Trusts and *Waqf*: Negotiating the concept of religious endowments in Cape Town

By: Ighsaan Taliep, Dawood Terblanche and Auwais Rafudeen
(International Peace University, South Africa)

Abstract
The application of *waqf* in South Africa is subject to the constraints and requirements of this country’s laws, which have historically not recognized the concept in the way that it is classically understood in Islamic law. Consequently, individuals and organizations wishing to register religious endowments, particularly mosques, have opted to register them as trusts- the nearest equivalent to the *waqf* concept. This paper explores some key issues, overlaps and tensions that arise in this negotiating between the concepts of trust and *waqf*. Among them are the following:

- The legal distinctions between trusts in South African law and *waqf* in the Shariah and by implication their correspondences and dissimilarities. The issues of ownership and dissolution will also be examined in this regard.

- The way these distinctions play out in the operating of a trust as distinct from a *waqf*. These implications not only involve the organizational running of the endowment, but also the spiritual attitude that may be cultivated by trustees of a trust as distinct from a *waqf*.

The study concludes that a trust is a workable legal solution for *waqf* provided certain provisions are constitutionally in place that guarantees that the principles and objectives of the latter are safeguarded and that minimize the tensions between the two concepts.
Introduction
South Africa, being a predominantly secular, non-Muslim country, does not have any specific laws or courts that regulate religious endowments in terms of waqf regulations, as classically understood in fiqh. Consequently, Muslims in this part of the world have opted to legally register endowments in terms of laws that govern trusts, while implicitly regarding such properties as waqf according to Islamic law. Our study focuses on the mosques of Cape Town and asks: how does this distinction play out in practice, both historically and currently? And consequently, is the trust an effective legal implement for the safeguarding of the principles and objectives of waqf?

Our study proceeds by firstly providing an overall comparison between the concepts of trust and waqf, pointing to their similarities and differences. We then sketch aspects of particularly 19th century mosque history in Cape Town- aspects that pertain to the issues of waqf and trust. Following that, the study looks at the recent and current history of mosque founding and administration, based upon sample interviews with, and questionnaires to, mosque personnel. Finally, based upon our findings, we make recommendations as to how mosque administration can be enhanced, and problems alleviated, so as to ensure that waqf develops sustainable, harmonious communities.

Trusts and waqf: a comparison
Trevor Norman notes that there are some academics who suggest that the notion of trust in common law actually derives from the Islamic concept of waqf. This would explain the overlap between the two concepts. Three such similarities, as mentioned by Norman, are crucial: the gratuitous transfer of ownership from individuals or legal entity [ in common law the “settlor” and in fiqh the “wāqif”] to the trustees; second, the trustees [Arabic sing. “mutawallī”] who administer the assets according to the wishes of the original owner; third, the beneficiaries of this administration of assets.

It is thus easy to see why a trust is seen as such a convenient equivalent to waqf, when it is not possible to explicitly apply the latter. Notwithstanding this, Norman has succinctly states these differences between trusts and waqf:

- In a trust the assets are owned by trustees and they may transact with the assets as they deem appropriate. In a waqf, the mutawalli administers the assets, but generally will not be able to sell the assets without express permission from a Shari’a court.
- It follows that a waqf will normally continue to exist indefinitely, however, for a trust the “rule against perpetuities” or trust Law will require that the assets must vest within a certain time period.
- A wakif does not have the power to revoke a waqf, whereas trust law permits the reservation of a power to revoke by the settlor.
- There are restrictions on the nature of assets that can be transferred to a waqf, e.g. usufruct, whereas such assets can be owned through a trust.
- Most importantly, a wakif is generally prevented from having an interest in the assets of the waqf, whilst a settlor may be appointed as a beneficiary of trust.

There are also similarities and differences between the types of waqf and trusts. Thus waqf can, as is well known, be private or public. Similarly, trusts can be family or charitable. Fixed interest trusts are bound by the conditions set up by the original owner and waqf too has to respect the wishes and conditions of the wāqif. However, discretionary trusts provide a good deal of leverage to trustees in how they administer the trust whereas mutawallīyūn of a waqf, particularly of a public one, are more clearly bound by the rules and objectives of the Shari‘ah in administering their duties. Both a trustee and a mutawallī are bound by a code of ethics including honesty, transparency, impartiality and diligence in fulfilling the trust they have been given. However, it is clear that trustees, because they have ownership of the trust as distinct from mere administrative control as in the case of the mutawallī, are technically freer to handle the assets of a trust as they see fit. As we will see, this leaves open the possibility of abuse, but in a well-administered trust this does not have to be the case.

Mosque founding and administration in Cape Town: a history

In his landmark work, the Mosques of Bo-Kaap, Achmat Davids provides a fascinating picture of the often problematic founding and administration of Cape mosques in the 19th century - problems that often revolve around the problems of waqf and trust.

On 26 September 1794 Coridon from Ceylon - the freed slave of Salie- purchased two properties in Dorp Street. Approximately three years after Coridon passed away, his son-in-law, Achmat van Bengalen, made one of the properties available to Tuan Guru as a mosque - the Auwal Mosque, Cape Town’s first. However, “ownership” of the mosque remained with Coridon’s family. Upon his death, ownership of the property (No 43 Dorp street) was transferred to his wife Trijn van de Kaap, who in turn transferred it to her daughter Saartjie van de Kaap on 13 February 1809 for the sum of 3000 guilders. Saartjie, wife of Achmat van Bengalen. P109 Saartjie van de Kaap, in her will dated 1 December 1841, dictated that the property on which the mosque was housed shall be used by her husband and children as a “Mahomedaansche Kerk” [mosque] as long as Islam was allowed as a form of worship in the colony. The property will fall into the hands of her children and their descendants with the condition that neither of the properties will be sold or mortaged but that its first use will be for the performance of Islamic religious duties. In 1843 she then added a codicil to her will where she revoked the power of her sons as executors and appointed her attorney instead.1

The will of 1841 appears to indicate that implicitly the property was to be regarded as waqf although legally ownership devolved upon the family. Waqf was de facto not de jure. Up until today, according to the present assistant Imam of the mosque, the committee members of the mosque and the community implicitly see the mosque

---

1 Achmat Davids, Mosques of Bo Kaap (Institute of Arabic and Islamic Research, Cape Town, 1980), pp100-107
property as waqf although ownership belongs to Saartje van der Kaap’s family, an ownership that is recognized by South African law.

Thus from the very inception of institutional Islam in South Africa there arises this negotiation between waqf as in classical Islam and the realities and limitations of the South African context. Such negotiation often led to conflict and tension: there is currently still a dispute on the precise status of ownership between Saartjie van de Kaap’s family and the mosque committee.

Similarly, Cape Town’s second mosque, the Palm Tree Mosque, was also initially “owned” by individuals namely Frans van Bengalen and Jan van Bougies. In around 1807 they purchased land for the mosque, set up as an alternative to the Auwal Mosque. Ownership devolved then to Jan alone and then after his death to Jan’s wife, Sameda van de Kaap, who in her will, “dedicated the place as a mosque in memory of her husband [and] appointed seven trustees to administer what she called “De Kerk van Jan van Boughies.” This was done upon her death. Her condition was that the property should not be sold or mortgaged but should be used for the purposes of a mosque.2

This appears to be an endowment made in terms of waqf laws. However, when disputes of succession cropped up as the mosque, as it regularly did in the 19th century, the disputants often took the issue to courts and they were raised in the Supreme Court a number of times. Through these disputes and legal machinations, Sameda’s will remained remarkably resilient and the Court held firmly by its original contents. Here we have an instance of consecration via a will, with the intention of waqf, being upheld by a court. Furthermore, the Court also called upon the assessments of esteemed Islamic scholars in the Cape, such as Abubakr Effendi, in judging the issues at hand.3

The problems of property implicitly being regarded as waqf but technically deemed to be a trust is aptly demonstrated in the history of the Nurul Islam mosque of Buitengracht Street, Bo-Kaap, Cape Town. The mosque was founded, as the Mohamedan Shafee Congregation, by congregants led by Abdol Rakiep and Abdol Rauf, Tuan Guru’s sons. In 1844 the congregation took transfer of the property as a trust in the name of the “Malay Community”. In 1867, the grandson of Tuan Guru, Abdol Rakiep, became Imam of the mosque. Abdol Rakiep had been schooled under Abu Bakr Effendi, a prominent scholar originating from Turkey and sent by the Sultan to the Cape. He was partial to certain Hanafi juridical positions, which caused a rift with stricter Shāfī’ congregants of his mosque. Matters came to a head and in 1873 the apparently sole trustee of the mosque (Ahmad Saddick who was also at the time Imam of the Auwal mosque) sued Imam Abdol Rakiep for malpractice and demanded his removal as Imam. The court action, and a subsequent one by a congregant in 1879, was unsuccessful. Ahmad Saddik’s passing on in 1878 left the mosque without a trustee until 1895. This entrenchad Abdol Rakiep’s position. In September 1895 a meeting was convened and Abdol Rakiep and his two brothers were elected as trustees of the mosque, a resolution confirmed by the Supreme Court in November 1895, upon application for such confirmation.

2 Davids, ibid, pp114-116, 119
3 Ibid, pp120-126
However, a second application to mortgage vacant land attached to the mosque for a loan with the purpose of erecting buildings thereon, was declined. The Chief Justice said that the trustees did not have the power to transfer, cede or mortgage any of the property of the congregation- even though this mortgage had been agreed upon by members in the meeting in September 1895. The judge stated that only fifteen members were present, thus the decision lacked consensus. Further, he stated that the “founders of this church seem to have some good reason for prohibiting any alienation or mortgage of this property, and I do not think good cause has now been shown for setting aside the prohibition.”

The application was renewed in December 1895 on the basis that the mosque was badly in need of repairs. Again it was declined. Despite this the building programme had already begun and went ahead. The mosque was somehow mortgaged, there was difficulty in repaying the loan, and in 1905 the mosque was sold. The sale was a judicial one. After the debts were paid, the leftover amount of 543 pounds were to be disbursed to the trustees, whose intent was to use sum to repurchase mosque or buy suitable property for building of new mosque. This came to light in an affidavit after an application was lodged by former congregants of the mosque to show cause why the sheriff should not be restrained from paying over the balance to the trustees. Those who brought the application accused the trustees of maladministration and lack of care. The court accepted the arguments of the trustees and the former congregants lost their application.

The trustees did set up a new mosque in Frere Street. As far as the Nurul Islam went: after its sale, it was purchased by one Hadjie Mogamed Taleb who took transfer on the 24 October 1905 and retransferred to a Jassar Mohamed Sadien. Although now in private hands, the property was de facto used a mosque with Hadjie Taleb as Imam. In September 1912 the congregation took transfer of the property and the mosque changed its name to the Nurul Islam mosque. The new Imam was Gabebodyn Hartley, a competent Imam. However, he transferred the property from the name of “Noorul Islam Congregation” into his own name. He then took out a bond on the mosque, found difficulty repaying it and the property was again put up for auction. This caused a furore in the Cape Muslim community and a group of concerned men, known as the British Mizan of Afghanistan Society, purchased the property. The Imam was deposed and a new one elected. Though the registered property of the Mizan Society, the mosque under the new Imam was administered by a committee elected by the congregation.

Quite clearly, the mortgaging, selling and transferring in one’s own name as personal ownership of waqf are at odds with its rules. Trusts are more prone to these elements of human subjectivity because of the notion of ownership. However, as the above examples illustrate, the broader spiritual consciousness of waqf by the community tended to mitigate conscious or unintentional abuse of a trust.

---

4 Davids, ibid, p134
The Queen Victoria of Jamia Mosque also graphically illustrates the problem of *waqf* not being legally recognized. The British government granted Muslims land to build a mosque in return for their earlier support fighting the Xhosas on the Eastern Frontier. In 1854 the first Imam Abdol Bazier took transfer of the property in trust for the “Mohamedan community.” However, in 1872 Shahibo, the third Imam, took transfer of the property in his own name. When Shahibo controversially passed the Imamate onto his son, Hassiem, some other congregants took the matter to court in 1887. The congregants lost the case. Court action was also repeated in 1896, with a group of congregants objecting to Hassiem’s using a room that was set aside for religious festivals first as a stable and then as his residence. They also complained of financial mismanagement. Shahibo, in his reply, stated “Malay priests, in general, never laid financial statements of their mosques before congregations.” In this case, too, the defendants were successful.

Hassiem was succeeded by Imam Noor who “had no administrative ability and incurred a tremendous debt in the name of the mosque. The congregation was declared insolvent, with all the assets, including the mosque, being put up for auction in the early 1930’s.”

This situation was fortunately averted but this dramatic instance how tenuous and unprotected the notion of *waqf* could be in 19th century Cape Islam. This was because, despite all good intentions and implicit awareness of it, it was not recognized as such in South African law, and was thus exposed to the element of human subjectivity.

Where *waqf* does enjoy more protection in when the mosque is bounded by a clear constitution. Thus the personage who donated the land for the Nurul Mohammadia mosque in 1899 transferred the property with certain conditions. One of these was that there should be a register of members who alone have voting powers. The trustees were required to update this register to “avoid in the future unseemly disputes.” These members would vote for an Imam or with regard to other matters affecting the mosque. These clauses were inserted due to hard lessons learnt during the course of mosque disputes in the Cape in the 19th century. The Nurul Mohammadia itself seems to have avoided the management and succession problems plaguing so many other mosques.

The twentieth century saw a change in the power dynamics between trustees and Imams. Whereas the 19th century was characterized by the powerful, charismatic Imam who had full charge of the mosque various factors in twentieth century South Africa weakened this hold of the Imam in general, though not universally.

These factors include:
- The global forces of modernization – greater access to Islamic knowledge through travel heightened the role of the Shaykh as distinct from the Imam, the former (a *faqīh*) being higher in status than the latter (functionary of the community’s rituals)
- Apartheid with its forced removals of communities through the Group Areas Act of 1950. The relocation favoured committees and trust bodies as against Imam. It was

---

5 Davids, ibid, p146  
6 Davids, ibid, 147  
7 Davids, ibid, p170
committee who raised funds for mosques and madāris, and other associated activity, making Imam more vulnerable to committee.

- The establishment of the Muslim Judicial Council in 1945. The establishment was a response to the incessant disputes and the consequent fragmentation of religious authority. The MJC now became, for all intents and purposes, the “chief priest”. The Council’s interventions, coming from a Sharī’ah discourse, helped depersonalize issues and conflicts. Thus in the Claremont Main Road Mosque dispute in the 1970’s, which was brought to the courts, the MJC sided with the committee in attacking “hereditary Imamship” [which the ousted Imam was claiming] on the basis of the textual tradition. 

The current-day administration of mosques

The problems that have been associated with mosques have made administrators more wary of having a proper regulatory framework. Thus Salie notes the following in registering a mosque in South Africa:

- More committees are having their constitutions registered at the local office of the Registrar of Deeds
- Recently, institutes and societies have opted to create a Notarial Trust Deed which incorporates mosque and madrassah. Attorney and witnesses would appear before a Notary Public together with witnesses to create a Trust who will be charged with the affairs of an association. The Trust can establish a committee to see to day to day running of mosque and madrasah. Purpose of Trust is to protect association’s assets and to prevent hostile takeovers “as had happened in the past”.

He further suggest the methodology of donation: that the donor can give verbally to recipient of association (mutawalli) who accepts it in name of mosque he represents and that it must be registered at local Registrar of Deeds in the name of the mosque through a conveyancer. The documents that are to be lodged at Deeds Registry are the following:
1. Title Deeds
2. Power of Attorney authorizing donor’s conveyancer to register transfer
3. 3. Proof of rates payment
4. Proof of payment of transfer duty
5. Draft of new Title Deeds in favour of Trustees of the mosque
6. Cancellation of existing mortgage bond (pp138-140)

In RSA all immovable assets (waqf) are vested with the Trustees. The donor has the right to appoint a mutawaali – a position which is not hereditary. He adds that it is

---

9 Abduragiem Hasan Salie “The Laws pertaining to mosques in Islam” (Daddys Books, 2002), pp45-46
impermissible for mosque administrators to negotiate 99 year leasehold rights (after which land goes back to municipality).

Still, we need to ask the question: are mosques working well? We sought to elicit the recent and current-day administration of mosques through sample interviews with and questionnaires to key mosque personnel. The aim was to establish how successfully the mosque negotiated the concepts of waqf and trust.

(a) Resume, with notes, of an Interview with Hoosain Ebrahim, Chairman of the trustees, Jam’iyatus Sabr Mosque and madrasah (Conducted 9 and 12 June 2007)

- In 1979 Jam’iyatus Sabr formed from Primrose Park Educational Society [PPES]/Islamic Society Manenberg [ISM]. The PPES focused on the madrasah while the IAM sphere was the mosque.
- From Jam’iyatus Sabr the trustees are elected. The Trust body is called the Manenberg/Primrose Park Trust. Members were initially from both organizations after an earlier Chairman pushed for their coming together. However, some members reluctant to merge since they felt that the PPES would be freer to raise funds through activities that may have been frowned upon if done in the name of the mosque. This demonstrates the spiritual consciousness of waqf. In later years this initial tension between mosque and madrasah occasionally crops up among disaffected parties, but clearly in a mild manner. For instance there may be reservations among some as to why a particular upgrade to the mosque is necessary.
- The registration of the Manenberg/Primrose Park as a legal entity was in order to secure the mosque and madrasah against takeover bids. Such bids occurred in the early history of the mosque. For example one of the personalities instrumental in building the mosque, the first Chairman, was seen as too domineering and was edged out. He made a failed bid to reassert the original status quo. Another bid came from members of the Tabligh Jamaat who gave up after seemingly being ordered by the Deobandi ‘ulamah, with their base in northern South Africa, not to meddle in mosque administration. The mosque, though, continued to be very accommodating towards them. The goal of the trust, then, was not so much to become a vehicle for waqf but for legal protection against hostile takeovers.
- Trustees are aware of the legal rudiments of a trust and have a spiritual consciousness of waqf. However, they clearly not aware of the legal niceties of both. Thus while aware that while they legally owners of the land, they merely administer the mosque and madrasah as waqf on behalf of the community. They are careful about not abusing any funds received, about putting distributing such funds according to the donors wishes [even though it may be more needed for other purposes] and so forth. However, when it comes to intricacies as to whether they can use waqf money to financially relieve a long-serving mutawallî (a trustee) then expert advice from outside needs to be sought. Similarly, while they understand that the trust protects the mosque against hostile takeovers, they would be not be aware of the technicalities of a trust- such as its exact tax status under the latest laws.
- The trustees are de facto life long members of the trust, there being no stipulations in this regard. The AGM’s have not been regularly held.

10 Salie, ibid, pp138-143
Despite this, the mosque has not experienced any major conflict, apart from those early takeover bids. To a large extent this has been due to a stable Imam for the last 25 years. The Imam is low-key and efficient. This was after a tumultuous first few years when several high profile Imams were released from duty for various reasons: controversy, their not being able to be there regularly etc. Thus the good relationship between the Imam and trustees is a key reason for success. Further, the mosque is financially stable, being in the black.

Overall, it is a successfully run mosque. This success is based upon the proven efficiency of, and implicit trust in, the parties involved in administering its activities.

However, we can at this juncture ask whether this stability will this continue in the future once the present trustees are gone and a new unproven group emerges. Will they be bounded by same consciousness of waqf? There appears to be a need for continuous safeguards to be put in place safeguards to be put in place such as the holding of regular AGM’s and waqf/trust training for existing and incumbent trustees.

(b) Resume, with notes, of an interview with Shaykh Nazeem Taliep 12 June 2005, Imam of Masjid ul Khidma, Rondebosch East

The Mosque and madrasa was registered as a trust, the Rondebosch East Islamic Community Trust, in 1997. The Mosque complex is called the Masjid ul Khidma

There are ten trustees on board. The Imam is not a member of the trust though initially he was Amīr of the trustees. Trustees felt that salaried official cannot be trust member. This decision shows “corporatization” of trust. Trustees are generally professional people operating in an affluent area. The Imam is ambivalent about not being on trust- he believes his input will be vital and does not violate rules of waqf, but respects the arguments of the trustees.

The constitution of the trust is a very detailed one. Prior to setting up the constitution, the Imam did detailed research on mosque committees and problems associated with them, even composing a paper on the subject. The constitution is set up so as the alleviate problems that have plagued many other mosques. Thus the constitution is not merely legal, but formulated to support the clear strategy on which the mosque complex operates in administering its duties. The strategy revolves around the principles of shūrā (consultation) and responsibility. Basically, the considerable activities of the mosque are administered by subcommittees. The activities are determined by the needs of the mosque (education, Imamate) and community (youth, recreation etc.). The subcommittees are responsible to the trustees who in turn are bound by the stringent criteria of the constitution in being responsible to, and serving the, community. Among the criteria are restricted terms of membership (3 years), a fairly rigorous selection process for becoming a trustee, adherence to the behavior required by the trustees, the requirement for trustees to learn laws of waqf, and for all decisions to be taken collectively. The arrangement ensures that abuses and conflict are minimized.

The Imam, in fact, has drawn up special models of conflict management based upon criteria in the Quran and ahadīth (such as the SNT formula-shūra, nasīḥah and ta’āwun). The emphasis is on the notion of “process”- that leadership is a process developed by masjid culture, and not about individuals and strong personalities. The model has been
effective in diminishing potential conflict at the mosque in an area that could possibly have been divided along racial lines. Further, there are many successful, strong personalities in this affluent area and this model equalizes the various actors. No issue is regarded as too “trivial” and too be swept under the carpet. Thus in a wage dispute between a teacher and a principal in 2000, a special “Commission of enquiry into the activities of the Rondebosch East Islamic Society” was set up to look at all aspects of the mosque, not only this dispute, resulting in further guidelines for the conduct of the mosque’s activities.

- The trustees are thus being actively trained to address problems in these terms without the aid of the Imam. Thus they are made more conscious of the responsibilities as trustees of a waqf property. This is especially important because they often lack a trained Islamic learning and ethos and thus need to be inducted into their responsibilities through guidance by the Imam and constitution. Thus while they need not be aware of all the technicalities pertaining to waqf, they ought to have a general knowledge of its laws and the spiritual consciousness of its responsibility. On the other hand, given their backgrounds, they are, or become, au fait with legal details regarding trusts. However, the Imam still feels that they need to properly relate to the needs of the community by understanding the educative function of the Imam as the go-between between them and the community.

- The Imam, as to be expected, has a thorough knowledge of waqf. He thus purposefully suggested that the mosque be made waqf shar‘ī and the other parts waqf ījtimā’ī so as to accommodate ladies in menstruation, for instance, who come for mosque activities. He also declined a plan that would have allowed more parking space at the mosque for he felt that this would have violated waqf rules. Similarly, he ensures that the obsolete material of the mosque is sold and ploughed back into waqf etc.

- In summary, the trust as it stands protects the waqf from abuse. In fact, there are efforts underway to actively use funds to develop waqf and make the mosque self-sustaining. The success of the mosque is a two-edged sword for the Imam. A number of other mosques want to adapt its model. However, the Imam worries that the success must not lead to pride, and that trustees must fully realize that all success comes from Allah. In other words, he constantly brings them back to the spiritual consciousness that is ideally associated with a mutawallī of a waqf.

---

(c) Resume of an interview with Farid Sayed, 13 June 14, 2007 Former Secretary of Jamia Usmania Mosque, Bontheuwel

In the mid 1960’s the Bontheuwel mosque was established. A family based trust was mainly responsible for the overall administering of the trust. Though the family was not from the area of the mosque itself, they (and certain other trustees) felt a philanthropic desire to contribute to Islamic upliftment in a socio-economically depressed area. The need for a mosque was identified and land was bought.
Initially the family was quite heavily involved in the mosque, not only in terms of its administration but also in family members acting as prayer leaders and khatibs. Given the nature of the trust, and family involvement, there was the perception that they “owned” the mosque. Thus there was early opposition by members of the community who felt the mosque must become “waqf”. The family response was that it was already “waqf” because the Board of Trustees (Al Jamiah al Usmania Trust) was duly registered. However, this was more in terms of a spiritual consciousness rather than in a detailed knowledge of the laws of waqf. Another component of the trust board, the Bontheuwel Muslim Society [BMS], was the trustee from the community. Gradually the family started withdrawing from administering and participating in mosque activities, leaving the effective running to the BMS. In the early 1980’s there were serious charges of maladministration. For many, the trust was held responsible for the misconduct because of its absenteeism. The family and its co-trustees tried to reassert control over the mosque at this juncture. The then Imam felt constricted and “insulted” by the family’s conditions of appointment. This initiated intermittent conflict at the mosque, which at stages was translated into physical violence. Various other undertows also crept into the conflict, such as the Islamic ideological rivalry between the various factions involved.

It is clear here that various social factors—such as the family’s distance from the waqf and segments of the community feeling excluded from the sense of owning and belonging to the mosque—played a crucial role in the trust’s misfortunes. In such a tense atmosphere, the concept of *waqf* becomes very vulnerable, to be used as a weapon rather than a concept that needs to be understood, since the trust itself was charged to have been maladministered.

(d) Questionnaire based interview with a committee member and a murīd of the Owal [“Awwal”] mosque, Bo-Kaap.

1. How is your mosque registered?
   Ans: In the Estate of Saarjie Van de Kaap.

2. Do members of the mosque understand the mosque as a trust or *waqf* property?
   Ans: As *Waqf*.

3. How is *waqf* understood by the trustees? Are they well acquainted with the concept.
   Ans: We understand the basic meaning of *Waqf* but not fully. In my understanding it means that if something is *waqf* it implies that it belongs to the community and if it is a book, that book cannot be removed from the *Masjied*.

4. Do the Imam and trustees understand the rules pertaining to trust?
   Ans: To some degree not fully, whether we adhere to it fully is questionable.

5. Has the mosque experienced any problems with its administration ie. Between committee members or between the committee and Imam.
Ans: Committee member - No problems.

Ans: From a long time Murid of Masjid – Yes between the Imam and the Committee. Approximately ten years ago the committee accused the Imams (both) of not fulfilling their duties. The Imams subsequently took the committee to the labor court. A settlement was reached out of court and payments were made to both Imams. After a short while both Imams vacated their positions. This incident took place during the life of the Late Shaykh. Salih Abādī. This turned ugly as the community became involved. There has also been another incident five years between the committee Members. This was a result of young committee members (between the age of 21 and 25) wanting to bring about a transformation in the administration and vision of the Owal Masjid. Their ideas were always frowned upon and often disregarded. This created animosity and frustration which resulted that all the young committee members resigning from their positions.

6. If your mosque has not really experienced any problems in this regard what do you ascribe its success to.
Ans: Committee member: Good understanding between the Imam and Committee. From a long time Murid – Not sufficient activities in the Masjid.

7. To what extent are trustees legally bound by waqf rules…….? 
Ans: They are strictly bounded in their understanding of what Waqf means. Before any money is being spent a meeting is being called.

8. Do you think that the trustees are spiritually aware of their duties ….? 
Ans: Yes, They also try to fulfill their obligations in conjunction with the rules of Trust’s.

Note: The dispute with the Imams, that resulted in civic meetings as well, touched upon the concept of waqf in an interesting manner. The Imams claimed that since the mosque was not true waqf- being still in the hands of the family- they were not bound by the dictates of the committee.

(d) Interview with a committee member of Masjid Salam, Athlone

1. How is your mosque registered? 
Ans: As a trust.

2. Do members of the mosque understand the mosque as a trust or waqf property? 
Ans: As a trust.

3. How is waqf understood by the trustee? Are they well acquainted with the concept. 
Ans: Well understood. The trust consists of three people; Sh. Salih Din and two other people. Sh. Salih consistently advises them of their duties.
4. Do the Imam and trustees understand the rules pertaining to trust?
Ans: Yes they do. Because it has been registered as a trust for many years.

5. Has the mosque experienced any problems with its administration ie. Between committee members or between the committee and Imam.
Ans: Approximately 16 years ago there have been differences between the two Imams of the Masjid Sh. Salih Din and Sh. Amien Soeker. The community became involved and a decision was taken by the committee to ask Sh. Amien Soeker to step down. Ever since there has been no problems.

6. If your mosque has not really experienced any problems in this regard what do you ascribe its success to.
Ans: There is a good relationship between the committee and the three Imams of the Masjid (Sh. Moosa, Sh. Abdurahman and Sh. Salih.

7. To what extend are trustees legally bound by waqf rules…….? 
Ans: The Committee members do not serve on the trust. Before the trust makes any decisions they must obtain the mandate from the committee. The trust has not violated there duties.

8. Do you think that the trustees are spiritually aware of their duties …? 
Ans: They are aware of their Waqf responsibility. They are spiritually motivated because Sh. Salih Din serves on the Trust.

Notes: What is clear from these response is that the relative success of this mosque is partially derives intrinsically, from the trustees having to be responsible to the mosque’s committee before taking decisions and, extrinsically, from the strong, well-respected personality of one Cape Town’s chief shuyūkh.

Conclusions and recommendations: are trusts a workable legal solution for waqf?
This study has shown that mosques established in the name of trusts run a whole gamut from being spectacularly unsuccessful, through to moderate failure or success, and finally even to superb success. Thus there is nothing intrinsic in the concept of a trust that ensures the failure or success of a waqf, and we are thus compelled to examine the various aspects that constitute the trust, and its operation in a given social locale, if we are to look at the reasons behind its success, or lack thereof.

It is apparent that a trust deed, or the constitution that informs the trust deed, must have built in safeguards that protect and maintain the principles and objectives of waqf. Thus while the law dictates that ownership will devolve upon the trustees, there has to be
mechanisms in place that ensure collective decision making, that allow for revolving trusteeship, and that bound trustees to the fixed interest of the trust. In this way, a sense of ownership by the trustees will remain formal rather than real. Such safeguards will also lessen potential mismanagement of assets.

It is also evident that success or failure depends not only upon what the constitution details or does not detail, but also in how a trust is run. The perceived efficiency or inefficiency of the trustees is often the reason why communities would be accepting of trustees or not. Again, criteria that gauge efficiency needs to be built into the mosque constitution. Successful management models, taken from the corporate world and realigned in terms of the Islamic ethos, need to be adopted in order to keep pace with the changing expectations of a community.

Finally, the element of human subjectivity- which is bolstered by the sense of ownership associated with a trust- needs to be kept in check. A broad spiritual consciousness of waqf, while still the key, is not sufficient. Constitutional mechanisms should be in place that enhance that consciousness as well as induct trustees into becoming familiar with the laws related to both trusts and waqf. Further, given the nature of globalization, the understanding of waqf should be predicated upon a multimadhab basis so as to make optimum use of its potential as a tool to build sustainable communities.