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Zakat, Legal Pluralism, and Revenue Governance in Kenya

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Abstract

Background: Neither African public finance studies nor Islamic fiscal studies have examined the administration of zakat in Kenya or the potential impact of domestic resource mobilization on public health financing to any significant extent.
Objectives: This study examines how modern zakat governance has been shaped by the historical interplay between Islamic fiscal standards, the Omani government, British colonial rule, and Kenya's post-independence constitutional framework. This study differs from previous research in that it provides the first empirical and phenomenological analysis of zakat governance in Kenya. It combines the concept of historical legal pluralism with original field evidence to assess whether state-administered zakat is an effective source of funding for public health.
Methods: Interpretive Phenomenological Analysis (IPA) was used in conjunction with discursive analysis in this study. Qualitative data were collected from 166 participants in Mombasa and Nairobi, including 107 zakat payers, 42 Islamic scholars and religious leaders, and 17 policymakers and non-Muslim stakeholders. The data were organized into eight analytical themes.
Result: The results show that Kenya's zakat governance is legally pluralistic; among the 166 participants, trust, authority, legality, and consent emerged as key themes. Nearly all Muslims oppose government-administered zakat because they are concerned about corruption, constitutional obstacles, and the importance of preserving Islamic legal authority.
Conclusion: This study proposes "conditional consent" as a legally and institutionally viable framework that can be used to reconcile the principles of Islamic finance with Kenya's constitutional structure. It will expand the theoretical discourse on domestic resource mobilization and legal pluralism.

A. Introduction

The challenge of domestic resource mobilization in sub-Saharan Africa has been a defining preoccupation of fiscal policy discourse for several decades, yet the dominant analytical frameworks within which this challenge is examined have remained largely confined to the formal taxation systems inherited from colonial fiscal architectures. The revenue instruments embedded within Islamic law, and in particular zakat, the obligatory annual wealth levy constituting one of the five pillars of Islam, have received comparatively little attention from scholars engaged with African public finance, notwithstanding the substantial Muslim populations resident across the continent and the significant fiscal flows that zakat generates annually. This neglect reflects a broader epistemological limitation in African fiscal scholarship, one in which the fiscal dimensions of Islamic law are categorized as matters of private religious observance rather than as subjects of public revenue governance, with the consequence that the theoretical field is simultaneously distorted in

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its historical account of African fiscal systems and impoverished in its analytical capacity to consider alternative sources of health financing in contexts of chronic state revenue insufficiency.

Kenya presents a particularly compelling setting for examining these questions. The country has a Muslim population of approximately 11 per cent, constituting just under six million persons according to the 2019 Kenya Population and Housing Census, and its constitutional framework reflects a historically negotiated form of legal pluralism in which Islamic personal law is recognized and enforced through the Kadhi's courts established under the 2010 Constitution of Kenya. This constitutional accommodation did not emerge through a neutral policy process; it is the product of a centuries-long negotiation between Muslim communities, successive colonial administrations, and the post-independence Kenya state, a negotiation that has consistently carried fiscal dimensions that have never been adequately theorized. The history of Islam in Kenya is, among other things, a history of revenue governance: it concerns who controls the flows of obligatory and charitable Islamic wealth, under what legal conditions, through what institutional mechanisms, and towards what social ends. That history begins with the settlement of Arab traders along the East African littoral in the early seventh century and continues to shape the present-day governance of zakat in ways that carry profound implications for health financing policy and for the broader question of what legal pluralism means in practice when applied to the domain of public revenue.

This article addresses the relationship between that history and contemporary zakat governance in Kenya through original empirical fieldwork. Its central argument is that the arrival and successive consolidation of Islam along the Kenya coast produced a distinctive form of legal pluralism over revenue, one in which Islamic fiscal norms developed in parallel with, and frequently in structured tension against, successive political orders from the Omani Sultanate through British colonial administration and into the post-independence constitutional settlement. This historical legal pluralism continues to structure the governance of zakat today, producing an adaptive institutional system in which Islamic authority figures, schools of jurisprudence, ethnic community groupings, and faith-based Organizations jointly determine how zakat is collected, to whom it is distributed, and for what purposes it may legitimately be deployed. No prior empirical study of this system exists. Although scholars including (Gallien et al., 2024; Latif, 2025; Maritim et al., 2022) have referenced zakat in the Kenya fiscal context, none has produced ethnographic or phenomenological data on how Kenya Muslims actually understand and implement zakat norms, nor on whether they would accept the Kenya state as a zakat administrator for the purposes of health financing. The present article provides that data and the analysis required to interpret it.

The research is organized around a specific and novel policy question that has not previously been examined in the literature: whether it is feasible for the Kenya state to receive and administer zakat to partially finance the public health system in alignment with the human rights principle of maximum available resources as developed under General Comment 14 of the International Covenant on Economic, Social and Cultural Rights (Adjagba et al., 2025; Karimi et al., 2025). Answering this question requires both historical and empirical analysis, because the feasibility of any such arrangement depends not only on the doctrinal permissibility of directing zakat towards state health budgets under Islamic law, but also on whether Kenya Muslims would consent to such a practice, what institutional conditions would need to be satisfied to generate that consent, and whether the constitutional framework of Kenya could accommodate an arrangement that incorporates Islamic conditions on a revenue source received and administered by the state. The article proceeds in four parts. The method section explains the research design, participant selection, data collection instruments, and analytical strategy. The results and discussion section situates the fieldwork findings within the historical arc of Islamic legal pluralism in Kenya, traces the evolution of zakat governance from the Omani Sultanate to the post-independence period, and analyses the eight themes that emerged from coding the data gathered from 166 participants across two study sites. The conclusion draws together the theoretical implications for legal pluralism scholarship, domestic resource mobilization, and the governance of Islamic fiscal instruments in non-Islamic constitutional states, and proposes the framework of conditional consent as the operative mechanism through which the competing legal orders at issue might be reconciled.

B. Research Methods

The research adopts an interpretative phenomenological research design, which (Englander, 2016; Quinney et al., 2016) have identified as particularly suited to inquiries in which the subject matter is not readily quantifiable and in which the researcher seeks to understand how participants construct meaning from lived experience and normative frameworks. Phenomenological research generates data through intensive personal interviews, allowing the researcher to capture the interpretations, perspectives, and experiential understandings of participants in relation to the question under inquiry. This design was complemented by the discursive approach proposed by (Mwinlaaru & Xuan, 2016; Yazdannik et al., 2017), who argued that the internal states of research participants, including their motivations, beliefs, and normative commitments, can be understood by identifying analytic codes and categories from their language. The combination of these two methodological approaches provided the study with a rigorous framework for generating and analysing qualitative data on a subject for which no prior empirical literature exists in the Kenya context.

Purposive sampling was employed across three participant groups (see table 1 below) following the principles articulated by (Andrade, 2021; Yadav, 2022). The first group comprised 107 Muslim male and female zakat payers interviewed at selected mosques in Mombasa and Nairobi between December 2019 and February 2020. These participants were approached at mosque premises before and after prayer hours and asked ten structured questions concerning their practice of zakat, the amounts paid, the beneficiaries they selected, and their views on the possibility of directing zakat to the Kenya government. Their responses were analysed using Microsoft Excel to generate quantitative data on patterns of zakat payment and were subsequently coded alongside qualitative responses. The second group comprised 42 Muslim participants recognised as Islamic law experts, authority figures, imams, ustadhas, and officers of faith-based Organizations, selected to capture the perspectives of those who shape normative guidance on zakat within the Kenya Muslim community. This group included representatives from the Mahad Dawah Organization and Zakat Kenya, as well as participants in two halaqas convened at Masjid Al Salam in Nairobi. The third group comprised 17 non-Muslim participants including Members of Parliament, healthcare workers, academics, and persons of different faiths, interviewed to generate external perspectives on the constitutional and policy dimensions of integrating zakat into the public health financing framework.

Table 1. Three Groups of Participants

Group	Category	Description	Composition	Location / Method
1	Zakat payers	Muslim male and female zakat payers interviewed at selected mosques	107 participants (male and female)	Mombasa and Nairobi; Dec 2019 – Feb 2020; structured questions
2	Islamic law experts and authority figures	Imams, ustadhs, officers of faith-based Organizations, and participants in halaqas convened in Nairobi	42 participants	Nairobi; purposive selection
3	Non-Muslim stakeholders	Members of Parliament, healthcare workers, academics, and persons of different faiths, selected to generate external perspectives on constitutional and policy dimensions of zakat integration into public health financing	17 participants	Kenya; semi-structured interviews

A methodologically distinctive feature of the study is its use of halaqa as a primary data collection instrument. As (Muhammad, 2020; Oktavia & Damni, 2026) explain, halaqa is a religious gathering in which Muslims meet for the collective study and deliberation of Islamic questions under the guidance of a scholar or knowledgeable participant. Its epistemological grounding within Islamic tradition makes it particularly appropriate for research involving Islamic legal questions, because it allows participants to engage with doctrinal issues within their own normative framework rather than within the externally imposed categories of Western social science methodology. The study convened two halaqas, one with ustadhs and one with a senior female Muslim authority figure and three Muslim women from government, specifically to generate female Muslim perspectives on zakat that are systematically absent from the existing scholarship. This design choice was a deliberate response to the documented male dominance of Islamic scholarship on zakat in Kenya as confirmed by fieldwork and identified in Ndzovu's (2019) analysis of female Muslim preaching, and it produced data that contributes to redressing that imbalance in meaningful and original ways.

The study was licensed by the National Commission for Science, Technology and Innovation in Kenya under Research Licence Reference Number 358511. Fieldwork conducted in person between December 2019 and February 2020 was disrupted by the onset of the Covid-19 pandemic in March 2020, which necessitated the transition of remaining interviews to online, telephone, and asynchronous email formats between May and November 2020. This disruption prevented planned interviews with officers from the Ministry of Health, the National Hospital Insurance Fund, and the Office of the Governor of Mombasa, limitations that constrain the study's coverage of the administrative dimensions of health financing but do not affect the primary findings on zakat governance among Muslim and non-Muslim communities. All 166 participants were provided with information sheets and gave informed consent.

Using descriptive and in vivo coding, in accordance with (Dalkin et al., 2021), the data were transcribed verbatim and analyzed. Initial coding yielded 25 codes, which were then grouped into eight main themes of analysis: authority, consent, control, development, identity, effects, legality, and trust.

Several techniques were used to improve the validity and credibility of the results in order to guarantee the study's reliability. While source triangulation involved contrasting viewpoints from three participant groups zakat payers, Islamic scholars and religious leaders, and non-Muslim policymakers and stake holders methodological triangulation was accomplished by combining various data collection techniques, such as structured interviews, halaqa discussions, and documentary analysis. Maintaining an audit trail that documented data collection, coding choices, and theme development throughout the analytical process, as well as member checking in which chosen participants attested to the accuracy of the researchers' interpretations further enhanced credibility. These methods improved the findings' reliability, confirmability, and trustworthiness.

C. Results and Discussion

Understanding the findings of this study requires placing them within the historical arc of Islam's relationship to revenue governance in Kenya, because the attitudes and institutional arrangements that the fieldwork documents are not recent innovations but the accumulated expressions of a legal pluralism with deep historical roots that has never been systematically analyzed as a fiscal phenomenon. Islam reached the East African coast in its definitive orthodox form during the early seventh century, carried by Arab traders from Yemen and Oman who settled along the littoral fringe of the Indian Ocean (Bishara, 2018; Crowther et al., 2016). These settlers brought with them the Shafi school of jurisprudence, which became the dominant legal tradition along the Kenya coast and which continues to shape the majority of zakat practice among Arab, Swahili, Somali, and native reverted Muslims in that region today. A smaller and distinct community of Indian Muslim traders, arriving somewhat later and concentrating in the urban hinterland, adhered to the Hanafi school, introducing a competing jurisprudential tradition that persists principally in Nairobi and Kisumu. What is significant about this early period from a revenue governance perspective is the emergence of the bait ul maal, the informal public treasury through which wealthy Arab Muslims provided assistance to the poor and maintained charitable endowments, as the precursor of a rudimentary Islamic fiscal architecture along the coast (Laallam et al., 2021; Sıcakyüz, 2024). The scholarship of both (Zakeyo, 2025), who have written most extensively on the history of Muslim institutions at the Kenya coast, makes no specific reference to zakat as part of this philanthropic tradition, a silence that indicates the history of zakat at the Kenya coast was never institutionalized within the kind of formal fiscal record that would render it retrievable from the colonial archive or from post-independence scholarship.

The Omani Sultanate's consolidation of authority along the East African coast from 1828 provides the closest historical analogue to a formal zakat administration in the region. The Sultan of Oman, Said bin Sultan, appointed liwalis to govern the coastal areas on his behalf and established a governance system grounded in Islamic law, though the application of that law was confined to contract, family, and succession matters rather than extended to the fiscal domain (Liebst & Liebst, 2024). Evidence from Al-Salimi's historical writings, accessed through (Houhou & Houhou, 2026), confirms that the Sultan maintained a functioning zakat collection apparatus in Oman itself, employing dedicated zakat clerks who were permanent employees of the Omani state receiving a fixed share of the zakat they collected, with the remainder deposited in the bait ul maal. An Interviewee, who was a scholar, whose doctoral research examined the legal and political system of Oman and pre-independent Zanzibar, confirmed during fieldwork:

> *"Al-Salimi's writings have documented that the Sultan collected zakat in Oman."*

The same interviewee confirmed, however, that Al-Salimi does not indicate whether zakat was also collected from the East African territories under Omani jurisdiction, a documentary silence that the absence of relevant material at both the Zanzibar National Archives and the Nairobi archives corroborates. This archival gap carries significant analytical weight. It suggests that even at the apex of Omani political authority in East Africa, zakat was not institutionalized as a component of the revenue system governing the coastal strip, and that Islamic fiscal norms remained embedded in community and household practice rather than in formal state administration, establishing from the outset the pattern of fiscal exclusion from official governance that would persist across successive political orders.

The 1895 treaty between Britain and the Sultan of Zanzibar, which brought the ten-mile coastal strip under British administration as a protectorate, institutionalized this pattern with lasting constitutional consequences. The Sultan's sole condition was the continuation of Islamic law among Muslims and the protection of their freedom of religion, a condition recorded in the Report of the Kenya Coastal Strip Conference (1962). The British colonial government honoured this commitment by enacting legislation and ordinances recognizing the limited civil jurisdiction of the Kadhi's courts, but it did not engage with the fiscal dimensions of Islamic law, and the extensive colonial record on Kenya contains no reference to zakat. The British tendency to manage Islamic institutions instrumentally, preserving those that were politically useful and ignoring those that posed no administrative challenge, resulted in a colonial legal pluralism that was structurally selective: it incorporated Islamic personal and family law into the formal legal order whilst treating Islamic fiscal instruments as belonging entirely to the private domain of religious observance. (Latif, 2025) has noted that zakat was available to the Sultan of Zanzibar as a tax source, but without supporting reference and in a manner that the archival record does not substantiate, a claim that illustrates the degree to which zakat has been assumed rather than studied in the Kenya fiscal context. The post-independence period continued and constitutionalized the pattern established during the colonial era. The 2010 Constitution of Kenya recognized Islamic personal law through the Kadhi's courts and provided for the resolution of Muslim personal and family disputes according to Islamic law, but its insistence on the separation of religion from governance under Article 8 effectively excluded any extension of Islamic fiscal norms into the domain of public revenue. Legal pluralism in Kenya thus remains constitutively limited: it accommodates Islamic law in the private and personal sphere whilst withholding constitutional recognition from Islamic fiscal or revenue instruments in the public sphere (Kunyuk, 2024).

Against this historical background, the near-total absence of scholarship on zakat in Kenya is not merely an academic lacuna but a reflection of the structural subordination of Islamic fiscal norms within a constitutional order inherited from British colonialism. The scholarship on Islam in Kenya has been organized around two distinct preoccupations: the history of Islamic practice under colonial rule, centred in the writings of (Mujuzi, 2021) and the political representation of Muslims in the post-independence state, examined by (Latifah & Ahmad, 2026). Neither tradition has engaged seriously with zakat as a subject of revenue governance or fiscal institution-building. (Jeffery-schwikkard, 2024) references zakat only as a type of Islamic tax in the general context of discussing religion and politics in Africa; (Baraktar & Şenca, 2022) mentions it as an available fiscal resource without elaboration; and two articles by (Latif, 2022) propose zakat as a potential revenue source for the Kenya state without situating the proposal within the empirical reality of how Kenya Muslims actually administer their zakat. This study fills that gap with original data gathered from the Muslim community itself and from non-Muslim government and academic actors whose perspectives are equally necessary to any complete analysis.

The fieldwork conducted in Mombasa and Nairobi reveals that zakat governance in Kenya operates as an adaptive system structured around ethnic and jurisprudential community boundaries, in which Islamic authority figures, including imams, ustadhs, scholars, and faith-based Organization officers, serve as the primary interpreters and enforcers of zakat norms. The total amount of zakat paid by the 107 zakat payers interviewed in 2019 was £18,238, comprising £8,425 paid by 42 male respondents from Mombasa, £2,962 by 17 female respondents from Mombasa, £4,074 by 29 male respondents from Nairobi, and £2,777 by 19 female respondents from Nairobi.

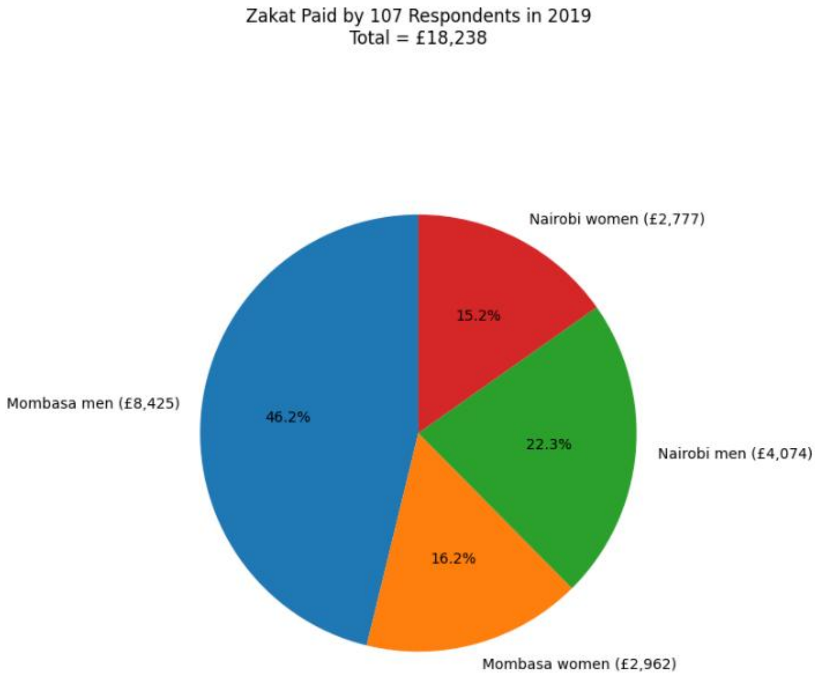

Figure 1. Distribution of Total Zakat Payments by Respondent Group

Whilst these figures cannot be extrapolated to the full Kenya Muslim population without additional representative data, they provide the first documented account of the scale of individual zakat payments in Kenya and confirm that zakat represents a non-trivial annual wealth flow within the Muslim community. The data also reveal a consistent gender inequality in zakat payment, with male respondents contributing substantially more than female respondents, which reflects structural inequalities in asset ownership between Muslim men and women in Kenya as well as the limited recognition of women as independent zakat payers within the dominant schools of jurisprudence. All respondents across both study sites confirmed that questions concerning zakat are directed to their imams and scholars, and that these authority figures guide decisions on the beneficiaries of zakat, the amounts to be paid, and the institutional channels through which payment should be made, with Arab, Swahili, and Somali participants confirming their adherence to the Shafi school and Indian respondents affirming the Hanafi school as their jurisprudential foundation.

The theme of authority emerged as the most pervasive analytical code across all three participant groups and performed a dual function in structuring zakat decisions. For Muslim participants, authority referred primarily to the doctrinal authority of the Quran and sunnah as interpreted through the imams and scholars of their respective schools of thought, and secondarily to the institutional authority of the mosques and faith-based organizations that served as intermediaries in the zakat system (Hidri & Zafari, 2021). This deference to authority is not passive or unreflective; it reflects a sophisticated system of community governance in which decisions on the use of zakat are legitimated through processes of shura (consultation) and ijma (consensus) at institutional, community, and household levels, and in which the imams' congregational sermons actively reinforce the pattern of directing zakat towards poor Muslims within the community. An Interviewee, a senior male Muslim authority figure in Nairobi, explained with analytical precision:

> *'Regulating the use of zakat at institutional level are only based on the schools of Islamic thought from which no derogation is accepted. The Hanafi school, for instance requires that zakat must be handed to the beneficiary, he must possess the ownership of the money, it is his to do as he pleases. The purpose of zakat is to relieve economic hardship, and this has been the practice of zakat for us. Giving it to finance health means cutting off the annual supply chain of money for*

> *poor households. Zakat creates a direct relationship between the payer and the beneficiary, there should be no intermediary, especially not the government of Kenya.'*

The theme of legality was closely interwoven with authority, and together these two themes constituted the normative architecture within which Muslim participants made their zakat decisions. Legality in this context did not refer to state law but to Islamic legality, specifically to the question of whether a particular use of zakat could be justified with reference to the Quran, the sunnah, and the established precedents of the relevant school of jurisprudence. For the Muslim respondents in this study, the legality of an action is determined first and foremost by its compliance with Islamic law, and only secondarily by its compliance with Kenya state law. This represents in practice precisely the form of legal pluralism over revenue that the article's historical analysis identifies: a community in which Islamic fiscal norms retain primary normative authority over the disposition of wealth regardless of the constitutional order within which that community is embedded.

The fieldwork documented a pattern of profound fragmentation within the Kenya Muslim community that structurally impedes any collective decision-making on zakat that might enable its direction towards public health financing. This fragmentation operates along ethnic, racial, and jurisprudential lines, with Arab Muslims, Somali Muslims, Indian Muslims of various sub-communities, Swahili Muslims, and native reverted Muslims each maintaining separate social structures, separate mosques, separate imams, and separate zakat distribution channels. The Mahad Dawah Organization and Zakat Kenya, both Nairobi-based faith-based Organizations, represent institutional attempts to create more inclusive platforms for zakat governance, but their reach remains limited within a community divided by competing traditions of authority and longstanding patterns of insularity rooted in the social hierarchies established during the Omani and colonial periods. The social reality of this fragmentation was captured with candour by an Interviewee, an officer of a Mombasa-based faith-based Organization, who observed that fragmentation is so:

> *"…deeply engrained that the Indians will never agree with the Somalis and the Somalis will never agree with the Arabs. It's as if they are each possessed to claiming superiority over the another. They can't even agree on when Ramadhan begins. The Somalis will defy the Kadhi, the Arabs will look towards Saudi and the Indians will keep to their bubble."*

This observation is not merely sociological commentary; it carries direct implications for the feasibility of using zakat to finance health at a national level, since any such arrangement would require a degree of collective Muslim consent and coordinated institutional administration that the current fragmentation of the zakat governance system does not readily permit.

The themes of identity and control were equally foundational to understanding Muslim resistance to government involvement in zakat administration. Both Group 1 and Group 2 respondents expressed strong commitment to maintaining Muslim control over zakat funds as a precondition of their continued participation in the system. This commitment was grounded not merely in pragmatic concern over misappropriation but in a sense of Islamic identity in which the right to determine the distribution of zakat is inseparable from the community's religious self-governance. The informal women-led social welfare groups documented in this study, represent the most granular expression of this identity-based control, organizing zakat collection and distribution along ethnic lines and making decisions through internal processes of consultation. These groups also represent an important finding in their own right: they document that Muslim women in Kenya are active participants in zakat governance at the community level, making autonomous decisions about the collection and distribution of zakat within their social networks, even as they are largely excluded from the formal scholarship on Islamic law and zakat in Kenya. The theme of trust, or more precisely the near-total absence of trust in the Kenya government as a potential zakat administrator, was the most decisive factor explaining the universal Muslim rejection of government involvement documented by the fieldwork. An Interviewee, a Mombasa-based female Arab respondent, articulated the view that characterized Group 1 responses across both sites:

> *"Government officials openly steal taxpayers' money, they steal money that is donated in good faith for building schools and hospitals, ah I can never trust government with my zakat."*

Other respondents characterized the government as *"highly corrupt,"* predicted that it *"will misuse and steal the zakat, they will definitely delay utilizing the zakat money where needed,"* and concluded that *"we are better off doing it ourselves."* The depth and consistency of this distrust locates the primary barrier to integrating zakat into public health financing not in doctrinal incompatibility but in the damaged political relationship between the Muslim community and the Kenya state, a relationship shaped by decades of perceived political marginalization documented by (Kabia et al., 2019; Oraro-lawrence & Wyss, 2020).

The themes of impact and development, whilst secondary to authority and legality in structuring the normative framework for zakat decisions, emerged as the primary positive motivators for giving zakat and as the most promising conceptual basis for reconsidering its potential contribution to public health financing. Respondents across all three groups were consistent in identifying the social impact of zakat on the economic conditions of poor Muslims as the fundamental justification for its obligatory character, and several were open to reconsidering the purposes towards which zakat was deployed provided that evidence of impact and effective distribution could be demonstrated. The data from Group 2 indicated that zakat governance at the institutional level was already oriented towards development outcomes beyond simple almsgiving, with Zakat Kenya directing zakat funds towards income-generating activities for poor Muslim women, including the establishment of catering businesses and roadside kiosks selling local foods. The willingness among institutional actors to conceptualize zakat as an instrument of development financing opens a pathway towards considering health financing as a legitimate zakat purpose, provided that the conditions of authority, legality, and community control could be satisfied. An Interviewee, a female Muslim authority figure participating in the Nairobi halaqa, expressed with considerable analytical clarity:

> *"Zakat to finance health is a public issue and if this discussion is to have any legitimacy, it must be considered by the ulema and not at an individual level. An individual can decide to give his zakat to pay the medical bill of his non-Muslim parent, for example, but when you want to collect zakat at a national level and give it to the government with which it can support the public healthcare system, we must all consent to this. Our consent can only be arrived at after we deliberate as the ulema, consult our books, go back to the guidance of the Prophet peace be on him and consider the pros and cons of giving zakat to the government for this aim. We must arrive at a decision within this system that we have adapted to and the government also if it wants to benefit from zakat, it must also unconditionally adapt to our system."*

This reflection by the Interviewee encapsulates the central tension that the study identifies between the Muslim community's adaptive system of zakat governance, which requires collective Islamic consent expressed through the ulema and grounded in the schools of jurisprudence, and the Kenya constitutional order, which under Article 8 prohibits the state from adopting a religion or applying religious law in the public sphere. The non-Muslim respondents in Group 3 gave detailed expression to this constitutional tension, with Members of Parliament consistently identifying Article 8 as the barrier to government acceptance of zakat with its Islamic conditions. An Interviewee, a Member of Parliament, identified the practical administrative dimension of the problem:

> *"If the zakat is given to us, you know the health budget is a pool of funds nationally drawn, internationally supported with different aid forms and disbursed at county level. How will we separate zakat from the entire budget if we include it as part of government's health budget? I think decisions around giving zakat to the government should not be made with religious conditions in mind. That will complicate the entire process."*

A further constitutional analysis was offered by another Interviewee, an academic respondent, who explained that Article 2(4) of the Constitution recognizes the legal validity of any law only to the extent that it is not inconsistent with the Constitution, and that any application of Islamic conditions on zakat by the government would require those conditions to be reformulated in non-religious terms if they were to have legal force in the public domain. The interviewee noted specifically that recognition of Islamic conditions could operate only where *"any such law was being applied at a personal or private level and not where the government is called upon to apply such law,"* a doctrinal position that creates a firm constitutional limit on the extent to which Islamic fiscal norms can be incorporated into the public revenue system without deliberate legislative intervention.

The theme of consent produced the most theoretically productive exchanges in the study, because it required respondents to articulate, often for the first time, the conditions under which zakat could legitimately flow towards the state. The consensus that emerged from Muslim respondents, and particularly from the halaqa participants, was that consent to give zakat to the government would require the ulema to deliberate collectively, arrive at a fatwa permitting such giving, and establish institutional structures under Muslim governance to oversee the administration of the funds. An Interviewee, an academic respondent, proposed a reframing of zakat contributions to health financing as aid conditionalities rather than as religious conditions, drawing on an analogy with conditionality frameworks attached to government partnerships in climate mitigation:

> *"Muslims can place their conditions without framing them as religious rules but as aid conditionalities and the government can accept them as part of meeting a target under the health goal."*

This formulation is theoretically significant because it offers a mechanism by which the normative authority of Islamic law can be preserved in substance, in that the conditions attached to zakat remain operative in determining how the funds are used, whilst being reformulated in terms that are constitutionally legible to the Kenya state. A further justificatory framework was proposed by another Interviewee, who located the theoretical basis for such reframing in the relationship between zakat and justice, observing that:

> *"… human rights are commitments to justice. The underlying objective of zakat as I understand it resonates with promoting justice. Supporting the poor is an act of justice. So I think, framing the achievement of a human right along the idea of promoting justice provides this leeway you are looking for, to introduce religion-based financing to support provision of healthcare of the poor in a particular area."*

This formulation suggests that the most productive pathway to integrating zakat into health financing lies not in seeking constitutional accommodation for Islamic fiscal law in its doctrinal form, but in identifying the shared normative commitments, specifically justice and redistribution, that make zakat intelligible within a human rights framework.

The findings, taken together, support the characterization of zakat governance in Kenya as a form of pluralist revenue administration that operates in parallel with and largely independently of the state fiscal system. This parallel governance structure is the product of the same historical forces that produced legal pluralism in Kenya more broadly: the layered succession of Omani, colonial, and post-independence legal orders, each of which accommodated Islamic law selectively and instrumentally, recognizing its personal and familial dimensions whilst withholding recognition from its fiscal dimensions. The result is a zakat system that is simultaneously legally recognized as an expression of personal religious obligation, institutionally embedded within mosques, faith-based Organizations, and informal community groups, ethnically fragmented along the lines of the Muslim community's historical social stratification, and constitutionally excluded from integration into the public revenue system. These characteristics are the structural consequences of a form of legal pluralism that has never extended to revenue governance, and they define both the challenges and the possibilities of the policy proposal that this study examines. The institutional architecture required to bridge these competing legal orders would need to satisfy at minimum three conditions that the fieldwork identifies. The first is the condition of Islamic legality: any arrangement for directing zakat towards health financing must be validated by the ulema through collective deliberation across the Shafi and Hanafi schools of jurisprudence, issuing a fatwa that commands sufficient authority across the ethnically diverse Muslim community to generate broad-based participation. The second is the condition of Muslim control: the institutional structures through which zakat is channelled towards health financing must be governed by Muslims, with transparent accountability mechanisms that preserve the community's trust in the integrity of the funds and their distribution according to the purposes for which they were given. The third is the condition of constitutional compatibility: the conditions attached to zakat giving must be formulated in terms legible within the constitutional framework of Kenya, as conditions attached to a voluntary donation rather than as religious law, so that the government can accept and administer the funds without violating Article 8. These three conditions are demanding but they are not mutually exclusive, and the framework of conditional consent that emerges from the fieldwork provides a conceptual scaffold for the institutional design work that would be necessary to operationalize this proposal.

Comparative Implications for Muslim-Majority Countries

The study's conclusions reach beyond the Kenya setting and add to more general discussions about zakat governance in nations with a majority of Muslims. While Muslim-majority jurisdictions have established various institutional systems that show differing degrees of state involvement in zakat administration, Kenya is a Muslim-minority constitutional state where zakat functions outside of the formal fiscal system. These divergent governance models offer a crucial comparative perspective for comprehending how institutional trust, legal authority, and constitutional architecture influence zakat's function in public welfare and health funding.

Malaysia is one of the most institutionalised versions of zakat governance among nations with a majority of Muslims. State Islamic Religious Councils use professionally run collection companies with acknowledged legal authority to administer zakat. Zakat has been able to support social welfare projects like as healthcare, education, and poverty alleviation because of strong institutional accountability and high public trust. Effective governmental involvement in zakat administration requires not only legal recognition but also long-term institutional legitimacy and public trust, as the Malaysian experience shows. Comparable institutional structures would be challenging to implement in Kenya without first addressing concerns of governance credibility, as respondents in this survey regularly showed mistrust towards government handling of zakat.

Indonesia has embraced a collaborative governance model through the National Zakat Agency (BAZNAS) and licensed private zakat institutions (LAZ), in contrast to Malaysia's primarily state-led system. By combining government supervision with active involvement from civil society Organizations, this hybrid approach preserves zakat's religious legitimacy while increasing administrative effectiveness. The Indonesian experience serves as an example of how collaboration between Islamic Organizations and public institutions can improve zakat governance without necessitating the total transfer of religious authority to the state. This approach is especially pertinent to Kenya since it shows how institutional cooperation might offer a workable means to put the suggested conditional consent framework into practice.

In Sudan and Pakistan, where the state is significantly more involved in zakat administration, a different style of governance is evident. While Sudan integrated zakat into the national budgetary management through specialist governmental Organizations, Pakistan established mandatory zakat collection under the Zakat and Ushr Ordinance. Both nations have encountered difficulties with administrative legitimacy, sectarian variety, and public trust, despite the fact that these systems show that zakat may be included into public budget. These experiences imply that institutional credibility and community acceptance continue to be crucial factors in determining the successful implementation of zakat; legal power alone is insufficient to achieve effective zakat governance.

When combined, these global experiences demonstrate that no single governing model can be used consistently in various constitutional and sociopolitical settings. The interplay of institutional ability, public trust, religious authority, and legal frameworks determines how well zakat governance works. Because Article 8 forbids the state from adopting any religion, Kenya confronts a unique constitutional difficulty in comparison to the Muslim-majority nations mentioned above. As a result, the main concern is not just administrative effectiveness but also how to reconcile Islamic legal authority with constitutional secularism.

In light of this comparative context, the study's main theoretical contribution is the notion of conditional permission. The framework provides an institutional system that allows Islamic legal norms to coexist with constitutional governance, as opposed to promoting either total state authority or exclusive community-based administration. By putting forth a governance model created especially for Muslim-minority jurisdictions looking to mobilise Islamic fiscal resources while maintaining both constitutional neutrality and religious validity, this contribution expands on previous research on legal pluralism and zakat governance.

D. Conclusion

This article has presented the first empirical study of zakat governance in Kenya and the first phenomenological analysis of whether Kenya Muslims and non-Muslim actors consider it feasible to deploy zakat as an instrument of public health financing. The historical analysis has demonstrated that the arrival of Islam along the East African coast in the early seventh century initiated a form of legal pluralism over revenue that has persisted through successive political orders and continues to define the relationship between Islamic fiscal norms and the Kenya constitutional order. The Omani Sultanate's documented practice of institutional zakat collection in the Arabian heartland, the British colonial preservation of Islamic personal law without extension to fiscal instruments, and the 2010 Constitution of Kenya's recognition of Islamic personal law through the Kadhi's courts whilst excluding Islamic fiscal law from the public domain all represent moments in the formation of a legal pluralism that is structurally incomplete. It accommodates Islamic law in the private sphere whilst excluding its fiscal dimensions from the public domain, and it is this incompleteness that the research question under inquiry asks whether an innovative institutional design might overcome.

The fieldwork findings confirm that zakat governance in Kenya is an adaptive, institutionally resilient, and ethnically stratified system whose primary determinants are Islamic authority and legality as understood within the Shafi and Hanafi schools of jurisprudence. The near-universal distrust of the Kenya government as a zakat administrator, the strong community commitment to Muslim control of zakat funds as an expression of Islamic identity, and the constitutional barrier posed by Article 8 collectively define a structural challenge that cannot be resolved through doctrinal argument alone. Overcoming these structural barriers would require institutional innovation of a specific kind: the creation of a national zakat fund governed by Muslims, validated by collective ulema deliberation across both major schools of jurisprudence, and structured to channel zakat towards health financing for the poor under conditions that are constitutionally compatible with the separation of religion from governance. Such an arrangement would represent a historically novel form of legal pluralism over revenue, one in which Islamic fiscal norms are given operational effect within the public domain not by displacing the constitutional order but by working within it through the mechanism of conditional philanthropy, translating religious obligations into aid conditionalities that the Kenya state can receive and administer without constitutional violation.

The theoretical contribution of this study to Islamic fiscal studies and to African public finance scholarship is threefold. It provides the first empirical documentation of the scale, distribution, and institutional governance of zakat in Kenya, establishing a baseline against which future studies can measure change. It introduces the concept of legal pluralism over revenue as a framework for understanding the structural relationship between Islamic fiscal norms and non-Islamic constitutional orders, extending beyond the conventional focus of legal pluralism scholarship on personal status and family law into the undertheorized domain of revenue governance. And it identifies conditional consent as the operative mechanism through which the competing legal claims of the Muslim community and the Kenya state might be reconciled in a manner that expands the fiscal space available for health financing without violating either Islamic law or the Constitution of Kenya. Future research should examine whether the conditions of Islamic legality, Muslim control, and constitutional compatibility can be operationalized within specific institutional designs, should engage with the administrative feasibility of a national zakat fund operating in formal partnership with the Kenya Ministry of Health, and should extend the comparative inquiry to other Muslim minority states in sub-Saharan Africa where analogous forms of legal pluralism over revenue may obtain and where the policy question of integrating Islamic fiscal instruments into public health financing has yet to be rigorously examined.

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F. AUTHOR CONTRIBUTION STATEMENT

LL was solely responsible for the conceptualization, methodology, data collection, formal analysis, interpretation of the findings, writing, and final approval of the manuscript.

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