Chapter 11

KENYA

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Islamic banking and finance has existed for roughly a decade in Kenya but it only began to develop with significance in the past few years. According to Paul Muthaura, CEO of the Capital Markets Authority Kenya:

> "The global Islamic finance industry is expected to reach an overall value of USD 3.54 trillion by 2021, a remarkable 77% growth when compared to 2015. This anticipated rapid development of Islamic finance on the global stage is to a degree, being mirrored across Africa. In Kenya, this is exemplified by the support that the country's financial sector regulators have given to the on-going policy and regulatory reforms aimed at enhancing the penetration of Islamic finance, with the country now getting increasingly well positioned to become a hub for Islamic finance. Kenya's Islamic finance sector now constitutes three fully-fledged Islamic banks, four Islamic windows, two credit unions, one *takaful* company, one *takaful* broker, one re-*takaful* window and two capital market Unit Trust Funds."[1]

In 2016, Islamic Finance Advisory & Assurance Services (IFAAS) an international consultancy specializing in Islamic finance, in association with Simmons & Simmons (an international law firm), was commissioned to lead the Project Management Office (PMO) set up by the Financial Services Regulators Forum with the technical and financial assistance of the Financial Sector Development (FSD) Africa. The PMO was tasked with the development of an institutional, policy and regulatory framework for the Islamic finance industry in Kenya. It was given the mandate of addressing the general lack of awareness pertaining to Islamic finance in Kenya,[2] the dire need for human capital development, and to set up a National *Shari'ah* Governance Framework. In the Budget Policy Statement 2017 compiled by the National Treasury, it was stated that one of the aims of the government is to implement additional measures to further strengthen the financial sector. One such measure listed in the policy statement is:

> "Enhancing Kenya's position as an Islamic finance hub by putting in place an Islamic Finance Regulatory Framework through the recently launched Islamic Finance Steering Committee chaired by the Cabinet Secretary, National Treasury and Islamic Finance Consultative Committee."[3]

It was intended that in 2017 the focus will be on anchoring the key amendments to the relevant financial sector legislation to allow for the recognition of Islamic finance in Kenya. However there has been very slow progress on the development of Islamic finance in 2017 perhaps because of the government's focus on the general elections that took place on the 8th of August 2017, which was then held again on the 26th of October following the Supreme Court ruling on the 1st of September annulling the August election. An honest assessment of the socio-political climate in Kenya indicates that progress on the Islamic Finance front will, optimistically, resume sometime in 2018 but no significant advance has been undertaken so far.

In light of the above summary, and to understand the pertinence of effective s*hari'ah* governance of Islamic finance in Kenya, we must first set out the position of Islamic finance in Kenya today as prepared for this chapter by the Capital Markets Authority (CMA) in Kenya under the directive of its CEO, Paul Muthaura. The position set out is as of April 2017 but remains the same to date.

ISLAMIC FINANCE IN KENYA: FACTS, DEVELOPMENTS AND PROSPECTS[4]

Key Objectives of Establishing Islamic Finance in Kenya

- Enabling Islamic finance to play an active role in the country's economic development and be an enabler for achieving national goals
- Ensuring that Islamic finance is inclusive, regardless of faith or background
- Increasing financial inclusion and deepening by way of diversification
- Developing regulations and frameworks that are unique to the jurisdiction, prepared in accordance with the country's context
- Creating a level playing field in relation to the regulatory treatment and taxation of Islamic financial institutions and their products
- Increasing foreign direct investments and diversifying sources of funding for infrastructure projects
- Building and enhancing economic relationships with trade partners
- Positioning the country to play an active role in Islamic finance

Guide for Reviewing Kenya's Islamic Finance Status

- Make changes only when and where required, in accordance with the country's Constitution
- Keep the changes as simple as possible to minimize disruption to the system

- Provide recommendations using rationale, international benchmarks and industry best practices
- Facilitate the policy change process, with technical assistance and capacity building for stakeholders.
- Create a level playing field between conventional and Islamic finance

Matters Currently Being Addressed to Allow for Islamic Finance in Kenya

- Alignment of the existing legislative framework to recognize Islamic finance as an alternative value proposition available to all prospective investors
- Amendment of the Financial Sector legislation (Banking, Capital Markets, Insurance, Retirement Benefits and SACCOs & Microfinance) to enable regulators to incorporate and cross-refer to the standards of AAOIFI and the IFSB in respect of Islamic securities
- Establishment of a legal framework for *sukuk* issuance to create a clear basis for the issuance of sovereign and corporate *sukuk*
- Development of a clear legal framework for SPVs underpinning the issuance of *sukuk* in relation to their establishment, management and accounting treatments
- Amendment of the Asset Backed Regulations to specifically allow SPVs to issue Islamic securities and *sukuk*, thereby encouraging sovereign and corporate *sukuk* issuances
- Amendment of the Public Management Finance Act (or such relevant Act) and related regulations to provide the Government with specific authority to issue *sukuk*
- Development of Islamic liquidity management solutions within the market
- Ensuring tax neutrality of Islamic financial instruments, to make Islamic products to be equivalently treated to Conventional products

- Development of s*hari'ah* governance guidelines and incorporate references to the relevant AAOIFI s*hari'ah* governance guidelines, thereby maintaining investor confidence

Progress Thus Far

- Financial Sector Regulators (Capital Markets Authority, Central Bank of Kenya, Retirement Benefits Authority, Inland Revenue Authority & Sacco Societies Regulatory Authority) agreed in 2015/16 to have a joint approach to accommodating Islamic Finance as a complementary form of Finance to conventional Finance
- In late 2016, with the patronage of the National Treasury and the support of FSD Africa, the Islamic Finance Project Management Office (PMO) was established
- PMO's membership is from secondees from the Financial Sector regulators and the consultants (IFAAS & Simmons & Simmons).
- On October 14 2016, PMO was officially launched, with the National Treasury taking a leading and coordinating role in supporting its activities
- PMO is housed at the CMA Offices
- Two Key Governance Committees (the Islamic Finance Steering Committee (IFSC) – the Apex Committee composed of Financial Sector Regulators or their nominated representatives and Chaired by C.S. National Treasury and the Islamic Finance Consultative Committee (IFCC) – composed of market stakeholder representatives and the National Treasury and Chaired by the National Treasury were also launched (although they have not been operationalized)
- Capacity Building has been done for representatives from KRA, AG's Office, the National Treasury, Financial Sector Regulators

- As a representative of the Financial Sector Regulators Forum (FSRF), Kenya, CMA is now an Associate member of the Islamic Finance Services Board (IFSB)
- Proposals to allow for amendments to the relevant Financial Sector Acts to facilitate operationalization of Islamic Finance (except those on Banking) have already been pronounced by the C.S. National Treasury

Pending Activities

- The National Treasury will in due course gazette names of the IFSC Members (a draft gazette notice has already been submitted to the National Treasury
- Amendments to the Banking Act to allow for operation of Islamic Banking/Finance
- More capacity building for the market
- Firming-up of *Shari'ah* Governance infrastructure

With regard to *takaful*, new guidelines were drafted by the Insurance Regulatory Authority (IRA) to allow insurance companies in Kenya to open *takaful* windows in similar fashion to conventional banks in Kenya opening Islamic banking windows.[5] The Authority recognizes that *takaful* is one of the ways to increase insurance penetration in Kenya and increase the contribution of insurance to the country's GDP.[6]

Takaful Insurance of Africa, Kenya's first fully-fledged *takaful* firm was launched in 2011. First Community Bank also operates a *takaful* scheme whereas Kenya Reinsurance Corp has developed a s*hari'ah* compliant reinsurance product. Once the Guidelines come into force it is likely that new *takaful* windows will come into being.

The Insurance (Amendment) Act 2016 signed into law by President Uhuru Kenyatta in January 2017, was a deliberate measure to address market concerns and provide an enabling environment for Islamic finance to flourish.[7] This came soon after the Capital

Markets Authority was admitted by the Council of the IFSB as an associate member of the board. The Insurance (Amendment) Act 2016 reads: "The new law provides for the licensing and regulation of *takaful* insurance business in Kenya in order to encourage international investment in this sector, which is a target area for the Nairobi International Financial Centre".[8]

Challenges Limiting the Growth of Islamic Finance in Kenya

It is essential to highlight four important factors that directly impact Islamic banking and finance in Kenya:

A. Kenya is a predominantly Christian nation. Muslims are a minority, concentrated at the coastal region and otherwise scattered throughout the country. Muslims comprise 11% of the entire population.

B. The banking and financial system is conventional and all the laws and regulations that govern the banking and finance sectors facilitate such conventional operation. For Islamic finance to take root and flourish in Kenya, major changes will have to be made in the legal, regulatory, tax and other related areas to ensure it can function well, which obviously includes, compliance with the s*hari'ah*. The question of s*hari'ah* governance cannot be adequately addressed if the legal and regulatory framework governing Islamic banking is unclear and in question. Specific laws and regulations pertaining to IBF must be enacted and put in place. Yet for this to happen Kenya must have the legal and technical expertise to enact and implement such laws and regulations. There is currently a huge gap in skilled and qualified persons in the IBF sector in Kenya and it is one of the many challenges Kenya faces in the development of IBF.

C. Kenya is a very corrupt country. There is no other way of stating this fact. Any credible report gauging the levels of corruption in nations will indicate this fact about Kenya. It is frequently among the most corrupt countries of the world according to the Corruption Perceptions Index.[9] A simple Google search will also furnish numerous examples of news stories highlighting this issue.[10] Many public figures, leaders, and important institutions including the judicial system, are corrupt and corruption is a fundamental part of life in Kenya. This leads one to ask whether Islamic finance can take root in a jurisdiction that is not only essentially corrupt, but has no concept of social welfare and is anti-Islamic in most of its established practices.

D. Even if we were to ignore the aspect of corruption, most judges have minimal, if any, knowledge of Islamic banking and finance and therefore could not effectively rule on a case if it came before them. Given Islamic finance inevitably entails the application of laws and the engagement of legal processes, how can one say that Islamic finance in Kenya has been or is Islamic compliant if a general lack of awareness and a lack of expertise and know-how taints its applications or outcomes? Even if an alternate dispute resolution (ADR) mechanism is set up for IBF this does not rule out IBF transactions being subject to litigation. It is apt to note that in all of this, the consumer will no doubt bear the extra costs of ADR or litigation due to the deficient system and lacking of expertise. Ultimately to suggest that corruption be eliminated from Islamic finance in Kenya is unrealistic and unlikely to occur. It is simply a fact we must contend with for now.

THE CURRENT PRACTICE OF *SHARI‘AH* GOVERNANCE IN KENYA

The Example of Kenya Commercial Bank

In Kenya it is the responsibility of each individual bank to undertake and ensure effective s*hari'ah* governance of its Islamic banking and finance transactions. The following example is set out as was sent to me by the Head of Islamic Banking at Kenya Commercial Bank (KCB) in Kenya at the time of conducting this research.[11] It is a first-hand account of the s*hari'ah* governance practice in Kenya which is determinable by each individual bank or institution offering Islamic finance products.

> "The practice of sound *Shariah* governance entails that the provisions of a *Shariah* governance framework that seeks to:
>
> - Set out the expectations of the institutions on governance structures, processes and arrangements to ensure adherence to defined *Shariah* guidelines in terms of operations and business activities.
> - Provide a comprehensive guidance to the *Shariah* Advisory Board and management of the institutions in discharging its duties in shariah matters in functions relating to *Shariah* review, *Shariah* risk management and *Shariah* research among others.
>
> At KCB, the *Shariah* Advisory Board consisting of scholars well-versed in *Shariah* and commercial matters do offer us support in product development, exercise oversight and undertake periodic review/audit of our transactions and help in *Shariah* interpretations in the event of disputes between ourselves and clients.
>
> Internally, we have a *Shariah* auditor who is the link between the *Shariah* scholars and the bank's management in matters relating to *Shariah*. The auditor follows up on the

implementations of the scholars' directives and also reports to the scholars on gaps and omissions he/she notes in the bank's *Shariah* activities."[12]

The Example of National Bank of Kenya (NBK)

NBK has ensured its products comply to s*hari'ah* by establishing a competent and reputable *Shari'ah* Supervisory Board (SSB) made up of 4 s*hari'ah* scholars appointed and employed by the bank. NBK has employed a s*hari'ah* coordinator Swaleh Rajab, who is the head of s*hari'ah* department and the secretary of SSB who supervises day-to-day running of Islamic transactions in the bank. National Amanah, which is the name of the Islamic banking window of NBK, does not use any product before it is studied, scrutinized and approved by its SSB. Before the end of the year auditing of all transactions is done by the *shari'ah* coordinator, who then passes the documents to SSB who makes sure they were *shari'ah* compliant. Income that is generated from sources or through processes that are not *shari'ah* compliant is placed into a charity pool to be used at the discretion of the SSB.

It is to be noted that all *shari'ah* board members and heads of the *shari'ah* department are selected and employed by the bank and serve the interests of the bank. Independence of *shari'ah* board members and *shari'ah* governance as a whole is highly questionable. This falls short of the AAOIFI standards. There is also neither disclosure of the *shari'ah* governance process or of any relevant documents nor publication of *fatwas*, if any, issued. The entire *shari'ah* governance process in Kenya is kept confidential and not exposed to any central or independent and qualified *shari'ah* scrutiny.

LEGAL ISSUES PERTAINING TO *SHARI'AH* GOVERNANCE OF ISLAMIC FINANCE IN KENYA

Whilst Kenya has been hailed as a leading Islamic financial and investment hub in East Africa,[13] the industry experienced subdued activity in the Islamic finance sector in 2017.

The deficient regulatory, legal and tax provisions is one reason. The placing of Imperial Bank and Chase Bank Kenya (Chase Bank) under receivership by the Central Bank of Kenya in 2016, was another factor which caused major concerns to depositors and investors alike. The fate of Imperial and Chase banks had a nation-wide effect on the banking sector.[14]

Directly pertaining to Islamic finance, the Central Bank of Kenya, which regulates the banking sector, accused Chase Bank of using the Islamic banking window that Chase Bank operated to grant unsecured interest-free financing to insiders under the guise of Islamic financing. A misunderstanding between the former directors of Chase Bank and their auditors on how to classify Islamic banking assets led to a restatement of the financial reports of Chase Bank. The (former) directors of Chase Bank deflected blame by pointing fingers at their audit firm for 'professional ignorance' regarding Islamic banking products. The directors argued that the auditors misunderstood the principles of Islamic banking. Whatever the real story, this case highlights the need for a better understanding by all relevant professionals of Islamic finance products including their structures, the accounting treatment and classification of assets. The AAOIFI and IFSB standards both set out auditing of Islamic finance products as one of the requirements for *shari'ah* compliance and therefore this case pertains directly to *shari'ah* governance. Chase Bank should have ensured that its auditors undertook their duties with due diligence as part of proper *shari'ah* governance. It is also part of an Islamic banking's operation and management structure to ensure that Islamic banking is not used as a window dressing scheme for unsecured loans because to do so taints or violates, depending on the accuracy of the accusation, not only that particular bank, but Islamic banking as a whole. The accusation, if false, tarnishes Islamic banking in Kenya through negative publicity, and if accurate, is cause for major concern because it means Islamic banking, through Chase Bank in this particular case, was a means of window dressing unsecured loans under the guise of Islamic banking. Moreover, if the bank in question had to be placed under receivership before the above issues came to light, this indicates a lack of proper *shari'ah* governance structure within the individual bank practicing Islamic finance, not to mention the apparently absent internal *shari'ah* review mechanism as per the IFSB guidelines. The issue is not solely pertaining to the accounting standards but rather whether the *shari'ah* governance structure in place ensures proper accounting skills and standards to prevent any dubious transactions under the guise of Islamic banking. The fact that Chase Bank was placed under receivership means that the accusation will never be established or extinguished but it does raise a serious concern.

Given that actual knowledge and awareness about Islamic banking is minimal in Kenya, the perception of Islamic banking is key and largely influential amongst ordinary men/women and potential customers of this nascent industry. Scandals and negative exposure involving Islamic banking such as that of Chase Bank must be prevented and I believe it is part of the aims of *shari'ah* governance to do so. This is perhaps why the AAOIFI and IFSB standards are broad and comprehensively cast.

Another leading bank in Kenya, National Bank of Kenya, which offers *shari'ah* compliant financing was also recently embroiled in a dispute with one of its borrowers over the nature of the facility that the borrower was granted.[15] The borrower, Diba Hussein Dado, claimed National Bank illegally changed his facility from a fixed term loan to a revolving *musharaka* loan, effectively raising the interest rate from 18.5% to an Islamic profit-sharing equivalent of 19.5%. The terms of the facility required Mr Dado to pay back the capital amount plus profit which in effect was equivalent to a loan at 19.5%. Mr Dado, on the other hand, claims that he only agreed to a regular Islamic financing arrangement under which the borrower and National Bank were to share proceeds of its business at a ratio of 55.3 to 44.7 respectively. The bank argued that the borrower was aware of the nature of the facility granted and that the bank had explained the terms to the borrower on several occasions. Situations like this are detrimental to IBF in Kenya, and can easily be prevented by proper *shari‘ah* governance in the bank. Such situations could be further prevented or eliminated if a National *Shari‘ah* Advisory Board is set up to guide practitioners and consumers of Islamic finance on the tenets of *shari‘ah* compliant finance. To ensure such cases do not arise, it is the role of proper *shari‘ah* governance through effective disclosure by the Islamic banking window of the nature and type of the facility being extended to the customer. It is also likely that the facility in this case was simply a window-dressed loan at, in fact, a higher interest rate that was costlier for the Islamic banking customer whilst being contrary to the true nature of a *musharaka* agreement. In a *musharaka*, one party in the partnership is not required to pay back the full capital plus profit at a fixed rate regardless of the fate of the business venture. Was there a possibility in the terms for the customer not to pay back anything in case he made a loss? And would the National Bank of Kenya have borne such loss with the customer? Was the agreement drawn up to reflect a *musharaka* in substance or was this a guise so as to make the transaction "*shari‘ah* compliant"?

FACTORS AFFECTING THE *SHARI‘AH* GOVERNANCE OF ISLAMIC FINANCE IN KENYA

Whilst the importance of training and having qualified personnel is slowly gaining recognition and there are regular short courses and seminars taking place in Islamic finance including *takaful* (most banking conferences in the region also include Islamic finance as a topic of discussion) the concern remains as to whether these "add-on" trainings and courses are sufficient to equip industry personnel with the requisite skill and expertise required to ensure the strict adherence with the principles of Islam stemming from a deep understanding of the *shari'ah* and the *maqasid al shari'ah*? It is not verifiable if the *shari'ah* scholars themselves sitting on the *shari'ah* governance boards of banks offering IBF products in Kenya are properly qualified. Have they studied Islamic economics and Islamic finance? Do they have industry experience? Where were they trained? What are their qualifications that deemed them fit to be appointed a *shari'ah* scholar? How credible are their qualifications? These questions are pertinent since the credibility of IBF and the proper *shari'ah* governance of Islamic finance depends on appropriately qualified and properly trained *shari'ah* scholars. Yet, all this remains unquestioned, let alone answered, in the haste to make Nairobi an Islamic finance hub. This is also one of the glaring differences between a jurisdiction like Malaysia and Kenya.

Market players have repeatedly called for the government to create and regulate a national framework for Islamic finance. This will create uniformity and consistency in the standards set, rules and requirements established as well as in the advice given on all matters pertaining to IBF and regarding *shari'ah* governance of IBF. I need not make a case for a national *shari'ah* governance framework since it has proven highly successful in Malaysia, a leading jurisdiction of Islamic finance globally. In this regard, the Kenyan government has been urged to consider emulating Malaysia's model of separate regulatory frameworks for conventional banking and *shari'ah* compliant banking.[16]

It is noteworthy that in neighboring Uganda, the law was amended in 2015 to allow Islamic banking in the country and it requires the establishment of a Central *Shari'ah* Advisory Board in the Central Bank of Uganda and they are in the process of introducing further legislations. If all the countries within East Africa make relevant amendments to their banking and other relevant legislation to allow for Islamic finance we may see regional cross-border Islamic finance transactions taking place in the future which would mean greater growth and development in this sector. However, proper and effective legal, regulatory and *shari'ah* governance framework in each country is an imperative pre-requisite for the sustainable growth of the sector.

CONCERNS PERTAINING TO THE DEVELOPMENT OF ISLAMIC BANKING AND FINANCE IN KENYA

Based on the discussions above, I will outline and summarize some of the main concerns I have with the development of Islamic banking in Kenya. These concerns can potentially be addressed through appropriate *shari'ah* governance:

1. The current mode of *shari'ah* governance Islamic finance in Kenya is decentralized whereby each Islamic banking institution or window caters to its own needs for *shari'ah* guidelines and governance. Each institution with IBF business has its own *shari'ah* scholar and compliance mechanism. No overarching or centralized *shari'ah* council that oversees or ensures *shari'ah* compliance is yet in existence. In the authors opinion this is a cause for concern and every effort must be made to create and adequately equip a national *shari'ah* governance framework, mechanism and system. If a National *shari'ah* Supervisory Board, for instance, is established in Kenya, it will be a step in the right direction providing the necessary momentum for Islamic finance to grow by creating an enabling environment and avoiding cases such as that of Chase Bank mentioned earlier.
2. As far as laws and regulations pertaining to Islamic finance in Kenya are concerned, there is no specifically tailored body of positive law or regulations for the operation of Islamic banking. Exceptions are made for IFIs or IF windows to operate which means that they are simply exempt from the application of certain banking, tax, insurance, and other laws and regulations that would otherwise impede their operation. It is worth noting that *shari'ah* compliant finance is only exempt from

some of the provisions of the Banking Act and other laws that regulate the conventional banking system. This however raises the serious concern as to how an industry comprised of transactions and operations requiring compliance with sometimes intricate rules and principles of the *shari'ah* is to be built on a set of exceptions to laws created to govern conventional banks and other financial institutions? What if the exception made comes into conflict with that specific or other law in Kenya? What if the exception/s comes into conflict with the wider objectives (*maqasid*) of the *shari'ah*? Is a further exception to be made? What if the rule is revoked or comes into question, is the exception automatically void? What if an Islamic banking transaction is the subject of legal contention in court and the judges are not trained or able to properly consider the issues given that they know little of *fiqh* and the *shari'ah*? There is no single report or person I have spoken to in Kenya that has raised these fundamental questions which is in itself a cause for concern.

3. As indicated by the Capital Markets Authority summary set out in the beginning of this chapter, legislative amendments, alignments, *shari'ah* governance guidelines, appropriate frameworks and developments have been proposed and are urgently required ahead of the much awaited sovereign *sukuk* issuance. Yet much of this remains unaccomplished as I write this chapter in June of 2018 and thus begs the question, if IBF has been in existence in Kenya for a decade to date, what *shari'ah* governance guidelines, frameworks and legal basis has it being operating under? How can we say that the transactions and IBF operations in the past ten years have been *shari'ah* compliant if there is no proper *shari'ah* governance framework or verifiable processes in place?

4. The *shari'ah* scholars serving on the *shari'ah* supervisory boards are all appointed by the banks and serve the interests of the bank. All their reports are confidential, and they do not disclose any of their proceedings or rulings for scrutiny. It is not clear if the Central Bank scrutinizes the reports of the *shari'ah* governance boards and if it did, it is unlikely that the person doing so would be qualified since the Central bank has no *shari'ah* board or *shari'ah* scholar sitting on its board of directors.
5. The interest to develop Islamic finance in Kenya is very much a trend-based initiative in the explicitly government stated hope of increasing its national GDP and FDI flows. This is a serious concern in a country that frequently tops the corruption indices. Islamic finance is a religious imperative and duty, not an option or a trend to be taken up by nations to serve their agenda of raising their GDP. I am of the view that Muslims should not facilitate such use of Islamic finance unless and until it is clear there is a proper *shari'ah* governance framework in place for the operation of Islamic finance in line with the objectives of the *shari'ah* and in direct facilitation of the welfare of Muslims and the public interest in general. It is imperative that intelligent and authoritative voices speak out against such abuse of the concept of Islamic finance. The Muslim countries helping Kenya raise its GDP and FDI flows through IBF whilst ignoring its corruption levels further entrenches corruption in Kenya because this allows the government to continue siphoning off the country's taxes and resources whilst it uses alternative investor funds through IBF to fund projects that taxes should be paying for. All this occurs whilst the welfare of the common Kenyan and Muslims is still as neglected as ever. It is my firm opinion that a transaction or a small portion of a banking system cannot be *shari'ah* compliant when the overall system is corrupt and spreads *fasad*[17] instead

of eradicating it. This is in clear contradiction of the teachings of the Quran and *sunnah*.

CONCLUSION

It is clear that Kenya has a long way to go towards attaining a proper *shari'ah* governed IBF industry. The first-hand examples of *shari'ah* governance in the two banks set out above plus the legal disputes highlighted indicate a rudimentary *shari'ah* governance mechanism in banks offering IBF. In fact, the legal disputes and issues arising therefrom strongly indicate that *shari'ah* governance of IBF in Kenya falls way below the AAOIFI and IFSB standards. Taking this point a step further, in the context of Kenya as set out at length in this chapter, the author strongly suggests that AAOIFI and IFSB establish a higher benchmark and stricter *shari'ah* compliance rules for Kenya (and other nations who mirror the corruption levels of Kenya) and that such benchmark and standards be made mandatory for Kenya to attain. This measure has partly been admitted and impliedly called for by the CMA itself in the report prepared for this paper as set out above which stated as an objective: "Developing regulations and frameworks that are unique to the jurisdiction, prepared in accordance with the country's context." The how's of establishing this higher benchmark is out of the scope of this paper yet the suggestion itself analogically follows, in my view, from the Islamic spiritual idea that persons with higher levels of impurities must also undergo more arduous processes of purification before being deemed fit to pray. The prohibition against *riba* is absolute; there is no short-cut or exception to it and it is a religious imperative just as the prohibition against alcohol is. If someone is more prone to drink, appropriate measures must be taken to prevent him or her from doing so. Kenya is a highly corrupt country, with high levels of *fasad*, and prescribed rules that otherwise work in orderly and law-abiding jurisdictions have little effect in Kenya. The very officials in charge of regulations and law enforcement, not to mention the persons in charge of the day-to-day running of the banks, are prone to corruption. Without air-tight mechanisms on *shari'ah* governance to ensure that IBF transactions are properly governed by the *shari'ah*, one cannot say that IBF in Kenya is or has been subject to effective *shari'ah* governance and neither can it be said that the transactions to date have been *shari'ah* compliant.

I conclude this chapter with the oft-used Islamic phrase, "God knows best."

[1] "Islamic Finance Leaders from across Africa, the Middle East and beyond Set to Gather in Djibouti to Tap into Sukuk Opportunities and Drive New Growth Momentum for Islamic Finance in Africa," ZAWYA MENA Edition, October 18, 2017, , accessed March 22, 2019, https://www.zawya.com/mena/en/press-releases/story/Islamic_finance_leaders_from_across_Africa_the_Middle_East_and_beyond_set_to_gather_in_Djibouti_to_tap_into_Sukuk_opportunities_and_drive_new_growth_momentum_for_Islamic_finance_in_Africa-ZAWYA20171018075214/.

[2] Saida Ali Aden, "FACTORS INFLUENCING ISLAMIC BANKING IN KENYA: A CASE STUDY OF NAIROBI COUNTY" (Master's thesis, United States International University, Nairobi, 2014), accessed March 22, 2019, http://erepo.usiu.ac.ke/bitstream/handle/11732/124/Saida Aden.pdf?sequence=1.

[3] Kenya. The National Treasury. *CONSOLIDATING ECONOMIC GAINS IN AN ENVIRONMENT OF SUBDUED GLOBAL DEMAND*. Accessed November 2016. http://treasury.go.ke/component/jdownloads/send/172-budget-policy-statement/459-2017-budget-policy-statement.html?option=com_jdownloads.

[4] This section was prepared by the Capital Markets Authority (CMA) in Kenya under the directive of its CEO, Paul Muthaura.

[5] Mona Doshi, 'Takaful operational guidelines', *IFN Country Reports*, June 2015, p. 21.

[6] The author objects to this intention or motive as a driving factor in the development of Islamic finance. The intention and motive must be just as shariah compliant as the transactions themselves.

[7] Mona Doshi, 'Keeping the Islamic Finance Momentum Going', *IFN Country Reports*, March 2017.

[8] Daily Nation, *Islamic Finance Roots Grow Deeper*, January 2017

[9] https://www.transparency.org/news/feature/corruption_perceptions_index_2017

[10] For example, see: AfricaNews. "Kenya: Mass Suspension of Gov't Procurement Officials as Graft Purge Heightens." Africanews. June 04, 2018. Accessed March 22, 2019. https://www.africanews.com/2018/06/04/kenya-mass-suspension-of-gov-t-procurement-officials-as-graft-purge-heightens/.

[11] Abdul Jaffer, Head of Shariah Compliance at Kenya Commercial Bank.

[12] Based on author's correspondence with Abdul Jaffer of Kenya Commercial Bank.

[13] "The Economist." Editorial. *A Report by The Economist Intelligence Unit*, 1-22. Accessed March 22, 2019. https://eiuperspectives.economist.com/sites/default/files/MappingAfricasIslamicEconomy_0.pdf.

[14] Mona Doshi, 'Gearing toward Sukuk', *IFN Country Reports* (Mombasa, Kenya, September 2015), p. 18.

[15] "Client Wants NBK's Islamic Banking Shut in Sh3.7bn Row." Daily Nation. September 05, 2016. Accessed March 22, 2019. https://www.nation.co.ke/business/Client-wants-NBK-s-Islamic-banking-shut-in-Sh3-7bn-row/996-3369922-hg3t5s/index.html.

[16] Mona Doshi, 'The need for a National Shariah Supervisory Board', *IFN Country Reports*, October 2016, p. 18.

[17] Quranic term for corruption or corrupt conditions that threaten social well-being.