Financing social infrastructure and addressing poverty through *wakf* endowments: experience from Kenya and Tanzania

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ABSTRACT The East African coast is rich in examples of housing, schools, health centres and other urban facilities that have been financed through endowments known as "*wakfs*", created by citizens concerned with community well-being and security of next of kin. From its early religious origins, the practice has developed into a durable economic institution capable of enriching and expanding approaches for mobilizing resources for poverty reduction. Places such as Mombasa, Lamu, Malindi and Zanzibar owe much of their public architecture and social harmony to assets set aside in this way. Partial insulation from the market and strict rules ensure that *wakf* assets are protected from pillage or undue exposure to risk. This paper outlines the development of *wakf* methodology and administration in Kenya and Tanzania (specifically Zanzibar) since the early twentieth century. In both countries, elaborate legislation and supervisory mechanisms ensure that endowments are registered and subject to audits to ensure compliance with original objectives. In recent years, more emphasis has been placed on reviewing legislation and finding new ways of adapting to current social needs, changing economic circumstances and national social development policies.

KEYWORDS endowments / heritage / Mombasa / poverty / *wakf* / Zanzibar

I. INTRODUCTION

In the search for appropriate responses to widespread poverty, life-threatening conditions and unprecedented levels of violence, we may find guidance in neglected economic institutions that derive legitimacy and utility from their accomplishments. They function quietly and effectively in cities of the South, straddling the gap between the market and the more inward-looking worlds of clan solidarity, social responsibility and the search for a presence after death. While these institutions cannot be compared in terms of scale to the renowned international foundations and charities found in the western world – especially the United States – their fundamental objectives are similar.(1) These homegrown institutions provide school places, community nurses, playgrounds and burial grounds. They help to relieve the suffering in shantytowns, the hardship in homes and the pain of homelessness. For many generations on the East African coast, as in other parts of the Muslim world, the Muslim institution known as "*wakf*" – a form of endowment – has been a convenient, sustainable, legally acceptable way of financing social and religious facilities and maintaining family and clan welfare.(2)

1. The big American foundations have been influential in shaping a range of national policies ranging from education, through social science research to foreign policy. See, for instance, Arnove, Robert F (editor) (1980), *Philanthropy and Cultural Imperialism*, G K Hall, Boston,

a. Institutions for giving

In the context of East Africa, from its early development in the great Swahili city-states, the institution of *wakf* has survived successive waves of imperial occupation by the Portuguese, the Omani empire and the British,(3) becoming in the process more robust and capable of adapting to changing economic and social conditions. Even half a century after the emergence of independent African governments, these trusts continue to be created.

Wakf endowments(4) have been a viable means of enriching people's lives, providing safety nets and supporting social infrastructure for the poor. Yet there is no definitive research on the oldest surviving and functioning *wakfs*, their relationship with successive political regimes, or the conditions that best support their efforts, and little is known about the long-term effects on wealth distribution.(5) This paper considers the neglect of this institution in the literature on civic society and philanthropy, and explores the link with the wider world of non-government action vis-à-vis pressing current urban issues.

The paper presents data from two case studies undertaken in Kenya and Tanzania between 2001 and 2004. *Wakf* deeds from private archives were analyzed and records and registers of *wakf* authorities examined. Users, tenants, officials and *wakf* commissioners were interviewed, along with lawyers specializing in the field. In Mombasa, a handful of legal firms have, over the years, accumulated a wealth of experience in structuring and interpreting the various permutations of relevant *shariah*, statutory and customary law. In Zanzibar, the *Wakf* and Trust Commission (WTC) has its own corps of administrators, lawyers, accountants and engineers to develop policy and manage the asset portfolio. Their perception of policy and strategic issues has to be juxtaposed against the experiences of those receiving the benefits of endowments.

II. MEANING AND PURPOSE

a. How *wakf* endowments work

Wakf means an asset that has been withdrawn from circulation so that its yield can be used for charitable purposes. The asset becomes inalienable except under special circumstances specified by law. In the past, such arrangements played an important role in financing economic and social infrastructure, much as local government, non-governmental organizations, charitable trusts, endowments and family settlements discharge these functions today.

The relevant law as it relates to educational institutions has been extensively researched,(6) and over the years a significant body of common law has been built up through the pronouncements of eminent jurists, magistrates and scholars.(7)

It is a fundamental principle that the motive for setting aside one's property for the benefit of others should be to achieve *qurba*, or nearness to the All-Mighty. One forgoes a seemingly tangible asset in return for a greater, although invisible, advantage. In addition, there is an elevation in social standing and influence in the community and a claim to perpetual recognition. For that to happen, certain basic requirements must be met.

473 pages. A phenomenon seen in the late twentieth and early twenty-first century is the arrival of a new generation of young wealth givers who apply the same rigour to the process that they would exercise in business (thus "giving while living"). They give their money to good causes and frontload their projects by way of capital payments. See a BBC Radio 4 interview on 9 March 2007 with a philanthropy capital advisor.

2. The concept of *wakf* (also spelt *waqf*) is ably explained in Kozlowski, Gregory C (1998), "Religious authority, reform and philanthropy in the contemporary Muslim world", in Warren F Ilchman et al. (editors), *Philanthropy in the World's Traditions*, Indianan University Press, pages 279–308.

3. A brief history of the Swahili in Kenya can be found in Idha, Ahmed Salim (1973), *Swahili-speaking Peoples of Kenya's Coast, 1895–1965*, East African Publishing House, Nairobi, 272 pages. A more recent collection of papers on the Swahili is available in Loimeier, Roman and Seesemann Rudiger (editors) (2006), *The Global Worlds of the Swahili*, Lit Verlag, Berlin, 409 pages.

4. The terms trust, endowment and foundation are used interchangeably in this paper.

5. The Egyptian experience is documented in Garnett, H (1982), *Summary of the Cairo Metropolitan Area Land Use/ Infrastructure Development Study*, Dames and Moore, Cambridge, Mass, USA.

6. Makdisi, George (1984), *The Rise of the Colleges: Institutions of Learning in Islam and the West*, Edinburgh University Press, 377 pages. This is the most comprehensive study available on the subject in English.

7. Yahya, S S (1994), "The uses and abuses of *wakf*", in Mohamed Bakari and Saad S Yahya (editors) (1995), *Islam in Kenya: Proceedings of the National Seminar on Contemporary Islam in Kenya*, Mewa Publications, Nairobi.

b. The essentials

Since the formation of a *wakf* foundation or endowment is essentially an economic transaction, it must not only work smoothly but also be legally sound and enforceable. The founder must execute a document specifying the following:

- The founder is the rightful and outright owner of the property to be set aside, and is of age and sound mind.
- The trust must generate good for others.
- The founder's wishes are absolute in matters relating to the administration of the *wakf*, as long as they do not contravene the law.[8] The founder can decide on such matters as the management of the endowment, the appointment of trustees, the use and distribution of income and who is to benefit.
- The asset to be declared as *wakf* must be tangible and immovable. Books, however, are included and there are recorded cases of jewellery and furniture having been included in endowments. Pearl[9] reports that *hanafi* law allows endowments of immovables permanently attached to movables; of animals, such as horses and camels; of books and furniture; and (in Pakistan) of bonds, shares and stocks. This extension to embrace modern-day assets raises new, interesting possibilities for using the institution to meet new economic and social needs.
- A declaration creating an endowment has to be irrevocable, unqualified and permanent. Any form of alienation or transfer is prohibited, including sale, disposition, gift, mortgage or inheritance. However, under certain circumstances, exchanging a property for an equivalent one, or selling an asset and investing the proceeds in another asset, is permissible. So are short leases of, say, no more than three years.
- Although charity is the legal justification, a supplementary motive (for example, to widen one's influence or patronage, or to compete with rivals or impress a spouse) will not invalidate an endowment. The overt objective can be to build and/or operate a school, a clinic or a hostel for wayfarers (the modern equivalent could include international businessmen, asylum seekers, economic migrants) and the homeless; or to establish a fund for helping the poor or securing the rehabilitation of ex-prisoners. The infrastructure of a city, such as water and power supplies, public gardens and open spaces, libraries and universities could also be the supported. Whatever the objective, it must be specified in the *wakf* deed.
- Valid, undeclared motives may include tactics to protect one's wealth and integrity, such as minimizing tax liability, curbing the excesses of frivolous progeny or guarding one's wealth from confiscation. A patron may also wish to invest in education and research for the purpose of controlling the livelihoods, minds and activities of leading scholars and thinkers. Such motives also played a seminal role in the formation of endowments in the West and the development of contemporary think tanks and retreats.[10]
- Naming the trustee, or *mutawalli*, is essential when creating an endowment. There can be several trustees and the founder can appoint himself sole or joint trustee. The law is rich with cases and judgements on the appointment, remuneration and removal of trustees.[11]

8. Several specimens of *wakf* deeds were collected during the course of the study; these indicate a variety of formulations used to specify the founder's wishes.

9. Pearl, David (1979), *A Textbook of Muslim Law*, Croom Helm, London, 317 pages.

10. "*Foundations have been key investors in the development of universities, think tanks and research institutes throughout the world. They have provided the necessary funds by which academic programmes flourished and unknown scholars gained international prominence*." See reference 1, Arnove (1980), pages 306–330.

11. See reference 6.

The *mutawalli*'s principal duty is to ensure that the endowment is administered in accordance with the founder's wishes. He can build, repair, rebuild, improve and preserve; he may lease the property and/or cultivate the land; he has the power to collect income from rent, harvests and fruits, and to distribute the proceeds to the intended beneficiaries, be they institutions or family members as prescribed by the founder. He is accountable to the founder or, in his absence, to the courts. This is important because an incompetent or dishonest trustee can quickly destroy a substantial portfolio.

Within this broad framework, the manner in which endowments are created and used varies from country to country depending on the adjustments made to suit local needs.

c. Variations and adaptations

Three types of modification are worth examining: there are the differing legal interpretations; the restrictions and managerial improvements introduced by colonial legislation; and, finally, the focus imposed by local custom on how endowments should be used.

Differing interpretations of *wakf* law by the four schools of Sunni Islam thought have been analyzed clearly and competently by Maghniyyah.[12] In the East African context, the main point of contention is whether the founder can be a beneficiary, or even whether his immediate family and descendants are allowed to benefit. The overwhelming opinion is that both are permissible. One can leave property for one's sole benefit for life, and after that for the benefit of descendents and, on expiry of that line, for the benefit of a charitable public activity.

State laws passed during the colonial period interfered with the practice of *wakf* by seeking to bring a measure of responsibility and accountability to the sector so as to minimize cases of fraud and general abuse of the institution. Legislation passed in Kenya and Zanzibar in the early twentieth century introduced registration, appointed supervisory authorities and gave the courts the power to sell *wakf* property in exceptional circumstances. This approach was restrictive but had one very important effect, namely to embed the institution in the laws of the country at a time when many aspects of business and personal wealth management were being drastically overhauled. Judgements, some ill advised, passed in Indian and East African courts often contradicted recognized texts and classical positions, causing confusion and even injustice.[13]

The third form of adjustment concerns the use to which endowments are put at the local level. Founders' perceptions of the future public good are rooted in the local social and cultural environments, and activities benefiting from endowments vary in time as well as location. The larger towns can accommodate grander projects such as hostels, hospitals, public baths and colleges. In the villages, the range is more restricted – for example, remembrance of anniversaries, supporting a school or maintaining a religious facility. There are also cases where the founder, with a wish to promote inter-communal understanding and harmony, donates property for use by a community other than his or her own. The Mombasa *wakf* register has documented several instances of mutual support between citizens of Arab, Indian and African origin. Status and wealth differences naturally contribute to asymmetrical flows of compassion. Where property

12. Maghniyyah, A M J (1988), "*Waqf* according to five schools of Islamic law", *Al-Tawhid* Vol 7, No 4, Part 1, pages 83–98; also *Al-Tawhid* Vol 8, No 1, Part 2, pages 61–67; and *Al-Tawhid* Vol 8, No 2, Part 3, pages 91–102. Translated from the Arabic by Mujahid Husayn (1410 AH/1988).

13. Anderson, J N D (1959), "*Waqfs* in East Africa", *Journal of African Law* Vol 3, No 3, pages 152–164.

is let to tenants – to benefit intended persons or charities – there is a general reluctance to pay market rents. In Kenya, some tenants, especially in Old Town Mombasa, are refusing to pay rent on the grounds that, from their understanding (obviously deficient) of *wakf*, endowed property can be enjoyed by all and sundry at no cost.[14] The government does not wish, indeed has no direct statutory power, to intervene. In Zanzibar, tenants in *wakf* buildings enjoy concessionary rents based on a government policy of subsidizing all rents for all government-controlled housing. For administrative purposes, such properties are considered public housing, although they are essentially private property. These differing ways of exploiting the vulnerable aspects of the institution are explored in the following two country case studies.

14. The fact that government has a hand in the administration of endowments creates a loophole for some people to use the system to their own advantage, especially as it takes longer for public authorities to react to infringements.

III. COUNTRY CASE STUDY: KENYA

a. Policy context

Although the value of the *wakf* portfolio in Kenya has risen dramatically in recent years, the actual number of properties has remained largely static over the last 30 years or so. People are not creating as many endowments, mainly because national laws have created other ways of securing the future and financial sustainability of family and charitable projects. These alternatives also make it possible to take advantage of market opportunities and to circumvent the prohibition of interest in financial transactions or of illegal activities regarding *wakf* properties. Potential *wakf* founders are discouraged from taking that route by their advocates. Although *wakf*s are fully recognized and enforceable in the national judicial system, the law of trusts, companies, cooperatives and civic societies is more widely understood and used in day-to-day business. The government has no specific policy regarding *wakf* endowments, but holds a generally favourable view on the creditable work performed by charitable trusts and endowments in education, health services delivery and poverty alleviation. Such institutions are consistent with the general policy of encouraging communities to build and maintain their own life-supporting facilities, as government withdraws from direct provision and focuses on regulation, standard setting and providing incentives. Improved management of endowments should therefore be to government's advantage.

Political interference in the running of *wakfs*, although serious, is probably less of a threat than the depletion of assets and reduced confidence in the institution as a result of neglect and mismanagement, the failure to resist pressures caused by soaring property prices, or infighting among beneficiaries. In the absence of diligent supervision, it becomes difficult for trustees to strike the delicate balance between profit and ethics. Moreover, intra-family confrontations can create situations that outsiders can exploit.

b. The *Wakf* Commissioners of Kenya (WCK)

The first Kenyan law regulating *wakfs* was passed in 1900. There have been several amendments since, the latest in 1951.[15] The legislation was to be read in conjunction with the *shariah* and as part of the national

15. See *The Laws of Kenya (rev. 1981), Chapter 109, The Wakf Commissioners Act,* Government Printer, Nairobi.

judicial system. A network of magistrates, known as *kadhis*, was to assist in interpreting the law and in the settlement of disputes.

Apart from enshrining *wakf* endowments in the country's legal system, another important achievement of the legislation was to create the *Wakf* Commissioners of Kenya (WCK),(16) an independent agency to administer *wakf* properties and related matters. Giving corporate identity and powers to a largely autonomous body was most likely meant to soothe fears about potential interference by the colonial government in the management of assets set aside for charitable purposes. The WCK consists of the chief *kadhi*, the provincial commissioner (equivalent to a regional governor) and six other members appointed by the Attorney-General "*…after taking into consideration Muslim opinion in relation thereto*",(17) and is the supervisor and manager of last resort. If individual trustees fail or have passed away without leaving clear instructions on who should succeed, the WCK can take over.

After a long period of inactivity, the WCK now has several new diligent members keen to reform the institution and present a revitalized image. They meet once a month in Mombasa Old Town, and I attended the December 2004 meeting as an observer.(18) The chief *kadhi* was there, with four other members, and the purpose of the meeting was to discuss the problems facing the organization. Neglect by the government was seen as dispiriting and indicative of a lack of interest, and the district commissioner (normally expected to represent the provincial commissioner) seldom attended meetings. Members of the public were ignorant about the very nature of *wakf*. There was a general misconception, commissioners

16. The reason for preferring the term "commissioners" to "commission" is unclear. It reverberates with personal presence and authority, characteristic of colonial rule, and is probably a continuation of the tradition established by the *Wakf Commissioners Ordinance 1900.*

17. See reference 15, Section 6.

18. Monthly meetings are a big improvement on the previous record and are an indication of renewed fervour and commitment.

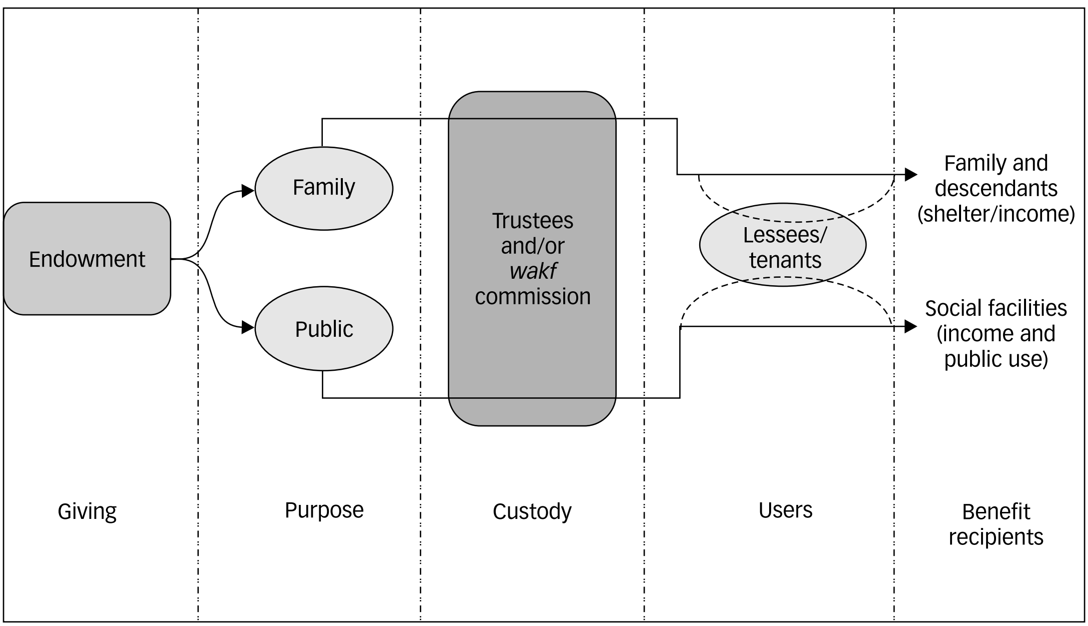

FIGURE 1
Wealth and compassion flows

lamented, that the WCK was not doing its job, assets were being plundered and public facilities neglected. Members felt a more positive image was needed and they were in the process of creating a website. The public did not know that a fully fledged secretariat was in place, that committees had been formed, policy reforms were being initiated, they were operating with a proper budget, and that an up-to-date inventory of all properties under their care had been prepared. New endowments were still being created, but they were not being registered with the WCK despite the statutory requirement for registration.(19)

19. This undermines the WCK's effectiveness and is one of the issues to be addressed when existing legislation is reviewed.

Managing the property portfolio presents the WCK with many challenges, both practical and ethical. They are merely custodians or agents and not owners (Figure 1), and tenants are always difficult to deal with. Rent arrears were high at the time we met, standing at 9 million shillings (US$ 1 = Ksh 70 approximately), although they were hoping to reduce the figure by 3 million a year. However, rents are too low, with some tenants paying almost nothing. A 99-year lease in Mombasa might require the tenant to pay only 20 shillings a year (a handsome figure early in the twentieth century) for high value properties in or close to the town centre. In the absence of a rent review clause, the WCK is unable to change this. In Malindi, a town north of Mombasa, it is common to find tenants paying monthly rents equivalent to one-fiftieth of the average monthly wage.

Trustees are required by law to strive for the maximum revenue, so every effort was being made to raise rents and to reject lease renewal requests at old rental rates. Nor would the WCK condone sub-letting, a serious problem where even distant relatives are considered family members. Where land lies empty and undeveloped, squatters are a problem, especially as the WCK has no policing capacity and eviction carries too high a political risk.(20)

20. Interview with commissioners on 9 December 2004.

In order to meet administrative expenses, the WCK retained 15 and 20 per cent, respectively, from total income earned from public and family endowments. To improve revenues, the WCK was chasing defaulters, tightening conditions for lease renewal and sub-letting, and seeking legislative amendments to give them more powers to collect. When valuation services were required, the WCK depended on the municipal valuer in Mombasa for an independent opinion. He is the best source of market information for this specialized sector because of restrictions on sale and transfer.

Nothing in law prevents the WCK from acquiring new investments or redeveloping existing assets to enhance their revenue base. While there is no shortage of competent property professionals in Mombasa, obtaining the necessary investment finance on acceptable terms is more difficult. Restrictions on interest-led credit seriously restrict the list of potential lenders in a market dominated by conventional banks and finance houses. But a large portfolio with good prospects for profit can always attract enterprising businessmen. There are 500 properties on the books and the assessed valuation for urban property taxation purposes is only Ksh 300 million, a poor reflection of the market value of the land alone, without improvements or development (the basis on which property is assessed in Kenya).(21) The WCK believes that, realistically, they should collect 10 per cent of that amount as income, but actual performance is well below that figure. It seems that income has risen considerably since 1994 as a result of improved management.

21. Urban property in Kenya is taxed by local government on the basis of assessments that reflect the market value of undeveloped land, also known as unimproved site value.

The commissioners see themselves as responsible, caring custodians who have to maintain the spirit of compassion and meet social needs. The following items in the minutes of the 4 August 1993 meeting illustrate this.

> "Interest-free credit: The secretary tabled a letter from the beneficiary of a family *wakf* requesting an advance of Ksh 20,000 from his dues '… in order to meet family expenses and other necessary commitments'. The loan was approved."

> "Women's mosque: The commission had approved a request from the residents of Lamu for a plot to be allocated for the purpose of building a mosque for women. One commissioner reported that the original applicant was finding it difficult to raise funds for the project; however, he believed that a youth group was taking up the project and expecting to obtain funding soon."

These examples show that the WCK is engaging in wider developmental issues by acting in a pragmatic needs-driven way. Access to credit (let alone interest-free credit) and space for women's activities are the subject of intellectual discourse at national and international levels. A return on the money lent would be recovered through rent increases, in addition to enabling borrowers to meet urgent commitments such as paying school fees, making a downpayment on a property or investing in a small business. Some commissioners are astute, prosperous businessmen in their own right. The exact nature of the need will have been discussed discretely and informally beforehand by the applicant and a trusted commissioner. The women's mosque was considered a worthwhile venture because it would also be available for adult classes, vocational training for girls and social functions. Through such decisions, we see the WCK slowly developing policy by creating precedents; although unwritten, it is nonetheless an evolving framework guiding future responses to similar requests.

A more intimate appreciation of the assets portfolio can be gained by analyzing the contents of the register which, by law, the WCK must keep as a record of all trusts either in its care or in the care of various trustees.

c. The register

The *wakf* register, kept in the chief *kadhi*'s office, is different from conventional registers in that entries consist of actual deeds pasted into the book. In 1994, there were 494 entries, corresponding to the WCK's estimate of 500 properties. The numbers change as new trusts are created, old houses collapse and, occasionally, properties are acquired by the government for public works, or fall into the hands of foreign investors.[22]

There are more family *wakfs* than public ones, since a founder's primary concern is the security of his or her progeny (especially unmarried daughters and widows, who are extremely vulnerable in a society where economic opportunities for women are limited). Although the law separates the two types of endowment, it does not preclude interchange, either through succession (the usufruct passing to the needy once the bloodline is exhausted) or through leasing property to another organization dedicated to public service. Another approach is to divide one's possessions into two portions, one going to a family *wakf* and the other to a public *wakf*.

22. See the Kenyan monthly, *The Message*, March 1994.

The register reflects the cosmopolitan and socially diverse nature of Mombasa and other Kenyan coastal towns and the general configuration of power and authority in the community during the first half of the twentieth century. The names listed indicate whether the donor was of African (Swahili), Arab or Indo-Pakistani descent. In terms of generosity or propensity to give, the Arabs come first, followed by Indians and then Africans – to be expected since Arabs formed the majority of property owners and Asians were fewer but also wealthy. Many of the names have now disappeared completely or become extremely rare. Also disappearing fast are place names, as landmark trees fall, old buildings collapse, vacant plots are built upon and streets are diverted.

The register shows a varied selection of assets, including town houses in prestigious Mombasa island neighbourhoods, suburban plots in Malindi and coconut groves in Lamu. Houses can be given with or without land, since an interesting feature of local land tenure is that buildings and trees can be held separately from the land.(23) The breakdown for the period 1927–90 is as follows:

- urban land with house(s): 80 per cent;
- house without land: 5 per cent;
- farm/orchard: 10 per cent; and
- other: 5 per cent.

Concern for the welfare of the departed is also evident. Several bequests are dedicated to the establishment and maintenance of cemeteries or to observing wakes and anniversary prayers. Family and clan cemeteries might be viewed as socially divisive, but they are also a great relief to the municipal budget(24) and are likely to be better maintained than public cemeteries. Sanitation projects have also benefited from *wakf* largesse, especially water supply, but no local founder thought of creating an endowment to build such unglamorous works as a sewerage or waste disposal facility!

The register shows a drastic reduction in *wakf* creation in recent years. From 1980 to 89, only 17 entries appear, as opposed to 31 in 1941 alone. This is less a case of declining piety and social responsibility than the availability of alternative methods of forming trusts, the popularity of one-time or front-loaded commitments overtly linked to the donor's name, and the low-key stance of the WCK. Lack of an evident professional approach to asset management is also a handicap. Despite all this, new endowments are created, existing ones are nurtured with a limited degree of success, and the WCK earns its keep.

d. Summary

The lesson to be learnt from a century of official *wakf* administration in Kenya is that where a large number of specialized philanthropic organizations exist, which share a common purpose but which use different styles and standards of management, it may not be a bad thing for the state to impose a regulatory superstructure. When a sacred or devotional dimension is involved, the law becomes somewhat complex owing to the interwoven ethical, moral and professional strictures. Although early colonial legislation, by attempting to streamline and reconcile varying

23. This is a legacy of customary tenure and is legally recognized both on the Kenya coast and in Zanzibar. It has the effect of distributing land rights over a wider citizenship base.

24. Family and clan cemeteries abound in old towns and are still in use in Mombasa, although they were abolished in Zanzibar in the early 1960s as part of integrationist policies. They form a vital stock of semi-public open spaces in a crowded urban environment and are popular with children because of the fruit trees.

classical interpretations of *wakf* law, introduced minor inconsistencies, by and large the resulting *wakf* regime has served the country well. Introducing compulsory registration, supervised by an independent commission, has lent the system a measure of credibility and legitimacy in the eyes of the public. The potential for bringing in additional revenues is enormous, but it does require professional expertise as well as the ability to gain political support and commitment to the cause.

IV. COUNTRY CASE STUDY: ZANZIBAR, TANZANIA

a. Endowments in a world heritage site

The durability of *wakf* endowments was severely tested in Tanzania from the early 1960s to the mid-1980s, when the country experienced a brief period as a socialist state. On the islands of Zanzibar, many private properties were nationalized, but those under *wakf* were spared, partly because an established state machinery regulated such endowments and partly because numerous families and social facilities depended on income from the trusts for their upkeep. The exemption was dictated by practical as well as religious considerations. The majority of *wakf* properties are in Stone Town, the capital city's ancient core, with the islands forming a separate state in the two-state union of Tanzania.

The use and management of trust properties is closely tied to Stone Town's status as a listed UNESCO world heritage site, a prestigious and widely sought after label in architectural and heritage conservation circles. Endowments, large and small, created by many individuals, have contributed much to the achievement of that prized status. They have created a pool of assets that provide income and sustenance for hundreds of families, and also a range of social facilities that house small businesses and generate work in maintenance, rehabilitation and the tourism sector. When Siravo prepared the current conservation plan and related conservation regulations,[25] he identified a positive relationship between house occupation and durability and suggested measures to make Stone Town an attractive, healthy place. A revitalized economy and good infrastructure were seen as critical. Proceedings from the conservation conference organized by the historian Abdul Sheriff in 1995[26] concluded that planning the future of Stone Town required a sensitive, bold approach, bearing in mind the new social dynamics, the opening up of the real estate market to foreign developers and speculators, and the emergence of new technologies.[27] One practical example of the work needed was the conservation and design manual authored by Steel and Battle.[28] A more recent work by Battle et al. explores the relationship between heritage conservation and poverty reduction.[29]

Our research approach in Tanzania was different from that in Kenya, with an emphasis on the use and misuse of assets by tenants and how rental income is distributed between administrative expenses and endowment objectives. The research is part of a larger project on tenant–landlord relationships and community-led regeneration.[30] Information was gathered from key informant interviews, focus groups, participant observation and rental market analysis. Policy-related data were obtained from official documents and semi-structured interviews.

25. Siravo, Francesco (1996), *Zanzibar: A Plan for the Historic Stone Town,* Aga Khan Trust for Culture, Geneva.

26. Sheriff, Abdul (editor) (1995), *The History and Conservation of Zanzibar Stone Town,* James Curry, London, 151 pages.

27. The liberalization of the property market has been documented by Mirza, A (1997), "Land management in Zanzibar", *Proceedings of the Seminar on Land Management in Africa,* Helsinki University of Technology Institute of Real Estate Studies, Helsinki.

28. Steel, Tony and Stephen Battle (1998), *Conservation and Design Guidelines for Zanzibar Stone Town,* UNESCO and Aga Khan Trust for Culture, Geneva.

29. Battle S, T Melin and A Forsman (2006), *Fighting Poverty in Historic Cities: An Example from Africa,* Aga Khan Trust for Culture and Sida, Geneva/Stockholm.

30. The research was done as part of the community-based rehabilitation project sponsored by the government with support from the Aga Khan Trust for Culture, the Swedish International Development Agency and the Ford Foundation.

b. Endowed assets and their use

The assets concerned are in the care of the *Wakf* and Trust Commission (WTC), which was revitalized in 1980 in order to bring under one roof government responsibilities for inheritance, endowments, obligatory alms and religious affairs. Although some observers have suggested replacing the commission with a new body, there is no consensus on the form and functions. It is clear, however, that the government has a role to play and the present commission is discharging an important function. The present WTC merely streamlines functions that have existed within government machinery for more than a century.

In 2003–04, a preliminary inventory was prepared of buildings in Stone Town under the care of the Government Housing Department (which manages the public housing stock) and those under the WTC:

- *wakf* tenants: 537 names;
- housing department: 1,399 names;
- standing buildings: 1,700; and
- number of doors: 2,400.

Verification took some time and still continues. Many buildings, for instance, have more than one front door, each bearing an identification number. Such exercises are difficult and usually have unforeseen consequences, some with political undertones. Non-payment of rent, sub-letting and illegal transfers are likely to be uncovered, and powerful individuals may not want to cooperate. Descendants of the original founders and beneficiary institutions, however, are not interested in who occupies what property as long as they receive a regular income from the WTC.

The population of Stone Town, estimated at 24,000 in 1992, consists mainly of renters (two households out of three) on verbal monthly tenancies. However, in recent years the trend has been towards greater owner-occupation.[31] Many households lack reliable water supply and sanitation facilities and 42 per cent share water taps. In 2003, about half the households earned less than Tsh 60,000 per month (US$ 1 = Tsh 1,100). There are many extended family households and a relatively high proportion of these are headed by women.

Two out of three renters are public sector tenants, mostly poor people living in multi-family tenement houses and sharing such facilities as toilets, kitchens and yards. These crowded conditions invariably generate tensions, although violent incidents are rare. In a series of group discussions, tenants of a house near the central market, with a variety of backgrounds, said they appreciated the convenience of the location but expressed concern about the dilapidated state of the building and the frequent conflicts (the front door being left open at night, children messing up the common facilities, single women bringing men friends and relatives into their rooms). They were not necessarily the original tenants and it was difficult to differentiate between genuine relatives and assignees/sub-tenants. Some ground floor rooms had been converted to commercial use, which is a common occurrence in such buildings. Rents fall into arrears when there is no work, again a common situation, and some tenants had been in arrears for many months. To make things worse, the WTC had recently raised rents by a factor of two and a half.[32] However, fear of eviction was not an issue because the WTC was considered a reliable and sympathetic landlord. Uppermost in tenants' minds was security of person and

31. In a recent survey, Knippel reports that owner-occupancy rates increased from 24 to 36 per cent in the period 1992 to 2003. See Knippel, Verena (2004), *Baseline Survey of Zanzibar Stone Town – Basic Analysis of Data,* Aga Khan Cultural Services, Zanzibar, page 9.

32. The increase was from Tsh 2,000 to Tsh 5,000 per month.

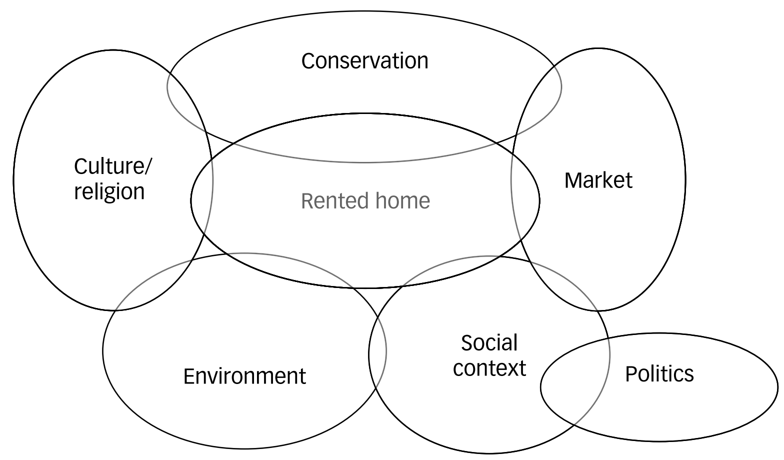

FIGURE 2
Endowment resources as family and social assets

possessions, the availability of water and other services, and the ability to pay rent regularly.

Tenants wanted more space, a better living environment, improved infrastructure (especially water supply), security and, ultimately, ownership of their own house. But they were suspicious of the suggestion that they should move out temporarily while major repairs were carried out. And by virtue of its mandate, the WTC is precluded from selling properties unless the proceeds are applied to the original intended purpose of the endowment. However, it is possible to grant a medium-term lease, say 10 years, to sitting tenants who can afford it, which would give a measure of security to tenants without prejudicing the long-term interests of the endowment. Such arrangements exist informally, as tenants are encouraged to repair their apartments within an agreed cost limit and then recover the money through rent deductions over a period of time. Discussions and trials have started on a 10-year lease designed specifically for medium- and low-income tenants. One concern is whether tenants should be allowed to transfer their leases and how the resulting capital gains could be shared.

Another concession under consideration was house committees to promote tenants' interests, coordinate building upkeep and repairs, mediate between tenants when disagreements arise and generally develop responsible tenancy. It was apparent that tenants would need help to develop the self-confidence and skills to deal with government officials outside the immediate circle of the neighbourhood; to collect and manage money (opening a bank account is almost impossible without corporate registration); and to keep and maintain collective records.

c. Policy context

Wakf properties are subject to national laws that affect urban property and housing. A Zanzibar housing policy launched in the mid-1980s was followed by a rash of new land legislation in the 1990s, the most important from our point of view being the Land Tenure Act and the Registered Land Act. These abolished freeholds, introduced a form of perpetual leasehold known as the RTO (right to occupancy) and established the office of the Registrar of Lands.[33] The housing policy has served the country well. Buildings in Stone Town have provided accommodation for all income groups, presenting good examples of mixed-income neighbourhoods. New areas in the suburbs have been opened up for settlement and squatter areas provided with water and other basic services. A flexible approach to planning has enabled informal economic activities to be established by residents in or near their houses. A revision of the housing policy is currently underway. One likely casualty is rent control, which has been in force since the colonial times but which is now seen as a hindrance rather than a progressive pro-poor policy instrument.

The WTC operates under the *Wakf* and Trust Property Act 1980. Chaired by the chief *kadhi*, and serviced by a commission secretary, it is an autonomous body capable of conducting land transactions independent of the government. The commission must maintain a register of all *wakf* properties in the country, private or public. Properties under their care may not be demolished, developed or transferred without approval, although the commission has delegated the power to oversee approvals to the courts, which raises the level of transparency in an otherwise market-driven environment. A lease or transfer for a period exceeding one year is invalid unless approved by the commission. These restrictions, and the requirement that the wishes of the founder regarding use are respected, must not be allowed to diminish the WTC's responsibility to ensure that the properties are managed according to commercial principles. In Zanzibar, an additional complication is the government's desire for affordable housing for poor people. Striking the necessary balance cannot be easy for the commission. Apart from ensuring that its own records are in order, the commission may also call on independent trustees to produce relevant accounts or documents.

Related policies are concerned with poverty reduction and heritage conservation. The poverty reduction plan released in 2001 emphasizes, among other things, greater investment in health and education and also highlights the importance of community-based projects and community priorities. Efforts to make decent shelter available to the poor include rent restrictions and heavily subsidized rents for civil servants and other citizens in public housing.[34] A complex three-tier rental market has emerged as a result.[35] Poverty is also tackled through *wakf* endowments through concessionary rents, regular payments to beneficiaries and support for cultural and educational facilities. Reconciling the inevitable overlaps between planning, conservation and delivery of municipal services is left to the Stone Town Conservation and Development Authority, which has developed strict rules to guide redevelopment and the maintenance of the town's character.[36]

d. Management approaches

The administration of endowments is only one of the WTC's functions, albeit the best known to the public. On behalf of deceased founders, they look after urban properties, farms, mosques and other assets on the

33. It was not until 2006 that the Registrar of Lands was finally appointed, mainly because of difficulties in recruiting a suitable legal professional.

34. Zanzibar Ministry of Finance and Economic Affairs (2001), *Zanzibar Poverty Reduction Plan*, Zanzibar.

35. The three-tier market is the result of expatriates paying rent in foreign currency (sometimes several months or years in advance), private sector landlords charging market rents to local tenants, and subsidized public housing.

36. The Stone Town Conservation and Development Authority (STCDA) is an autonomous body charged with maintaining the authenticity and integrity of Stone Town. It has to reconcile the tension between conservation and redevelopment, which is dictated by cultural and economic forces, both of which are very strong.

two main islands of Unguja and Pemba. Departmental records list 455 managed buildings on Unguja, 90 per cent in Stone Town and the rest clustered in neighbourhoods within three kilometres. There are 655 tenants officially known to the WTC, which suggests unregistered tenants, as some buildings can accommodate numerous tenant families and businesses. The department is developing a maintenance policy based on past experience, to arrest the rapid deterioration of assets under their care. They used to let tenants undertake repairs but some invested a lot of money in their houses and therefore demanded long leases to recoup the costs.

The commission has five departments: religious affairs, inheritance, administration, finance and endowments. The last is the best known to the public because its work affects so many people and assets. A reverential aura surrounds *wakf* property, probably as a result of its association with compassion, virtue and prosperous times gone by. The 11 employees in the department perform all the labour intensive tasks related to the management of assets and the distribution of benefits and feel overworked, especially as everything is done manually using very old registers and ledgers. It will not be long before the quaint and crowded beachfront offices in a landmark historic building are over-run by laptops, broadband and other digital gadgetry. Training in efficient and modern methods of property asset management is badly needed.

Other than a meagre grant from government to pay for salaries, the endowment portfolio is self-financing. In 2001, the commission collected Tsh 34.9 million, keeping 10 per cent as their fee and distributing the rest to beneficiary families and institutions. The distribution effort involves complex formulae to ensure equity according to the relevant *wakf* deed and the law, especially considering that third or fourth generation heirs still expect benefits. Following a slight drop in revenue, rents have again been raised, and income has improved. Although Tsh 3.5 million was earned in 2001, expenditure on repairs was Tsh 6 million, which is why rents were raised. The current minimum rent is Tsh 4,000, while only a decade ago rents were as low as Tsh 10–20 per month. But the officer in charge of houses says that raising rents is not easy, as government discourages the practice and objected to the last raise. Tenants themselves resist any attempts to raise rents: "*If my salary is only 3,000 (shillings), where will I get the money to pay a rent of 5,000*?" Government wanted parity with their own rents, but the WTC refused because government rents are much too low and *wakf* houses are in any case private property. The expected income (i.e. the 10 per cent management fee) in 2002 was Tsh 9 million and the commission found this grossly inadequate to meet administrative and maintenance costs. These relatively small amounts do not in any way reflect the value of the assets in the market; rather, the income is an indication of the extent to which the authorities go to help the poor at the expense of asset durability.

No strategic plan was in place at the time the fieldwork was undertaken, but senior WTC officials would like to see a variety of improvements such as a special fund for maintenance, short training courses to develop a variety of skills, and external monitoring to ensure satisfactory performance. More spacious and comfortable office accommodation would also be welcome.

e. Summary

Wakf endowments are an integral part of Zanzibar's tenure laws and an important component of Stone Town's stock of assisted housing and social infrastructure. The institution has survived modifications and adaptations imposed by the colonial and subsequent governments to conform to the politics of the day. It has managed to house about one quarter of Stone Town's population and support mosques, schools, hostels and seminaries. It has provided jobs and workplaces in a situation where work is scarce and a salaried job is a rarity. Mixed use enables apartments to exist alongside shops, restaurants, small workshops and offices, which provide other types of benefits to residents. When the taps in town run dry, people depend on mosque wells for relief. The contribution of endowed infrastructure to the town's architectural heritage is also enormous. Endowed properties can stake a valid claim as contributing to the town's world heritage site status. But the accolade comes with responsibilities. Maintaining historic buildings is expensive and requires great skill. The tenants are poor and rents are well below market levels, leaving little for repairs and building upkeep after paying for administrative expenses and meeting endowment obligations.

Although relationships between tenants who share facilities are not always easy, a modicum of civil co-existence has evolved over the years, with no written rules. One of the challenges facing administrators is to use that informal understanding to promote self- management and similar participatory approaches. Another is to develop tenure innovations that will enable tenants to enjoy a measure of security without compromising the long-term interests of the endowment. Recently updated property laws could help in these efforts. The continued utility of rent control laws is, however, dubious, and the WTC sees them as a nuisance. Several cases are before the rent tribunal and the WTC finds it easier and quicker to reach an amicable agreement out of court. Another constituency that the WTC has to please is the large number of people and facilities to whom endowment proceeds must be distributed. They get frustrated when no regular income is forthcoming and occasionally threaten to take their properties out of the pool. WTC staff are therefore keen to learn more, improve working procedures and methods, and improve office facilities. But this is difficult to achieve without government support.

V. INSTITUTIONAL TRANSFORMATION: LOOKING TO THE FUTURE

a. Dominant cross-country themes

The people who establish endowments have a common desire to extend a lifeline to the poor, the vulnerable and the disadvantaged. Several dominant themes have emerged in our cross-country comparison. Although givers and founders in both Kenya and Zanzibar are concentrated in urban areas, especially the ancient cities and places such as Mombasa, Lamu and Zanzibar, the assets are spread over a larger area and include farms and vacant land dedicated to the benefit of urban kin and public facilities. Schools, colleges, places of worship, wells and cemeteries have benefited from both capital investment and regular payments to support upkeep.

The housing stock provides inexpensive accommodation to large numbers of people in densely populated areas, not to mention space for related functions such as shops, office space for small businesses, and storage. Given the proximity to the sea, endowed buildings have to house not only seafarers and fishermen but also retail outlets selling ship provisions, fishing gear and maritime services; and, of course, hotels, restaurants and other attractions demanded by tourists. The few farms on the register make their own contribution to urban life and the economy by providing food and fuelwood. The founders represent society as a whole and are not restricted to racial group or gender. Women have been givers as well as deserving recipients. Government has assumed a regulatory role in both Kenya and Zanzibar, with the intention of curbing mismanagement by trustees, preventing the illegal sale of assets and tracking any suspicious endowments that could undermine government authority. In Zanzibar, for example, no mosque can be built without the government's approval.[37] The aim is to regulate the number of mosques and also to ensure that investment in religious infrastructure will not be used for political ends.

An autonomous commission has existed in both countries since the early twentieth century, but autonomy is limited by dependence on government funding and on government's power to appoint commissioners after limited consultation with selected community leaders. Only in Kenya has the lack of consultation with the community at large been discussed. The commission in Zanzibar has other functions (inheritance, trusts and religious affairs) apart from endowments, and appears to be more robust, while the Kenyan one is less active and less well known to the public.

In both countries, a register of endowments specifying the founder, purpose, asset and beneficiary has been found to be an essential management tool, although the actual format varies. Proceeds from the assets on the register are not sufficient to cover administrative costs, and both governments have to provide for commission expenses in the national budget in recognition that it is part of the national infrastructure.

b. Popular perceptions and expectations

Although in Kenya mandatory registration applies mainly to east coast communities, the institution of *wakf* endowments is widely used in other parts of the country, especially among the Somali peoples in the north of the country.[38] "*It appears (therefore)…*", writes a lawyer practising in Mombasa, "*…that the intentions of the act were to vest the administration of all wakf property in the commissioners either directly or indirectly through the proposed trustees.*"[39] The *wakf* commissioners concede that there is a need to extend their mandate to other parts of the country and to create greater public awareness of the commission's work and the benefits of registration. That could help soften the uncooperative stance taken by some tenants and change public perceptions regarding the level of integrity and efficiency in the commission's operations. The negative view has to be seen in the context of expectations of the highest levels of propriety and business ethics as dictated by sacred and secular laws; of the respect due to departed founders and the sacrifices they made; and out of consideration for the poor, the institutions and the worthy activities that should benefit from the proceeds. Public disgust is expressed when reports

37. See reference 7. There is also a practical rationale to this prohibition in that where a neighbourhood or village already has a mosque, there is no sense in building yet another one, and the money would be better invested in a children's home or a health centre (interview with Mlamali Adam, London, 18 March 2007).

38. Section 2 of the *Wakf Commissioners Act* restricts the application of the act to only certain sections (mainly Sunni) of the Muslim community.

39. See Abubakar, Yusuf (2005), "Suggestions on how to improve the institution of *wakf* property", private Brief prepared for a local non-government organization.

emerge in the press about assets being abused or when public facilities entitled to endowment benefits are not well looked after.

The public expects the government, both in Kenya and in Zanzibar, to discharge its regulatory duties more diligently, especially by increasing the resources and powers available to the commission, so that assets are not allowed to deteriorate or be plundered by unscrupulous citizens. They also expect the commission to be more representative and to include lawyers and other professionals knowledgeable in management.

C. Conclusion

Important as the governance of endowments is, it is also necessary to look at the wider question of how *wakf* can weather political and market pressures. In Zanzibar, for example, rents have to be moderated to suit the government's housing policy and poverty reduction agenda. The WTC is a high-profile institution that the government takes seriously. In Kenya, a predominantly Christian country, the WCK is more of an oddity in the national institutional landscape, which keeps the Muslim population happy while providing social services and paying municipal taxes. This could make the institution extremely vulnerable were it not for the religious dimension and the constitutional freedoms to which minorities are entitled. Legislative reform is overdue in Kenya, and this is already on the commissioners' list of priorities.(40) Zanzibar too could do with stronger enforcement powers.

Wakf assets constitute a large portfolio that is partly in the market arena, which makes them an economic sector capable of expansion not only in terms of volume and capital worth but also in terms of generating work and adding value to related sectors such as the professions, construction, transport, the supply of materials and local government. Tenants pay heavily subsidized rents, but in the secondary rental market they reap huge benefits through sub-letting, premiums and "key money",(41) much to the dismay of commissioners and managers. Vacant plots, especially in Kenya's robust property market, offer tremendous possibilities for development. Demand for housing is insatiable and land for commercial and tourism sector developments commands high prices. All these phenomena present considerable potential for final recipients to reap increased benefits. But both the WCK and the WTC seem to lack the expertise needed to exploit such chances, which could help them build up a reserve to invest in social projects consistent with their mandate of protecting and promoting philanthropic activities. New areas could be explored in expanding work opportunities in poor neighbourhoods, vocational education and trade. Possibilities also exist in environmental programmes, human rights and the media. The wayfarers' homes and halfway houses of old (a few still exist) need to be able to cater to refugees and internally displaced persons who flock into towns for survival and employment. Encouraging new endowments to put money into credit schemes and training programmes could expand work opportunities for all.

Scholars and those in charge of national *wakf* commissions should clear the way for such innovations. Over the centuries, *wakf* endowments have demonstrated their durability and social utility in East Africa, and the institution is likely to keep reinventing itself to meet the challenges

40. This question was discussed during an interview with commissioners on 9 December 2004.

41. "Key money" refers to a lump sum paid under the counter by the prospective tenant to the landlord or outgoing tenant to secure the keys to the premises.

of the twenty-first century. It is important that it evolves to incorporate innovations consistent with growing concerns regarding equity, control of community resources and conflict-free co-existence between various income groups.

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