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Corporate Governance Model For *Waqf* Institution in Uganda

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Abstract: Recently, there are attempts in many Muslim countries for reforming the administration of *Waqf* institutions by separating the management functions from custody services and making *Waqf* institutions as autonomous entities. The purpose of these reforms is to recover, preserve and develop several *Waqf* properties so that they can help improve the social welfare of theMuslim *ummah*. Thus, it is widely agreed that the best practice of good governance should be adopted as it is the most important element in reviving *Waqf* institutions. These attempts however are confined mostly in high income Muslim majority countries. The present study proposes UIEC corporate governance model that can be used to improve accountability, transparency and efficiency of *Waqf* institutions in Uganda in Particular and low income Muslim minority countries in general. The model is expected to contribute towards the revival of *Waqf* institutions, which ultimately will improve the welfare of Muslim communities at large.

Key words: Corporate governance · Model · *Waqf* institution · Uganda

INTRODUCTION

Over the centuries, *Waqf* institutions haveplayed crucial role towards the socio-economic development of Muslim *Ummah.* According to Hisham, *et al*. [1] an effective management of *Waqf* p roperties should be able to contribute positively on socio-economic development. *Waqf* institutions are supposed to be managed effectively for the best interest of the society. *Mutawallis* are supposed to preserve *Waqf* properties, maximize their revenues and distribute them according to the objectives of *Waqf* [2]. In that respect, the success of *Waqf* management depends largely onpossession of several managerial qualities such as: *Taqwa,* honesty, managerial skills and competence, efficiency and management capability and vision [3]. *Mutawallis* have no right to sell, exchange, or mortgage *Waqf* property or borrow money in order to spend on *Waqf* without the permission of the court [4]. Moreover, Muslim societies place *Waqf* properties in the hands of *Mutawallis* because the societies believe that they have the desired qualities and can use *Waqf* properties and distribute their benefits the way it is stipulated in *Waqf* deeds [5].

Unfortunately, *Waqf* institutions have been to a great extent mismanaged throughout the Islamic history. This is because *Waqf* management teams either lack the required qualities or they simply abuse the trust of the public. Confusion, uncertainty and often conflict of interests are common among *Waqf* administrators. Financial reporting in the *Waqf* sector has long been regarded as something of a ‘black hole’. Dafterdar [6] asserts that it is generally agreed that lack of transparency in the financial reporting of *Waqf* institution, does limit their accountability to the public, to the beneficiaries and to the prospective lenders and donors.

Experiences show that due to the increasing decline in our sense of moral responsibility and accountability, *Waqf* management team exhibits varying degrees of dishonesty, corruption and mismanagement. The administration falsifies *Waqf* account, fabricate vouchers and receipt and there is no accountability for donations. In addition, *Waqf* properties are illegally expropriated and there are also under-hand dealings with tenants of *Waqf* properties so that they pay very low rent [6]. Moreover, in most cases, the management team lacks managerial skills and competences that are necessary for

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the proper and efficient management and development of the *Waqf* properties. Indeed, these have resulted in an overwhelming dissatisfaction among donors and *waqifs.* Prospective *waqifs* feel disinterested to dedicate their properties as *waqf,* after looking at the sad plight of *Awqaf* and how their income was plundered (Syed, 2008). Nevertheless, according Cajee [7], there are growing interest and awareness about managing *Waqf* institutions based on good corporate governance, i.e. good management practices, transparency and accountability. Therefore, the overall aim of this study is to suggest a conceptual corporate governance model for improving transparency, accountability, efficiency and effectiveness of *Waqf* institution in Uganda in particular and low-income Muslim minority countries in general.

Concepts of Corporate Governance: The term corporate governance is a relatively new both in the public and academic debates. Although the issues it addresses such as transparency, accountability and control have been around for much longer period of time [8]. There is no universally accepted definition of corporate governance; rather there exists different definitions that analyze specific aspects of corporate governance. In the broadest sense, corporate governance is a set of relationship between a company's management, its board, its shareholders and other stakeholders. In that respect it provides the structure through which the company goals are set and the means of attaining those objectives and monitoring performance are determined [9]. According to Mallin [10], corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The aim is to align as nearly as possible the interest of individuals, corporation and society [10]. The features of corporate governance according to Mallin include: collection of systemic controls to safeguard firm's assets; prevent a single person from having too much power and influence so that checks and balances continually drive operation and decision-making; balancing the relationship between management, board of directors, shareholders and other stakeholders to ensure no single group hijacks the corporation for their personal benefit at the expense of others; and encourage accountability and transparency within the management and business operations to cultivate market confidence. Thus, Mallin suggests that corporate governance has three distinctive components, i.e. (1) transparency and disclosure, (2) control and accountability and (3) board structure.

The Western concepts of corporate governance focus on either the Anglo-American model that intend to maximize shareholders wealth or the Franco-German model that uphold the interest of all stakeholders. Little however has been written on Islamic corporate governance [11]. Thus, in the context of Islamic financial institutions, corporate governance is viewed as a set of organizational arrangement whereby the action of the management of Islamic financial institutions are aligned, as far as possible, with the interest of its stakeholders; provision of proper incentives for the organs of governance such as board of directors, shariah board and management to pursue objectives that are in the interests of the stakeholders and facilitate effective monitoring, thereby encouraging Islamic financial institutions to use resources efficiently; and comply with shariah rules and principles [12]. The role of Islamic corporate governance is to promote corporate fairness, transparency, accountability and maintain good relationship between different stakeholders as well as the relationship with Allah [12]. Grais and Pellegrini [13] cite that there are three roles of corporate governance exclusive to Islamic financial institutions (IFIs). Firstly, corporate governance reassures stakeholders that IFIs activities are fully compliant with *shariah* principles. Secondly, it assures the stakeholders that the aim of IFIs is to maintain and increase their wealth. Thirdly, it proves to stakeholders that the corporate is efficient, effective, stable and trustworthy. According to Iqbal and Mirakhor [14], the corporate governance model in an Islamic economic system is a stakeholder-centered model in which the governance style and structures protect the interest and rights of all stakeholders rather than just the shareholders interest. Nienhaus [15], states that Islamic corporate governance should be value-based and should promote the principles of fairness and justice with respect to all stakeholders.

In the view of the uniqueness of the underlying principles and paradigm of Islamic corporate governance compared to the Western models, several studies have attempted to construct an Islamic model of corporate governance. For example, Choudhury and Hoque [16] propose Islamic corporate governance that is founded on the epistemological aspect of *Tawhid*which is embedded in Shariah rules and principles. Belief in Oneness of Allah and being conscious all the time that Allah observe all our actions and deeds makes every Muslim conscious of his or her responsibility and accountable towards his/her actions, as Allah says in al-Quran: "*Every soul will be (held) in pledge for its deeds" (al-Muddathir: 38).* On these bases, Islamic corporate governance models are built based on the four fundamental principles of *Tawhid, Shura,* property rights and commitment to contractual obligation that govern the economic and social behavior of individuals, organizations, societies and states.

Abdul Rahman [17] suggests a framework of Islamic corporate governance that integrates Shariah and Islamic moral precepts. He emphasizes the institutions of *Shura, Hisbah* and religious audit as the major components of a corporate governance framework. The institutions of *shura,* which consists of management, board of directors, shareholders, employees, customers and other interested parties, may ensure the effectiveness of any corporate decision making. The institution of *Hisbah,* on the other hand, plays the role of monitoring corporations on both regulatory and moral aspects. The religious auditors or shariah boards issue legal rulings and provide advice for ex-ante auditing and supervise and monitor ex-post auditing.

Choudhury and Hoque (2004) also present a more comprehensive framework of Islamic corporate governance model which is based on *Tawhid and Shura*. The principles of *Tawhid* lead to important concepts of vicegerence *(Khilafah)* and justice or equilibrium *(al- adlwa al-Ihsan).* The stakeholders, as vicegerents of Allah, have a fiduciary role to uphold the principle of distributive justice through *shura* to involve wider participation of stakeholders in decision making. Choudhury and Hoque added that as Allah knows everything and holds all mankind accountable and answerable to Him, this can make organizations to widen their scope and objectives to include all stakeholders rather than just focusing on shareholders' interest. Furthermore, acknowledging the fact that stakeholders are vicegerents of Allah, the shareholders, the management, the Board of Directors (BOD), the *Shariah* board, the employees and communities will uphold distributive justice through *Shura* process where all stakeholders' interests will be taken into account. In this regard, the *shariah* board plays crucial role to ensure that all corporation activities are in line with*shariah* rules and principles. Shareholders also have a responsibility as active participants and conscious stakeholders in decision making process and policy formulation to ensure that the interests of all direct and indirect stakeholders are taken into consideration. The other stakeholders, including communities, should also play their roles to provide mutual cooperation to protect the interest of all stakeholders in order to improve their social welfare. All of these processes are centred on fulfilling the ultimate objectives of Islamic corporate governance of complementing the private and social goals via upholding the principles of distributive justice [18].

Chapra and Ahmed, [19] in their research on corporate governance of Islamic financial institution emphasize on the notion of equitably protecting the rights of all stakeholders irrespective of whether they hold equity or not. This seems to support the model proposed by Iqbal and Mirakhor, where they view that the corporate governance model in Islamic economic system is a stakeholder-centered model in which the governance style and structures protect the interest and rights of all stakeholders rather than the shareholders per se. Their main arguments are based on two fundamental concepts of Islamic law namely principle of property rights and commitment to explicit and implicit contractual agreements that govern the economic and social behavior of individuals, society and state. These two principles provide strong justification for the notion of classifying Islamic corporate governance as a stakeholder-oriented model. However, these proposed models are designed for Islamic financial institutions. There are few corporate governance models for Islamic social institutions such as*Waqf* . This study proposes corporate governance model for *Waqf* institutions in Uganda.

Corporate Governance Model For *Waqf* Institution In Uganda: Uganda is a landlocked country in East Africa with an area of 240,038 square km of which 197,323 square km is covered by land. It is still a low income developing country ranking 161 on the Global Human Development Index in 2012 [20]. According to the Ahmad [21], Muslims constitute 30 per cent of Uganda's population. Uganda Muslim Supreme Council (UMSC) is the highest body that manages the affairs of all Muslim in the country. Under the 1972 UMSC Constitution, UMSC shall be the only single body in perpetuity unifying all Muslims in Uganda. A Mufti of Uganda shall be the leader and the head of all Muslims in Uganda. Thus, all *Waqf* assets are supposed to be governed and administered by the UMSC as the sole trustee of the *waqf* properties. Thus, UMSC is supposed to ensure that the *Waqf* properties are well administered and managed for the welfare of the Muslim community. From the legal aspect, UMSC can buy, take, hold and invest all*Waqf* properties registered under it. Therefore, UMSC is responsible for the development and management of *Waqf* assets and the distribution of their benefits to the Muslim community. Besides UMSC, there are other bodies that manage affairs of Muslims in the country, for example, Spidika in Kisenyi suburb, Nakasero and William Street-based Tabliqs and Clock Tower Mosque-based Tabliqs.

Ahmed [22] study on *Waqf* in Uganda reveals that the majority of Muslim respondents (66%) do not trust Islamic religious bodies in the country which manages *Waqf* institution because they believe that these religious bodies are not trustworthy, accountable, transparent, reliable, competent and honest. Hence, an overwhelming majority (90%) agreed that they will be more willing to donate their assets as*Waqf* for socio-economic development if *Waqf* management in the country is transparent, accountable and practices good governance. These findings have highlighted that good governance is vital in reviving *Waqf* institutions in Uganda in particular and other low-income Muslim minority countries in general.

Therefore, for an effective management of *Waqf* institutions in Uganda, the study suggests a model where UMSC will create Uganda Islamic Endowment Corporation (UIEC) as an independent *Waqf* corporate body that will restore, develop and manage *Waqf* properties in the country. UIEC will be registered as Non-Profit Organisation with the aim of improving the social welfare of Muslim community. UIEC will be managed by effective and efficient management teams that practice good corporate governance. The major components of the governance framework will include *Shura* council, Board of Trustee (BOT), management team, auditors and *Hisbah*institution. Hisham [23] and Ihsan [24] identify *Waqf* stakeholders as *wâqif, waqf* board, regulators, beneficiaries and the community at large. Cajee identifies *waqif, mutawalli,* regulator and beneficiaries as the major stakeholders. Therefore, the *Shura* council members will include senior UMSC officials, BOT, management team, government officials, diplomats from Muslim donor countries and officials from other Muslim non-governmental organizations. This broad representation will ensure that UIEC will be accountable and transparent and makes best decisions in the interest of Muslim community in Uganda. *Shura*Council will also be responsible for selecting members of the Board of the Trustee and the board will be accountable to the council. The second component will be the board of trustee. This will include UMSC officials and independent executives who are professionals, skillful and qualified, competent, honest, religious and above all have *Taqwa*. The board members will include the Mufti of Uganda as a chairman, religious scholars and independents outsiders such as auditors, lawyers, bankers, managers and other professionals. The duties of the board will include: governing UIEC by establishing broad policies and objectives; appointing management team, monitoring and assessing the performance of management teams; ensuring the availability of adequate financial resources; approving annual budgets; and setting remunerations for the management teams [25]. Furthermore, the board must meet annually, make sure that the UIEC publish detailed annual reports and ensure that the financial reports are accurate. Board members, acting as agents of stakeholders, will be responsible for controlling the actions of the managers, evaluating their performance and implementing effective systems of control [26].

Moreover, the board must put mechanisms of checks and balances in place to ensure transparency and accountability. Thus, UIEC should be audited by both internal and external independent auditors.

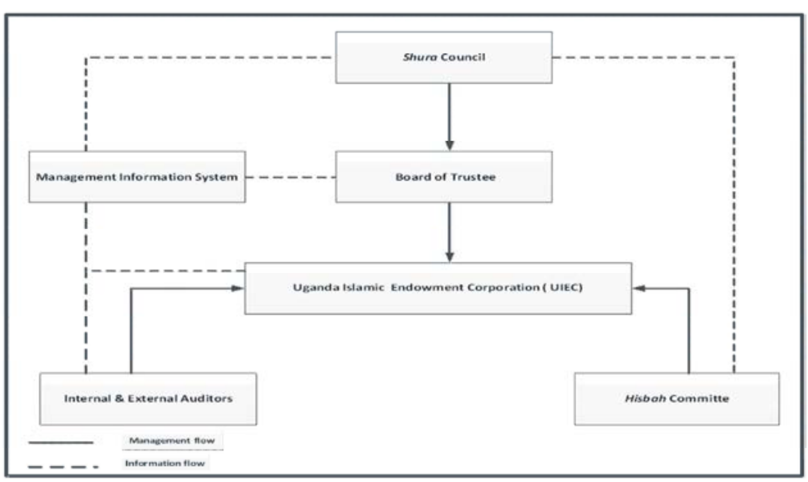

Fig. 1: Corporate Governance Model for Uganda Islamic Endowment Corporation (UIEC)

Auditing should be done in accordance with generally acceptable international auditing standards, such as AAOIFI. Moreover, to increase transparency and accountability, management information system (MIS) will be used where all stakeholders will have access to information. Page [27] asserts that access to information is the cornerstone to good governance, meaningful participation and increasing transparency. It is also a powerful mechanism of accountability. The *hisbah*committee will be established to ensure that UIEC complies with regulations and uphold social justice. Thus, the*hisbah* plays the role of monitoring the activities of UIEC on both regulatory and moral aspects. It will check on fraud, irregularities and malpractices in the organization. The *hisbah* members will include *shariah* scholars as well as representatives from the Muslim community. According to Abdul Rahim, during the early Abbasids (750 CE) the role of *muhtasib* included inspecting weights and measures in business dealings, ensuring fair trading, checking business frauds and irregularities, auditing illegal contracts, keeping market free and preventing hoarding with the aim of promoting good and preventing evils. The Islamic corporate governance framework for UIEC is shown in Figure 1below.

CONCLUSION

This paper has pioneered the idea of developing a corporate governance model for *Waqf* institution in Uganda. The model is robust, sustainable, practical and easy to apply. It has taken into consideration the context and settings in the target country. The analysis from the findings reveals that Islamic corporate governance is distinct from the Western models as it theoretically upholds and maintains the principle of *Tawhid,* social justice, productive engagement of resources in social welfare and active participation in economic activities. Good governance is vital in reviving *Waqf* institutions in low-income Muslim minority countries where there is rampant corruption, mismanagement and abuses of *Waqf* assets by religious authorities. Muslims in these countries have lost confidence in *Waqf* institutions. The proposed UIEC if adopted is intended to help improve corporate governance efficiency in the*Waqf* institution. This in turn will restore public confidence and encourage both external and internal donors to contribute to *Waqf* institution. Ultimately, the social welfare of Muslim community in Uganda will improve as income generated from *Waqf* assets will now be used, through UIEC, effectively and efficiently in various programs particularly in poverty eradication.

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