CHAPTER NINETEEN

Enhancing Islamic Banks' Participation through Agriculture under Nigerian inclusive Financing Policy: *Musaqah* and *Muzara'ah* as Panacea

Ahmed Abiodun Muhammed-Mikaaeel*
Mistura Abayomi Mohammed-Yusuf**

Abstract

Calls for inclusive financing have been on the world agenda over the years. Nigeria also joins other comity of nations vides its Central Bank of Nigeria in adopting inclusive financing policy with financial institutions as the engines of implementation. The policy focuses on the rural area dwellers with a view to alleviating their poverty status. Islamic Banking, as a leg of Islamic finance, has gone a long way in participating in the implementation of the policy within the compliant framework of Shari'ah especially in the sphere of agriculture. It is however observed that Islamic Banks' participation in the policy have been on short term basis, owing to its traditionally adopted banking products, which does not augur well for real agricultural financing. It is against this backdrop that this paper examines how Musaqah and Muzara'ah can be used to enhance Islamic Banks participation in the policy with particular focus on agriculture. The paper adopted doctrinal method of legal research. The paper finds that Islamic banks' participations so far in the inclusive financing policy have been on short term basis with over reliance on their traditional banking products like Mudarabah, Musharakah, Ijarah, Istisna and the likes and that the banks rarely explored Musaqah and Muzara'ah

---

* Ph.D Scholar in Islamic Law (Unilorin); LL.B; LL.M (Unilorin); BL (Lagos); Notary Public for Nigeria; Lecturer, Islamic Law Department, Faculty of Law, Kwara State University, 234 703 506 4745, ahmed.muhammed-mikaaeel@kwasu.edu.ng.

** LL.B (Unilorin); BL (Abuja); Barrister and Solicitor at A.S. Oseni & Co., KM5, Old Jebba Road, Opposite Hassadah Motors, Agric Area, Ilorin, Kwara Sate, Nigeria, 234 703 894 0858; yusmis.ym@gmail.com.

which are uniquely designed for agriculture. The paper identified likely challenges that might be faced with the adoption of Musaqah and Muzara'ah with way forward. The paper concludes that with strict adherence to the guiding principles of Musaqah and Muzara'ah, the participation of Islamic banks in financing policy would be greatly enhanced.

Keywords: Enhancing, Islamic Banks, Agriculture, Inclusive Financing, Musaqah, Muzara'ah.

1. INTRODUCTION

The yawn for implementation of inclusive financing policy has been consistent campaigns amongst developing countries at the global and regional levels across the universe.[1] National effort towards implementing the all-important inclusive financing policy is equally peculiar to developing countries within the African continent geographical location.[2] The Central bank of Nigeria (CBN) in the recent time spearheaded the campaign for inclusive financing policy after repeated failed efforts of the previous exclusive financing policy.[3]

The very essence of the inclusive financing policy is to present equal opportunities for all citizens without any fear, favour and discrimination in the areas of access to financial aids.[4] The ultimate aim is to get rid of poverty especially amongst the rural dwellers in

---

1 M.M. Chima, *et al*, 'The Relevance of Financial Inclusion on Sustainable Economic Growth in Sub-Saharan African Nations' *Sustainability*, 2021, 13, 5581, pp. 1-18

2 *Ibid*

3 J.A. Omojolaibi, 'Financial Inclusion, Governance and Economic Progress in Nigeria: What Happens to the Welfare of the Poor?' *Arabian Journal of Business and Management Review (Oman Chapter)*, Vol. 6. No. 7, February 2017, pp. 72-83

4 S. Aina, and O. Oluyombo, 'The Economy of Financial Inclusion in Nigeria: Theory, Practice and Policy' pp. 2-14, available at: https://www.researchgate.net/publication/281586408 (last visited on Nov 14, 2021).

the country.[5] The policy sets out to assist the poor at the rural area regions financially in all ramifications with agriculture as one of the target tools for empowerment.[6] The reason being that majority people in the rural areas are predominantly engaged in agricultural activities.

For proper implementation of the policy, the CBN carefully identifies financial institutions[7] as the key players towards achieving the goals set up by the inclusive financing policy.[8] In this wise, Nigerian banking industry has dual systems of conventional and Islamic banking. The focus in this paper is on the Islamic banks which have played significant roles in the realization of the CBN inclusive financing policy through arrays of its legalized banking products.

It is however observed that the participation of Islamic banks in the inclusive financing policy has always been on short term basis with respect to agricultural financing.[9] To this end, it hypothesized that long term financing is a *sine qua non* for meaningful agricultural financing. Thus, this paper seeks to examine the participation of Islamic banks in the Nigerian inclusive financing policy with a view to determining the workability of *Musaqah* and *Muzara'ah* banking products for effective participation in the long term financing of agricultural projects.

---

5 F.M. Ajide, 'Financial Inclusion and Rural Poverty Reduction: Evidence from Nigeria' pp. 1-18, available at: https://www.researchgate.net/publication/304624192 (last visited on Nov 14, 2021).

6 Christopher, E., *et al*, 'Agricultural Financing Policy and Rural Development in Nigeria' being a paper presented at the 84th Annual Conference of the Agricultural Economics Society, held at Edinburgh between 29th to 31st March, 2010.

7 These include the conventional and Islamic Banks in Nigeria.

8 A.A., Babajide, *et al*, 'Financial Institutions Concentration and Financial Inclusion Penetration in Nigeria: A Comparative analysis' *Journal of Contemporary African Studies*, Vol. 38, Issue 4, 2020, pp. 610-625

9 N.A. Abdullahi, 'Islamic Banking in Nigeria: Issues and Prospects' *Journal of Emerging Economies and Islamic Research,* Vol. 4, No. 2, 2016, pp. 1-14

2. CONCEPTUAL ANALYSIS

Inclusive financing policy is a mechanism of the Central Bank of Nigeria towards eradicating poverty through the instrumentality of banks' financing aids.[10] It is a process that assures ease of access, availability and usage of financial system by all members of the economy.[11] It is a mechanism that provides easy access to all and enables them to take benefit of financial system in the country.[12] It gives equal opportunity and access to all citizens of Nigeria to be able to access credit and effectively make use of the requisite financial system and products without any difficulty.[13] The policy was adopted by Nigerian government to stimulate economic growth and efficient allocation of productive resources to all. The objective of the policy is geared towards developing creativity from the financial regulators with a view to enhance betterment of the populace.[14] Owing to the importance of the policy, its absence in any country will inevitably make the poor to perpetually rely on their inadequate savings thereby making life difficult for them financially.[15] It is therefore not gainsaid that the inclusive financing policy is a veritable tool of poverty eradication program of the Central bank of Nigeria. To this end, the focus of the policy is the remote areas of the country and the citizens living in that region in addition to the general aim of benefitting

---

10 O. Sanya, and F.F. Olumide, 'Financial Inclusion as an Effective Policy Tool of Poverty Alleviation: A Case of Ekiti State' *IOSR Journal of Economics and Finance*, Vol. 8, Issue 4, Ver. II, July to August 2017, pp. 01-10.

11 O.P. Ardic, *et al*, 'Access to Financial Services and Financial Inclusion Agenda around the World' Policy Research Working Paper 5537, January, 2011, pp. 1-17

12 *Ibid*

13 *Ibid*

14 S. Aina, and O. Oluyombo, 'The Economy of Financial Inclusion in Nigeria: Theory, Practice and Policy' pp. 2-14, available at: https://www.researchgate.net/publication/281586408 (last visited on Nov 14, 2021).

15 P. Ozili, 'Financial Inclusion in Nigeria: Determinants, Challenges and Achievements' *Munich Personal RePEc Archive MPRA*, pp. 1-14

various players in all aspects or sectors in the country.[16] Among the advantages of the inclusive financing policy is the realization of economic growth, eradication of poverty and income inequality.[17] It is important to note that without financial Institutions such as Banks, the dreams of inclusive financing policy will continue to be a mirage.[18] Thus, without Banks' participation, implementation of the policy becomes difficult. The reason being that Banks are the critical agents in this regards.[19]

Banks in Nigeria are typically divided into two, namely: conventional banks and Islamic banks.[20] The focus of this paper is on the participation of Islamic banks in the implementation of the inclusive financing policy. It is to be noted that Islamic banks are banks established within the context of *Maqaasidus-Shari'ah* which operate based on Islamic commercial jurisprudence.[21] It is purely non-interest financial institution which operates based on the various unique Islamic banking products sanctioned within the principles Shari'ah.[22] As one of the players in financial sector, participation of Islamic banks in the inclusive financing policy is not left out. This is realizable by utilization of various banking products developed

---

16 F.M. Ajide, 'Financial Inclusion and Rural Poverty Reduction: Evidence from Nigeria' pp. 1-18, available at: https://www.researchgate.net/publication/304624192 (last visited on Nov 14, 2021).

17 M. Guruprasad, *et al*, 'Role of Financial Inclusion for Inclusive Growth in India' *International Journal of Current Research,* Vol. 11, Issue, 07, 2019, pp. 5378-5383

18 A.A. Babajide, *et al*, 'Financial Institutions Concentration and Financial Inclusion Penetration in Nigeria: A Comparative analysis' *Journal of Contemporary African Studies*, Vol. 38, Issue 4, 2020, pp. 610-625

19 *Ibid*

20 A.A.M. Olayemi, 'The Legality of Islamic Banking in Nigeria (A Critical Approach)' pp. 1-23, available at: https://www.researchgate.net/publication/228126816 (last visited on Nov 14, 2021).

21 *Ibid*

22 A.I. Abikan, 'Islamic Banking as Non-Interest Banking: Fact or Fiction?' *Shariah Law Report*, 1, xlvii, 2012, pp. i-xix

pursuant to Islamic commercial jurisprudence.[23] Since rural dwellers in the remote rural areas of the country are one of the targets of inclusive financing policy, then agricultural activities of these region deserved to be financially aided with a view to enhance poverty eradication of the residents of rural areas.[24] Hence, unique Islamic products which have potentialities of impacting directly on agricultural sector is worthy of consideration.

Musaqah is an Islamic product not usually put to utilization by Islamic banks in Nigeria.[25] It literally means tending by watering.[26] It is an agricultural partnership in which one partner who owns a land upon which trees are planted but the owner, for one reason or the other, could not cultivate or manage it by himself, he then gives it to another for cultivation and management with the understanding that the produce shall be shared between them after harvesting.[27] *Musaqah* is also described as an act of releasing productive assets (capital goods) to a working party on the bases of gross output sharing.[28] The product is typically for agricultural purpose. In the same vein, *Muzara'ah* is another products of Islamic jurisprudence for agricultural purpose.[29] The root meaning of the word *Muzara'ah* connotes to sow seed.[30] It also is a kind of partnership relationship

---

23 *Ibid*

24 F.M. Ajide, 'Financial Inclusion and Rural Poverty Reduction: Evidence from Nigeria' pp. 1-18, available at: https://www.researchgate.net/publication/304624192 (last visited on Nov 14, 2021).

25 U. Maman, *et al*, "Al-Musaqah" and Shariah Agribusiness System: An Alternative Way to Meet Staple Food Self-Sufficiency in Contemporary Indonesia' *Hunafa: Jurnal Studia Islamika*, Vol. 14, No. 2, 2017, p. 190

26 *Ibid*

27 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), pp. 5-10

28 K. Munzer, and K. Tariqullah, 'Principle of Islamic Finance' Islamic Research Training Institute, Research Paper (16) 1992, pp. 1-21.

29 B.S. Yahuza, 'Viability of Muzara'ah Contract on Agro-Financing in Alleviating Rural Poverty in Kano State, Nigeria' *Jurnal Al-Muzara'ah*, Vol. 6, No. 2, 2018, pp. 91-100

30 *Ibid*

where a land owner gives his/her land with or without seed to another person to sow and cultivate while at the harvest period, they both share the farm produce.[31] *Musaqah* and *Muzara'ah* have not been popular in practice amongst the Islamic banks' products.[32]

3. NIGERIAN INCLUSIVE FINANCING POLICY

Inclusive finance, as a trending concept in today's financing system, could be described as an effort in ensuring that financial services is brought down to the unreached people with the aid of financial institutions.[33] It can further be described as the process of ensuring accessibility of financial services by the vulnerable people of the society at the appropriate time of need, and at a very affordable cost.[34] Inclusive financing system is a system which serves as many people as possible without discrimination of any sort.[35] It brings to the enjoyment of the poor, what the rich are benefiting from. This unique importance has made the developing countries to infuse so much importance to it because it is perceived as driver of economic growth.[36] It should be noted that developing or embracing inclusive financing system will facilitate accumulation of capital from the low

---

31 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), pp. 1-5.

32 B.S. Yahuza, 'Viability of Muzara'ah Contract on Agro-Financing in Alleviating Rural Poverty in Kano State, Nigeria' *Jurnal Al-Muzara'ah*, Vol. 6, No. 2, 2018, pp. 91-100

33 M.M. Chima, *et al*, 'The Relevance of Financial Inclusion on Sustainable Economic Growth in Sub-Saharan African Nations' *Sustainability*, 2021, 13, 5581, pp. 1-18

34 J. Joseph, and T. Varghese, 'Role of Financial Inclusion in the Development of Indian Economy' *Journal of Economic and Sustainable Development,* Vol. 5, No. 11, 2004, p. 6

35 S. Aina, and O. Oluyombo, 'The Economy of Financial Inclusion in Nigeria: Theory, Practice and Policy' pp. 2-14, available at: https://www.researchgate.net/publication/281586408 (last visited on Nov 14, 2021).

36 M. Guruprasad, *et al*, 'Role of Financial Inclusion for Inclusive Growth in India' *International Journal of Current Research,* Vol. 11, Issue, 07, 2019, pp. 5378-5383

income earners who are in the rural environment without access to financing services.[37]

Access to financial service allows the poor to save money outside the house safety, and help in mitigating the risks that the poor faces as a result of economic shocks.[38] Hence, providing access to financial service is increasingly becoming an area of concern for every policy maker for the obvious reason that it has far reaching economic and social implication.[39] Financial inclusion has therefore become explicit strategy for accelerated economic growth and it is considered to be critical in achieving inclusive growth in a country.[40]

Prior to four decades ago, Nigeria was known for financial exclusion, rather than inclusion.[41] The recorded disadvantages of the earlier economic policy thus foisted the Central Bank of Nigeria to ensure financial inclusion in Nigeria financing system.[42] In order to achieve this, the government and the monetary authorities introduced various policies within the economy.[43] Among these policies is the rural banking programme introduced by the Central Bank of Nigeria in the

---

37 F.M. Ajide, 'Financial Inclusion and Rural Poverty Reduction: Evidence from Nigeria' pp. 1-18, available at: https://www.researchgate.net/publication/304624192 (last visited on Nov 14, 2021).

38 *Ibid*

39 M. Guruprasad, *et al*, 'Role of Financial Inclusion for Inclusive Growth in India' *International Journal of Current Research,* Vol. 11, Issue, 07, 2019, pp. 5378-5383

40 U. Kama, and M. Adigun, 'Financial Inclusion in Nigeria: Issues and Challenges' *Central Bank of Nigeria Occasional Paper*, No. 45, p. 2

41 S. Aro-Gordon, 'Effectiveness of Financial Inclusion Strategy in Nigeria' being a Paper presented at the 2nd International Conference on Inclusive Economic Growth and Sustainable Development, held between 18-19, November, 2016 at Mysuru, India.

42 U. Kama, and M. Adigun, 'Financial Inclusion in Nigeria: Issues and Challenges' *Central Bank of Nigeria Occasional Paper*, No. 45, p. 2

43 A.S. Kalu, *et al*, 'Central Bank of Nigeria Monetary Policies and Economic Growth in Nigeria (1980-2018)' *Account and Financial Management Journal*, Vol. 5, issue 01, 2020, pp. 2063-2069

late 1977.[44] This was meant to be achieved by giving the commercial banks a target to establish banks in all the local governments of the states in Nigeria.

In the recent time, Nigerian financial service sector have put in place policy by government and the regulatory authorities for promotion of financial inclusion.[45] This policy having in mind the interest of the low earners and the people of the rural environment, have made Central Bank of Nigeria to focus more on the product that are specifically targeted at the low income and the financially excluded people in the society.[46] For 2020 financing System Strategy, financial inclusion has been incorporated as one of its cardinal objectives.[47]

Thus, the financial inclusive policy offers people in the low developed area of the society arrays of opportunities to enjoy financial services, just like their counterparts in the urban area.[48] It strategically makes the wealth of the low income earners to form part of the running capital in the financing system.[49] This in turn affords them accessibility to financial services, owning personal bank account, accessing credit facility, among many others without any difficulty.[50]

---

44 *Ibid*

45 M.O. Mbutor, and I.A. Uba, 'The Impact of Financial Inclusion on Monetary Policy in Nigeria' *Journal of Economics and International Finance*, Vol.5(8), 2013, pp.318-326

46 *Ibid*

47 U. Kama, and M. Adigun, 'Financial Inclusion in Nigeria: Issues and Challenges' *Central Bank of Nigeria Occasional Paper*, No. 45, p. 20

48 M.O. Mbutor, and I.A. Uba, 'The Impact of Financial Inclusion on Monetary Policy in Nigeria' *Journal of Economics and International Finance*, Vol.5(8), 2013, pp.318-326

49 S. Aro-Gordon, 'Effectiveness of Financial Inclusion Strategy in Nigeria' being a paper presented at the 2nd International Conference on Inclusive Economic Growth and Sustainable Development, held between 18-19, November, 2016 at Mysuru, India.

50 *Ibid*

Since one of the main focuses of the inclusive financing policy is the rural area dwellers, the predominant agricultural activities of this area deserves attention.[51]

4. AGRICULTURE AS AN IMPORTANT TARGET OF THE POLICY

Agriculture is a field which requires more attention due to its importance to the society.[52] The pressure to invest in agriculture has been more pressing due to the overwhelming population and the dietary preference of the growing middle class in emerging markets towards higher value agricultural products.[53] Further still, research have shown that in about 30 years to come, demand for food will increase to 70% thereby requiring budget of at least $80 billion annual investment for realization of the task ahead.[54] This estimated budget will not come from nowhere but from the private sectors.[55] Hence, the inclusive financing policy makes agriculture as one of its cardinal targets being an integral part of the activities at the rural areas.[56]

---

51 B.S. Yahuza, 'Viability of Muzara'ah Contract on Agro-Financing in Alleviating Rural Poverty in Kano State, Nigeria' *Jurnal Al-Muzara'ah*, Vol. 6, No. 2, 2018, pp. 91-100

52 D. Cervantes-Godoy, and J. Dewbre, 'Economic Importance of Agriculture for poverty Reduction' *OECD Food, Agriculture and Fisheries Working Paper,* No. 23, OCED Publishing, France, pp.3-25

53 *Ibid*

54 *Ibid*

55 M. Liu, 'The Role of the Private Sector in Generating New Investments, Employment and Financing for Development' pp. 1-7, available at: https://www.un.rog/development/desa/dspd/wp-content/uploads/sites/22/2018/The-role-of-the-private-sector-in-generating-new-investments-employment-and-financing-for-development.pdf (last visited on Nov 17, 2021).

56 *Ibid*

It is however disheartening to note that financial sector lend very little to the agriculture.[57] This is owing to a number of challenges which include: insufficiency or inadequacy policies, high transactional cost to reach remote rural populations, covariance of production, market and price risk, absence of adequate instrument to manage risk, low level of fragmentation and incipient development of value chain, and lack of expertise of financial institution in managing agricultural loan portfolio.[58] Apart from the identified challenges, it is observed that Banks in Nigeria prefer to finance short term projects.[59] They rarely invested in long term financing due to certain risk that may crop up along the line. Agricultural financing, by its very nature, requires long term financing depending on the circumstance.[60] Little wonder both conventional and Islamic banks in the country have not so much key into real time agricultural financing.

5. ISLAMIC BANKS' PARTICIPATION

Since the introduction of Islamic banks in Nigerian financial sector, its participation in inclusive financing policy cannot be over emphasized.[61] Islamic banks participated in the so-called policy within the permissibilities of Shari'ah. Of great importance is the contribution of Islamic banks towards financially adding various business enterprises in the country to both Muslims and no-

---

57 A. Famogbiele, 'The Challenges of Agricultural Finance in Nigeria: Constraints to Sustainable Agricultural and Economic Revival' *International Journal of Business and Social Research*, Vol. 3, No. 5, 2013, pp. 234-240

58 *Ibid*

59 D.U. Waste, 'Sources of Financing for Small and Medium Enterprise in Nigeria' pp. 1-124, being a Dissertation submitted to Walden University in Fulfillment of Doctoral Study, December, 2017.

60 *Ibid*

61 E.F. Nwaolisa, and A.G. Kasie, 'Islamic Banking in Nigeria: A Critical Appraisal of its Effect on the Nigerian Economy' pp. 37-46, available at <htpps://www.longdom.org/open-access/Islamic-banking-in-nigeria-a-critical-appraisal-of-its-effect-on-the-nigerian-economy-2315-78441-119.pdf> accessed on 17 November, 2021.

Muslims.[62] It is observed however, that the participation of Islamic banks in the inclusive financing policy has been on short term basis so far.[63] For instance, the sphere of operations of Islamic banks in this regards has been categorized into four thus:[64] equity-based participatory products which makes use of *Mudaraba, Musharakah* and *Muqarada*; leased-based products which essentially rely on *Ijara* and *Ijahara Muntahiya Bitamleek*; trade-based products which focuses on utilization of *Murabaha, Salam, Istisna* and *Ba'i Bithaman Ajil*; and service-based products which adopt *Wakalah, Kafalah* and *Tawarruq*.

The foregoing products are designed within the context of Islamic commercial jurisprudence and give zero tolerance for *riba* base transactions.[65] The participation of Islamic banks in inclusive financing policy has not gone beyond the utilization of the foregoing products.[66] It is observed that in doing so, with respect to agricultural financing, Islamic Banks' participation and financial aid have been on short term basis just like their conventional counterparts.[67] Truth be told, any meaningful financing of agriculture cannot run away from long term financing owing to its nature.[68] To avoid unnecessary

---

62 Saiti, B., *et al*, 'Why non-Muslims subscribe to Islamic Banking?' Qualitative Research in financial Markets, pp. 1-13, available at: https://doi.org/10.1108/QRFM-01-2018-0005 (last visited on Nov 17, 2021).

63 D.U. Waste, 'Sources of Financing for Small and Medium Enterprise in Nigeria' pp. 1-124, being a Dissertation submitted to Walden University in Fulfillment of Doctoral Study, December, 2017.

64 M.A. Ali, and T. Hussain, 'Islamic Banking Products, Services and Objectives : Perspectives of Sharia'h Supervisors and Regulators', *International Review of Management and Business Research,* Vol. 10, Issue, 1, March, 2021, pp.251-252.

65 *Ibid*

66 L. Abdulkareem, 'Islamic Banking in Nigeria: Principles, Problems and Prospects' *IAR journal of Humanities and Cultural Studies*, Vol. 2, Issue 2, 2021, pp.1-7

67 S. Vrajlal, 'Jaiz Bank, Nigeria: A Case Study of Non-Interest Bank' *Munich Personal RePEc,* Paper No. 68763, 2015 Archive, pp.3-26

68 F. Hollinger, 'Financing Term Investment in Agriculture: A Review of International Experiences' being a paper presented at International Conference on Best Practices with the Theme (A Agricultural Lending

burden of interest accumulation on the indigent farmers through the possible long term financing from the conventional banks, better and direct options are available in Islamic jurisprudences for utilization of Islamic Banks.[69]

Thus, apart from the popular products of Islamic Banks, Shari'ah has already designed products specifically for agricultural activities bearing in mind its long term requirement.[70] These products are *Musaqah* and *Muzara'ah* which are rarely explored by Islamic banks in Nigeria.[71] To this end, legality and practical operation of these products will be of immense benefits to Islamic banks in the country.

6. LEGALITY AND PRACTICE OF *MUSAQAH* AND *MUZARA'AH*

The Law Giver expressly sanctioned *Musaqah* and *Muzara'ah* in the glorious *Qur'an* when He ordains thus:[72]

> And have you seen that (seed) which you sow? Is it you who makes it grow, or are We the Grower? If We willed. We could make it (dry) debris, and you would remain in wonder. (Saying), indeed, we are (now) in debt. Rather, we have been deprived.

From the above quoted *Qur'anic* verses, it is deduce that cultivation of land by oneself or through another is absolutely by Allah's Rahman (Grace). In order to prevent lands from being wasted and to improve their fertility, Allah (SWT) permitted related contract of

---

Practices: Methodologies and Programs), available at: https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-case-study-financing-term-investments-in-agruculture-a-review-0f-international-experiences-2003.pdf (last visited on Nov 17, 2021).

69 U. Maman, *et al*, "Al-Musaqah" and Shariah Agribusiness System: An Alternative Way to Meet Staple Food Self-Sufficiency in Contemporary Indonesia' *Hunafa: Jurnal Studia Islamika*, Vol. 14, No. 2, 2017, p. 190

70 *Ibid*

71 B.S. Yahuza, 'Viability of Muzara'ah Contract on Agro-Financing in Alleviating Rural Poverty in Kano State, Nigeria' *Jurnal Al-Muzara'ah*, Vol. 6, No. 2, 2018, pp. 91-100

72 *Qur'an* Ch. 56:63-67

Musaqah and *Muzara'ah* with regulation between the parties. The parties in this special contract are the land owners and the trustee/farmers for the period of time agreed upon and upon the lawful consideration which in most cases focus on sharing of farm produce after harvest.[73]

Thus, the two products of *Musaqah* and *Muzara'ah* had been in practice since the time of the Prophet Muhammad (PBUH). There is authentic report of the tradition of the Prophet (PBUH) to this effect. Imam Ahmad thus: 'The Prophet (PBUH) gave the people of *Khaybar* the date palms and the land of *Khaybar* on the condition that they will give half of the yield (to Muslim).'[74]

The above narration clearly shows that the Prophet (PBUH) used to give his land in *Khaybar* to its inhabitants to cultivate on it in consideration of the a half of the farm produce after harvest. The messenger of Allah (PBUH) continued dealing with the people of *Khaybar* (through *Musaqah* and *Muzara'ah*) until his demise as he never invalidated it. After his demise, the rightly guided Caliphs continued dealing with these two systems as well as laid down by the Prophet.[75] Thus, the practice *Musaqah* and *Muzara'ah* and for the benefit of agriculture by the Prophet was on a long term basis. This afforded parties to take full benefit of the objectives behind the products.

It is in view of the above that Imam Ibn Al-Qayyim maintain that there is legal evidence of the permissibility of *Musaqah* and *Muzara'ah* in return for a specified portion of the yield, be it fruit or crop.[76]

Allah (SWT) has created human being in such a way that one is superior to the other in terms of material things.[77] While some people

---

73 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), pp. 1-5.

74 Al-Fawzan, A. *A Summary of Islamic Jurisprudence* (Vol. 2, Al-Maiman Publishing House, Riyadh, Saudi Arabia, 2005), pp. 2-10

75 *Ibid*

76 *Ibid*

77 *Qur'an* Ch. 43:32

are blessed with landed property, others are blessed with farming skills and have times to devote for that purpose.[78] This thus makes the practice of *Musaqah* and *Muzara'ah* a reality. This is because, two persons can possibly come together and contract under *Musaqah* and *Muzara'ah* for the realization of meaningful agricultural fanatical aid.[79] This can take a number of forms. For instance, one may give out his land with or without seed or land upon which trees were planted to the other with farming skill, to cultivate, and agree on the proportion which the produce of the farming will be shared at the end of the farming activities.[80]

The objective of *Musaqah* and *Muzara'ah* cannot be over emphasized. The reason being that it seeks to restore the earth and widening the scope of agriculture.[81] This would not have been achievable if the intended parties had remained on their own; the land would have remain unused and as such would have lost value for the period it was not cultivated.[82] By the constant practice of *Musaqah* and *Muzara'ah,* the more one practises farming activities, the more experience one acquires. This will also not be realizable if the land had not been given to the skilled, he could not have gathered more experience in the circumstance. No doubt, *Musaqah* and *Muzara'ah* practically enrich the land owner and the sharecropper. This is because, at the end of the day they the parties to such contracts will both share farm produce which will automatically add to their riches or incomes.[83]

However, like every other types of contract, certain guiding principles are put in place for *Musaqah* and *Muzara'ah* with a view

---

78 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), pp. 1-5.

79 B.S. Yahuza, 'Viability of Muzara'ah Contract on Agro-Financing in Alleviating Rural Poverty in Kano State, Nigeria' *Jurnal Al-Muzara'ah*, Vol. 6, No. 2, 2018, pp. 91-100

80 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), pp. 1-5.

81 *Ibid*

82 *Ibid*

83 *Ibid*

to ensure justice and transparency between the parties. The principles guiding the practice of *Musaqah* are itemized thus:[84]

i. It is a condition for validity of *Musaqah* that the tree must be of edible produce. i.e it must not be fruitless tree or tree of inedible produce.

ii. It is also a condition that the share of the individual party (of the produce) be specified. For example, a half, a third, or a quarter.

iii. It must not be that at the end of the harvest period, the produce will be for just one person and other will be left with nothing.

iv. It is not permissible to stipulate what the quantity of the harvest will be like, because it may be more or less. This is geared towards preventing *Gharar* in the circumstance.

v. It is not permissible to limit the produce of a particular tree as being the share of a party, because it is very possible that some trees might not produce at the end of the day. That will amount to not having any share of the produce if any of the tree specified for a party does not bear fruit.

vi. It is unanimous views of the scholar that *Musaqah* is binding contract between two parties that cannot be canceled by one of them, but with the consent of the other. It must be within a specific period of time, no matter how long. In as much as the tree is still there, the contract is still binding.

In the same token,[85] *Muzara'ah* also has certain guiding principles for its practice as follows:

i. It is not a condition that the seed to be planted be released together with the land. Though if it is released, it is

---

84 M. Kahf, and T. Khan, 'Principles of Islamic Financing' Research Paper No. 6, (Islamic Research and Training Institute, Jeddah, Saudi Arabia), pp.19-39

85 H. Yaacoob, 'Commercializing Muzara'a Model Contract Through Islamic Finance to Help Malaysian Aborigines' *International Journal of Business, Economics and Law*, Vol. 2, issue 3, 2013, pp. 75-76

permissible. However, not given the seed does not invalidate the transaction.

ii. It is also a condition that the share of the individual party (of the produce) be specified. For instance, a half, a third, or a quarter.

iii. It is not permissible that the land owner take the quantity of the seed releases with the land and then share the remaining produce with the sharecropper. Reason being that, it may happen that the total harvest may not be more than the seed and that will amount to a loss on the part of the sharecropper.

iv. It is not permissible that a party will take his portion of the produce from a particular part of the land. This is supported by the narration, that when Rafi Ibn Khadij (may Allah be pleased with him) was asked about renting land in return for gold and silver (i.e. *dinnar* and *dirhams*). He said, there is no harm in it. however, people used to rent their land during the life time of the Messenger of Allah (PBUH) in return for the yield situated near the canals, bank, and at the end of the streamlet or in return for the vegetation of a specific area of the land. Sometimes the vegetation of the specified area was damaged, while the rest remained safe and vice versa. People do not rent their land except through that way, yet the Prophet (PBUH) prohibited it, because it involves harm to the people's interest that may occasion disputes and devouring people's wealth unjustly.[86]

7. ENHANCING ISLAMIC BANKS PARTICIPATION THROUGH *MUSAQAH AND MUZARA'AH*

Just like other popular products[87] of Islamic banking, *Musaqah and Muzara'ah* are legalized Islamic banking products. The two products have potentials of immensely improving Islamic financing system

---

86 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), p. 8.

87 Such as *Mudaraba, Musharakah, Muqarada, Ijara, Ijahara Muntahiya Bitamleek, Murabaha, Salam, Istisna, Ba'i Bithaman Ajil, Wakalah, Kafalah* and *Tawarruq*.

and participation in inclusive financing policy with respect to the rural area dwellers. Practically, the purpose and objective of *Musaqah* and *Muzara'ah* can be likened to that of *Mudaraba* and *Musharaka* in terms of exchange of what one party has for which the other party does not have. However, these two products of *Musaqah* and *Muzara'ah* are basically agricultural based products which Islamic banks can explore in their unique style of operation in the sphere of inclusive financing participation.[88] The products can be utilized in such a way that they bring two different persons together in a situation where one of them gives out his land with or without seed or land upon which trees were planted to the other with farming skill, to cultivate, and agree on the proportion which the produce of the farming will be shared after harvesting.[89]

Since financing is the hall mark of the operation of Islamic banks, Islamic banks can thus involve themselves in transactions between the land owner and the sharecropper through *Musaqah* and *Muzara'ah* contracts in three ways. Firstly, Islamic bank while acting as a financier can approach a land owner, who is ready to surrender his land for cultivation or irrigation as the case may be, and the bank then employs another with farming skills, and ultimately finances the cultivation/irrigation. This tripartite arrangement, can be based on the agreement of sharing the farm produce or the proceeds of the farm produce at the harvesting time based on the individual's respective contributions.

Secondly, Islamic banks can also participate as the land owner. This is possible where Islamic bank has acquired large expanse of land and then secures the service of a skilled farmer, makes necessary provisions for the financing of the farming or irrigation activity, monitors it till the end and then shares the farm produce as agreed by the parties after harvest.

Lastly, Islamic bank can as well participate as a sharecropper. In this case, Islamic bank will approach a land owner, offer to use his land

---

88 A.A. Haqqi, *The Philosophy of Islamic Law of Transaction* (CERT Publications Kuala Lumpur 2009), pp. 1-5.

89 *Ibid*

for farming or to tender the tree on his land for the product to be shared in the agreed proportion at the end of the day. Having in mind that the money used in financing the cultivation is not for the bank but the general public; the money will, at the end of the day, accrue some profits to the general public whose money was expended on the transaction. In this manner, *Musaqah* and *Muzara'ah* can enhance direct participation of Islamic bank in inclusive financing policy in Nigeria. To therefore ensure hitch free participations potential challenges must be tackled for maximum benefits.

8. POTENTIAL CHALLENGES

There are a number of potential challenges that is likely to bedevil the exploration of *Musaqah* and *Muzara'ah* by Islamic banks for the benefit of agricultural activities in Nigeria. The first among the likely challenges which Islamic banks must be ready to contend with is how to cope with long term financing.[90] Owing to the fact that majority of Islamic banks' financing in the inclusive financing policy has been short term based, there is need for Islamic bank to strategize for long term financing inherent in *Musaqah* and *Muzara'ah* in order forestall failure. This can be achieved by ensuring that such long term financing is followed by strict supervision from the beginning to the end with a view to prevent or minimize risk(s).

Another likely challenge which Islamic banks may face in the utilization of *Musaqah* and *Muzara'ah* for agricultural financing is the apprehension of *Gharar* (uncertainly),[91] especially having regards to the facts that germination, growing, fruiting of plantations or trees are in the hands of Allah (SWT).[92] In contending with this, and to be saved from *Gharar*, there is need for Islamic banks to adhere strictly

---

90 A. Kammer, *et al*, 'Islamic Finance: Opportunities, Challenges, and Policy Options' *IMF Staff Discussion Note,* April 2015, pp. 2-32

91 M.A. Uddin, 'Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir' pp.1-8, available at: https://www.researchgate.net/publication/299466506_Principles-_of_Islamic_Finance_Prohibition_of_Riba_Gharar_and_Maysir accessed on 17 November, 2021.

92 *Qur'an*, Chapter 56:63-67

to the guiding principles governing the practice of *Musaqah* and *Muzara'ah* as highlighted.

More so, misrepresentation/incompetent farmers may frustrate the contract of *Musaqah* and *Muzara'ah.*[93] It is therefore important for Shari'ah Supervisory Board of Islamic banks to be up and doing and scrutinizes all contract documents to ensure such misrepresentation/incompetent farmers are detected at the earlier possible time.[94]

Natural disasters such as heavy rain, erosion, drought, etc. are among other challenges that may be faced by Islamic banks.[95] To this end, contracts of *Musaqah* and *Muzara'ah* should therefore envisage these natural occurrences and make alternative plan such as irrigation to tackle drought and mulching, planting of perennial plant cover, planting of cover crop, placing of crushed stone, wood chips with a view to combat heavy rain and erosion.[96] It is worthy of note that to achieve better agricultural output by way of *Musaqah* and *Muzara'ah*, the banks have to take crucial measure in ensuring that experts are put in place such as experienced and skillful farmers.[97]

---

93 J.R. Laiglesia, 'Institutional Bottlenecks for Agricultural Development' OECD Development Centre Working Paper No. 248, March, 2006, available at: https://www.eocd.org/dev/36309029.pdf (last visited on Nov 18, 2021).

94 M.M.Y. Injas, 'The Importance of the Shari'ah Supervisory Boards (SSBS) in the Islamic Banking System' *South East Asia Journal of Contemporary Business, Economics and Law,* Vol. 9, Issue 2, 2016, pp. 25-30

95 D.C. Israel, and R. Briones, 'Impacts of Natural Disasters on Agriculture, Food Security, and Natural Resources and Environment in the Philippines' in Y. Sawada, and S. Oum, (eds), *Economic and Welfare of Disaster in East Asia and Policy Responses*, ERIA Research Project Report 2011-8, Jakarta: ERIA, pp. 553-599

96 S.A. Bhat, *et al*, 'Soil Erosion and Management Strategies' pp. 75-112, available at: https://www.researchgate.net/publication/336223101_Soil_Erosin_and_Management_Strategies (last visited on Nov 18, 2021).

97 M.M.Y. Injas, 'The Importance of the Shari'ah Supervisory Boards (SSBS) in the Islamic Banking System' South East Asia Journal of Contemporary Business, Economics and Law, Vol. 9, Issue 2, 2016, pp. 25-30.

9. CONCLUSION

The effort of the Central Bank of Nigeria through inclusive financing policy to get rid of poverty and ensure economic growth in the country is laudable. It is important to state that the engine vehicles of the inclusive policy are the financial institutions in Nigeria. To this end, Islamic Banks as part of banking services in operation in the country have been contributing their quota towards the implementation of the inclusive financing policy. With the focus of the policy being the rural areas in Nigeria, the financing of the agricultural activities of the areas becomes expedient. As against the usual short term financing style of Islamic banks in Nigeria towards realization of the inclusive financing policy, the unique products of *Musaqah* and *Muzara'ah* is recommended which if adequately practised, they will enhance Islamic banks' participation in the Central Bank of Nigeria inclusive financing policy for economic growth and poverty alleviation. The reason being that the products are most suitable for financing of agriculture owing to its long term nature.

LEGAL PARADIGM IN NIGERIA

A new direction in the Study of Law and Practice

Edited by
Prof. Mansur Ibrahim Sa'id
Dr. Kabir Garba Muhammad