indicate its adamant support and recognition of waqf in the country. The first sign of this would be for it to grant the said enterprises the ‘legal entity’ status that would, on the one hand, attract founders and investors to engage in the practice and, on the other hand, protect the relevant beneficiaries from losing their interest in the said properties. And so to counter the abovementioned issues – and others that fall under them – the relevant legislators would have to adopt the required legal measures and extend certain privileges exclusively available to entities with legal personality so as to legitimize and enhance the practice in the eyes of current and potential participants, which in turn would bring about the following benefits.

Limitation of Liability

One of the main benefits to associating the legal personality status to waqf establishments is that the liability on founders is limited to their contribution under what is known in corporate terms as a ‘limited liability partnership’ or a ‘trust limited by guarantee. The arrangement simply offers partners in a particular enterprise the opportunity to restrict their liability to the amount of their contribution. With this defense in place, founders and guarantors are rest assured that their accountabilities would not extend beyond their grasp or capabilities as they would consciously make their contributions in accordance with it (Limited, n.d.).

A great example of this can be seen in article 18 of Senegal’s 2015 law on waqf, which states that although the grantor is only “... liable for any intentional act or gross negligence he commits which has caused damage. To the waqf property.” This concise statement clarifies that grantors of waqf are not liable for other defects or claims made against them pertaining to waqf properties. As a result, they are given assurance that their liabilities are directly related to their actions – or rather their misacts.

Continuity Beyond Lifespan of Founder

Apart from limiting the liability of founders and investors, this benefit is considered another significant advancement. As we've highlighted earlier, one of the main issues that a potentially formidable waqf project encounters is the direct correspondence of its lifespan with that of its founder(s). As such, beneficiaries or inheritors registered at a legally recognized waqf establishment that executes wills would have to worry neither about the death of the founder of the establishment nor the testator. With this new feature, a primary development from the current status would see the disassociation of the two, allowing for waqf establishments to carry on a life of their own and outlive their founders. This would realize and fulfill the resilient and functional aspects needed for the said establishments to disrupt the existing practice (Abdullah & Ismail, 2017).

Available Legal Recourse

As highlighted earlier, without the legal entity status, the waqf enterprises would neither bring a case against another legal entity (whether natural or legal person) nor have a case brought against them under their name. Therefore, whether waqf establishments are created as trusts limited by guarantee or corporations, it is incumbent that waqf enterprises have the *locus/ standi*, i.e. the ability to file suit and take legal action or have legal action taken against them in and within their legal capacity (The Capacity to Sue or Be Sued, n.d.; Merriam Webster, n.d.).

Two countries that have manifested this practice are Kuwait and Turkey. In the former state, within the civil court system, a special department has been set up to deal with matrimonial and waqf cases (Price & AlDebasi, 2009). In the latter, civil courts within jurisdiction have been assigned to resolve all legal disputes brought about in the country. To facilitate the passing of judgment, the courts with jurisdiction are required to refer to Turkey's own Foundations Law 2008 and its Council of Foundations as a guide to modify the purpose of the waqf, grant relief to its aggrieved parties or dissolve the establishment altogether (Uygun, 2015).

In contrast, countries such as Nigeria have faced issues resolving legal cases involving waqf establishments. This is due to provisions in its apex law, i.e. the constitution that provides overlapping authorities to its civil courts and Shariah Appellate courts. While land matters have been designated under the civil court, certain Islamic matters, including waqf, have been designated under the respective Shariah Appellate court. As a result, a number of cases, such as *Alhaji Saidu Maje v Da'u Dillalin Shanu Appeal No. CA/K/142/S/2005* and others involving waqf

lands have since been a jurisdictional battle between the two courts (Oseni, 2012).

And so, we come to realize the significance of the availability of legal recourse to waqf-related parties and the clear distinction and division of court jurisdiction over waqf matters.

Registration of Beneficial Interest

This particular point follows from the previous ones. Upon a waqf enterprise being granted legal personality, its properties are considered properties owned by the now legally recognized enterprise. As a result, the contribution of donors and the offerings to recipients are enumerated and recorded as well. In other words, stakeholders, whether the former or latter, do not have to worry as much about delinquencies committed by other partakers as their respective interests are registered by law and could be reclaimed in court when violated (The Capacity to Sue or Be Sued, n.d.). Once again, it must be stressed that this beneficial interest is specifically intended to protect the interest of stakeholders that do not have a legal ownership interest in an asset but rather a beneficial one.

Referring once again to Senegal's 2015 draft waqf law, we see that a founder/grantor of a waqf is required to form its waqf in writing, pursuant to article 6. Article 8 states that the registration is complete upon the attainment of a notarial deed or by a private deed kept in the records of a notary together with the endorsed. Thereafter, Article 9 requires that a copy of the incorporation deed be submitted to the person in charge at the High Authority of Waqf (referred to as HAW), an independent administrative waqf authority attached to the Office of the Prime Minister (article 2 and 3).

Upon registering the waqf asset with the relevant authorities, the provisions of the said waqf law of 2015 would entirely apply to the waqf asset. One particular provision that ensures the protection of the right of beneficiaries is article 20 of the same law, which explicitly gives nominated beneficiaries the right:

“to use the waqf property and to exploit it according to the stipulation of the grantor and in a manner compatible with the purposes of the waqf. He may also enjoy himself the waqf property or transfer the right of enjoyment to third parties unless the right to waqf is exclusive to his person.”

Moreover, apart from articles 21, 22 and 23 of the same law upholding other beneficial interests of relevant stakeholders, article 24 strictly lists out the instances in which the beneficial interest of a beneficiary ceases to exist:

“Death or cessation of activities; absence or disappearance of the beneficiary when the enjoyment is exclusive to him; forfeiture of the status conferred on him by the right to the waqf; express waiver of his right to the enjoyment of the waqf property.”

These indicate to us just some of the many beneficial interests that would be recognized and upheld by the relevant waqf authorities in Senegal upon registering a waqf asset.

Another country – amongst others – that has enforced the registration of waqf beneficial interests is Turkey. The more recent Foundations Law 2008, which is the current law governing waqf establishments, has endorsed the position of the Turkish Civil Code of 2003 that recognized waqf establishments as having legal personality and, consequently, being allowed to own properties under their own name – as opposed to their founder or grantor’s name.

The stance taken by Senegal and Turkey – among other countries – showcase to us the importance and benefit of legally recognizing the beneficial interest of waqf parties.

Creation of Job Opportunities

Furthermore, as pointed out earlier, activities in the informal sector still exist and are growing in underdeveloped countries. Diallo, Zhonghua, & Mukete (2017) state that the informal sector employs over 96% of the workforce in Guinea. They, therefore, recognize the significance of developing a legal framework that effectively regulates and protects entities that fall under the said sector. A major indication of this would be the enactment of provisions that ensure the legal recognition of its enterprises and the protection of its labor force. The absence of which would result in the said entities being vulnerable and exposed to misconduct that is not rectifiable through legal measures (Diallo et al., 2017).

In Turkey, for example, there is a very famous waqf entity known as the Vehbi Koc Foundation, founded in 1969 by Vehbi Koc. This foundation employed over 40,000 people in around 100 of its group of companies as of 2000 (Cizakca, 2000). Another waqf foundation is Turkey Diyanet Vakfi (referred to as TDV). This particular foundation has, as of 2019, provided to over 25 thousand university students across the country and another 2 thousand from other countries a number of educational services, such as hostel facilities, research academies, local and international scholarships, youth and women centers, etc. The educational and humanitarian services offered by TDV increases the employability of the beneficiaries of the said services (Diyanet, 2018; Paksoy, 2017).

Apart from these two excellent waqf establishments, numerous other brilliant ones exist in the form of corporations, educational institutions, or places of worship within and beyond the country. This shows that a lot could be achieved with sufficient attention and recognition of such establishments.

Entitlement to Legal Benefits

Moreover, in order to encourage members of the general public as well as other legal entities to found waqf establishments and register them accordingly, the government or the body delegated with the task of handling waqf enterprises would need to maximize incentives, one of which is the waiving or cutting off of repelling expenses, such as taxes and registration fees. A number of legal incentives that could be offered – amongst some others – are highlighted below under specific headings.

Tax and registration fee exemption

In countries such as Malaysia and Turkey, the respective governments have introduced some tax reliefs to encourage donations to waqf institutions. In Turkey, for example, the Foundations Law 2008 has declared that a person or enterprise that makes donations for the maintenance, repairing or renovation of waqf establishments may apply for tax deductions on their income tax. Similarly, in Malaysia, pursuant to Malaysia's Income Tax Act 1967, waqf establishments, which are considered state properties, are exempted from having to pay income tax (Alias, 2011). These initiatives have served as an incentive for legal entities to invest in and/or donate or contribute to waqf establishments.

Moreover, in Guinea, the sole waqf facility currently benefitting from these legal incentives is Waqf IDB Guinea due to its legal status. The said facility is exempted from paying all forms of taxes and processing fees, such as registration fees, pursuant to provisions within the Waqf Law 1997 and the 1998 Accord. Therefore, it is only right that other waqf entities in the country are also awarded this favorable status for capitalizing on at least some of its many advantages.

Social security schemes

Additionally, the social security or health insurance policy available to persons in Guinea is, as the case in any other underdeveloped country, costly, primitive and inadequate (M. Camara, Y. Camara, & N. Camara, 2015). Nonetheless, it may be said that some protection is better than none. An alternative solution for depending

on domestic insurance policies would be to explore foreign coverage. Examples of these would be Bellwood Prestbury and AXA Global Healthcare, which are both international insurance companies that offer a wide range of coverage to employees working in underdeveloped, volatile areas across the globe. However, it must be stressed that waqf entities would not benefit from either international or local insurance schemes without being legally registered and recognized at the respective registrar (Bellwood Prestbury, n.d.; AXA, n.d.).

Capital investment and fundraising opportunities

Lastly, another advantage waqf establishments would gain from attaining legal recognition is the prospect of capital investment. This special status is offered to none other than enterprises that possess a legal personality. To reiterate the point addressed earlier, enterprises in the informal sector are mainly impeded from growth owing to their inability to raise funds needed to carry out their long-term projects (Diallo et al., 2017). This is primarily due to the lack of trust between potential investors/donors and legally invisible waqf operators, i.e. the negative perceptions associated with such enterprises due to their lack of legal recognition, locally and internationally (Becker, 2004). As elaborated earlier, waqf enterprises in Turkey, particularly Vehbi Koc and TDV, have raised excess funds for their projects.

Similarly, in Kuwait, the body placed in charge of waqf affairs. Kuwait Awqaf Public Foundation (KAPF) has established three management committees, one of which is the “Investment and Development of Waqf Resources Committee”. This committee is dedicated to investing waqf funds into projects that would generate returns and ensure its productive operation (section 10 of the 1993 Royal Ordinance). Additionally, sections 3 and 4 of the same Ordinance provide that the main functions of the KAPF are to invest waqf funds and engage in business ventures through collaborations and other means that would contribute to the overall development of waqf in the country.

Another manifestation of this is Malaysia’s Waqf An-Nur Hospital and Clinics (KWAN). These health care centers, owned by Johor Corporation (JCorp), which is the investment arm of Johor (a Malaysian state), and managed by Waqf An-Nur Corporation (WANCorp), which is the endowment arm of JCorp. Both have treated around 1.5 million patients and have been equipped with over 60 dialysis machines (Johor Corporation, n.d.; Atan, 2017). According to Mubin (2015), a portion of the funds were accumulated through a fourth (25%) of the additional stock shares from JCorp’s listed and unlisted subsidiaries that were made

waqf, while the remaining portion of the funds were received from individual and corporations. As it stands today, 24 KWAN clinics and one hospital have been built across the country. This marks an outstanding achievement of Malaysia's JCorp and WANCorp entities (Johor Corporation, n.d.).

Here, we may observe the blatant fact that both portions of the funds collected were raised primarily due to JCorp's legal personality. This, on the one hand, enabled it to create subsidiaries and, thereafter, retrieve a share of its stock dividends and, on the other hand, established its legitimacy in the eyes of individuals and corporations.

And so, as can be proven by the projects presented above, these momentous initiatives would not have been possible without the legal recognition of the abovementioned entities, namely, Vehbi Koc and TDV (in Turkey) KAPF (in Kuwait), and JCorp (in Malaysia). Therefore, it is evident that granting legal personality to waqf establishments or at least the entities they operate under would give some security or assurance to potential donors looking to partake in waqf initiatives, whether financially, through goodwill or other means.

Conclusions

All in all, the study has highlighted the current state of waqf in the Republic of Guinea. It has shown that there is currently no dedicated legal framework protecting the interest of waqf entities, and waqf establishments are not given legal status in the country. Such inadequacies preclude waqf entities from obtaining legal benefits offered exclusively to entities with a legal personality. This, thereby, dissuades potential partners from engaging in waqf initiatives and leaves them at the mercy of unenforceable customary practices.

In essence, these issues were collectively said to have delegitimized waqf initiatives and rendered them high-risk and thus undesirable. In addition to highlighting the significance of the legal personality status for the said entities, the study enumerated a number of recommendations that would ameliorate the practice of waqf in all countries, particularly the Republic of Guinea.

This study believes that it is now upon the relevant authorities to ensure that waqf entities are legally recognized and effectively governed by regulatory policies. These policies limit founders' liability, offer legal recourse to aggrieved parties, register and protect the interest of the relevant stakeholders, and grant legal incentives to waqf enterprises and their respective donors to encourage participation. The legal entity status and aforesaid policies, if executed diligently,

although would not resolve all waqf-related issues that are known to be complex and multifaceted, would indeed serve as a step in the right direction.

References

- Abdullah, R., & Ismail, A. G. (2017). Taking Stock of the Waqf-Based Islamic Microfinance Model. *International Journal of Social Economics*. 44(8): 1018-1031.
- Alias, T. A. (2011). Tax Laws Affecting the Waqf in Malaysia: A Comparison with the United States and Turkey. Available at: https://www.academia.edu/1101187/Awqaf_tax_laws.
- Asnaini, M. (2008). Zakat Produktif Dalam Perspektif Hukum Islam. (*Published Thesis*). Bengkulu: Pustaka Pelajar.
- Atan, N. A. (2017). The Importance of Reviving Waqf-Based Health Care Institutions in Malaysia, *5th South East Asia International Islamic Philanthropy Conference 2017 (5th SEAIIPC2017)*. Malacca City.
- AXA. (n.d.). International Health Insurance from AXA. Retrieved March 10, 2020, from International Health Insurance: Designed for Life: https://www.axaglobalhealthcare.com/en/international-health-insurance/?camp=ppc-camp-b&gclid=Cj0KCQjw9ZzzBRCKARIsANwXaeKgH8YDTvXzpAkPcLwChWeFGL6lOHxZj51YERgIFl5OBBzLc8mTMw0aAjl_EALw_wcB
- Becker, K. F. (2004). The Informal Economy. Retrieved March 10, 2020, from Omslag.pmd: <http://www.rojasdatabank.info/sida.pdf>
- Bellwood Prestbury. (n.d.). Guinea Insurance. Retrieved March 10, 2020, from Guinea Insurance - Critically Important Protection: <https://www.bellwoodprestbury.com/your-challenges/high-risk-countries/guinea-insurance/>
- Business Dictionary. (2020). What is Legal Personality? - Definition and Meaning. Retrieved 03 10, 2020, from businessdictionary.com: <http://www.businessdictionary.com/definition/legal-entity.html>
- Camara, M., Camara, Y., & Camara, N. (2015). The Healthcare System in Africa: The Case of Guinea. *International Journal of Community Medicine and Public Health*. 2(4):685-689.
- Cizakca, M. (2000). A History of Philanthropic Foundations: The Islamic World from The Seventh Century to The Present. Istanbul: Bogaziçi Üniversitesi Yayınları.

- Deloitte. (2019). Guide to Fiscal Information - Key Economies in Africa 2019. Retrieved March 10, 2020, from Guide to Fiscal Information - Key Economic in Africa 2019: https://www2.deloitte.com/content/dam/Deloitte/za/Documents/tax/za_Africa_Key_Fiscal_Guide_2019.pdf
- Diallo, A., Zhonghua, Y., & Mukete, B. (2017). Assessing the Socioeconomic Impacts of the Informal Sector in Guinea, West Africa. *OALibJ*. 4(1):1-9
- Diyanet. (2018). Türkiye Diyanet Foundation provides educational services for 25 thousand students. Retrieved March 17, 2020, from T.C. Diyanet İşleri Başkanlığı: <https://www.diyamet.gov.tr/en-US/Content/PrintDetail/12032>
- Fay, B. (n.d.). Types of Taxes - Income, Property, Goods, Services, Federal, State. Retrieved March 10, 2020, from Debt.org: <https://www.debt.org/tax/type/>
- Forstater, M. (2017). The Good, the Bad, and the Ugly: How Do Tax Incentives Impact Investment? Retrieved March 10, 2020, from Center for Global Development: <https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment>
- Johor Corporation. (n.d.). Waqaf An-Nur Hospital & Clinics. Retrieved March 17, 2020, from Waqaf An-Nur Hospital & Clinics: <http://www.jcorp.com.my/waqaf-an-nur-hospital-clinic-35.aspx>
- Kuran, T. (2001). The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System. *Law & Society Review*. 35 (4): 841-898.
- Law Teacher. (2013). Separate Legal Entity and Limited Liability Differences. Retrieved March 10, 20, from lawteacher.net: <https://www.lawteacher.net/free-law-essays/business-law/separate-legal-entity-and-limited-liability-differences-business-law-essay.php?vref=1>
- Limited, A. C. (n.d.). Limited Liability Partnerships - Company Formation and Registration. Retrieved March 10, 2020, from A1 Company Services Limited: <https://www.a1companies.com/company-formations/limited-liability-partnerships/>
- Merriam Webster. (n.d.). Locus Standi. Retrieved March 01, 2020, from Merriam-Webster.com: <https://www.merriam-webster.com/dictionary/locus%20standi>
- MicroWorld. (n.d.). About Microcredit. Retrieved from microworld.org: <https://www.microworld.org/en/about-microworld/about-microcredit#history>
- Mohammad, M. T. (2016). Legal Personality of Waqf. Retrieved 02 27, 2020, from Ana səhifə: <http://atelim.com/a-proposal-for-a-new-comprehensive-waqf-law-in-malaysia-mohamm.html?part=2>

- Mubin, F. N. (2015). The Potential of Healthcare Waqf in Malaysia, *9th ISDEV International Islamic Development Management Conference (IDMAC2015)*. IDMAC 2015.
- Mughniyyah, M. J. (n.d.). The Five Schools of Islamic Law. Retrieved from al-islam.org: <https://www.al-islam.org/five-schools-islamic-law-sheikh-muhammad-jawad-mughniyya/10-waqf#waqifs-intention>
- New World Encyclopedia. (2016). Almoravid Dynasty. Retrieved March 10, 2020, from New World Encyclopedia: https://www.newworldencyclopedia.org/entry/Almoravid_dynasty
- Oseni, U. A. (2012). *Towards the Effective Legal Regulation of Waqf in Nigeria Problems and Prospects*. in Rashid, S. K. & Arif Hasan (eds.), *Waqf Laws and Management with Special Reference to Malaysia*. 339-354. New Delhi: Institute of Objective Studies.
- O'Toole, T. E. (2019). Guinea - People. Retrieved March 10, 2020, from Encyclopædia Britannica: <https://www.britannica.com/place/Guinea>
- Paksoy, Y. (2017). Turkey's Diyanet Foundation Educates Thousands Abroad. Retrieved March 17, 2020, from Daily Sabah: <https://www.dailysabah.com/education/2017/06/15/turkeys-diyamet-foundation-educates-thousands-abroad>
- Price, D., & AlDebasi, A. (2009). *The Development of Intellectual Property Regimes in the Arabian Gulf States*. United Kingdom: Routledge.
- PWC. (2014). Social Security Country Profiles. Retrieved March 10, 2020, from Social Security Systems: <https://www.pwc.com/gx/en/hr-management-services/pdf/social-security-country-profiles-august-2014.pdf>
- The Capacity to Sue or Be Sued. (n.d.). The Capacity to Sue or Be Sued Legal Definition. Retrieved March 10, 2020, from West's Encyclopedia of American Law, Edition 2: <https://legal-dictionary.thefreedictionary.com/The+Capacity+to+Sue+or+Be+Sued>
- Uygun, E. S. (2015). Establishment of Foundations. Retrieved from Mondaq: <http://www.mondaq.com/turkey/x/387312/Corporate+Governance/Establishment+of+Foundations>
- Word Disk. (2020). Reading. Retrieved March 10, 2020, from Maliki: <https://worddisk.com/wiki/Maliki/>
- Worldometer. (2020). Guinea Population (2020). Retrieved March 10, 2020, from worldometers.info: <https://www.worldometers.info/world-population/guinea-population/>
- Your Dictionary. (n.d.). Small Business. Retrieved from small-business dictionary definition: <https://www.yourdictionary.com/small-business>