Zakāh & Waqf: A Paradigm Shift Towards Synergisation delves into the issue of investing a portion of Zakāh funds into long term investments for the benefit of zakāh eligible beneficiaries. Both Zakāh and Waqf are important pillars of the Islamic Economy and current trends point towards closer collaboration between these two vital institutions that serve the Ummah. This book comprises of research articles and fatwas from a range of scholars and jurists, discussions, and hypothetical proposals for practical implementation. An earlier publication by the author Zakah: The Pillar of Empowerment is also included. May this spur debate and further research. May it enrich the literature and clear the way for a paradigm shift towards synergisation of Zakāh & Waqf. And Allah knows best.

ZEINOUL ABEDIEN CAJEE [BBusSc (UKZN); HonsBCompt (Unisa); CA(SA); BED, MEd (Wits). Cert in Corporate Governance (Wits); Cert in Administration of Awqaf Properties (IsDB). Practised as auditor and consultant. Senior lectureship at University of Johannesburg (Soweto). Exposure to local and international Islamic scholars through the Muslim Students Association and the Muslim Youth Movement and actively engaged in several community projects over the years. Since 2000/2001 passionately involved in the initiation, establishment, and implementation of the National Awqaf Foundation of South Africa (AWQAF SA). Currently serves as the Founding CEO of the organisation. 

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Zakāh and Waqf: A Paradigm Shift Towards Synergisation

A compilation of articles and fatawa with discussions and proposals.

Zeinoul Abedien Cajee
In the name of Allah, Most Gracious, Most Merciful

We Praise Allah and send Prayers and Peace on his Honourable Beloved (Prophet Muhammad ﷺ)
Reviews and Recommendations

Hisham Dafterdar
Chairman, Awqaf Australia Ltd.

The Islamic institutions of zakāh and waqf are two faith-based socio-economic development models having the objective of achieving equitable redistribution of income and wealth. Zakāh, the third pillar in Islam, is an obligatory charity payable by a Muslim who has reached the minimum level of wealth (nisab) to recipients specified by Shari‘ah. Similarly, waqf is a voluntary charitable act that has wide economic implications. The overall objective of these two institutions is to build a sustainable way of life for the weaker sections of society and thereby raise the Ummah’s welfare level.

Zakāh and waqf have similar objectives and roles. The collaboration between the two institutions enable them to leverage each other’s systems, processes and efforts to achieve greater potentials in policies of redistribution of wealth, poverty alleviation and capacity building. In many developing countries the zakāh collection may not be enough to provide income support to all the poor in the country. The strategy of leveraging on awqaf organizations to use the zakāh funds to increase the productive capacity of the poor will have long term positive results. Specifically, the collaboration between zakāh and awqaf can facilitate wealth creation and capacity building by reducing poverty, creating jobs, and promoting wellbeing for all. The ultimate goal is to transform zakāh receivers to become zakāh payers.

This valuable book covers a number of theoretical and practical applications in the area of interrelationship between
zakāh and waqf. More specifically, this book puts together a few articles, research papers, case studies, and interviews, with regards to the complementarity between waqf and zakāh. The book also offers a simple and easy guide to help the average Muslim in calculating his due zakāh, and in distributing it to its prescribed recipients. Recommendations and policies are outlined in the light of the fatwas given by the Islamic Fiqh Academy and Shariah scholars.

**Dr Goolam Mahomet Hoosen**

*Co-Founder and Past President of the Islamic Medical Association of South Africa.*

This book by Zeinoul Abedien is a follow up on his original work on Zakāh. This book is an expansion on the use of Zakāh for the establishment of Zakāh Assets/ Infrastructure and combining it with Waqf assets that will be beneficial to Zakāh beneficiaries. He has brought together different opinions on the subject and makes a strong point for it. This is bound to create much interest, and temperature. We look forward with much interest.

**Assoc. Prof. Dr. Dzuljastri Abdul Razak**

*International Islamic University Malaysia (Iium); Executive Committee Member Of The International Council Of Islamic Finance Educators.*

Good project indeed. Zakat is a viable way to achieve sustainability of the ummah.

**Dr. Sami Mohamed AlSalahat**

*Founder of the International Institute of Islamic Waqf (IIW).*

All Praise be to Allah, Lord of the worlds, and prayers and peace be upon the most honorable messengers, our Prophet Muhammad and all his family and companions.
It is natural to feel elated when you present a book to an author who lives the concerns of the nation and the reality of his society, and the most beautiful of that is that this book is the fruit of the author’s experiences in the field of the nation’s renaissance and advancement, especially in the field of economic and social empowerment.

I reviewed the book of dear brother Zeinoul Abedien Cajee, whom I have known for two decades, on zakat and WAQF, which included several very important sections, dealing with the pillar of Islam, which is zakat, and the WAQF ritual, which is the pillar of social and economic development since the mission of the Prophet Muhammad, may Allah’s prayers and peace be upon him.

The book is a collection of articles, fatwas, proposals and discussions, talking about the mechanisms of paying zakat and investing it, and it talks about the Malaysian experience, and how to establish a real partnership between zakat and WAQF, to establish income-generating assets that help strengthen the assets of zakat and WAQF in Islamic societies and countries.

The book is an important intellectual work in an area that the Islamic nation needs, which is the subject of sustainable development, working to build civil society institutions, meeting the nation’s needs, providing the necessary resources to spend on them, and stimulating the spirit of giving and giving.

Therefore, it is not surprising that Zeinoul’s goal is not to search for the promotion of development in the various fields of interest to the nation, as I have realized him in many locations and he is searching, calling and communicating for the purpose of reaching out with those interested in the
Zakat sector and WAQF towards the real empowerment of these two rituals of Islam.

I hope that the workers in the Zakat and Waqf sector will see this book and consider it with consideration and practice. I congratulate my brother and friend Zeinoul Abedien on this scientific achievement, and his insight into the mechanisms of developing the Zakat and Waqf sector in the service of Islam and its people.

And this, by Allah, is behind the intent.

MI Yusuf Patel
Secretary General: United Ulama Council of South Africa (UUCSA).

"Zakāh & Waqf - A Paradigm Shift Towards Synergisation" probes the lawfulness of investing zakāh funds for the exclusive benefit of zakāh eligible beneficiaries. It is a compilation of a number of scholarly critiques that will most certainly generate robust debate since it goes against the prevailing view of local and international Islamic scholars regarding the disbursement of zakāh funds. It is however mooted and supported by scholarly opinion which calls for dispassionate reflection and consideration.

Muhammad Lawal Maidoki
Executive Chairman, Sokoto State Zakat and Waqf Endowment Commission (SOZECOM), Nigeria.

"Zakāh & Waqf: A Paradigm Shift Towards Synergisation” is an indispensable read for waqf practitioners, scholars, students and all interested readers in the important fields of zakāh and waqf. As a compilation of articles, fatawa, proposals and discussions this compelling work has brought together varied sources to address the contemporary challenges within the framework of constraints on zakāh and waqf co-existing with
secular systems. Zeinoul Abedien Cajee once has succeeded in shedding additional light on seemingly intractable issues at an auspicious time.

Haroon Rasheed Aboo Kalla

*Former Chairman and Member of the Council of Mutawallees of Awqaf SA; Executive Director of Amka Products (Pty) Ltd.*

Zeinoul Cajee has, with great skill, captured the core process of how to transform and optimise applications of Zakāh. The fatawa (legal edicts) quoted in this book introduce a thoroughly dynamic and contemporary way of how Zakāh can be synergised with a special Waqf fund to transform and empower our communities. This sustainable concept is particularly relevant to Muslim minorities in South Africa and elsewhere.

It is very clear that due to the sanctity of the month, that the notion of dispensing our Zakāh in Ramadan is a noble and wonderful thing to do. However, by spending all of our Zakāh in one month, we can neglect ongoing and immediate needs for the rest of the year.

We have to acknowledge that a once-off voucher or food parcel cannot eliminate poverty. In fact, it could perpetuate need through dependency if it does not have a long term vision to eliminate poverty. One sure way of achieving our goal as a society to enhance the optimum utilisation of limited resources is to think very seriously about implementing the concept of sustainability in our Zakāh.

Hence, the idea that we look at the option of transforming our Zakāh beyond immediate needs to a long-term Waqf, this in the interest of ensuring sustainable transformation over many years. In other words, this could achieve sustainability and enrich the value of dispensing our Zakāh in Ramadan.
This is a win-win for all, as it could allow our NPO organisations to make long term plans for transforming and uplifting our communities.

Insha Allah, if we can achieve a consensus to make excess Zakāh a special Waqf this could serve as a “community sovereign fund” with the power to act as a fountainhead of barakah and transformation in our community.

This has the potential to fast track us from being takers of Zakāh to being producers and givers of Zakāh, a noble pillar of Deen serving the greater good of society.

**Hfz Adv AB Mahomed SC**  
*Chairman, Albaraka Sukuk Trust. Vice President Islamic Council of South Africa.*

My congratulations to you for an outstanding book on Zakah and Waqf. It sets out brilliantly the pros and cons of the discussion and debate on Zakah as used in the traditional sense and as it ought to be used as a financial instrument for economic growth. It is timely and very persuasive for the business sector to change their mindset.

Since central to the debate is the question of ownership, one may consider Sukuk Certificate Holders as the answer to the poor individual becoming the owner from inception without the risk of loss due to ignorance or lack of skills as the management is done by a third party. This is an area for problem-solving to be discussed at another time. Inshallah.

It is a good reference book for research and a valuable addition to one’s knowledge. It is a game changer.
Zakāh expenditures are only for the poor and for the needy and for those employed to collect [administer] [Zakāh] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler - an obligation [imposed] by Allah. And Allah is Knowing and Wise.

(Qur’an: Surah Tawbah 9:60)

(Sahih International)

Never will you attain the good [reward] until you spend [in the way of Allah ] from that which you love. And whatever you spend - indeed, Allah is Knowing of it.

(Qur’an: Surah Aale Imraan: 3:92)

(Sahih International)
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Dedication

This compilation is dedicated to all those who seek to explore innovative ways in which to build Islamic institutions and seek solutions within the broadest parameters of the Shari’ah.

I also dedicate this work for the pleasure of Allah and for Esaal-uth-thawāb of my beloved parents Muhammad Yusuf Cajee & Zuleikha Ismail Wadvalla, and my beloved sisters, Sarah Bibi Cajee-Karodia and Saida Cajee-Omar.

May Allah accept all their efforts and grant the deceased the highest stage in the ākhirah.
Acknowledgements

We gratefully acknowledge the kind permission granted to the National Awqaf Foundation of South Africa (Awqaf SA) by the author Sh Dr Jasser Auda to translate his article from Arabic to English and which was originally published within the Proceedings of Session 28 of The European Council for Fatwa and Research, Istanbul 1440/2018. A special thanks to him also for the important fatwa that he provided at the request of Awqaf SA way back in 2015 after a conversation we had in Cape Town at a dinner meeting hosted by the International Peace College of South Africa (IPSA).

We also acknowledge with gratitude the readiness of Prof/ Hafez Yousuf Dadoo to undertake the translation assignment of the abovementioned article and the article written by Benaouda Bensaid and Aouidad Rachid, for and on behalf of Awqaf SA. We make dua that these research articles will add to the further exploration of the importance of both zakāh and waqf as significant charitable institutions in Islam and the Islamic Economy. We pray that these research articles will add significant value in the practise and implementation of waqf and zakāh in ways that not only conform to Shari’ah, but also gives practical expression to its intended purposes.

Thanks also to various scholars with whom I have been in contact and whose advice has always been forthcoming. Mufti Najeeb Khan (Pakistan) who was a guest at two Awqaf SA Waqf Cadre Programmes held in Pretoria and Durban; Dr Anwarullah (Pakistan) who was interviewed by myself in 2000. The full transcript of that interview is recorded in my previous book titled “Zakāh: The Pillar of Empowerment” and published in 2002 (see Appendix 1); Dr Irfaan Syaqubi Beik (Indonesia), Executive Secretary of the World Zakāh and Waqf Forum; Prof. Dr Murat Çizakça (Turkey), world
renowned scholar and academic; many local ulama that I have spoken to and who provided valuable inputs including Mufti Shafique Jakhura (South Africa); Brother Hoosen Essof (South Africa) (former Regional Director of SANZAF) for providing me with various materials on Zakāh including the book by Dr Mahmood Abu Saud (RA) and the monumental book by world leading scholar/aalim Sh Dr Yusuf Al Qardawi. Shukran to br Imthiaz Jhetham, current regional Director of SANZAF who provided various relevant materials and made himself available for discussions. May Allah be pleased with all. Thanks and gratitude also Sh M Shuaib Omar (South Africa) for the regular advisories sent on what's app.

I am also grateful to our dear Shaykh Amir Mandla Nkosi Abdul Qadir for having edited parts of the book.

My gratitude also goes to my colleagues at Awqaf SA, our honorable Mutawallees and Executive (past and present) who have always provided the moral support for engaging in research work that helps promote the cause of waqf and Zakāh. Thanks to all those who have helped in one way or another.

A special thanks and gratitude to our beloved brother marhoom Dr Shawkat Alli Thokan (RA) (co-founder and trustee of the South African National Zakāh Fund (SANZAF) and co-founder of AWQAF SA) who wholeheartedly supported endeavours that promoted the “Islamic way of Life” and in creating and promoting institutions that would fulfil community needs. May Allah grant him and all our predecessors who passed on and made invaluable contributions to the Islamic movement in South Africa and elsewhere.
Thanks also to Sr Tazkiyyah Amra and her team at Hikmah Pubb

Lastly but not least, thanks to my dear wife Amina who has always been the first to read my writings and provide suggestions and comments for improvement. And to my family and friends for their unwavering support.

May Allah reward you all abundantly. I ask for forgiveness for any errors. And Allah ﷻ Knows Best.
Foreword

Dr. Selim Argun.
Vice President, Presidency of Religious Affairs of Turkiye

Islam provides a social order with the historical institutions it has created. The most basic feature of these institutions is to observe a balance between this world and the hereafter. This approach results from Islam's view of this world as a transitional stage before the hereafter, which is the place of eternal life. Therefore, we witness that many practices, which are seen purely as worship, contribute to improving life, individual evolution, and social welfare. Similarly, it is known that many practices that are not seen as worship are thought of as a means for people to obtain otherworldly rewards via their intentions and perspectives. Many institutions have emerged due to this belief, and the foremost among these are zakat and awqaf.

Since zakat is a form of worship, it has been discussed in detail and has served as an important basis for social consensus in Muslim societies. On the one hand, zakat is a means for the rich to be grateful for their wealth and, on the other hand, for meeting the needs of the poor segments of society. It has also brought together different parts of society, for example, by reducing the tensions between the rich and the poor and providing social welfare.

Another institution that has as important a function as zakat is waqf. Awqaf have assumed crucial social and economic roles in Muslim societies and undertake essential functions in many fields, ranging from education to health and environment to animal welfare. As such they are important institutions that embody philanthropy and human values. It is noteworthy that the awqaf established in the Ottoman period,
on the one hand, increased in terms of quantity and, on the other hand, assumed important roles in terms of quality. In particular, foundations based on educational institutions have enabled knowledge to become widespread and reach a point that will appeal to all segments of society.

The importance of both zakat and awqaf has led to an increase in studies on these two institutions today. In particular, the economic roles of zakat and waqf have led to studies on ways to benefit from the opportunities offered by these institutions in problem areas such as poverty, underdevelopment, and lack of education in the Muslim world. However, the inability to make new perspectives and approaches on some issues related to zakat as worship reduces the benefit of these institutions. In addition, we have very few studies on the opportunities offered by zakat concerning the awqaf in the Muslim world. Therefore, this book should be an important step towards filling this gap.

Although it is important to establish the relationship of zakat with the waqf and to benefit from zakat in the awqaf activities, scholars have struggled to establish this relationship. In particular, supporting the activities of awqaf in the field of education with zakat will ensure that these activities become widespread in disadvantaged groups of society. This book is vital in that it offers new ideas and suggestions regarding the current gap. I think such approaches are essential because they discuss new ideas that preserve the spirit of the institutions created by Islam and the universal message of Islam; thus, testing different perspectives and furthering research that will provide essential gains. For this reason, I think that “Zakāh & Waqf: A Paradigm Shift Towards Synergisation” will offer important insights that will lead to a revisit of the opportunities offered by these two important institutions.
Preface

Experience of apartheid, and cognisance of its legacies, many were concerned about how the Muslim community would interact with the broader community post-apartheid. The needs are many, but do we have the resources to fulfil those needs? And whatever we do, we will need funding. What are the sources of our public funding? Generally, people donate lillah, pay their Zakāh, and other forms of charity, distributed either individually or through institutions. But are we distributing the Zakāh to the eligible categories and what is the methodology – handouts vs empowerment of beneficiaries?

However, early in 2000, I decided to research Zakāh to explore its distribution and possibilities, and fortunately, I had access to marhoom Moulana/Dr. Fazlur Rahman Ansari’s (RA) encyclopaedic two-volume; “Qur’anic Foundations and Structure of Muslim Society” and also the thoroughly researched and world acclaimed monumental work, “Fiqh Az-Zakāh” by Shaykh/Dr. Yusuf Al Qaradawi – both internationally recognised scholars of Islam. They both touched our South African shores and have been inspirational to the youth globally, including South Africa. The research included quantitative data obtained via questionnaires to leading Zakāh institutions in South Africa, secondary desk research consulting the aforementioned, other literature and publications, an in-depth interview with Moulana/Dr. Anwarullah, who at the time came to South Africa as a guest of AMAL (Association of Muslim Accountants and Lawyers) for a Conference on Muslim Personal Law, held on the South Coast near Durban, and my personal experience. At that time, Dr. Anwarullah was
seconded by the Pakistan government to Brunei to serve on its Shariah Board.

The focus of the above study, which culminated in a book titled; “Zakāh: The Pillar of Empowerment,” published in 2002, was on the distribution of Zakāh in South Africa by various institutions rather than the collection and calculation of Zakāh (the book is reproduced herein as Appendix 1). The questions raised then are also relevant today. How best can we utilise Zakāh in an era with rampant poverty, where the iniquitous apartheid legacy of racism, inequality, and dehumanisation still lingers? How should we explore the maximum utilisation of Zakāh for the strategic interests of the Muslim Ummah in South Africa, our beloved country with all its attendant problems?

Also, I recently contacted the now aged and retired Dr. Anwarullah and shared the book with him. He gratefully acknowledged and commented that if he had better health and more time, he would devote it to the question of the investment of Zakāh funds. The main thrust and focus of that book was on the notion of empowering zakāh beneficiaries rather than giving handouts. While handouts are necessary in some cases, especially for orphans, the elderly and the incapacitated, others need to be empowered towards self-sufficiency – the highest form of charity.1

1 See https://en.wikipedia.org/wiki/Tzedakah; also Maimonides’ Eight Levels of Charity, Mishneh Torah, Laws of Charity, 10:7–14https://www.chabad.org/library/article_cdo/aid/45907/jewish/Eight-Levels-of-Charity.htm. Maimonides was a 12th century Jewish philosopher/ scholar who lived during the Middle Ages in Islamic Spain and who was also an advisor to Sultan Salahuddin Ayyubi (R A). His view accords with the Prophets’ view of enabling the poor but capable to become self-sufficient – re the story of the beggar who was helped with an axe to chop wood and to sell same.
As a minority community, it was through the efforts of the Muslim Youth Movement of South Africa (MYM) that several “projects” were initiated and established. Until around the early ‘70s there was no national body focusing on the collection and distribution of Zakāh. The South African National Zakāh Fund (SANZAF) started as a project subcommittee of the MYM. It gradually and progressively evolved into a separate but important institution that we can all be justly proud of.

Similarly, until about 2000, there was no national body focusing on the prophetic and divine institution of Waqf. It was again, during August 1984, that the MYM, under the Presidency of Br Ebrahim Jadwat, sent four members viz Brs Abdul Sattar Gani (RA), Suleman Lockhat (RA), Iqbal Kolia, and myself (at own expense!) to Jeddah for a two-week-long programme on the “Administration and Management of Awqaf”

Maimonides invented the following hierarchy/ladder of giving. Each rung up represents a higher degree of virtue:

1. The lowest: Giving begrudgingly and making the recipient feel disgraced or embarrassed.
2. Giving cheerfully but giving too little.
3. Giving cheerfully and adequately but only after being asked.
4. Giving before being asked.
5. Giving when you do not know who is the individual benefiting, but the recipient knows your identity.
6. Giving when you know who is the individual benefiting, but the recipient does not know your identity.
7. Giving when neither the donor nor the recipient is aware of the other's identity.
8. The Highest: Giving money, a loan, your time or whatever else it takes to enable an individual to be self-reliant.

https://www.charitywatch.org/charity-donating-articles/eight-rungs-of-the-giving-ladder
"Properties." It was at that seminar that we learnt about this magnificent institution of Waqf. Scholars and experts from various countries made presentations, Shaykh Dr. Hasan Al Amin; Dr. Nejatullah Siddiqui; Dr. Anas Zarqa; Dr. Abdul Mannan Khan. Various other delegates also made presentations about the Waqf institutions in their respective countries. That was probably the first English language seminar/conference on Waqf, in recent times – almost 38 years ago. While not new to countries like India, Pakistan, Bangladesh, Cyprus, Kenya, and Malaysia – to name a few – for us South Africans, it was an eye-opener - a great learning experience. Alhamdulillah, in 2000/2001, the seeds for AWQAF SA were planted and active steps were taken in the establishment and implementation of the National Awqaf Foundation of South Africa (AWQAF SA).

The institutions of Zakāh and Waqf have in recent times taken centre stage in the ongoing development of “Islamic Finance,” “Islamic Economics,” the “Islamic Gift Economy,” and “Islamic Social Finance.” Over the past 20 years, there have been literally hundreds of conferences on Islamic Finance. Slowly but surely, the topics of waqf and Zakāh are entering the “sacred” space of Islamic Finance. Both Zakāh and Waqf have played significant roles in the economies of the Muslim world and Muslim communities. But, when the Islamic Banking and Finance movement began in the early 1970s, there was hardly a mention of Zakāh and waqf as important “social finance pillars” that needed to be integrated into the broader Islamic Banking and Finance arena. It was during the International Waqf Conference 2008 co-hosted by the Muslim Religious Council of Singapore (MUIS) and the Islamic Development Bank (IDB) that the idea of integration of the so-called “social finance pillar” of Waqf with the mainstream Islamic banking sector was entertained. About 10 years ago the World Zakāh Forum was
inaugurated courtesy of BAZNAS, the Indonesian government-supported Zakāh Fund. While the Waqf sector has been struggling to establish a world forum, the World Zakāh Forum took a bold decision during its annual meeting (held online) in December 2021 to amalgamate the Waqf sector with the Zakāh sector – now renamed the World Zakāh and Waqf Forum. We make dua that this Forum will further enhance both sectors and share invaluable information about projects being undertaken in their countries utilising both Zakāh and waqf for their needs.

The theme of 2021 in the World Zakāh and Waqf Forum was “Strengthening Zakāh and Waqf Synergy in the Post Covid-19 Economic Recovery”. That was a clear indication of the enormous collaboration opportunities and possibilities; between the two largely untapped Islamic institutions of Zakāh and waqf in a more structured and organised way. In attendance were the members of the Indonesian Waqf Board [Badan Waqf Indonesia (BWI)], Badan Amil Zakāh Nasional (BAZNAS), International Islamic Fiqh Academy (IIFA), various scholars of Islam, university professors and practitioners from other parts of the world, including South Africa.

In the past, there have been many writings on the utilisation of Zakāh and waqf for poverty alleviation, microfinance and other matters of community development. Those writings, too, will need to be revisited.²

There are many issues in which scholars (jurists/fuqaha) differ, both classical and contemporary. On the one hand, there are differences about what is zakatable and what is not, for

² See Habib Ahmed in the bibliography.
example, which precious metals are zakatable, which investments in the current economic scenario are zakatable, and at what rates.\textsuperscript{3} On the other hand, There are also differences regarding the distribution of zakāh. Some scholars are of the opinion that zakāh must be distributed immediately, while others permit a delay, and suggest periodic payments also. Furthermore, there are different opinions on the interpretations of who the eligible zakāh beneficiaries are, for example the Qur’anic notions of \textit{muallafatul quloob} and/or \textit{fi sabil lillah}.\textsuperscript{4}

A raging debate is the issue of investment of Zakāh funds. Regarding Waqf, investment is a no-brainer as it is already well settled that waqf is a capital asset and not a consumable. Waqf may be a permanent giving perpetual benefit but may also be temporary (depending on the assets useful life). This compilation then focuses on the issue of partial and conditional investment of Zakāh funds for the use of profits generated by the respective Zakāh funded investments by all categories of Zakāh beneficiaries with or without additional funding from profits generated from waqf investments.

At a time when Muslims are rediscovering their lost heritage in the form of the great socio-economic-political-cultural-civilisational institutions of \textit{Waqf} & Zakāh, there is always a need to seek new and creative pathways and solutions within


the broad bounds of *shari’ab*, in different contexts, eras, and milieus. Today’s rampant lavish lifestyles and conspicuous consumption in a sea of poverty is no longer tenable. Capitalism and globalisation have failed humanity. The poverty-wealth gap must be narrowed as an urgent imperative by all communities. The Muslim community has a particularly important responsibility in this regard. The big question is how do we do that? The solution lies in our powerful, sustainable, *shari’ab* based institutions of *Waqf* & *Zakāh*. The Qur’ān, and Sunnah are replete with injunctions, advisories, exhortations, and parables about spending in the way of Allah using *infaq* and its derivatives to drive home the point.

A short step back into observing what our national priorities are and a look at the startling macro socio-economic issues will suffice to give us all a wake-up call and may also give us direction as to where our *Waqf* revenues and *Zakāh* should be spent:

**Top 10 National Priorities: 1999 Human Sciences Research Council (HSRC) Survey:**

- Job Creation
- Crime Reduction
- Housing Provision
- Improve Education
- Clean water at a lower cost
- Better health services
- Better services: Electricity & Water
- Electricity supply and street lights
- Increase money for pensioners
- Better wages and/or salary increment
A search was done to check if the Human Sciences Research Council did an updated version, none was found. But if one needs to fast forward to 2022, we may well find the same issues lingering on, along with a few more.

**Fast Forward to 2022:**

Poverty  
Inequality  
Unemployment  
Alcoholism/Foetal Alcohol Syndrome  
Corruption  
Promiscuity/Abortion/ Teenage Pregnancies  
Gender-Based Violence  
Education Attrition  
Jobless Graduates  
Housing  
Structural and institutional deficits  
Lack of “Community Capital”  
Climate change  
Impact of Covid 19  

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<td>Clean source of water &amp; bringing cost down</td>
<td>19</td>
<td>1</td>
<td>3</td>
<td>0.6</td>
<td>14</td>
</tr>
<tr>
<td>Improve clinics and better health services</td>
<td>11</td>
<td>15</td>
<td>8</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>Better services: water and electricity</td>
<td>10</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Electricity supply and street lights</td>
<td>10</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Increase money for pensioners</td>
<td>5</td>
<td>4</td>
<td>8</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Better wages and/or salary increment</td>
<td>5</td>
<td>4</td>
<td>8</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
The above issues and priorities are crucial concerns for all South Africans. The Muslim population is tiny compared to the rest of the population — 2-4% (unverified) of the total population of 60.1 million. The key question is, to what extent can we, as a community, with limited resources, intervene? Yes, we can make a difference as we have been doing. But when we look at the issues, these are alarming problems and require billions to remedy and redress. Do we seek solutions at the root of the problem or are we going to use band-aid solutions to treat symptoms, not the causes? What resources do we have at our disposal to help address these national priorities? Then we also have Muslim priorities. These could very well be common to the above but also includes Dawah, Leadership development, Unity, developing new institutions, community infrastructure, social cohesion among Muslim established, immigrant, and emerging communities as well as among Muslims and the broader South African community. What resources do we need to be effective? How can we leverage the institutions of Waqf and Zakāh? Hopefully, this research project may provide some answers. Inshallah.

This compilation:
The article entitled “Payment of Zakāh to a charitable Waqf that oversees its disbursement according to one of the legal channels,” written by Sh Jasser Auda is in Part 1 of this compilation. It was originally published within the Proceedings of Session 28 of the European Council for Fatwa and Research, Istanbul 1440/2018. Shaykh Jasser Auda’s article clearly opens a door that has always been there but not explored in recent times by practitioners, scholars, and social entrepreneurs. The colonial and post-colonial nation-states were bent to destroy and colonise Islamic community self-sufficiency and independence. This article gives us an opportunity to rethink and rejuvenate our age-old institutions for current and future generations. Inshallah.
As an additional discussion, a well-researched paper titled “Investment of Zakāh In Islamic Law“ that sets forth arguments both for and against investment of Zakāh funds by Islamic scholars is offered in Part 2.

These papers are followed in Part 3 by a fatwa by Sh Jasser. The fatwa argues for the payment of Zakāh to a Waqf for the benefit of Islamic education. To further substantiate his argument, the OIC International Islamic Fiqh Academy fatwa/resolution no 15, and other fatawa are provided in Part 4. Some endorsements of Sh Jasser Audas fatwa are also presented.

During the 9th Global Waqf Conference, a paper on the Synergy between Zakāh and Waqf was presented. We highlight the Malaysian practice of transferring surplus Zakāh funds into what is referred to as a “Tawaqquf Fund”. This fund is then used for capital infrastructure projects that serve eligible Zakāh beneficiaries rather than giving them ownership. A fatwa provided by the Penang State Islamic Religious Council (SIRC) is also offered to indicate the official nature of the Tawaqquf Fund and for what purpose it is utilised.

A discussion of the foregoing fatawa and are discussed in Part 5. Variances to the narrative on the investment of Zakāh funds for eligible Zakāh beneficiaries are presented and discussed. The issue of tamleek or ownership by a Zakāh beneficiary is also visited.

In Part 6, an article focusing on the Synergy between Zakāh and Waqf, written for the January 2022 edition of the Cape Town-based newspaper, Muslim Views, is included in light of the recent (online) World Zakāh Forum and renamed as the
World Zakāh & Waqf Forum. The focus of the 2021 forum was on the Synergy between Zakāh and Waqf.

Next, in Part 7, proposals for the implementation of Zakāh funded assets or investments, based on the aforementioned articles and fatāwa are presented. Models of how we may be able to implement Zakāh funded revenue-producing assets that may be used for funding eligible Zakāh beneficiaries are presented. In this context, a zakāh funded investment is regarded as a Zakāh Asset. The asset belongs to Allah and retains its identity as a zakāh asset. This will be explained in the discussion.

We conclude in Part 8.

(I have deliberately not gone into discussing definitions and explanations of the concepts of zakāh and waqf in this compilation as these concepts are deemed to be covered in the articles, Appendix 1, and references by the respective authors. Readers may visit www.waqfacademy.org; www.awqafa.org.za; and www.Sanzaf.org.za; for more on these important concepts. Some edits have been done in this version for better flow. )

We make dua that Allah ﷺ accepts this effort from the authors, translators, and implementers. And Allah ﷺ Knows Best.
Part 1: Payment of Zakāh to a charitable Waqf that oversees its disbursement according to one of the legal channels

By Prof./Dr. Jasser Auda*
*Member of the European Council for Fatwa and Research

Translated from the Arabic original for The National Awqaf Foundation of South Africa (Awqaf SA)
by Yousuf Dadoo - Emeritus Professor, Unisa
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1-5 Rabiʿ Al-Awwal 1440, corresponding to 9-13 November 2018

Jasser Auda (Cairo, November 1966) is a scholar and distinguished professor of Islamic law, in particular, the study of the higher purposes or maqasid of the Sharia. He is the President of Maqsid Institute Global, which is a think tank registered in the United States, United Kingdom, Malaysia and Indonesia, and has educational and research programs in a number of countries.

He is a member of the Fiqh Council of North America, the European Council for Fatwa and Research, and a fellow at the Fiqh Academy of India. He has a PhD in the philosophy of Islamic law from the University of Wales, UK, and a PhD in systems analysis from the University of Waterloo, Canada. Early in his life, he memorized the Quran and studied at the Study Circles of Al-Azhar Mosque in Cairo, Egypt. He worked previously as a professor at University of Waterloo, Carleton University and Ryerson University in Canada, Alexandria University in Egypt, Islamic University in Sanjaq, Qatar Faculty of Islamic Studies, American University of Sharjah in the UAE and University of Bahrain. He lectured on Islam and its law in dozens of countries. He currently spearheads the Masters in Applied Islamic Thought Programme at the International Peace College in South Africa which he also founded in 2020. He has also been lecturing in the Honours programme at the same institute based in Cape Town. He wrote 25 books in Arabic and English, some of which were translated to 25 languages.

https://en.wikipedia.org/wiki/Jasser_Auda
Introduction

This brief exposition answers the question about the permissibility of paying one’s zakāh to a welfare waqf that spends its revenue on one of the mandated channels for zakāh expenditure. To this question, the traditional answer that has been given is that it is impermissible for the following four considerations: firstly, some jurists have stipulated immediate ownership of the zakāh by its recipients. We respond by proving that it is allowed to pay zakāh to a charitable organisation that undertakes its distribution instead of paying it directly to a beneficiary; secondly, most jurists have specified that the donor must be the owner of the property that he donates in the way of Allāh. We disprove this argument with reasons like in the case of a waqf trust that is generated by a governor from part of the wealth of the state exchequer (bait al-māl); thirdly, a majority among them have laid down that money cannot be given as a waqf. We refute that; and fourthly, they have discussed the probability of money losing its value if it is invested. We respond that a condition can be attached stating that mandatory precautions will be observed to avoid loss. This research probes, in some detail, the rationales for waqf in the present context and the effect of paying zakāh in favour of awqāf that serve as legitimate avenues for zakāh disbursement for accomplishing those objectives for the Muslim community.

Concept of waqf in texts of the Shari‘ah

Specific texts relating to waqf are limited in Shari‘ah texts that I regard as a deliberate step of the Lawgiver against elaborate details and subsidiary rules about which someone may pose questions. This also opens the door of creativity, independent juridical decision, and renewal in exploiting this institution for
the benefit of this Muslim community with its constantly cropping up problems.

In the Holy Book, general texts allude to virtuous deeds and spending in the Path of Allāh. They constitute Qur'ānic proofs for the legislation of waqf, for example “O those who believe, spend of what We have provided you before a day comes in which no trade transaction, friendship or intercession will help. And those who disbelieve are the wrongdoers”. Also, “the parable of those who spend in the Path of Allāh are like the seed that produces seven ears of corn. In each ear there are a hundred seeds. And Allāh increases for whom He likes. And Allāh is All-Embracing, All-Knowing”. He also said: “You shall never attain piety until you spend out of what you love. And whatever you spend, Allāh is cognizant of it”. Passages conveying this sense are plentiful. It is worth mentioning that the word appearing in the Prophet Muḥammad ﷺ’s statements about waqf is the word tasbil, meaning to assign something in the Path of Allāh. Everything reported about spending in the Path of Allāh contains waqf and tasbil.

The word tasbil appears in Prophetic reports in the chapter “How should waqf be recorded” in the collection of Al-Bukhārī. It states: “It has been reported on the authority of the son of ʿUmar (may Allāh be pleased with them both) that ʿUmar obtained land in Khaibar. Thereupon, he came to the Holy Prophet and said: ‘I have obtained land. I have never obtained any wealth more precious than it before. What do you command me to do with it?’ He replied: ‘If you wish, you may retain the corpus and give its profit in charity’. So, ʿUmar gave its proceeds in charity, (stipulating) that the

\[5\] Qurʾān 2:254
\[6\] Qurʾān 2:261
\[7\] Qurʾān 3:92
corpus was not to be sold, nor given as a gift, nor was it to be inherited. It was to be spent on the poor, near of kin, slaves, in the Path of Allāh, guests and travellers. There was no harm in its caretaker consuming of it what was conventionally acceptable or feeding any friend without getting enriched thereby.” Āḥmad and Dārquṭnī produced this report. The latter added the statement “religiously devoted for as long as the heavens and the earth last”. Al-Ṭāḥāwī produced it as a narration of Yaḥyā bin Saʿīd Al-Anṣārī with his wording “he gave its income in charity and retained the corpus”. Al-Nisāʿī narrated from ʿUbaid Allāh bin ʿUmar with his wording “retain its corpus and give away its revenue in charity”. Muslim added “and it shall not be sold”. All these reports have Ibn ʿUmar’s client, Nāfiʿ, as the source anyway.

Ibn Ḥajar commented on this in his Fadḥ Al-Bārī on the categories of “in the Path of Allāh, guests and travellers” by saying that apart from guests, the others have been mentioned in the Qurʿānic verse on charity. Explanation about them has been given in the “Book of Zakāh”. Al-Ṭāḥāwī and Ibn ʿAbd Al-Barr reported via Mālik from Ibn Shahāb that ʿUmar said: “Had I not mentioned my charity to the Prophet Muḥammad ﷺ, I would have taken it back”. They deduced therefrom that waqf cannot be retracted nor can free disposition of its corpus.

But zakāb was always differentiated from waqf in the writings and rulings of religious scholars. But in the “Book on Zakāb” in Al-Bukhārī, under the section of “Zakāb for relatives”, I found a clear principle. I did not see who pointed it out for assigning zakāb wealth for waqf. It appears in the category of “Family Waqf”, as it was termed subsequently. It narrates the following report of Anas bin Mālik (RA): Abū Ṭalḥah was the wealthiest person among the Anṣār of Madīnah in terms of
owning date-palms. He loved this wealth of his at Bairaḥā’, which faced the mosque. Prophet Muḥammad ﷺ loved entering this orchard and drinking of its tasty water. So, when the verse “You shall never attain piety until you spend out of what you love” was revealed, Abū Ṭalḥah went to Prophet Muḥammad and said: O messenger of Allāh, Allāh declares: “You shall never attain piety until you spend out of what you love”. My dearest beloved wealth is Bairaḥā’. I would like to make it a charity for Allāh’s sake whose charity and treasure will be for His sake. Dear messenger of Allāh, assign it where Allāh has shown you. Prophet Muḥammad responded: Excellent! That is profitable wealth. That is profitable wealth. I have heard what you have said. But I feel you should assign it for your near relatives. Abū Ṭalḥah replied: I shall do so, dear messenger of Allāh. Then, Abū Ṭalḥah divided it among his relatives and paternal cousins. This report on Bairaḥā’ is the foundation of waqf of zakāh, in my view. Abū Ṭalḥah’s act of distributing the land constitutes waqf.

There are two other reports that I am quoting. Firstly, it is reported by Abū Hurairah (RA), from Prophet Muḥammad ﷺ: ‘Whoever keeps a horse for use in the path of Allah, believing in Him and trusting His pledge, will be rewarded for the food and drink it consumes and excretes. These will be placed on the scales on the day of Resurrection.’ He responded: If anyone holds a horse in custody for the Path of Allāh, having faith in Him and believing in His promise, its food, its drink, its excrement, and its urine will be placed in his scale of deeds on the Day of Resurrection. It is reported

8 Al-Bukhārī, Sahih, Book on Zakāh, Chapter on Zakāb for relatives, Report No. 1392.
9 Meaning that the owner will be rewarded for all these items. Al-Bukhārī, Sahih, Book on Warfare and Heroic Deeds, Chapter on
from Abū Masʿūd that a man brought a she-camel with whiteness\(^{10}\) to Prophet Muḥammad ﷺ. He remarked: On the Day of Resurrection, you will have seven hundred she-camels of this kind\(^{11}\). In a report cited by both Al-Bukhārī and Muslim, Khālid reserved in custody his weapons for the Path of Allāh. They even included animals that he used in warfare. In these reports, we obtain proof about the permissibility of giving perishable things for waqf such as animals and weapons. They prove a broadening by the Holy Prophet’s companions of the parameters of waqf to a degree much broader than the understanding of most jurists. Some of the latter even prohibited waqf of perishable items like wealth and animals.

The account of the Well of Rūmah provides another foundation for waqf. In Al-Bukhārī, it is reported by ʿUthmān (RA) that Prophet Muḥammad ﷺ declared: Whoever purchases the Well of Rūmah, its bucket will be like the buckets of all Muslims. So, ʿUthmān purchased it\(^{12}\). The word waqf appears in a report of Jābir that stated: There was

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\(^{10}\) The word makhṭūm denotes whiteness extending from the fore part of its nose and mouth to the part beneath its lower jaw. A highly prized animal in those days.

\(^{11}\) Muslim, Sahih, Book on Leadership, Chapter on the Virtue of charity in the Path of Allāh and its compounding, Report No. 3619.

no esteemed companion of the Prophet ﷺ who did not make *waqf*.

**Previous views linked to details of this problem.**

A question about payment of *zikāb* to a charitable *waqf* that oversees its disbursement according to one of the legal channels was posed to the Islamic Fiqh Academy in 1986. The response varied between affirmative and negative. Some scholars stressed immediate ownership of the *zikāb* money and, on that basis, concluded that it was impermissible to forward *zikāb* to an organisation. Scholars sharing this view included Wahbah Al-Zuḥailī, ‘Abd Allāh ‘Alwān and Muḥammad Taqī ‘Uthmānī.

Others refuted this reasoning by providing arguments of classical and modern scholars. This group included my teacher Yūsuf Al-Qaraḍāwī, Muṣṭafā Al-Zarqā, ‘Abd Al-Fattāḥ Abū Ghuddah, ‘Abd Al-’Azīz Al-Khayyāt, ‘Abd Al-Salām Al-‘Ībādī and Muḥammad Fārūq Nabahān. After deliberations, the academy issued the following statement:

“The Council of the Islamic Fiqh Academy, holding its third session convened in Amman, the capital of the Hashemite Kingdom of Jordan, between 8-13 Ṣafar 1407 (corresponding to 11-16 October 1986), after examining the discussions made on the topic of employing *zikāb* for projects that yield revenues but do not transfer ownership to individual beneficiaries, decided upon the following: in principle, it is allowed to employ *zikāb* in projects that yield revenue in

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14 That is, individual property titles are not granted to the beneficiaries.
which ownership is transferred to the beneficiaries of zakāh\textsuperscript{15}, or which are under the control and administration of the entity which is responsible and has jurisdiction over collecting and distribution. This shall be so, if it is done after responding to urgent and immediate needs of the beneficiaries and furnishing sufficient guarantees against financial losses. And Allāh knows best\textsuperscript{16}. This is the preferable view seeing that religious scripture is silent on this detail and general benefit of people requires it.

**Waqf body taking care of Zakāh funded assets.**

But the question of a waqf body taking care of zakāh funded assets is a different matter because there is a mixture of two kinds of charity that were historically kept apart namely, zakāh and waqf. During my exploration of earlier opinions about this topic, I found objections to this fusion. We could summarise these objections among earlier scholars as follows:

\textsuperscript{15} That is, as a collective.

\textsuperscript{11a} This is a clarifying note by the author (2021): Whilst the zakāh funded waqf is a revenue producing asset, the ownership of the asset vests with the Waqf charitable organisation or Foundation. The zakāh entitled beneficiaries (asnaf), whoever they may be, now and in the future, may become owners of the revenue proceeds of the zakāh funded waqf or Zakāh derived benefit that they may receive. This does not mean that zakāh beneficiary “A” may be a beneficiary in perpetuity. Beneficiaries may change from time to time while the asset continues to produce revenues. Whether the zakāh funded waqf asset may at some point be transferred to zakāh beneficiaries may be a question for scholars to investigate.

\textsuperscript{16} Resolution of the Islamic Fiqh Academy, holding its third session convened in Amman, the capital of the Hashemite Kingdom of Jordan, between 8-13 Ṣafar 1407 (corresponding to 11-16 October 1986). Topic: Employment of Zakāh funds.

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Firstly, in a *waqf* the donor must own what he releases in the Path of Allāh. But for *zakāh*, he does not own what he donates since it rightfully belongs to the beneficiary. In principle, he is not its owner. This is the opinion of our esteemed teacher, Yūsuf Al-Qaraḍāwī\(^\text{17}\). But in terms of my understanding, this opposes *inṣād* (a trust initiated by the governor) about whose validity all scholars agree. Here, the governor makes a *waqf* of some wealth from the *Bait al-Māl* (State Exchequer) for a specific purpose. It is a kind of *waqf* that only a governor can make based on his competence, without having initially owned any of that wealth.

In his book on taxation, Abū Yūsuf reported: ʿUmar consulted with them about the lands of Iraq and Syria that Allāh had bestowed upon them. Some spoke about this matter, and they wanted him to distribute their rights to them and (give them) whatever they had conquered. ʿUmar (RA) asked: What will happen to those Muslims who come after us and see that the land with its wild asses has already been distributed and it has been passed on from fathers to sons as inheritance, and become private property? This is not my idea. They further remonstrated: Do you wish to make a *waqf* of territories that Allāh granted us with our swords in favour of people who were neither present nor witnessed their capture, as well as to their progeny? ʿUmar did not add to the following comment of his: This is my opinion, which is, that I should retain safekeeping over the lands. They all replied: That is your opinion. What an excellent statement and view!\(^\text{18}\)

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\(^{17}\) Al-Jazeera. 20 May 2007. *Al-Shariʿah wa al-Hayāt*.

Many scholars were guided by this when it came to the ruler choosing an option about purchasing what he liked and making its *waqf* in the Path of Allāh. Al-Nawawī records in his *Al-Majmūʿ*: The ruler has the choice to either hand over the horse and weapons to the warrior, or to give its monetary value, or he may hire it to him, or purchase horses and weapons from the allotment of “in the Path of Allāh” (from the exchequer) and designate them as a *waqf* in the Path of Allāh for meeting their needs\(^{19}\). The author used the word *waqf* instead of *irṣād*. In any event, there is no dispute about them because they are recently coined and are not accurately defined in *Sharīʿah* texts, as previously stated.

There is no evidence about any jurist essentially opposing the concept of a “ruler’s *waqf*,” in view of the formality around the ruler not owning what he issues as a *waqf*. The ruler is lawfully and conventionally entrusted with the community’s wealth. I have not found any opposition to that disposal either in law or social convention. To the contrary, I notice similarity between the “ruler’s *waqf*” as regards disposal of the *Bait al-Māl* (State Exchequer’s) assets for the benefit of the *waqf* – which he does not own – with the authority granted to the *zakāh* trustee who spends that wealth for a specific legally-approved purpose while not owning any of that money. In this context, this purpose is provided by the *waqf* body that oversees an expenditure channel meant for *zakāb*. (A *zakāb* department or division of the *waqf* body or an independent specialist *zakāb* distributor/agency).

Secondly, those who oppose a *waqf* entailing wealth (i.e. cash money, movable assets) (and this is, incidentally, the view of most jurists) do so because they view it as a perishable entity.

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\(^{19}\) Al-Nawawī, *Al-Majmūʿ*, vol. 6, p. 160.
It is unlike permanent entities that have been mentioned in religious texts. For this reason, benefitting from those entities will lead to their “destruction.” We counter this by asserting that some texts mention perishable entities like horses – as mentioned in Abū Hurairah’s report - and animals (as mentioned in Khālid’s report above). Anyhow, there is no text about permanence of *waqf* entities. This is a legal opinion that allows difference from it. Moreover, investing wealth in a *waqf* body will create growth and not decline, if Allāh wills. They finally object that there is no text supporting *waqf* of wealth. We react to this claim by saying that texts relating to *waqf* are few and broad. For easing matters, there is deliberate silence about details. There is no proof about any limitations being imposed by the texts.

Thirdly, opposition to paying *zakāh* to a *waqf* body that invests the money for fear of loss can be contradicted in the same way that the religious scholars of the Islamic Fiqh Academy mentioned earlier. The objection there centred around paying *zakāh* to a body instead of to individuals. In most cases, there will be no monetary loss; on the contrary, it will generate profit, if Allāh wills. It will be incumbent on the administrators of such Islamic investment bodies to probe this aim according to their ability so that those investments do not suffer losses and their accounts together with the accountability of administrators are closely observed\(^\text{20}\).

**Objectives of *waqf* and *zakāh***

Besides the above review of text details and legal opinions the basic factor for adjudicating this matter lies in considering the objectives of these two practices and accomplishing all of

\(^{20}\) Conference of the Islamic Fiqh Academy, 1986.
them in our modern-day context by investing zakāh monies in waqf bodies.

Waqf has personal objectives of faith such as seeking rewards in the hereafter, expressing gratitude to the benevolent benefactor, self-purification, etc. But it appears to me that the Holy Prophet’s stipulation that “the corpus was not to be sold, nor given as a gift, nor was it to be inherited” is meant to free wealth from the rights of disposal of its previous owner. Likewise, the unanimously upheld rule of waqf (the donor’s stipulation is like the Lawgiver’s text)23. Freedom from the disposal of others is limited to reasonable limits set by scholars24.

In modern parlance, these objectives mean granting financial and administrative independence to the waqf body against the disposal rights of others, including people of authority in government. It also means guaranteeing sustainability to waqf projects through continuous investments that yield plentiful returns.

**Comment & Discussion**

These objectives have special importance in our time where modern states and global companies have snatched the

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22 Al-Bukhārī, *Ṣaḥīḥ*, Book on Wills, Chapter on how a waqf should be recorded, report no. 2620.  
24 These are conditions accepted by human intellect. The public good also requires that such a stipulation of the donor be opposed, like dismissing an incompetent administrator, or unjustifiable increases in salaries, etc. See, *Maʾni l-Muḥtāj*, vol. 2, p. 385 and *Al-Muhadhdhab*, vol. 1, p. 443.
material and moral destinies of people and have shrunk – either willingly or by force – the terrains of civic and indigenous action to the lowest limit. The politicians in a modern state, regardless of whether it is democratic or autocratic, try to continue ruling over social organisations outside the state’s authority. This happens in civic organisations, non-governmental bodies, and especially in religious bodies. This domination is important to them since it guarantees them continued existence in their posts - notwithstanding their blunders - against civic, juristic and philanthropic movements. They endure in their positions whether they were elected to them or not. Global corporations also try to exercise authority over state and other bodies to continue with their vested interests and their earnings, and to achieve their trade objectives wherever they may be.

The Islamic world has witnessed a rapacious attack on its *awqāf* from nation states in the post-colonial period\. This is all only a perpetuation of historical colonialism that has waged war on *awqāf* and tightened its noose around them as part of the war on the identity and independence of this *ummah*\.

But *waqf* will guarantee financial independence with its consequent administrative and political autonomy for civic organisations and for Islamic *waqf* bodies pursuing the objectives of *zakāh* particularly. It will also secure the sustainability of those bodies’ projects with a view to the continuity and growth of *waqf* revenue, if Allāh wills. This

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autonomy and continuity are useful for the objectives and groups focusing on zakāh. In the context of our present reality, we regard them as necessary for the categories of eligible recipients.\(^{27}\)

The problems of the poor, the indigent and those who have excessive debt cannot be effectively confronted in matters of food, clothing and housing on an individual, piecemeal basis. There must be bodies that undertake broad human development for them and their societies. This must not involve feeding the poor person some morsels until his hunger returns the next day or meeting the debts of a person until he takes up a loan the following month.

Naturally, priority must be given to provide the urgent needs of these groups but after doing so the welfare bodies must undertake to develop their capabilities and enable them to extricate themselves from the cycle of poverty and debt. This strategy must be far removed from the growth standards as defined by global or special organisations. The least harm incurred by those standards is that they emanate from un-Islamic priority standards. This is a matter treated by Islamic institutions, whose continuity is guaranteed by amqaf, so that priorities are based on the Islamic sequence of essentials, necessities and embellishments. This is shown by the following order; first the protection of religion, followed by the protection of life, then intellect, then dignity, then progeny and lastly wealth.

\(^{27}\) From this point on, the author provides details about the effectiveness of waqf for some zakāh recipient categories mentioned in Qur’ān 9:60.
The most harmful effect of these development standards is that they do not target service to the poor and indigent to the degree that they serve global corporations that focus on selling their products through welfare services. What does it benefit a pauper when he obtains ridiculous luxuries in the form of commodities and distributed “gifts” while he remains in need of healthy, unpolluted food, clean water and a dwelling in which his dignity and that of his family can be protected? What does it profit an illiterate person to own a cellular phone or a speedy digital line as specified by development standards?

The autonomy of a welfare body by means of *waqf* guarantees that those standards, representing political and trade interests, do not act fraudulently in combating poverty. Payment of *zakāh* rightfully belonging to those poor, indigent and financially stressed people to *waqf* bodies is an act worthy of guaranteeing their continuity and success, if Allāh wills.

Instead of *zakāh* collectors obtaining their salaries or returns directly from those funds, it will be preferable to invest those monies in *waqf* investments that guarantee their continuous employment by those bodies and increase the pool of *zakāh* employees. Likewise, it will guarantee everyone’s autonomy from direct impact by donors and their special interests, if there be any.

Our attitude to those whose hearts are reconciled to Islam comprises one of the greatest difficulties in the mission to win reverts in our time. It assumes the form of detaching financial assistance to new Muslims or those who are on the verge of adopting Islam, and unfortunately tying it in most cases to the personal interests of countries and individuals who pay these religious initiates belonging to powerful
countries so that they (that is, the latter) may exercise soft power.

In my view, this has made it necessary for *awqāf* investments to achieve continuity and autonomy (that is financial, administrative and political) in order to assist programmes to help new Muslims and those whose hearts are inclined to Islam. In this way, the efforts of bodies inviting others to Islam will not go to waste when either some or most of them retract from this faith. This results from the weak material assistance given to those bodies and their programmes. We observe this reality today.

“*In the Path of Allah*” serves the objectives of education, correct upbringing, inviting to Islam, lending assistance and the like, according to present scholars. Education is the greatest objective that must be attained by *zakāh* in our time. Besides the obviously eminent status of knowledge in Islam, protecting the mind and developing it are essential objectives after protecting life. There is thus a need to pay *zakāh* money in this avenue. It must not be paid directly to the educational institutions but instead to *waqf* bodies that attend to those educational institutions. This is the only way to accomplish academic freedom for them. The absence of academic autonomy is one of the greatest problems of education, particularly in Islamic studies.

Beyond the field of Islamic studies, if we are to use the conventional division of education into Islamic and general,

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29 There is an epistemological quandary with this duality of Islamic and un-Islamic knowledge, or the division between transmitted and rational sciences, etc. All knowledge in Islam is Islamic, irrespective
education in lore is tied to the labour market. It is purely a profit-oriented system primarily built on society’s economic, political and juristic interests. The labour market does not strive to construct a person attentive to the Divine trust of human vice-regency as envisaged by Islam. This does not interest him either. These educational institutions produce graduates that are merely cogs in the machinery of modern “growth,” exploitation and consumerism observing current standards that are fundamentally economic and capitalist.

For this reason, it is one of the priorities of our time that we have help waqf bodies that spend on present-day educational institutions. Incidentally, we have the example of universities and senior research centres in the west whose formidable progress in the past century has been achieved only by virtue of waqf (or, what they call in their legal culture, endowments or donations). They borrowed this concept historically from Islamic jurisprudence, as is well known\(^{30}\).

In Islamic studies there is a pressing need for autonomous waqf bodies whose academic affairs are only run by independent scholars. In our time, almost all Islamic education bodies have been turned into incubators for the carriers of views favouring ideologies and schools that can formally be classified as Islamic. However, they do not basically serve Islamic goals and its authentic priorities. They only serve the interests of individuals, trade and politics in the name of religion whereas religion is free from them.

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Most governments everywhere also aim to influence the autonomy of study and research in Islamic studies for the benefit of their political and economic cadres as well as supporting (as per the definition of westerners) “assimilation” or (what Muslims describe as) “citizenship” of Muslim majorities. In Muslim majority countries, governments and institutions supporting Islamic studies pay students to propel them towards partiality in favour of narrow tribalism of petty post-colonial states. This is the political situation to which Muslims have reverted. In research projects in Islamic studies, they give priority to what serves “national programmes.” At best, they are narrow economic interests which are not necessarily in keeping with the justice and priorities of Islam.

Honest Islamic thinkers complain about the absence of sufficient support for their projects in Islamic studies, in terms of both education and research, in which they do not have to make a payment for a trade or political bill based on this assistance. Therein lies serious harm to the lofty objectives of Islam and the deep-rooted beacons of its code. After losing its awqāf, Islamic education has become easy prey for politicians, merchants and people with vested interests like them. The situation of centuries-old universities like Al-Azhar and Al-Zaitoonah, after losing their awqāf, is not far removed from us. Payment of zakāh under the category of “in the path of Allāh” to support Islamic studies awqāf is a critical component to resolve this crisis. In my opinion, it is necessary to wage war to regain our consciousness. Without victory in it, there is no survival for this ummah.

Historically, zakāh played a decisive role in the Islamic state. The first successor to the Holy Prophet, Abū Bakr (RA) declared: I swear in Allāh’s name, if they deny me a single
cord used to hobble the camel’s feet which they used to give the Messenger of Allāh, I will fight them to retrieve it. In that era, zakāh contributed to supporting the state in undertaking its social responsibility towards the groups of people eligible for this charity. Today, we have an historic opportunity to reduce the role of the state – through zakāh – since its influence has become all-pervasive in an imbalanced way. It has been swallowed by the executive political component which has dominated its multifaceted human and propagation facets. The latter are among the objectives of power and authority in Islam. By making payments to the bodies of waqf and zakāh, we encourage a broad system that grants greater authority to the individual and society, both at the levels of execution and legislation, within the broad parameters of awqāf regulations.

Conclusion

In this research, we have established that it is permissible for a person to give zakāh to a waqf body for the purpose of investing same and distributing its investment revenues to deserving asnaf, a waqf body that manages the appropriate avenue for its disbursement like poor people, the indigent and reverts. We have also observed that legal texts related to this subject as well as the opinions of scholars over time entertain this new perspective. We have also confirmed that it is necessary in our era to support Islamic bodies, many of which focus on waqf, and ensure the continuation of their efforts regardless of the immense challenges that the ummah is currently facing. And Allāh knows best and is most judicious.

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31 Al-Bukhārī, Ṣaḥīḥ, Book on calling the apostates and stubborn ones to repent, and waging war against them, Chapter on killing the person who refuses to accept the religious prescriptions and those accused of apostasy, Report No. 6526.
Part 2: Investment of Zakāh in Islamic Law

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Abstract

The question of investment of zakāt continues to constitute a controversial issue within the current development and application of Islamic finance. In this paper, zakāt investment is discussed and analysed in light of juristic textual evidences and in view of the principles inherent within Maqāṣid al-Sharī’ah that seek to ensure harmony with and adherence to the fundamental intents and objectives set by the lawgiver. This research utilises the inductive method in the discussion of legal reasoning deriving from Muslim sources of the law, alongside the effective contrast and comparison of legal opinions in light of the spirit of public interest (maṣlahah). The research endeavours to establish new inroads into contemporary fields of academic research revolving around new paradigms of understanding and undertakings of Islamic finance, while seeking the holistic and comprehensive rejuvenation of the zakāt institution within contemporary societies deriving from the view of comprehensive sustainable development.

Keywords: Zakāt, Maqāṣid al-Sharī’ah, Investment, Islamic Law, Sustainable Development.
Introduction

Today, investment of zakāt money in Islamic societies has become one of the greatest economic issues due to its volume and the splendid power that it gives to propelling contemporary Islamic development projects. Modern scholars and researchers have broached the difficulty of investing zakāt money while paying due regard to its essential ruling in Shari‘ah together with derivatives and several propositions. This researcher understands the consensus among scholars relating to zakāt wealth that is based on the following Shari‘ah principle: it must reach its eligible recipients immediately. Any delay without a valid Shari‘ah reason is not permissible. According to earlier scholars, the ruler may delay its distribution for a while as happened during the times of the Noble Prophet ☪ and his immediate successors. Even though most scholars have normally disallowed this practice on the part of the giver, they have given leeway during anomalous conditions like fear for one’s life, reputation or wealth. This also applies when the donor is awaiting an imminent report regarding the most eligible recipient of zakāt. Authorities have always established firm foundations for juristic categories and for tracing every subsidiary item to its origin. Thus, for every rule in zakāt there are branches (derivatives). That rule needs to be observed during a study of juristic branches, new issues and legal actions linked to zakāt. These new issues and exigencies must be referred to their basic rules so that their rulings may be clear.

In our topic, such comprehensive rules relate to problems like the following: Does zakāt become immediately dischargeable? Is it mandatory on the levied items or on the liable person? Can it be treated like ṣalāh where its performance may not be postponed up to the completion of
another similar prayer? In this study, we shed light on the first question raised above; that is, must zakāt be paid immediately or is any slackness permitted in its performance? The reason for restricting discussion to it is because our topic relating to the promptness with which zakāt is discharged, is directly related to this principle. But before delving into this topic, it is prudent to define some key terms like zakāt and investment.

Assessment of definitions

Linguistically, zakāt means the choicest item of something, and anything removed from its owner so that he may be purified with it. Ibn Fāris commented: “The z-k-and defective letter (w/y) is the root to denote growth and increase... Basically, all this relates to two meanings, growth and purification. The basic structure of this word indicates purification. But it has also been mentioned that it refers to increase and growth. Zakāt expresses growth, blessings, cleanliness, purification, probity, praise and the choicest element of something. Zakāt has been thus called because it is a cause for the later increase in wealth in this world and

reward in the hereafter\textsuperscript{36}. Allāh has said: And whatever you spend of anything, He will replace it. And He is the best of sustainers (34:39). Blessings augment wealth through zakāt and purify the person when he acquires Divine forgiveness\textsuperscript{37}. But there are differences among jurists about the technical definition of zakāt even though they agree on its basics that elucidate its reality in Islām. Hereunder is a total of their definitions.

The Ḥanafīs define it as giving ownership over a portion of wealth that has been specified by the Lawgiver in favour of a poor Muslim who neither belongs to the Noble Prophet’s descendants nor their clients. It entails discontinuation of benefits in all respects from the ownership of that wealth and is done solely for the pleasure of Allāh\textsuperscript{38}. The Mālikīs regard it as a portion of wealth which must be given to its eligible recipient when it reaches the amount that is liable for zakāt (that is, its niṣāb value)\textsuperscript{39}. The Shāfīʿis explain it as a word for taking a specific thing (namely, the income or profit) belonging to a specified amount (which is the niṣāb value) that is calculated on particular items (namely, assets) for the

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benefit of a fixed category\(^{40}\) (who are, eligible recipients of zakāt). The Ḥanbalīs spell out that it is compulsory when wealth reaches a certain limit. It must be paid to a specific category at a designated time\(^{41}\). From the preceding discussion, the jurists have agreed upon the following aspects: mentioning the specified amount on which zakāt which is termed niṣāb; specifying the categories from which it is mandatory; and identifying the channels into which zakāt must be paid. The Ḥanafi definition is distinguished by adding the following proviso: “granting ownership of zakāt wealth to poor people except for eligible Hāshimīs (from the progeny of the Noble Prophet) and their clients. This curtailment relates to all kinds of benefit from it.\(^{42}\)

Investments were not prominent in the classical literature of jurisprudence. Jurists used other words “doing business”, “deriving profit”, and “benefit” for it.\(^{43}\) According to Ibn Fāris, istithmār is regarded as a six-letter verbal noun from the roots th-m-r (fruit). It basically means something that grows from its combination with another thing. From this basic meaning, other metaphorical meanings are generated; such as showing great attention to something, or Allah causing


someone’s wealth to bear fruit (meaning, increasing it)\textsuperscript{44}. Rāghib Al-Aṣfahānī said: “Every benefit accruing from something is called its fruit; such as, the fruit of knowledge is virtuous conduct. And the fruit of good conduct is paradise”\textsuperscript{45}. On this basis, \textit{istithmār} means seeking some gain from the fruit. In relation to wealth, this word means gaining profits. Jurists use the word in this sense as we find in \textit{Al-Muntaqī} of al-Bājī: “…Abū Mūsā al-Ashʿarī has insight in investing and cultivating wealth …”\textsuperscript{46}. In contemporary times, investment has been defined in various ways with most of them concentrating on financing. We quote two explications now. Firstly, Dr. Al-Huwārī states: “It is the act of coupling finance with the objective of realising possible profits over a lengthy future period”\textsuperscript{47}. Secondly, the Scientific Encyclopedia of Islamic Banks declares: “Investing cash for a period of time either in an asset or property right or landed estates or partnerships by means of which the wealth or its growth are secured; whether it be through cyclic profits or increase in the value of wealth at the end of the term or incorporeal benefits”\textsuperscript{48}. From these definitions, it is

\textsuperscript{44} Aḥmad Ibn Fāris, \textit{Mu'jam Maqāyis al-Lughah} (Bayrūt: Dār al-Fikr, 1994), (Māddat: Thamar)


clear that investments are intended to acquire profit and increase money growth. Based on this, investing of zakāt money is designed to grow it in present, suitable ways as a service to its payers and eligible recipients. After this brief exposition of zakāt and investment, we explore rules about investing zakāt wealth by exploring forms of this investment by singling them out with additional study and analysis.

**Forms of investing zakāt wealth**

Investment of zakāt occurs in two ways; firstly, by a donor on whom it is mandatory and, secondly, by a ruler who invests on behalf of the people whose money is in his care. Since both have their peculiarities, we will discuss each of them separately.

1 **Investment by the donor**

When the owner/donor invests this money, it means that he is delaying its payment to its rightful recipient. It is therefore suitable to explore this possibility so that the Sharīʿah ruling relating to this phenomenon may become clear.

2 **Ruling about delaying payment of zakāt**

Jurists have differed about delaying this payment after it has become imperative for the person. Most jurists of all times have submitted that zakāt must be discharged immediately. So, it is impermissible to delay it once it becomes binding. This view is established for Abū Ḥanīfah and his two

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This is also the view upheld by his school. It is also supported by Mālikīs\textsuperscript{50}, Shāfi‘īs\textsuperscript{51} and Ḥanbalīs\textsuperscript{52}. Hereafter, we cite the quotations of some of these scholars that clarify their stance on this matter. Al-Ḥaṣkafī says: “It has been stated to be immediate, which means that it is compulsory to pay it immediately. The ruling is based on this view”\textsuperscript{53}. Ibn al-Humām mentions: “The obligation to pay zakāt has been proven from the three authorities”\textsuperscript{54}. The Mālikī school does not differ about accusing the one who delays without a valid reason the payment of zakāt once it becomes compulsory. Ibn Juzayy declares: “Any delay in the payment of zakāt after it has become mandatory despite the person’s ability to discharge it, is cause for his liability and disobedience”\textsuperscript{55}. Al-Nawawī said: “According to us, zakāt must be paid immediately. Once it becomes binding and the person can discharge it, any delay is not allowed”\textsuperscript{56}. Ibn Qudāmah, voicing the Ḥanbalī view, said: “Zakāt must be paid immediately. It may not be delayed if he is able to


\textsuperscript{54} Ibn al-Humām, \textit{Fatḥ al-Qadīr}, 2 : 114.

\textsuperscript{55} Ibn Juzayy, \textit{al-Qawānīn al-Fiḥbīyyah} (Bayrūt: Dār al-Kutub al-‘Ilmīyyah, 1997), 68.

\textsuperscript{56} al-Nawawī, \textit{al-Majmū‘}, 5 : 333.
discharge it”\textsuperscript{57}. This author further quoted from Al-Athram that Aḥmad ibn Ḥanbal was asked about the person who failed to discharge his zakāt after the lapse of a year. So, he responded: “No. And he did not delay in paying it?” He stressed this point. It is reported that the person began paying his dues in instalments from the beginning. Aḥmad ibn Ḥanbal declared: “No. He must discharge it totally when the year ends”\textsuperscript{58}.

These texts of various authorities belonging to diverse schools of law clarify the positions of the leaders of those schools and their followers about delaying the payment of zakāt after it has become mandatory. They indicate that the four legal schools support the immediate payment of zakāt when it becomes compulsory.

3 \hspace{0.5cm} \textbf{Gradual payment of zakāt}

From this review, the standpoint of heads of legal schools and their associates has become clear that the payment of zakāt must not be delayed once it is due. However, we find that some scholars belonging to the Ḥanafī school – besides its head and his disciples – have stipulated that discharging zakāt does not have to be immediate. While it is compulsory, the time for its payment is not stipulated except in circumstances where the performance of any compulsory act is restricted. This matter is well known in jurisprudence where the broad scope for completing a compulsory act is limited by its imminent lapse. Examples of this are a person who postpones performing any compulsory act up to a time close to his death or when he is on death row.

Anyhow, both parties have provided many proofs in support of their viewpoint which we now present.

\textsuperscript{57} Ibn Qudāmah, \textit{al-Mughnī}, 4: 147.

\textsuperscript{58} \textit{Ibid.}, 4:147.
Supporters of immediate payment of zakāt once it becomes mandatory

The first proof is found in the Qur’ān where Allah declares in verses like “And establish regular prayer and give zakāt” (2:43). This is a command and all unrestricted commands must be complied with immediately. Any delay invites Divine punishment.\textsuperscript{59} Another verse that they quote is “And give its due on the day of harvest” (6:141). The textual signification of “due” is zakāt in this verse. It is an unrestrained command which must be performed immediately\textsuperscript{60}. The reason for the interpretation of “due” as zakāt is a report from a group of the Prophet’s companions, among whom is Ibn ʿAbbās, the primary interpreter of the Qur’ān, and Anas bin Mālik. This version has been favoured by Al-Ṭabarī and others. But some scholars of the next generation have disputed this interpretation who maintain that the word does not refer to the obligatory zakāt, but to a compulsory category besides zakāt. This is an issue that has links to the category of zakāt that is known to scholars. A rebuttal to this argument is that the companions’ interpretation carries more weight. The opinion of some later scholars does not negate the validity of this word referring to zakāt. There are other proofs in legal and exegetical literature about it relating to categories besides zakāt. Nevertheless, this is not the place to expand on this topic. Scholars who advocate immediate payment of zakāt also deduce proofs from the Sunnah. One example here is a report from ʿUqba ibn Al-Ḥārith who reports that the Noble Prophet ☝️ led us in ʿAṣr prayer. Then he hurried


home. After a short while, he emerged. So, I asked him (what was the matter) or he was questioned about it. He replied: “I had left behind a gold nugget for charity at home. I detested ignoring it, so I distributed it”\textsuperscript{61}. Ibn Ḥajar commented on this report as follows: Ibn Baṭṭāl stated that it is worthwhile to hurry in matters of virtue. Calamities occur, obstructions impede, against death there are no securities, and procrastination is not laudable. To this, someone added: It (i.e. virtue) is purer for assuming responsibility, better at expelling need, further from reprehensible deferment, more pleasing to the Lord, and a greater obliterator of sin”\textsuperscript{62}. Al-Bukhārī reports this event as follows: “I recalled some gold nugget in our possession. So, I detested being detained by it. I then ordered its distribution”\textsuperscript{63}. Ibn Ḥajar states that Ibn Baṭṭāl understood something else when he said that delaying giving of charity will detain the culprit on the Day of Judgement.\textsuperscript{64} In the Ḥadīth is found proof of the compulsory nature of discharging ṭakāt. The Beloved Prophet ﷺ therefore hurried to perform what he remembered immediately after the prayer. It also takes into consideration the report of Ibn Baṭṭāl about the punishment for withholding this charity up to the last gasp that is tantamount to abandoning a compulsory act or indulging in a prohibited one.

Proof for this view is as follows: ṭakāt has been mandated to meet the needs of poor people. Their needs are urgent.

\begin{enumerate}
\item Ibid.
\item Ibid.
\item Ibid., 2: 337.
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Therefore, the duty must be immediately discharged.\(^{65}\) **Zakāt** is a recurring devotion. So, it may not be postponed up to another time when it must be discharged again. In this sense, it is like prayer and fasting.\(^{66}\) It is also a right that must be discharged to a person who has made a request for receiving it. As is the case with items left in someone’s trust, it is not allowed to delay in handing it to its rightful owner.\(^{67}\)

Below we deal with proofs given by the second group that allows slackness when paying **zakāt**.

5 **Supporters of slackness in payment of zakāt once it becomes mandatory**

They say that its general mandatory nature does not mean that it must be paid immediately. The liable person may delay paying **zakāt**. What is required is that it must be paid, without subjecting it to any time limit.\(^{68}\) This reasoning negates the claim that it has to be paid immediately, and that this is the authentic view in Islamic jurisprudence, as claimed by the Ḥanafīs, most Mālikīs (as claimed by Qāḍī ʿAbd Al-Wahhāb, in opposition to their scholars from the Maghrib region), some Shāfiʿīs (like Abū Bakr Al-Ṣairafī and Qāḍī Abū Ḥāmid Al-Marrūdhī) and apparently the view of Imām Aḥmad ibn Ḥanbal. This majority juristic view depends on many proofs, such as: Allah ordered people to race and hasten towards His forgiveness and paradise, spontaneously emulate His orders, which must be done speedily and not leisurely. According to scholars of language, every unrestricted command must be carried out immediately. So, for example, if a master orders

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\(^{67}\) Al-Nawawī, *al-Majmūʿ*, 1: 261.

his slave to give him water to drink and the slave delays in carrying out the order then blaming or reprimanding him is in order since he has disobeyed an order. Had it been acceptable to be tardy in this act, such negative reactions would have been unsuitable. Ultimately, there must be some time allotted for obeying the command. And the best of times is right after the order. It will be viewed as certain submission that is free from risk.\textsuperscript{69} If we assume that an unrestricted order does not imply that it must be carried out immediately, then the command to spend on a poor person carries an indication that it must be done immediately. It is meant to meet his urgent need. If it is spent tardily, it will not fully achieve the objective of responding effectively. A second reason is provided by Al-Jaṣṣāṣ as follows: If a person who is liable for \textit{zakāt} loses his \textit{niṣāb} at the expiry of a full year, he cannot be held responsible for that \textit{zakāt}. But if it is mandatory straight away, then he is liable. Such a person is like one who delays fasting during Ramaḍān. He must compensate for it after the month has expired\textsuperscript{70}. But this reasoning is flawed because the problem relating to non-liability for \textit{zakāt} upon the loss of \textit{niṣāb} has been debatable. It also involves reasoning with a secondary matter above a primary one, which is incorrect.

\textbf{6. Pleas for delaying payment of \textit{zakāt}}

Despite the preponderant view favouring the immediate payment of \textit{zakāt}, jurists have mentioned many instances where such delay is permissible\textsuperscript{71}. Some of them are the following:

\textsuperscript{69} Ibn Qudāmah, \textit{Rawḍat al-Naẓīr}, 2 : 625.


\textsuperscript{71} Al-Fawzān, Istithmār Amwāl al-Zakāt, 76.
Case 1: Where there is disadvantage to the donor. This happens when an entire year passes without the state tax collector coming to collect the *zakāt*. The donor fears that if he discharged the *zakāt* by himself, he might be liable to still pay that collector later. This specification has been made by Ibn Ḥanbal.⁷²

Case 2: If he fears that discharging his *zakāt* will harm himself or his wealth. The Illustrious Prophet ﷺ declared: “There shall be no harm done to others, nor shall harm be reciprocated”.⁷³ By analogy, if it is allowed to delay paying someone’s debt for that reason, then delaying payment of *zakāt* is foremost.⁷⁴

Case 3: If a person delays payment for some benefit, such as paying someone worthier of that *zakāt*; like close relatives or people who are in dire need, or neighbours or more virtuous people. Delay here is tied to a clear motive within the ambit of identifying superior candidates⁷⁵. Some authorities have laid out a condition that this delay must facilitate ease. For example, the needy people’s harm must not be aggravated. If their hunger is increased, any delay is impermissible.⁷⁶

Case 4: If the donor is poor and in need of his *zakāt*, meaning that his sufficiency level and lifestyle will be impaired if he pays his *zakāt*. Such a person may delay payment until his position later improves when the *zakāt* will

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⁷³ Ibn Mājah, Sunan, Kitāb al-Aḥkām.
be easily retrieved from him. This will be when the impediment will be dispelled.\textsuperscript{77}

\textbf{Case 5:} If the donor is uncertain about the eligibility of applicants because of which he delays payment to reflect upon the most deserving ones\textsuperscript{78}.

\textbf{Case 6:} When the person is unable to pay the \textit{zakāt} immediately either due to the disappearance of the eligible person or the loss of his wealth. For example, if that individual travels for a year or his wealth is stolen, he may defer payment. If he can discharge it from money on which \textit{zakāt} is not levied, he is not obliged to do so. Ultimately, \textit{zakāt} is payable on taxable wealth while payment from other wealth is only a concession and it is not intended to be transformed into some type of restriction for him.\textsuperscript{79}

\textbf{Preference}

After reviewing statements and proofs, the first of them is found preferable; namely, that \textit{zakāt} must be discharged immediately. It is not allowed to delay paying it after it becomes compulsory for the following reasons: first, the strength of argument provided in the Qur’ān, the Sunnah and by reflection. This view is free from contradiction by contrast to the second statement. Second, the preponderant view in jurisprudence is that any unrestricted command must be obeyed immediately. This is the view of many jurists, as we have previously mentioned. The same applies to the payment

\textsuperscript{77} Al-Buhūtī, \textit{Kashshāf al-Qinā‘}, 2: 256.


of zakāt because it is based on an unrestricted, general command. Before leaving this legal point, we must consider the following juristic problem: does the command necessitate an immediate response or not? The Shāfīʾīs in total have maintained that the command should be executed gradually, and not immediately. Despite this, they have inclined to discharging zakāt immediately once its conditions are met, which indicates that the context surrounding zakāt and its goals plays a role in the preference they show for this option. This legal school supports the idea of performing ḥajj over time after it becomes mandatory, and not right away by contrast with the other schools. Within that school, there is a difference of opinion about whether the performance of ḥajj requires leisureliness or for some extraneous reason.

Returning to zakāt, the stance of the Shāfīʾīs confirms the role played by the objectives of the Shariʿah (Maqāṣid Al-Shariʿah) in opposing this principle. It may be said that jurists generally investigated the objective of poverty alleviation responding to the poor people’s needs. They then concluded that such a connection strengthened the idea of immediately discharging one’s zakāt. It can also be said that those who did not favourably examine immediate payment of zakāt investigated other general and specific objectives of the Shariʿah regarding preservation of wealth and social solidarity that was meant to be achieved through zakāt. This led them to prefer the scale of immediacy for accomplishing the social and economic objectives of zakāt by immediately releasing the funds to its eligible recipients.

Based on this submission, it is not permissible for a person to invest his zakāt money. There is something else that we draw attention to; that is, when authorities of the Ḥanafī approved that zakāt could be discharged gradually and not all at once, they never encouraged wealthy people to abandon zakāt.
They also did not support laxity in responding to Allāh’s order about paying it, nor did they stipulate that any delay in its dispensing was preferable; not to speak of it being mandatory, as mentioned by scholars like Ibn Humām in Al-Faiḥ. The opinion about the immediate payment of zakāt has been expressed by most scholars without exception. Alongside it, they mentioned some mitigations condoned by the Shari’ah for paying zakāt as primary premises for conditions in which zakāt money may be invested if it meets the requirements for doing so.

7 Ruling about investment of zakāt money by the ruler

This aspect has received great attention from contemporary scholars and researchers. On this theme, several conferences have been convened in which decisions of legal conventions have been issued. There are five positions of which we will confine discussion to statements either supporting or prohibiting this practice. After investigations, some present-day scholars have approved investment of zakāt money by a ruler. This was the choice of members belonging to the International Islamic Fiqh Academy in Saudi Arabia, which is an adherent of the Islamic Conference, at their third meeting80, and also the third conference on contemporary zakāt issues convened by Zakāt House in Kuwait, and the Kuwait Finance House and Fatwā Committee at Kuwait Awqāf. This is also the opinion of a group of scholars including Shaikh Yūsuf Al-Qaraḍāwī, Muṣṭafā Al-Zarqā81, ‘Abd Al-Fattāḥ Abū Ghuddah, Wahbah Al-Zuḥailī, ‘Uthmān Al-Shubīr, and others. These magnificent scholars have relied on many proofs and approaches in Shari’ah that include:

81 Ibid., vol. 1, no. 1, 404.
Firstly, the Prophetﷺ earmarked a place for charity camels in the report about the 'Urniṣ who found the climate of Madīnah disagreeable. So, the Prophet ordered them to drink the urine of camels that were designated for zakāt.82 This is also proven in another report about zakāt camels issued by Anas that will be presented shortly. A report such as this proves that it is permissible to delay the distribution of zakāt until it reaches the ruler. Some contemporary scholars have suggested that such retention of zakāt camels was done for the sake of investment. Such an idea is incorrect. But there is nothing to support this contention except that the owner intended continuous continuous growth. But even this cannot be considered as proof for allowing investment because it is natural that the camel’s weight would increase if it grazed in a healthy pasture. There is no proof that by delaying its distribution, the Prophetﷺ intended to invest it.

Secondly, the immediate successors of the Prophetﷺ also designated places for zakāt animals for their grazing. It is reported that ‘Umar (RA) sealed off al-Rabadhah (between Makkah and Madīnah) for such animals.83 In our view, this does not prove that the Prophetﷺ and his immediate successors used to invest this zakāt wealth. What is clear – and Allāh knows best – is that such delays give a ruler the opportunity to discharge this wealth according to the needs


I am not providing any additional details about this report since it is irrelevant here.

of that time. The rule is that a ruler should act in the interests of the citizens. The jurists have also determined that the tax collector and ruler should dispense of the collected zakāt in a way that serves the interests of eligible recipients, as we will show later. In reality, this wealth is invested because of delay in spending it in the appropriate channels. These authentic reports are the basic issue for permitting investment of zakāt money for people who approve this strategy.

Thirdly, those who have sanctioned this practice find proofs from Prophetic practices. For example, it has been reported that ʿUrwah Al-Bāriqī transacted with the Noble Prophet’s wealth.84 Shubīr has quoted this as one of the proofs by approvers. Their argument is that the report did not nullify any act of people who invest money of others without their consent. It logically follows that the ruler may invest the wealth of eligible recipients without their approval. But this reasoning is false for a number of reasons; such as, ʿUrwah was initially entrusted by the Prophet ﷺ himself with his wealth even if he opposed an order of the Noble Prophet ﷺ. Further, this report sanctions conduct if the original donor has verified and approved it, not that such conduct of the entrusted person is always correct (in which case) that donor was disagreeable. Furthermore, zakāt is an act of worship which enables eligible people to receive it. They do not entrust anyone for receiving it on their behalf. They eagerly await the arrival of this wealth to them. Finally, zakāt and trade transactions are not equal. There is no collector involved in trade transactions so that an analogy between them is made despite the difference.

84 Al-Bukhārī, Kitāb al-Manāqib, hadith no.: 3443.
Fourthly, supporters of investing zakāt money have also cited the report of Qabīṣah ibn Mukhāriq wherein the Beloved Prophet ﷺ declared: “Asking for help is not permissible except in one of three cases: A man who has incurred a debt (in order to reconcile between two parties) for whom it is permissible to ask for help until he has paid it off, then he should refrain from asking; a man who has been stricken by a calamity that has destroyed all his wealth, for whom it is permissible to ask for help until he gets enough to get by – or he said ‘he gets enough to meet his basic needs’; and a man who is stricken by poverty and three men of wisdom among his people acknowledge that. According to some, this report indicates the importance of giving zakāt periodically, which is better than giving him enough to meet his needs in the short term in case he returns to beg later. Investing zakāt money plays this role whereby eligible people obtain a periodic income to satisfy them. Apparently, investing zakāt money enables us to achieve this goal of perpetual income for eligible people, particularly the poor and needy individuals. But this report does not prove the permissibility of investing zakāt money for attaining such goals. It does not tackle zakāt money, only money of general charity. There is nothing in it to suggest investment for us to take it as a proof in this debate.

Fifthly, supporters of investing zakāt money quote the Ḥadīth relating to three men who sought refuge in a cave one night. One of them had hired an employee who departed and left behind his wages. So, the man invested the money

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85 Muslim, Kitāb al-Zakāt, hadith no. 1044.
86 Majallat al-Majma'.
87 Al-Bukhārī, Kitāb al-Ijārah, Ḥadīth no. 2272; Muslim, Kitāb Al-Riqāq, Ḥadīth no. 6949.
without his permission. On this basis, supporters of investing zakāt money have drawn an analogous conclusion about investing zakāt money without its donors’ permission. But this Ḥadīth does not indicate permissibility of investing zakāt money by the ruler. There is a clear difference between zakāt – which is an act of devotion even if its purport is understandable – and investing the employee’s money. Further, there is the problem that a poor person does not share in the rich person’s profits after the latter has invested the money. But this Ḥadīth points out that the employee gained a profit. Can it then be suggested to a rich person who has invested zakāt money that he should give the option of taking a profit to the poor and indigent people?

After reviewing these justifications, it is evident that investing zakāt money still needs a more particular vindication than the general ones mentioned above, except for the first Ḥadīth because drawing an analogy of zakāt with trade, leasing or optional charity does not appear strong. Zakāt is a pillar of Islām that combines devotion to Allāh with rationality. It is thus unsuitable to destroy one of its components. The analogy between them always contains some differential. What appears solid to us is that the benefits accruing from investment should be examined after considering the admissibility for a ruler to delay the payment of zakāt by firstly investing it. This is the principle on which the entire discussion relies. Once we resolve that a leader can delay payment of zakāt to its recipients, we may see that he has the right of disposal in this affair according to perceived benefits. Many jurists, like Ibn Qudāmah, have favoured this approach. Any analogy with the wealth of an orphan or a waqf is ill-founded. Only wealth that exceeds the orphan’s needs is

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88 ‘Uthmān Shubīr, Qadāyā al-Zakāt, 43.
invested, and not everything. There is also a difference between the nature and objective of zakāt money and the money belonging to orphans. The reason for investing an orphan’s money is to prevent that child from consuming zakāt. So, what is the analogy here? The analogy with a waqf is weak because the purpose for it is investment. By contrast, zakāt is meant to be owned by eligible recipients. Generally, these are responses to proofs adduced by scholars in support of investing zakāt money with the ruler’s intervention. In the following paragraphs, we investigate the proofs of authorities who object to investing zakāt money.

The objectors include the International Islamic Fiqh Academy, a subsidiary of the World Muslim League, as articulated in its 15th session, and also the Islamic Fiqh Academy in Lucknow, India, as aired in its 13th session. This is also the view of Bakr Abū Zaid, Taqī ʿUthmānī, and Khalīl Al-Mais. Some of their strongest arguments are:

First, Allāh has declared: “Zakāt is only for the poor, the destitute, those employed to collect the funds, to attract the hearts of those who are inclined (towards Islām), to free captives, for those in debt, in the path of Allāh, and for the wayfarer; a duty imposed by Allāh. And Allāh is All-Knower, All-Wise” (9:60). The focus of this verse is to restrict eligible people for zakāt. Investing this money constitutes an infringement of this objective.89 There is a subtle point in this reasoning: investment of zakāt money is not a violation of the intended categories listed in this verse. It is instead an exercise of personal judgement about how the money is to be

spent on the entitled people. It is not an invention of a new category of recipients.  

**Second**, in their reasoning they have relied on the issue of immediate payment of *zakāt* which is the view of most scholars. In support of this principle, they have stated that it is not allowed to invest *zakāt* money that disables it from reaching its recipients. But there is a subtle point here: immediate discharge of *zakāt* is attained when the donor gets the money to reach the ruler. In turn, the ruler may delay its disbursement. This is not any simple view; rather, texts of the *Sharīʿah* point this out as we have previously stated. We wish to add the report of Anas (RA) who reported: “I went one morning to the Beloved Prophet ﷺ with ʿAbd Allāh bin Abī Ṭālḥah for *taḥník* 91. So, I saw him with a branding iron with which he branded the camels of *zakāt*”. Ibn Ḥajar clarified permissibility of the ruler delaying the distribution of *zakāt* in *Al-Fath* as follows: “Herein is sanction for delaying distribution. Any haste would not have left any vestige on it”. 92 Al-Māzirī says in his commentary about ʿUmar’s encouragement to give *zakāt*: “Probably the Noble Prophet ﷺ delayed it to another year upon reflection and to mitigate the situation. The ruler may postpone it to the following year if his personal judgement leads him to it”. 93 Al-Mardāwī has

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90 Al-Fawzān, Istithmār Aṃwāl al-Zakāt, 136.

91 This was a procedure in which new infants were taken to the Beloved Prophet who would chew a piece of date and put a part of its juice in their mouths.

92 Ibn Ḥajar, *Fath al-Bārī*, 3: 368. Note: This is my understanding of this statement – Translator.

stipulated that zakāt may be delayed by the donor in situations like a draught and so on. If that is allowed for him, it will be even more permissible to delay payment of zakāt in favour of its eligible recipients.\(^94\)

**Third**, investing zakāt money is hazardous. It could expose it to losses that would disenable it from reaching its recipients.\(^95\) But this view is not completely valid especially when investments in our times are subject to studies that limit the rate of risk.\(^96\) Another refutation is that worldly needs are of two kinds, according to Al-ʻIzz bin ʻAbd Al-Salām: some, that need immediate solution, like food and drink; and others, whose benefits are expected in the future, like deriving profits from trade or trading with orphans’ wealth for future gains.\(^97\)

**Fourth**, investing zakāt wealth leads to a lack of ownership by eligible people of their right. Granting ownership is a condition for zakāt.\(^98\) But this reasoning can be refuted because ownership is granted when zakāt wealth is invested. The eligible people own the investment project in a way that the money they own circulates in it.\(^99\) Even if most scholars have correctly supported ownership of money for zakāt to be accomplished, some of them have approved of exceptions where such needs arise. Examples include purchasing slaves and emancipating them or giving zakāt to wayfarers as a group without individual ownership.\(^100\)

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\(^{96}\) Al-Ghufaylī, *Nawāzil al-Zakāt*, 471.


\(^{100}\) *Ibid.*, 2: 525.
Fifth, the ruler’s hand signifies trustworthiness and not random conduct or investment. Yet this contention can be denied where jurists sanctioned the ruler’s intervention in zakāt wealth during times of need. Al-Nawawī declared: “The ruler or tax collector may not purchase anything unnecessarily with zakāt money. But purchasing is allowed when a need arises, like when some cattle might resist him or he fears he might die, or if there is some danger on the road; or if he needs to repel some intrepid beast, or obtain provisions for a journey, or capture a sheep, etc”. Ibn Qudāmah said: “When a tax collector obtains these animals and then has need to sell them for some benefit like avoiding the inconvenience of transporting them, he may do so”. Texts like these demonstrate that the ruler may dispense zakāt wealth in times of necessity and need which does not negate his safekeeping of it. Moreover, the ruler dispenses the wealth of citizens for their benefits, which makes it clear that investing zakāt money does not contradict the principle of securing benefit for them.

Preference

From arguments offered by the two groups, preference is given to the view favouring investment of zakāt money subject to it meeting requirements we will outline. This preference has been motivated by considerations like firm proofs for this practice by the Illustrious Prophet ﷺ and his immediate successors. They delayed distribution of this money. Actually, the Prophet used to brand camels which

103 Ibn Qudāmah, Al-Mughni, 2: 274.
indicates delay of more than just a day or two. Second, the
general remarks and *Shari‘ab* precepts that the opponents use
are not strong enough against the arguments of those who
favour investment of *zakāt* money since their assertions are
not incontrovertible. Third, jurists down the ages have
permitted interventions in *zakāt* funds in some form or other
for some public benefit or necessity. Fourth, opposing some
principles of *zakāt* for the greater benefit of entitled people
has been proven; like paying *zakāt* in advance, or paying the
current value of an item instead of its original value in
merchandise,\(^\text{104}\) and investing *zakāt* for its beneficiaries\(^\text{105}\).

Before we proceed to mention the requirements for investing
*zakāt* money, it is appropriate to stress that this act does not
constitute any opposition to foundation texts, as it appears,
because we have not offered only conjectural benefits on
them. Instead, we have primarily relied on *Shari‘ab* texts like
how the Noble Prophet postponed the conveying of *zakāt* to
its recipients. He did this based on benefit that would accrue
to them. Jurists emulated this example. Apparently, the
benefit of investing *zakāt* money is greater and more
meritorious than the advantages that the jurists mentioned
and for which they sanctioned the ruler or his collector to use
their discretion for trading with it. Notwithstanding that, this
entire issue has remained in the domain of personal juristic
judgement and opinion. Some jurists might not grant
approval to this measure, for which there ought to be no
censure. Eventually, views of jurists differ according to their

\(^{104}\) Al-Kāsānī, *Badā‘i‘ aš-Šanā‘i‘*, 2: 221; Ibn Rushd, *Bidāyah Al-
Mujtabid* (Bayrūt: Dār Al-Ma‘rifah, 1967), 1: 269; Ibn Qudāmah, *Al-
Mughnī*, 4: 250.

points of view. If they express the correct ruling, they will be doubly rewarded. But if they are wrong, they will still be rewarded once.

8. **Requirements for investing zakāt wealth**

For zakāt not to divert from the principles of its legislation, its investment is subject to certain requirements. At the outset, we mention that there are two components to zakāt, the devotional and the rational. It is important for an explorer in zakāt to not make one of these components override the other. Regardless of the degree to which it is rational, it still remains an act of devotion and a pillar of Islām. War may be waged against its denier. Below we will list a some of requirements that need to be observed so that this religious practice retains its original devotional aspect while achieving its educational, social, economic and developmental importance.

Religious rulings and decisions taken by Islamic legal bodies that have agreed to investing zakāt money stipulate that the urgent needs of beneficiaries take precedence to investing those funds\(^\text{106}\). This could draw the objection that if we respond to the needs of beneficiaries, we will not have enough zakāt money left, let alone investing it. We may respond to this reasoning by saying that all the money that pours forth into institutions entrusted with collecting it, does not all arrive at once. It takes days or months of a year to do so. These bodies have policies regarding the distribution of

money, and specific rosters of time and place. Therefore, some money is spent immediately while another portion is retained for a determined period. The latter can be invested. It may also be said that a large portion may be spent on the pressing needs of recipients while the remainder is invested to generate gradual growth and profit over time. This will bring profit and benefit to beneficiaries together with economic development in general, with the understanding that some economists have outlined investment strategies that do not pose as a stumbling block to the needs of beneficiaries.\textsuperscript{107}

Al-Farfūr mentioned that the field to investment is only open when there is a high probability about its benefit to the beneficiaries. So, zakāt money may not be invested in enterprises where the chances of profit and loss are equal or where there will probably be a greater chance of loss. Economists must investigate the profitability of the project by studying its economic benefits. Normally, any investment project goes through three major stages: stage one contains a study or a pre-investment phase; stage two contains foreseeable execution or implementation or a pre-investment phase; and stage three contains activation and production. Within each stage there are subcategories like studying the opportunity, studying the benefits (in brief) and studying the benefits in detail.\textsuperscript{108} Studies like these will ensure minimising risks, and giving preference to (or withholding it from) the investment party.

\textsuperscript{107} Al-Fawzān, Istithmār Amwāl al-Zakāt, 162.

\textsuperscript{108} Al-Mawsū’ah al-‘Ilmiyyah wa al-‘Amliyyah, 6 : 308-313; Al-Fawzan, Istithmār Amwāl al-Zakāt, 165.
All procedures should be followed to ensure that this money remains in line with the rules of zakāt to a point where its profits are only spent for the benefit of the entitled people. If there arises a need to sell its fixed assets later, its proceeds must be returned to legitimate categories for zakāt distribution. It must be stipulated in the operating documents that this is zakāt money that will return to its rightful owners at the end of the project.

Investment sources must be reorganized if the needs of eligible people and spending on them require this step. This occurs during unforeseen disasters during which normal amounts spent on them are insufficient. Therefore, investment sources must be able to accept drastic changes swiftly.

Oversight of managing the investment of zakāt must be given to experienced people who possess expertise, trustworthiness and integrity.

Synopsis

Investing zakāt wealth is connected to many juristic branches and enjoys a direct link with economics, development, and some political issues like permissibility to give zakāt to a tyrannical ruler. In this study, we have confined ourselves to

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109 ‘Uthmān Shubīr, Qaḍāyā al-Zakāt, 2: 534; Majallat al-Majma’, 373.
110 Al-Farfūr, Majallah Al-Majma’, 357; Al-Ghufaylī, Nawāzil Al-Zakāt, 495.
111 Al-Fawzān, Istithmār Amwāl al-Zakāt, 167.
112 ‘Uthmān Shubīr, Qaḍāyā al-Zakāt, 2: 534; Al-Fawzān, Istithmār Amwāl al-Zakāt, 167; Al-Ghufaylī, Nawāzil Al-Zakāt, 496.
investment of *zakāt* money considering that it is the first principle for responding to today’s visible needs. After confining and studying the statements of jurists and researchers about investing *zakāt* money, it is evident that this procedure is the preferential view to be observed, in addition to its *Sharīʿah* requirements that have been mentioned herein. Any infringement in this respect will cause *zakāt* to be returned to its original practice; namely, that it must be given to its eligible recipients without any licence to invest it. After all, *zakāt* is a devotional practice that contains some rational concepts which can be coupled to it. This preferred stance together with its requirements may be considered a practical application of Islāmic law in terms of identifying congruent factors in an analogy. Thus, financial development is an attested first principle while at the same time it is not annulled in relation to the devotional aspect of *zakāt*. Such an approach assists, to some degree, resorting to the requirements of *Sharīʿah* outlined above. From another angle, this juristic choice is strengthened about the general objectives of the *Sharīʿah* that promote preservation and growth of wealth, in addition to the specific objectives of *zakāt* that accomplish social solidarity and financial development. Despite choosing the view favouring investment of *zakāt*, it is fair to say that its contrasting view also has its rationales. A host of scholars and researchers have opted for it. In this way, this topic has remained a locus for varying judgements of scholars and researchers. But it may be added that if investment causes the destruction of the social, economic and educational objectives of *zakāt*, or its removal from the devotional sphere, then investing *zakāt* money should be outlawed because it has led to the nullification of the *Sharīʿah*’s objectives.
Bibliography


Part 3: Fatwa: Zakāh could be paid to an educational Waqf endowment

Jasser Auda

**Question:**
Can I pay my Zakāh to support Islamic education? And can I give this Zakāh to a Waqf endowment, where its Return on Investment (ROI) will go to an Islamic education college? In other words, can the Zakāh fund transform into a Waqf fund?

**Answer:**
Zakāh is one of the five pillars of Islam and thus an important obligation on every Muslim who has wealth above the "poverty threshold" (Arabic: Nisaab, which is estimated today as growing wealth or savings that is roughly worth more than a couple thousand dollars or 85 grams of gold). Zakāh is payable to a number of categories mentioned in the Quran, verse 9:60 (trans. Asad): "The offerings given for the sake of God are [meant] only for the poor and the needy, and those who are in charge thereof, and those whose hearts are to be won over, and for the freeing of human beings from bondage, and [for] those who are over burdened with debts, and [for every struggle] in God's cause, and [for] the wayfarer: [this is] an ordinance from God - and God is All-Knowing, Wise."

Thus, giving Zakāh to an Islamic education college to spend on books, classrooms, teachers, students, computers, etc, does fall under the legitimate categories of receiving Zakāh, specifically under the category of "in God's cause" (fi sabeel Allah). There is no significant difference of opinion about
this amongst contemporary scholars, even if the student who receives a scholarship or book is not "poor", even if the teacher who receives a compensation or a computer is not "needy", and so on. It is a condition, however, that the college receiving Zakāh is trustworthy and has a mission of advancing true Islamic education and knowledge.

On the other hand, Waqf or endowment is a Sunnah of the Prophet (S), a highly rewarded act of charity, and especially important when it comes to supporting Islamic education. In fact, in my view, establishing Awqaf endowments for Islamic education is "required" (Wajib) because Awqaf are the only means in our time to protect another Wajib (obligation), which is what we call in today's language: academic freedom. An endowment supports the academic activities of an Islamic education institute, and the Institute's "board of directors" (or equivalent body) will make sincere and independent decisions on how to spend the endowment’s return on Islamic education.

Instead, if the funds go to a Waqf endowment with no conditions or strings attached, and the decision of the board is independent, then the educational process is free from such interests and pressures and can be sincere only to Allah, Islam and the Ummah’s best interest. Endowments are the only means, in my view, that guarantee such freedom. Donating to an endowment that funds Islamic education becomes “obligatory” (Wajib), or more accurately a "collective obligation" (Wajib Kifayah). This means that a sufficient number of believers must rise to this obligation until it is fulfilled, otherwise all believers are wrongful.

Now an important technical question is: Can a Zakāb fund "transform" into an investment or a Waqf fund? My answer is: why not? There is no evidence from the Shariah that Zakāb
cannot be given to an endowment that achieves the same objectives and intents (Maqasid) of the Zakāh itself and benefits the same category of receivers of Zakāh in the best way. However, a number of objections have to be addressed in the following paragraphs.

One objection is that Zakāh must be given to the receivers themselves to own immediately (Tamalluk Fawri) and cannot be received by an organization or an investment entity. This is actually the opinion of some notable contemporary scholars such as Sheikhs Wahba al-Zuhaili, Abdullah Alwan, Mohammad Taqi Uthmani, and others (refer to: Islamic Fiqh Academy - Majma’ al-Fiqh al-Islami - 3rd Council, Amman, October 1986), all objected to Zakāh funds not given directly to beneficiaries.

However, many other notable contemporary scholars have issued Fatwas to allow Zakāh to be given to a charitable investment, and not necessarily the end receivers themselves to own immediately. Examples of such scholars are: Sheikhs Yusuf al-Qaradawi, Mustafa al-Zarqa, Abdul-Fattah Abu-Ghuddah, Abdul-Aziz al-Khayyat, Abdussalam al-Abbadi, Mohammad Faruq Nabhan, and others. For more details on these opinions, also refer to the Islamic Fiqh Academy - Majma’ al-Fiqh al-Islami, in its 3rd Council in Amman, October 1986. After much debate, the Majma’ finally issued an official decision allowing the investment of Zakāh by receiving organizations (text quoted in footnote 1 below).

In that Fatwa, however, two conditions were stated: 1. The urgent needs of the poor and the needy must not be compromised, and 2. Precautions must be taken so that the Zakāh funds are not lost in the investment. The first condition does not apply to our case, since it applies only to Awqaf and investments for the poor and the needy, i.e. “fī
“sabeel Allah” category not the “al-fuqaraa wal-masakeen” category. On the other hand, the second condition could be achieved when Zakāh funds are given to educational Awqaf institutions, by proper planning, accounting and auditing.

Another related question addresses the Maqasid/interests of the above transactions: What is the Maqasid/purpose of putting Zakāh funds in investments? The Maqsud/purpose here is to achieve growth and sustainability of the funds. It is clear that these purposes (growth and sustainability of the funds) are achieved even in a better way with a Waqf investment, far better than a small business or an investment property that is purchased by a charity organization.

Therefore, we have established so far that Zakāh funds could be received to be invested, and then spent on the same causes and categories that the Zakāh was given for originally, under the two conditions mentioned above.

Now there is another objection to investing Zakāh funds specifically in a Waqf endowment. Many scholars mentioned that one of the “conditions” (Shurut) of a Waqf endowment is the existence of a specific donor (Waqif) who actually owns the donated property or fund and then gives up its ownership to a Waqf. However, the donor of Zakāh does not actually own the fund, neither does the organization that will receive the Zakāh actually own the fund - so goes the objection. That is why several scholars who allowed Zakāh to be invested excluded Waqf from such investments (for example, Sheikh Yusuf Qaradawi. Refer to: http://www.aljazeera.net/programs/religionandlife/2007/5/20).

With all due respect to my sheikhs, including Sheikh Al-Qaradawi, I see the question here to be: Is the pre-
ownership of the donated property or fund a definite condition (Shart)? Or do we have precedents of endowments that were not owned by a specific Waqif/donor? The answer is yes we do. It is well established that Omar Ibn al-Khattab (R) and Othman Ibn Affan (R) did transfer some of the "conquered land" into "endowed land" (Waqf, Habss), with the authority of their governments and without owning such land themselves. That is why all scholars in the past and present considered the land in Palestine that Omar endowed to be “Awqaf” that cannot be sold or changed. (Refer for many related Fatawa that were given by scholars over the past decades, and refer to Abu Yusuf’s account of Omar’s story in his Al-Kharaj; excerpts quoted in footnote 2 below).

However, there is a difference of opinions amongst jurists about whether “Waqf al-Imam” (an endowment initiated by a governor) or in other terminology "al-Irsaad" (a trust that is initiated by a governor) is indeed a legitimate Waqf. They debated whether an analogy (Qiyas) with Omar’s and Othman’s decisions mentioned above is a correct analogy. Some jurists judged that an Irsaad is not a proper Waqf since the governor does not have actual ownership of the trust before designating it, while others say - which is the opinion they find closer to al-Maslabab or public interest and I find more correct - that a governor is a legitimate delegate (Wakeel) for the Ummah, which is the ultimate owner of the public funds, and therefore has the authority to initiate the Waqf (excerpts from Al-Nawawi’s Al-Majmou’ is quoted in footnote 3 below to support this argument).

In the same way, I believe that the directors of a Waqf are delegates (Wukalaa) for the community, who is the ultimate receiver of the Zakāh funds in any case, and therefore they have the authority to initiate Awqaf from the Zakāh funds
they manage for the sake of the best interest of the Zakāb receivers.

Conclusion:
Zakāb could be paid to support a trustworthy Islamic education institute, and could be paid to a Waqf endowment that supports such institute. Endowments for Islamic education is a collective obligation (Wajib Kifa‘i) for the sake of academic integrity and freedom. However, the following conditions apply: 1. No condition (Shart) shall be attached to this Waqf that compromises the integrity and freedom of Islamic education and research. 2. Precautions shall be made to invest the Zakāb funds efficiently, and all possible care shall be given to planning, accounting and auditing. 3. Donors shall be made aware of the Waqf investment of their Zakāb, and that the managing authority of the Waqf is delegated to act on behalf of the Zakāb receivers and in their best interest. And Allah knows best.

* Finally, please note that this Fatwa is the opinion of its author and does not necessarily represent the opinion of institutions or Fatwa academies of which he is a member.
Part 4: Other Fatawa

International Islamic Fiqh Academy (IIFC)

Bismillah Arrahman Arrahim
Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION No. 15 (3-3) CONCERNING INVESTMENT OF ZAKĀH FUNDS IN PROFIT GENERATING PROJECTS WITHOUT ATTRIBUTING INDIVIDUAL PROPERTY TITLE TO THE BENEFICIARY

The Council of the Islamic Fiqh Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986)

After reviewing the studies made on the issue of "Investment of Zakāh funds in Profit generating projects without disbursing it to the individual beneficiary.

After listening to the opinions of the members and experts on this subject;

RESOLVES

It is permissible, in principle, to put Zakāh funds in investment projects which eventually lead to be owned by those who are deserving of Zakāh, or which are under the control and administration of the entity which is responsible and has the jurisdiction over collecting and distributing Zakāh, provided that it is done after satisfying the basic and immediate needs of the beneficiaries and with proper guarantees against loss.

Verily, Allah ﷻ is All-Knowing.
The Malaysian Experience

The citation below further illustrates the synergy or collaboration of Zakāh and Waqf. The paper was presented at the recent 9th Global Waqf Conference (held virtually).

“Permissibility of Waqf and Zakāh Collaboration

Statistics show an increase in Zakāh collection is taking place across the country. The statistics of Zakāh collection is expected to continue to increase in the coming years due to the dawah efforts that have been carried out by Zakāh institutions. The distribution of Zakāh can also be seen increasing every year. Various forms and schemes of distribution of Zakāh to the community can increase the confidence of payers to continue to fulfil their Zakāh obligations. When the sums of Zakāh collected and disbursed were examined in detail, there appeared to be surpluses, that is, the amount collected exceeded the amount disbursed, and this condition occurred virtually annually. The amount of Zakāh surplus increased from 2016 to 2020. In 2020, there was more than RM400 million in Zakāh surplus recorded nationwide. The surplus Zakāh can be used for Waqf land development collaboration that can provide benefits to the asnaf.

Zakāh Collection, Distribution and Surplus in Malaysia

This study discovered that Zakāh and Waqf can collaborate to develop Waqf properties. Several states, including Penang, Selangor, and Pahang, have implemented Zakāh-Waqf synergy. This collaboration must be based on Islamic law, and the decision to implement it is based on an assessment of the good and bad of the development to be carried out. Another research determined the permissibility of Waqf and Zakāh collaboration using the fiqh muwazanat (fiqh of balances) approach. This method is very much associated with fiqh al awlawiyat (priority fiqh), which affects our acts and conclusions in determining that what we decided is the right decision.

There is also a fatwa issued by the State Islamic Religious Council (SIRC) of Pulau Pinang in the Government of Penang Gazette, Jil. 60, No. 21 dated 13th October 2016 concerning the use of Zakāh surplus money known as the Tawaqquf fund, which has been used to acquire Waqf property. Therefore, it demonstrates that the synergy of Zakāh and Waqf in the real estate projects is permissible under Islamic law. Both the Waqf and Zakāh components are complementary to one another, in that the Waqf land

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requires funds to be developed while the Zakāh funds are available for use in the empowerment of the asnaf.”

The authors also cite real life examples of projects that were co-funded by waqf and Zakāh:

“In Terengganu, there is also a synergy between Waqf and Zakāh. Terengganu Culinary College was founded as a joint venture between Yayasan Wakaf Malaysia and Terengganu's SIRC. Terengganu Culinary College cost RM2.5 million to construct on Waqf land. The fee for Asnafs children to attend this college is sponsored by the Zakāh institution. Komplek Asnaf, located on 3.4 acres of Waqf land in Kampung Pahang, Kuantan, is another example of Waqf and Zakāh collaboration. It consists of ten terrace houses, two terrace blocks, a dining room, and a surau (musallah) for asnaf.”

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116 Z Mohd Arif bin Mat Hassan; Anuar bin Alias; Siti Mashitoh binti Mahamood; Feroz De Costa, “Zakāh and Waqf Synergy for the Sustainability of Socioeconomic Development” p83-102 in Waqf: Past Present and Future, Nor Asiah Mohamad; Md Zahidul Islam; Zati Ilham Abdul Manaf; Muhammad Amrullah; Drs Nasrul; Publisher International Islamic University, Malaysia, Global Waqf Conference, Ahmad Ibrahim Kulliyyah of Laws, KL.

Fatwa of the Penang State Islamic Religious Council

GOVERNMENT OF PENANG GAZETTE VOL. 60 NO. 21, 13TH OCTOBER 2016
ADMINISTRATION OF THE RELIGION OF ISLAM (STATE OF PENANG) ENACTMENT 2004 NO. 712.
FATWA UNDER SECTION 48
In exercise of the powers conferred by section 48 of the Administration of the Religion of Islam (State of Penang) Enactment 2004 [Enactment 2], on the assent of the King of Malaysia, the Fatwa Committee for the State of Penang, makes the fatwa as set out in the Schedule.

SCHEDULE: FATWA ON THE PROPOSAL TO USE TAWAQQUF FUNDS MYR450,000.00 FOR THE PURPOSE OF PARTIAL FINANCING THE PURCHASE OF ALINAMIN BUILDING, LEBUH CHULIA, PENANG

Penang State Fatwa Committee Meeting No. 6/2013 discussed the proposal to use fund from Tawaqquf account of MYR450,000.00 for the purpose of partially financing the purchase of Alinamin Building, Lebuh Chulia, Penang according to Islamic view and decided as follows:

(i) The committee approved the proposal to use funds from the Tawaqquf account as part of the purchase cost of the Alinamin Building, Lebuh Chulia, Penang due to the issue of purchasing land in Pantai Acheh which had not previously been resolved.

(ii) The committee also recommended that the Baitulmal of Penang Islamic Religious Council to apply fund from the
Department of Waqaf, Zakāh and Hajj Malaysia (JAWHAR) for the purpose of this purchase, and;

(iii) If the application is not successful, then the committee agrees that the fund from Tawaqquf account is fully used for the purchase of the Alinamin Building amounting to MYR850,000.00 and the building will be considered as Tawaqquf property.

Made 6 May 2016

[JMNPP/(S)/19/1101/001 Klt. 3; PUNPP 352/100/1/2/EA/1 Jld. 3]

By Command

DATO’ DR. WAN SALIM BIN WAN MOHD. NOOR

Chairman of the Fatwa Committee State of Penang
Fatwa from the Islamic Fiqh Academy India: Decision on Investing with zakat money

The participants in the symposium, after reviewing the research presented on this subject, and after listening to the discussion and the opinions of scholars and experts in it, and in view of the decisions of some Fiqh academies on it, decided the following:

First: The backwardness of Muslims in the field of economy is a matter that does not need to be explained… It is the responsibility of Muslims everywhere to help poor Muslims with zakat funds, and if zakat funds do not meet this need, they should cooperate with them in other funds and donations.

Second: Zakat money that is paid to the poor and needy will get them all the rights of the property, and accordingly if a poor person invests it or puts it in trade or in the purchase of shares to benefit from it in the future, it is permissible for him to do so.

Third: In order to achieve the goal of making the poor and needy self-sustaining in the field of economy, if machines or industrial machines were purchased with zakat funds in

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118 This decision was received on 10 February 2022 based on a request sent by the author a day earlier. The Islamic Fiqh Academy of India has taken the decision regarding investing with zakat funds in its thirteenth session held on 12-16/April 2001 AD. The matter has also been referred to Shaykh Khalid Saifullah Rahmani (Secretary General of the India Islamic Fiqh Academy) in Hyderabad, to look into this important matter.
consideration of their profession and industry, or shops were established and delegated to them through ownership, it is permissible, and thus Zakat is paid on behalf of their owners.

Fourth: If houses or shops were established with zakat funds and handed over to the poor to live in or trade in, and were not paid through ownership, then this is not permissible.

Fifth: It is not permissible by Sharia to put zakat funds in investment projects such as establishing factories and companies to distribute their profits among those who are entitled to zakat, whether that is done by the Zakat payers themselves or the legal authorities responsible for collecting and distributing zakat, because the zakat funds do not reach their beneficiaries in this way, and it is feared in that the loss of factories and the loss of a large amount of zakat funds, in addition to refraining from meeting the immediate urgent need of those entitled and freezing zakat funds.

Sixth: It is the responsibility of the givers and the legal authorities responsible for collecting and distributing Zakat to put it first among the needy and deserving people in their areas, and give it to them to meet their needs.
Endorsements of Dr Jasser Auda’s Research

The relevance and interpretation of each of the eight categories of Zakāh to our present-day circumstances has not been fully researched. Dr Jasser Auda’s effort to research and interpret the use of Zakāh funds is welcome news.

Most charitable projects such as orphanages, soup kitchens, educational institutions, etc. rely on current use contributions from donors. These contributions are not consistent and depend on the prevailing economic situation, making services offered by these charitable projects unpredictable. Dr Auda’s research concludes that part of Zakāh contributed to an organization, subject to certain conditions, can be designated as an endowment/ waqf where the principal is preserved for growth. Assets of such awqaf/endowments, invested prudently in real estate (agricultural, commercial, residential, and industrial) and as well as in Shariah compliant shares of technology, health care, mining, and service companies, can build up financial resources relatively fast. Realized profits of such awqaf/endowments can provide consistent and continuous source of funding for charitable projects so they in turn can provide their services consistently and perpetually.

The creation of such awqaf/endowments is the best and only way to provide continuation of services and financial security to charitable projects such as Islamic Centers, schools, etc. which our community has built over time. Awqaf/Endowments also offer generational fairness by providing almost the same level of services for generations to come!
I commend Dr Auda for this research and for the conclusions he has drawn. As a matter of fact, we have already started to implement Dr. Auda’s conclusions in building assets of our own family foundation. May Allah bless and reward Dr Jasser Auda.

M Yaqub Mirza, PhD, Chairman, Amana Mutual Fund (assets US$5.6 Billion); member, Board of Trustees, Executive Committee, and Chair, Investment and Endowment Committee, Shenandoah University, Winchester, VA, USA. He is also author of “Five Pillars of Prosperity” (2014).

M Yaqub Mirza asked and discussed the opinion expressed by Dr Jasser Auda with Imam M Maged Ali and Shaikh Abdullah Idris. Both agreed with the opinion expressed.

“This is wonderful I found the book to be really good, well written, and he has done great research. Your endorsement: it's very powerful. I am in Mecca and made A lot of duaa for you and your family.”  Imam M Maged Ali

https://www.alimprogram.org/imam-mohamed-hagmagid-ali.html

https://isna.net/abdalla-idris-ali/
Part 5: Discussion

There will always be differences of opinion, and differences among the mathhabs are widely acknowledged and respected by all. The great Islamic scholar and jurist/faqih, Imam Abu Hanifa (RA) is quoted as saying: “I believe that my opinions are correct, but I am cognisant of the fact that my opinions may be wrong” 119.

A number of scholars and ulama have endorsed the views of Sh Jasser Auda. And there are bound to be differences. Dr Anwarullah, a shari’ah scholar who was seconded by the Pakistani government to serve on the Shari’ah Council in Brunei, and who was interviewed by myself in January 2000 (Cajee 2002) mentioned that in Brunei surplus Zakāh funds were invested and the returns were used for Zakāh eligible beneficiaries. Furthermore, Dr Anwarullah confirmed that in Pakistan, certain factories were Zakāh funded and employed Zakāh beneficiaries. In Indonesia too, Zakāh funded hospitals catered for Zakāh beneficiaries. We have also seen the Malaysian experience where surplus Zakāh funds are transferred to a “Tawaqquf Fund” which is used to build infrastructure for the use of Zakāh eligible beneficiaries (Asnaf).

Sh Jasser Auda puts forward the objections and endorsements of his fatwa by various scholars. One of the objections is the issue of tamleek, that is giving ownership to the mustahiqeen/Zakāh entitled persons.

“One objection is that Zakāh must be given to the receivers themselves to own immediately (Tamalluk Fawri) and cannot be received by an organization or an investment entity. This is actually the opinion of some notable contemporary scholars such as Sheikhs Wahba al-Zuhaili, Abdullah Alwan, Mohammad Taqi Uthmani, and others (refer to: Islamic Fiqh Academy - Majma’ al-Fiqh al-Islami - 3rd Council, Amman, October 1986), all objected to Zakāh funds not given directly to beneficiaries.

However, many other notable contemporary scholars have issued Fatwas to allow Zakāh to be given to a charitable investment, and not necessarily the end receivers themselves to own immediately. Examples of such scholars are: Sheikhs Yusuf al-Qaradawi, Mustafa al-Zarqa, Abdul-Fattah Abu-Ghuddah, Abdul-Aziz al-Khayyat, Abdussalam al-Abbadi, Mohammad Faruq Nabhan, and others. For more details on these opinions, also refer to the Islamic Fiqh Academy - Majma’ al-Fiqh al-Islami, in its 3rd Council in Amman, October 1986. After much debate, the Majma’ finally issued an official decision allowing the investment of Zakāh by receiving organizations (text quoted in footnote 1 below)” (see the fatwa by Sh Jasser Auda above).

The Fatwa Committee of Selangor (1999) quoted Majma’ al-Fiqh al-Islami’s (1992) opinion in considering the investment of Zakāh fund involving ‘amil’s portion. It is permissible, subject to the following conditions:

(i) Whenever there is no longer immediate needs of the asnaf that are required to be distributed;
(ii) Investments must be made perfectly the same way as other investments, and it must be based on shariah.
(iii) There shall be an assurance that the original property invested remains as Zakāh’s assets so as its profits.
(iv) When there is an urgent need of Zakāh should be distributed on the desperate needs of the *asnaf*, the property invested must be readily liquidated.

(v) Should be done in due diligence to ensure the security and sustainability of the Zakāh property.

vi) Must be done by a group of experts in the related areas with the approval of the authority.\(^{120}\)

The view that a Zakāh funded asset must be owned (*tamleek*) by the Zakāh beneficiary, rather than a waqf institution is supported by Dr Omar Hafiz. He provides an alternative interpretation to Sh Jasser Auda’s view of the Islamic Fiqh Academy resolution:

“What the resolution says is that it is permissible to use Zakāh funds in creating investment projects which eventually lead to be owned by Zakāh eligible. It is not saying that revenues of these projects should be for Zakāh eligible. The investment project should be owned by Zakāh eligible. Preparation of these should be done by Zakāh authority. For example we can use Zakāh to build a small factory to produce clothes and make its ownership for Zakāh eligible instead of giving them cash and they will spend without creating projects. And this is conditional that their basic and immediate needs are satisfied.”\(^{121}\)


\(^{121}\) Dr Omar Hafiz, (Secretary General of the General Council for Islamic Banks and Financial Institutions, and Professor of Islamic Finance in King Abdulaziz University, Saudi Arabia) in whatapp conversation with him.
If one were to apply Dr Omar Hafiz interpretation, it is possible in some cases where for example a housing complex is built and each Zakāh beneficiary is given a home. On the other hand if an institution is built for orphans or for the aged, where the institution is managed by the Waqf, the interpretation may not be tenable or feasible.

This view creates problems in terms of management and governance. What happens when some owners pass on, does ownership then vest with their respective heirs? Over generations, this becomes a huge problem. This view is not practical nor tenable. Its plausible in theory. A more realistic view is the one accepted by the Islamic Fiqh Academy, a body of renowned scholars/ulama. Simply put, Zakāh funds may be capitalised and invested in revenue producing assets for the benefit of legally entitled Zakāh beneficiaries. Ownership of the asset belongs to Allah but administered by a reputable institution. Only the usufruct is for the benefit of Zakāh beneficiaries who may change from time to time. Beneficiaries become owners of the distributable/distributed revenue and will have rights to those revenues for a certain time until they are no longer entitled. As a class, they do not have any real rights to the asset.

The fatwa of the Islamic Fiqh Academy India, also endorses investment provided that the ownership vests with the beneficiaries.

The issue at hand then is not about the permissibility of investment of Zakāh funds, but the issue of ownership. Here again the argument is that in certain cases it becomes impossible to give ownership to a beneficiary. Take for example equipment provided in a military expedition. Armaments are provided to the soldiers not for their
ownership but for their use, to be returned to the storehouse when done.

Sh/Dr Yusuf Al-Qardawi, a leading scholar and expert on Zakāh, in his magnum opus, Fiqh Al Zakāh, argues that the category of “Fi Sabeel Lillah” in Surah Taubah 9:60 goes beyond military jihad. It includes all forms of jihad. He states:

“… I do not extend the meaning of the term ‘fi sabili’llah’ to include all good deeds. On the other hand, I do not restrict it to military fighting alone. Jihad for the sake of Allah includes supporting His Cause by writing and speaking as much by fighting. Jihad may be educational, journalistic, social, economic or political jihad as much as military jihad. We must remember that in all kinds of jihad, the essential condition is that the action helps make Allah’s word supreme on earth.” 122

He further states that establishing Islamic Schools, libraries, hospitals and other cultural projects could be deemed as part of jihad in some places. 123 Tamleek/ ownership by individuals in these instances may be impossible.

The learned Shaykh Abdurraghiem Sallie (RA) [my ustadh in Kliptown circa 1963/1964] quotes Shaykh Ahmad Moustapha al Maraaghee from his Tafseerul Maraghee; The truth is that the meaning of Fee Sabee Lilllah is “that which is in the best interest of the general Muslim public”. For it is through the Muslim public that the ‘state’ and power of the religion is

123 Ibid, p424.
strengthened and supported.\textsuperscript{124} This view is also supported by Sayed Muhammad Rashied Ridaa where he says that Fee Sabeelillah comprises all that is in the best interest generally of the Shari’ah and which is designed to support and strengthen the ‘state’.\textsuperscript{125} [\textit{In the context of Muslim Minorities, the state may be substituted by the Muslim Community}]. Sh Sallie also asserts that hospitals, dawah centres, madressahs, and even roads, meaning Muslim community infrastructure, should be established. Dawah workers as well as Teachers in these institutions should be paid as Zakāh beneficiaries.\textsuperscript{126}

Shaykh M. Shuaib Omar states in a recent communication: “Using Zakāh Funds to Assist the Poor and Needy Afflicted by Covid-19 Pandemic:

1. It is a settled principle that Zakāh may be distributed to an eligible recipient, by way of a payment in-kind.

2. In the context of the current health crisis, Covid medicines and oxygen concentrators may be distributed to poor and needy eligible recipients, in the form of a compulsory Zakāh transfer to an eligible poor and needy recipient.

3. The International Islamic Fiqh Academy comprising of leading Shariah experts from at least 43 Muslim countries) had resolved in July 2007, under the Quranic category of Muallafah - al-Qulub, that “it is permissible to support from Zakāh funds, non-Muslims who

\textsuperscript{125} Ibid, p96. Sayed Muhammad Rashied Ridaa, \textit{Tafseerul Manaar}, p505-506.
\textsuperscript{126} Ibid, p97.
are afflicted by disasters, earthquakes, floods, and famines, in order to reconcile their hearts.\footnote{Sh M Shuaib Omar, in a WhatsApp advisory, 30 January 2021.}

Where these oxygenators / oxygen concentrators are provided to clinics and hospitals, it would be well nigh impossible for ownership to be given to Zakāh beneficiaries. The equipment, being a capital asset, will be used by multiple patients from all walks of life… rich and poor, Muslim and Non Muslim… but needy. Of course, the equipment may also be given to beneficiaries, but will be more useful if more people can benefit if used at a hospital/ clinic or loaned to multiple beneficiaries.

Another case where tamleek is impossible, it may also be appropriate to highlight for our benefit the Zakāh funded activities of the Council for American-Islamic Relations (CAIR) based in the USA and Canada.
“Based on the advice of respected scholars, we currently designate Zakāh-eligible funds for the services provided by the following CAIR departments:

**Legal Department**, which represents Muslim Americans victimized by anti-Muslim discrimination, including Muslim students, workers, travelers and incarcerated individuals.

**Government Affairs Department**, which is dedicated to advocating for policies and laws that benefit the Muslim community by—for example—protecting their right to practice their religion, advocate for causes of justice, and travel freely and safely, among other things.

**Research & Advocacy Department**, which is dedicated to monitoring, exposing and countering Islamophobia and other forms of bigotry.”  

The issue of tamleek is not an issue here. CAIR's Zakāh policy was endorsed by the esteemed Islamic scholar, Dr. Muzammil Siddiqi, who reviewed and approved CAIR’s Zakāh policy.  

According to CAIRS website, “other Muslim scholars [such as Sheikh Ahmad Kutty] have also confirmed that Zakāh is payable to organizations that exist to serve the Muslim community by protecting their rights. This is because the work done by CAIR (and other such organizations) can be classified as *fi-sabilillah*, which is one of the eight categories of


129 Dr. Siddiqi, the chairman of the Fiqh Council of North America, graduated from the Islamic University of Madina in Saudi Arabia in 1965 with a higher degree in Arabic and Islamic Studies. He received an M.A. in Theology from Birmingham University in England and a Ph.D. in Comparative Religion from Harvard University in the USA. He also visited South Africa in the 1970’s
Zakāh recipients detailed in the Quran (Chapter 9, Verse 60).

Prof. Dr. Murat Çizakça, world renowned economist and prolific writer on waqf in his presentation at the World Zakāh Forum 2021 on *Waqf And Zakāh for Economic Development* was emphatic about investing Zakāh funds into a waqf for the purpose of providing loans to entrepreneurs for small and medium enterprises on a mudaraba basis. He also states that "there is substantial evidence that established waqfs received donations from various donors but we do not know if these donations were actually Zakāh payments."

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130 Prof. Dr. Murat Çizakça, Member, Academia Europaea and European Science Foundation, Professor of Comparative Economic History and Islamic Finance at the Institute of Islamic Economics Marmara University, Istanbul and KTO Karatay University. Presentation at the World Zakāh Forum 2021.

131 Prof. Dr Murat Çizakça, in email communication 26 December 2021.
Part 6: Synergy between Zakāh & Waqf

(as published in Muslim Views, January 2022)

The December 2021 / Rabi Uth Thani 1443 virtual conference organized by the Indonesian based World Zakāh Forum focused on the synergy between Zakāh & Waqf - the two great pillars of redistribution of wealth and empowerment in the Islamic Economy. The Conference also took a bold decision in rebranding itself with a new name: World Zakāh & Waqf Forum to symbolize the synergy between these two important institutions in Islam.

Synergy: the interaction or cooperation, a mutually advantageous conjunction or compatibility of two or more organizations, substances, or other agents to produce a combined effect greater than the sum of their separate effects; increased effectiveness, eg \( 1+1=11 \). When synergy is applied and internalised by the institutions of Zakāh and Waqf, we should then expect much greater results and impact rather than when each acts on its own.

Several verses in the Qur’an urge the mumineen/ muttaqeen/ muslimeen to spend out of the bounties that Allah has provided in the form of infaaq/sadaqah/qard hasan and several verses speak directly about giving regular Zakāh. Many hadith also advise and direct us to give sadaqah and sadaqah jaariyah /waqf. (see: https://www.soundvision.com/article/quran-and-ahadith-on-the-poor-and-needy).
We know that Zakāh is the compulsory due commanded by Allah ﷻ that all Muslims who have in excess of the “nisaab” – the minimum wealth that one possesses – have to pay, while Waqf is the voluntary capital gift to Allah – the sadaqah jaariyah / perpetual charity as advised and practised by the Prophet ﷺ his pious companions, and all those that followed them.

While Zakāh has fixed percentages ranging from 2.5% to 20% of ones wealth calculated within a certain time frame on a range of respective Zakāhtable assets, Waqf gifts may be any amount or any asset up to 100% of ones wealth and the usufruct may be spent or used for any shariah compliant purpose. (It is well known that some individuals have given their entire wealth as waqf. Subhanallah.) Zakāh may only be given to or for the benefit of the eight categories of mustabiqeen / rightful beneficiaries/ asnaf according to the Qur’anic injunction in Surah Taubah 9: 60. These are: fiqara, masakeen, aamileen, muallafatul quloob, fir-riqaab, gharimeen, fi-sabeelillah, and ibn asSabeel.

How can we optimize the collaboration and synergy between Zakāh and Waqf? Options include traditional relief handouts, development, empowerment, capitalization of Zakāh and a combination of all. Our focus in this article is on synergizing the capitalization of Zakāh and Waqf. According to leading Islamic Scholar Shaykh Jasser Auda: “capitalize Zakāh into an investment asset for the benefit of Zakāh beneficiaries and combine it with waqf to be beneficial beyond Zakāh beneficiaries”. International fatawa organization, viz. OIC International Islamic Fiqh Academy, a body of esteemed Islamic scholars have also resolved authenticating the capitalization/investment of Zakāh for Zakāh beneficiaries [Resolution No. 15 (3-3). (1407/1986)].
Zakāh & Waqf funds may be used to establish many projects that serve Zakāh beneficiaries, either exclusively or on a case by case basis. MI/Dr Anwarullah, Shariah scholar and advisor cites Zakāh funded factories in Pakistan where Zakāh beneficiaries are either co-owners and/or employees. Waqf investment revenues may complement staff salaries, medical aid, and scholarships for the children of employees. Other examples are the hundreds of cost-free Waqf funded hospitals in Indonesia open to the public. Zakāh funds are used for the benefit of Zakāh beneficiaries to ensure that they get the best medicines and service. Non-Zakāh beneficiaries and the public may pay a small fee. Then there are also hundreds of waqf-based schools and universities. Needy students are given bursaries and scholarships from Zakāh funds to enable them to complete their studies and contribute to society with their skills and knowledge.

Desk research done a few years ago by the South African National Zakāh Fund (SANZAF) indicates the potential of annual Zakāh collection in South Africa to be in the region of R1.2 billion Rand, based on 2.5% of assets held in Islamic banks, unit trust funds, and Islamic windows in conventional banks. On the other hand the potential of Waqf assets is also great because of the very nature of waqf with no fixed percentages and the giving big hearts of donors. There is steady growth of the Waqf sector in South Africa as evidenced in the growth of AWQAF SA and many other waqf initiatives in the country.

Given the potential in South Africa, a typical model of synergy is where a shopping centre is acquired with both Zakāh and Waqf funds – with strictly separate Zakāh and waqf shareholdings. The Zakāh share of rentals funds Zakāh beneficiaries while the Waqf share of rentals funds other beneficiaries and may include Zakāh beneficiaries. Eg for
bursaries and scholarships, healthcare (hospitals/clinics), microfinance loans and grants, small scale housing, water and sanitation, farming, etc. By synergising, a powerful, enduring, and sustainable flow of funds can be produced to fund the respective beneficiaries.

In conclusion, AWQAF SA, as a leading waqf institution, is committed to operate within the framework of the Maqāṣid Al-Shari‘ah and in the promotion of all its facets. Synergising Zakāh & Waqf is an idea that needs serious consideration given the rampant poverty, unemployment, inequality, and our strategic interests. Zakāh and Waqf organisations and donors should cooperate in the best interest of the ummah. Awqaf SA invites the community from all backgrounds to support the growth and development of both Waqf and Zakāh to take us forward in community development and empowerment. Inshallah. Visit www.awqafsa.org.za for further information.

Note\textsuperscript{132}

Introduction

In light of (a) the article published by the The European Council for Fatwa and Research authored by renowned scholar and jurist Sh Jasser Auda; (b) the article by Prof. Benaouda Bensaid and Aouidad Rachid, (c) the various fatawa; and (d) experiences quoted herein; it is fitting that we present a model that will amplify the contents of the articles, their arguments and justification. Essentially the Sh Auda’s article argues for the utilisation of zakāh funds to invest in revenue producing assets whereby the ownership of the asset vests with a waqf body or a body that is competent to manage the special asset, and the income that gets generated be dedicated to and used for the exclusive benefit of zakāh eligible beneficiaries (asnaf/mustahik). The zakāh eligible beneficiaries are broadly in the eight categories as commanded by Allah ﷺ in the Qur’ān Surah Taubah 9:60.

In this section, we propose one particular avenue of spend: Education. This does not preclude us from utilising the model for other exclusive, or a multipurpose combination

\textsuperscript{132} This is to give an indication of how the institution of Zakāh may be utilised for more enduring purposes but within the confines of the injunctions of Surah Taubah 9:60). May Allah accept. Allah knows best.
of, avenues of spend eg healthcare, microfinance, social welfare grants etc. We would begin by describing some strategic objectives of the Muslim Ummah in South Africa, followed by articulating a problem of tertiary education, clarifying the rationale for funding education and the strategic objectives around funding education.

**SA Muslims**

As a minority community made up of established, emerging, and expatriate communities with varying historical and socio-economic backgrounds, and making up perhaps between 2 and 5% of the SA population of 55million, and having been victims of slavery, colonialism, apartheid and now in a democratic state, Muslims can and should play a critical role in shaping and progressing our beloved country, and contribute to social cohesion, nation, building, poverty alleviation, inequality, and unemployment. In the longer term, Islamic and Universal values should be the change agents that we desire that will drive the country and particularly the poor and downtrodden to new heights.

**Strategic Objectives**

- To become a powerful, influential, but benevolent *(ihsani/rahmani)* community.
- To demonstrate high values of ethics, justice, and integrity in our *mu'amalāt* / dealings & transactions.
- To contribute meaningfully to poverty alleviation, inequality, and unemployment in all communities, subject to available limited resources.

**Problem Statement: Education**

Thousands of students who matriculate are unable to afford university fees, accommodation / boarding and lodging / or other tertiary level training and development. Our Zakāh
institutions currently partially subsidise or otherwise turn potentially high achievers away. Many students who may be eligible for admission to local universities are forced to study abroad at great sacrifice from parents because of a perceived or real quota system that tends to exclude certain sections of the citizenry. Many of these cannot study locally or abroad due to lack of financial support. Clearly the community is unable to provide for its own students let alone providing for students in the broader community. Whilst established Muslim communities have the social and cultural capital of institutions and networks that provide some measure of support, for example the likes of the Kholvad Jamaat, or Memon Jamaat. Emerging Muslim communities do not have these, and thus lag even further behind their Muslim counterparts. Furthermore, students may not receive loans from The National Student Financial Aid Scheme (NSFAS)\textsuperscript{133} and students coming from rural areas may not even have adequate boarding and lodging facilities, let alone subsistence allowances and monies for text books and materials. 

NB. A detailed study would be required to verify the correctness of the problem.

**Education Strategic Objectives**

- To provide bursary non-repayable grant funding to indigent students to pursue their studies at various Tertiary and Technical colleges.
- To provide scholarships to students who demonstrate outstanding academic/ sporting/ community service performance or in any other area of achievement.

\textsuperscript{133} https://www.nsfas.org.za/content/
• To provide debt relief to existing students who are unable to receive their credits due to non-payment of fees.
• To fund a sizeable number of students from all communities that make up the Muslim strata of our population: established, emerging, and expatriate.
• To select high potential “Brightspark” students from emerging Muslim communities to become leaders in their fields of study.
• To develop a large cadre of highly trained professionals up to PHD level that can serve the country in various high level capacities as directors, advisors, consultants, ministers, MEC’s, at national, provincial, and local government level, in SOE’s and the Corporate sector.
• To train civil servants and community leaders as politicians, economists, social scientists, energy and water specialists, engineers, military scientists, mining, geological, and metallurgical specialists, agriculturalists, Islamic sciences scholars/ulama, health sciences… in literally every sphere of strategic importance.

Where possible students may be encouraged to repay their grants on a voluntary basis. Students may have compulsory leadership development camps and assignments during the course of their studies eg attendance of Future Leaders Programmes at ASRI; tarbiyyah programmes etc

Key Outcomes
• Muslim ethical participation and involvement at all levels of political, economic, research, academia, think tanks, advisors, consultants.
• Possible new institutions may be developed through the initiatives of graduates.
- Raising the goodwill of the Muslim community and positive attitudes from the muallaf.
- Muslims becoming indispensable to the country.

**Resources**

It is obvious that an ambitious plan with the above objectives would need substantial financial and human resources. An organisation dedicated to these objectives will need to be founded or a special division of an existing organisation will need to be established. Since the focus of this proposal is education and human capital development, resource requirements in other fields of support such as microfinance/entrepreneurship development etc may yet need further resources.

**Funding Proposal & Assumptions**

- Target 2000 students over a period of 3-5 years on a rolling basis
- Select an initial group of 500 students gradually increasing to the target figure.
- Average cost per student in terms of fees, books, materials, transport: R50 000.00 per annum. (Fifty Thousand Rands)
- Required amount based on 2000 students @R50 000.00 = 100 000 000. 00 (One hundred Million Rand).
- Capital Required to fund 2000 students to generate required amount in fee bursaries and scholarship grants: R1 000 000 000.00 (One Billion Rand).
- Average number of years support required: 4 years

**Source of Funding**

Mainly from the Muslim community, well wishers and perhaps foreign donor funding: *Zakāb* and *Waqf*. The thrust
of this initiative is Zakāh funding that will be capitalised into income producing investment assets. Revenues generated will be utilised to fund the underlying programmes. These funds may be supplemented with waqf funds and assets.

**Conditions for Zakāh and Waqf as Sources for Investment**

- *Zakāh* payers / donors shall be made aware, preferably in writing, that their *Zakāh* will be invested for the benefit of *Zakāh* beneficiaries.
- Both *Zakāh* payers and *Waqf* donors must understand clearly the use of their respective funds.
- The managing authority of the institution is delegated to act on behalf of the *Zakāh* receivers and in their best interest;
- Precautions shall be made to invest the *Zakāh and Waqf* funds efficiently to avoid any losses; and
- All possible care shall be given to planning, accounting, governance, and auditing.
- Should the *Zakāh* funded investment ever be liquidated, the proceeds will also flow to *Zakāh* eligible beneficiaries. (It is contended that a *zakāh* funded asset shall always retain its identity as a *zakāh* asset and not as a *waqf* asset)

**Operational Costs**

A maximum of 12.5% of the income generated will be dedicated to operational / administration costs. Operational costs may also be further subsidised by lillah/sadaqah funds.

**Proposals**

Two alternatives are provided here.

A 100% fully *zakāh* funded investment
A 50-50 \( \text{zakāh} \) & Waqf Funded investment
Where there is a 100% disbursement of \( \text{zakāh} \) funds by the institution as is done traditionally, as contrasted to investment discussed herein, such methodology is well known and shall not be deliberated here.

**Proposal A: Investment**
It is proposed that the full amount of the designated \( \text{zakāh} \) be capitalised in a revenue generating investment, subject to the conditions enumerated above. These funds shall be invested in a portfolio of income producing assets, using prudent investment criteria to ensure low risk, safety, and sustainability. A team of expert investment specialists and advisors will be required to manage the portfolio. For the purposes of this proposal 100% of Zakāh funds are used to invest in Shopping Centre (Pty) Ltd. The sole trustee shareholder is the NATIONAL ZAKĀH TRUST (NZT) PBO\(^{134}\).

**Distribution of Revenues**
Dividends / Rentals earned will be paid to the NZT as the sole shareholder. Since the investment was capitalised 100% via \( \text{zakāh} \) funds, the full amount shall be distributed to \( \text{zakāh} \) eligible beneficiaries. In this case as per the above hypothetical proposal, the amount will be used to provide scholarships and bursaries to students. Some students may be given a voluntary option of donating back to the NZT handling the disbursement. These funds may then be recycled to other students.

\(^{134}\) Fictitious name.
Proposal B:
Proposal B combines both zakāh and waqf funds but keeps the identity of each fund distinct. This is the synergistic implementation of a combination of zakāh funded Income generating assets for the benefit of zakāh eligible beneficiaries (Asnaf) & Waqf for the benefit of various beneficiaries Including zakāh eligible beneficiaries.

In this case 50% of the shareholding in Shopping Centre (PTY) LTD will be owned by the NZT utilising Zakāh Fund/s and the other 50% will be owned by say, AWQAF SA utilising Waqf Fund/s.

 Whereas NZT will be entitled to 50% of the dividends/rentals constituting a return on its shareholding. And AWQAF SA being the shareholder of the remaining 50%, its share of the dividends/rentals constituting a return on its respective shareholding.

Distribution of Revenues
Each shareholder will receive its respective share of dividends / Rentals. 50% to NZT and 50% to AWQAF SA.
The NZT portion being revenues earned from its zakāh investment, will be distributed to zakāh eligible beneficiaries. AWQAF SA dividends will be distributed as grants/loans to various projects and programmes as per the relevant waqfiyyah/s.

In this case as per the above hypothetical proposal, the amount will be used to provide scholarships and bursaries to students. Some students may be given a voluntary option of donating back to the NZT handling the disbursement. These funds may then be recycled to other students.
**Digitalization & Tracking**
It is envisaged that the entire journey of a student, his/her progress, extracurricular activities, achievements, vocation, research etc will be trackable via cloud based systems. Students will be followed throughout their careers. Students and graduates will be part of an Alumni programme. Inshallah.

**Disclaimer**
It is noted here that the conditions stipulated by the various *fatawa* will be strictly adhered to. Furthermore, due care should be taken in perhaps allocating a reasonable proportion of *Zakāh* funds received, rather than the greater part.
Part 8: Conclusion

This compilation of articles, fatawa, endorsements, and discussion makes a case for the investment of some or surplus Zakāh funds for the benefit of Zakāh beneficiaries in accordance with the eight categories prescribed in the Qur’an in Surah Tauba 9:60. There are cases where ownership (tamleek) of the invested capital asset will be transferred to the Zakāh eligible beneficiary, and in some cases the ownership will vest with the managing institution.

We presented the articles penned by Sh/ Dr Jasser Auda and his fatwa on the issue of investment of Zakāh funds for an Education Institute; the article by Prof. Benaouda Bensaid and Aouidad Rachid; the fatawa by the OIC International Fiqh Academy and yhe Islamic Fiqh Academy India; the Malaysian experience of transferring surplus Zakāh funds into a “Tawaqquf Fund” for capital infrastructure projects that serve Zakāh eligible beneficiaries without transferring ownership to the beneficiaries. We also provided endorsements of Sh/ Dr Jasser Auda’s views and some differing interpretations on the issue of ownership (tamleek).

Some Zakāh is paid to an institution and invested under certain terms and conditions in an income producing property, which Sh Jasser Auda regards as a waqf. Hence the notion of transforming Zakāh into waqf. The article written by Sh Jasser Auda and published by the esteemed The European Council for Fatwa and Research, Istanbul 1440/2018 and the fatawa of International Islamic Fiqh Academy, Sh Jasser Auda, and the detailed elucidation and direction by the world renowned scholar Sh Dr Yusuf Al Qardawi (RA) provide cogent arguments and support for the issue of investment of Zakāh funds under certain terms and conditions. The article
by Bensaid and Rachid gives both points of view from authoritative sources, but conclude with the preference of channelling a portion of zakāh funds into investments, again under certain terms and conditions.

While these are contemporary writings, they collectively provide excellent guidance for institutions handling Zakāh funds and waqf institutions to find common ground to make the paradigm shift and to implement something that is shariah compliant as espoused by the various fuqaha. The proposals for implementation are hypothetical and provide an example of how Zakāh may be used in funding capital assets for the benefit of Zakāh beneficiaries. There could be various other models that could be developed based on synergising Zakāh and waqf. A recent example also exists in a town in Gauteng, South Africa. Waqf land adjoining a mosque was utilised to build a housing complex. It is unclear whether funds donated by donors were “lillah” or Zakāh as some donors may not disclose the identity of the funds, though only “lillah” funds were called for. However, the building is occupied by widows and their rentals are subsidised by Zakāh funds.135

The recent online World Zakāh and Waqf Forum 2021, also emphasised the collaboration between these two institutions – Zakāh and waqf – for a variety of programmes including the funding of Small and Medium Enterprises, funding of Micro Enterprises, contribute towards alleviating multidimensional poverty, and towards meeting the United Nations Sustainable Development Goals (SDG’s). 136

135 Anonymous key informant.
136 https://sdgs.un.org/goals These goals while laudable, do not cover all SDGs according to Ahamed Kameel Mydin Meera, in an online webinar hosted by IGE Pearl on “Islamic Community Currency
When one traverses the various issues in Zakāh, there are invariably differences of opinion amongst fuqaha. For example in the case of fi qulubuhum, some may sanction the giving of Zakāh to non-muslims who are not enemies but whose hearts could be brought closer to Islam while others have a strict no-no. Or in the case of fi sabilillah, some fuqaha have sanctioned military jihad while others have sanctioned all types of struggle. These differences provide us with various options, yet within the broadest parameters of the shari‘ah, depending on which school of thought, or which faqih, we wish to follow.

Overall, thought for serious consideration by respective roleplayers and stakeholders. As Moulana Yusuf Patel said: “…(this) “calls for dispassionate reflection and consideration”. A dedicated new organisation or department as suggested by Sh Jasser Auda may be established to focus on the broader mission and purpose of Zakāh funds while waqf and investment administration expertise is combined to provide a win-win situation for all stakeholders: donors, institutions, and beneficiaries.

Clearly more research is required given the wide ranging opinions by world renowned authorities. The topic of synergising Zakāh and Waqf will continue to attract attention by various scholars and institutions. May this book provide fresh food for thought and where appropriate, implementation will be pursued as a key manifestation of the

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*Payment Systems*” in his presentation on a Complementary Money and Payment System for a Just, Stable and Sustainable Economy on 29 January 2022. Meera asserts that two more goals are required to achieve the 17 goals. These are 18.- Real Money Systems (some form of Gold Standard – Riba free) and 19 – Spirituality and Character.
paradigm shift. We rely on the Guidance and Grace of Allah ﷻ. And Allah ﷻ knows best.
And Allah ﷻ Knows Best.
Part 9: Bibliography


Appendix 1: Zakāh: The Pillar of Empowerment
ZAKĀH: THE PILLAR OF EMPOWERMENT

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DEDICATION

This research paper is dedicated to:
sustainable development, peace and justice,
and the eradication of poverty and dependence;
the empowerment of the poor and needy,
and to those
who work for Allah,
who have sympathy in their hearts for the Truth,
in bondage,
in debt,
travellers and seekers of Allah’s bounties,
and for the cause of Allah.

May Allah make this effort a means of
utilising Zakāh as was
demonstrated and practised by the
Noble Prophet Muhammad (s)
and by his Righteous Khulafa (ra)

All proceeds from the sale of this book are dedicated as waqf-lillah.
ACKNOWLEDGEMENTS

I am greatly indebted to Allah (S) for giving me the strength to pursue research work in His path, and especially for doing work that may be beneficial to His creation. Salutations and Peace to our Holy Prophet Muhammad (S) who laid the foundations of a vibrant Muslim community in Medina and from whose fountain of knowledge I continuously draw.

I am grateful to:

Muhammad Nanabhay, a student activist, who loaned me Shaykh Dr Yusuf Al-Qardawi’s momentous work on Zakāh without which I doubt that I would have been able to complete this research paper;

those organisations that assisted in providing me with data about their collection and distribution of Zakāh;

Dr Anwarullah, Shariah Specialist & Advisor (Pakistan/Brunei), who provided me with an in-depth interview on a variety of issues in the field of Zakāh (appendix C); Sister Rashida Patel for providing the case studies (appendix B);

Professor Ronald Mears who took time to read through the paper and offered his comments on technical matters;

Dr Shawkat Alli Thokan for his encouragement and for his comments;

Moulana Ahmed Fazel Ebrahim for his comments on certain chapters.
Lastly, shukran to my wife Amina, and sons Aadil, Zahir, and Muhammad for their support, understanding, and encouragement.

May Allah accept this effort and grant all concerned a great reward. I ask for forgiveness for any errors and omissions. Allah knows best.
FOREWORD

Zakāh is one of the fundamental pillars of Islam. It is incumbent on all Muslims to be familiar with basic rules pertaining to Zakāh.

The principles of giving Zakāh are outlined in the Holy Qur’an e.g. Surah Taubah Verse 60. But the details of fiqh have evolved from the Sunnah and the early centuries of Islam.

The early Muslim societies were mainly agrarian and trading societies. The early fiqh also developed in Muslim majority rule with a central authority in charge.

Most Muslims in South Africa live in a complex urban society, where we do not have our own central authority, nor are we the majority of the population in our country.

Although the Qur’anic principles are immutable, the fiqh that was developed in the early centuries may or may not address issues that we face in our lives.

Zeinoul Abedien Cajee has looked at some of the issues and pointed out the need for Zakāh as a developmental tool. His research paper deals mainly with the distributive aspects of Zakāh. He has reviewed recent literature and revisited issues such as “tamleek” and “institutional ownership of resources”. He also quotes from another author: “A portion of Zakāh could legitimately be used for developmental purposes”. The author also addresses the question of using Zakāh for the “strategic interests” of the Muslim community.
I regard this work as a discussion paper that probably needs more input. The fresh approach, and looking at the institution of Zakāh in our context, needs our support. I am quite certain that the various organisations handling Zakāh will find valuable pointers in this work. The Gauteng chapter of the South African National Zakāh Fund welcomes this research and hopes that more people will look at the institution of Zakāh and draw relevance for our community and society. We thank the author and hope that this paper will be a starting point in a long journey of relevant research for the benefit of our community and the Ummah. May Allah (S.W.T.) bless us and guide us to use our mental faculties for our mutual good.

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Chapter 1

“Such an important matter as Zakāh still needs study and research, especially because it is one of the fundamental obligations of Islam and a cornerstone of its financial, economic, and social systems”
(Sh Yusuf Al-Qardawi 1999)

“The institution of al-Zakāh as it exists today is in urgent need of recasting and re-evaluation”.
(MI Fazlur Rahman Ansari 1973: 314)

INTRODUCTION

The subject of Zakāh is not new and not simple. Muslim scholars and jurists have been writing volumes and arguing about its various elements for fourteen centuries. Three decades ago scholars such as Ansari (1973) have pointed out the need for a re-examination of Zakāh in the context of present day socio-economic and political systems as compared to the implementation of Zakāh within prophetic times and the precolonial era Islamic State. Latter day scholars such as Drs Al-Qardawi (1999), Anwarullah (2000), and Mufti Taqi Usmani (1999), have contributed immensely in focusing on several Zakāh issues as affected by contemporary systems.

There is a concern that Zakāh as a fundamental pillar of Islam should be better understood and more appropriately applied in present times. As a multi-dimensional institution it cannot ignore the social, economic, spiritual, and political dynamics of the day. Zakāh must be relevant in the industrial/information era as it was relevant during the agricultural and trade-based economy during the era of the
Prophet Muhammad (s) and his companions and followers (ra).
The issue at hand is what role does Zakāh play and how effectively is it being managed so as to stand out as a pillar of empowerment to the Muslim community and their strategic objectives in their country of residence.

(a) Rationale and problem
It is contended that Zakāh as a fundamental pillar of Islam is often misunderstood by Muslims leading to the wrongful application of the concept. Errors may be incurred in its calculation and more importantly, errors may be incurred in its distribution. The very purpose and multiple goals of Zakāh are often lost due to a parochial understanding and application of the concept. Sometimes Zakāh is described as alms for the poor, or poor due, and at times it is described as a wealth tax. In terms of its distribution, often Zakāh is simply a handout to satisfy immediate needs rather than a means of enduring empowerment. A closer examination of the concept is warranted not only to obtain a better understanding but also to guide the Zakāh-payer or muzakki as well as organisations and individuals who are actively engaged in the collection and distribution of Zakāh.

(b) Focus
Zakāh as an institution has many facets to it. From a shari’ah perspective there are several laws and rules governing its collection and distribution. The problem that this research paper addresses lies in the area of Zakāh distribution rather than in the area of Zakāh collection.
It is argued here that Zakāh is not being distributed as it ought to be distributed particularly for the purpose of empowering beneficiaries (mustahiqeen) who are capable of working and earning a fair living. Whereas certain categories of beneficiaries should be rehabilitated from poverty or need,
it is argued that they are in fact being helped to become dependent on Zakāh. More precisely, the problem that this research paper addresses is: How can Zakāh be distributed in a way that can also empower its beneficiaries?

The purpose of this research paper is to explore the understanding of the concept of Zakāh as a pillar of empowerment particularly for the beneficiary. Further, it is intended to provide possible directions and recommendations of the way forward in an era of reconstruction and development in the country, the renaissance of the continent of Africa, and the ongoing resurgence of Islam. It is not intended that this research paper delves into the multifarious fiqh issues of Zakāh, save for the specific issues raised herein. Readers may refer to the traditional texts as well as texts such as al-Qardawi (1999) and others for in-depth discussions and detailed rules pertaining to Zakāh.

(c) Research methodology
Data was obtained primarily from three sources: available literature; responses to questionnaires (Appendix D) sent to leading NGO’s; an interview with a ‘key informant’, and personal experience. Literature in the English language was generally difficult to come by and has been largely secondary in nature. I have gleaned through recent conference papers, articles on the internet, and literature on the subject written by contemporary Islamic scholars as I have relied on these scholars for their insights into and interpretations of the primary sources of evidence i.e. Qur’an and hadith. (See references) Questionnaires were sent to five organisations – three Gauteng based and two nationally operating - but responses were received only from the latter two viz. Africa Muslim Agency (AMA) and the South African National Zakāh Fund (SANZAF) The three groups that did not
respond either did not have the necessary data or were not willing to provide any information. (I have decided not to name the non-responding organisations due to ethical considerations.) My ‘key informant’ was Dr Anwarullah who gave insights into a range of issues. (Appendix C). My variety of personal experience and involvement in Islamic organisations since 1973, my work as a professional accountant and consultant in public practice since 1981, my studies and research in transformative education, and, recent work in community development and empowerment, also brought to bear on the writing of this paper. As a student of Islam, I have relied upon experts in the field and have drawn immensely from them.

The focus of the research has been to investigate ways of distributing and utilising Zakāh in the light of the present day financial and monetary system as well as prevailing circumstances of poverty, backwardness, unemployment, and the phenomenon of newly emerging Muslim communities in South Africa. Although the paper is qualitative in approach, it also presents, where appropriate, quantitative analyses to the collection and analysis of collected data.

Chapter 2 delves into the various definitions of Zakāh provided by various scholars and ulama. In Chapter 3 the meaning of Zakāh within the broader context of the civilisational goals of Islam is explored. Chapter 4 deals with various issues in Zakāh while Chapter 5 discusses elements of the redistribution of wealth embedded within the monetary system of Islam, widely referred to as the redistributive justice system. Chapter 6 deals with Zakāh as it is practised in South Africa while Chapter 7 deals with Zakāh as a way towards effecting personal and community empowerment. The conclusion and recommendations are dealt with in Chapter 8. Appendix A is an attempt to answer certain key accounting
related questions pertaining to Zakāh and to redefine the vocabulary used in the calculation of Zakāh from a South African accountants perspective. Appendix B provides selected case studies of how Zakāh may be utilised for enduring empowerment. Appendix C provides a full transcript of my interview with Dr Anwarullah, my ‘key informant’, and the questionnaire sent to NGO’s is presented in Appendix D. Appendix E comprises of possible small business or home industry projects.
Chapter 2

THE DEFINITION OF ZAKĀH

There are several definitions of Zakāh. I will provide definitions by some scholars and then discuss some of the elements of Zakāh. Although some overlapping occurs, Zakāh is largely defined in three ways. One is a linguistic definition. The second is a legalistic or shari’ah definition, and the third being a philosophical-spiritual definition.

(a) Linguistic definition
Zakāh is an Arabic word. According to Kamal Zakāh literally means ‘to purify, to develop, and, to cause to grow’. (Kamal 1982: 7) Al-Qardawi explains that Zakāh means blessing, growth, cleanliness, improvement or betterment. (al-Qardawi 1999: xliii) Ansari quotes Al-Shaukani who gives the linguistic definition of Zakāh as ‘growth’ and ‘purification’. In its shari’ah sense, Ansari asserts, Zakāh means both growth and purification, thus concuring with Kamal. (Ansari 1999: 11-12) According to Sabiq the word Zakāh means increase, purification and blessings. (Sabiq 1984: 1)

(b) Shari’ah definition
In terms of the shari’ah meaning Kamal states that Zakāh is an act of monetary ibadah ‘according to which every well-to-do Muslim who possesses property equal to or exceeding a laid down minimum, has to give away, at the prescribed rate, a portion of it to the deserving poor and needy’. (Kamal 1982: 7)

Al-Qardawi asserts that in the shari’ah Zakāh refers to the determined share of wealth prescribed by Allah (swt) to be
distributed among the categories of those entitled to receive it.’ (al-Qardawi 1999: xliii)

Ansari refers to Zakāh as ‘the perpetual compulsory Welfare Tax which every Muslim of means has been ordered to pay yearly for planned spending on welfare projects’. (Ansari (b) 1973: 247). For Ansari Zakāh in its legal sense means ‘a right on wealth’ or ‘the specified part of wealth designated by Allah (swt) to be given to certain beneficiaries’. He is careful in clarifying that Zakāh is ‘not a tax’ but ‘essentially a spiritual obligation not incumbent on those who are not Muslim’. (Ansari 1999: 11-12)

Sabiq asserts that Zakāh is the name given to what a person gives away of the due of Allah (swt) to the needy. (Sabiq 1984: 1) According to al-Mawardi (d1058 CE), a classical Islamic scholar, Zakāh is a wealth tax. (al-Mawardi : 168) For Anwar ‘Zakāh is a continuous obligation on the rich for the welfare of the poor’. (Anwar 1995: 15)

(c) Philosophical /Spiritual definition
Zakāh is given as a purification and as an assistance to those entitled to a portion thereof. (al-Mawardi : 168)
Ansari also refers to Zakāh ‘as the payment annually of a fixed portion of one’s surplus wealth for the benefit of others, solely out of love for God’ (Ansari 1973(a): 182)

(d) A word on Sadaqa
The Qur’an and Hadith use the word ‘sadaqa’ to refer to Zakāh. Sadaqa literally means truthfulness. The Qur’an refers to sadaqa broadly as to giving from ones possessions as an active expression of faith. The Prophet (s), on the other hand, referred to many acts of voluntary sadaqa, for example, smiling or kindness, as acts of sadaqa. He also referred to
sadaqa as Zakāh. “Inform them that Allah (swt) has prescribed on them sadaqa…” (Hadith quoted in al-Qardawi: 1999:343) Not all sadaqa is compulsory but prescribed sadaqa is Zakāh. Hence one also finds the Zakāh-al-fitr which is a compulsory levy which Muslims must pay before the I’d salaah for the benefit of the poor and indigent.

(e) Discussion of Zakāh definitions

From the foregoing there is a sense that Zakāh is associated with several positive ideals. These may be summarised from the various scholars as: growth, purification, cleansing, blessing, improvement, betterment, increase, and development. These ideals may in turn refer to (a) the wealth that a person possesses, (b) the Zakāh-payer and (c) the beneficiary. It could further be extended to the broader Muslim community.

Zakāh is a kind of compulsory levy on Muslims who have a minimum of net Zakāhtable assets (referred to as nisab), over which one lunar year has passed in most instances. It is primarily collected by the state in some Muslim majority countries, and by NGO’s, or individuals in Muslim minority countries (such as in South Africa) and distributed on behalf of the individual Zakāh-payer to certain designated beneficiaries. Practically, the payment of Zakāh is dependent on a voluntary basis as in Jordan, Bahrain, Kuwait, Lebanon, Malaysia, and Bangladesh whereas obligatory payments are required in Saudi Arabia, Libya, Pakistan, and Sudan. (Imtiazi 1989: 19)

Zakāh aims to spiritually purify the Zakāh-payer’s assets and cause growth to both the payer and beneficiary. Growth here may refer to spiritual growth, strengthening compassionate feelings for the poor, downtrodden, or the financially disadvantaged or it may mean financial growth for the Zakāh-
payers as giving begets wealth according to traditions of the Prophet Muhammad (s). Further, growth can also be coupled with the development and nurturing of a strong, secure, and stable Muslim community. The alleviation of poverty, growth and development, and the protection of the Muslim ummah, would thus remain important aims of Zakāh.

Zakāh may thus be defined as a compulsory levy on Muslims, imposed by Allah (swt), based on the net Zakāhtable assets (net Zakāhtable assets = gross assets, less exempt amounts, less Zakāh-deductible liabilities) (see Fig 1) for the benefit of designated persons and causes. Zakāh is thus Allah’s (swt) fund placed at the disposal of the Muslim community to be used for the protection and promotion of Islamic interests. These interests include the alleviation of poverty; freeing those that are enslaved or oppressed; relief from indebtedness; administration of the fund; jihad in various forms against the enemies of the Muslims and Islam; reconciling hearts of new Muslims and winning the sympathy of non-Muslims; assistance to the stranded traveller or refugee; and broadly for growth, development, and expansion of the Muslim community. (Qur’an Taubah 9: 60); WII: 18-19
**GENERAL FORMULA**

<table>
<thead>
<tr>
<th>Description</th>
<th>Symbol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross assets</td>
<td>AAA</td>
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<tr>
<td>Less: exempt amount</td>
<td>BBB</td>
</tr>
<tr>
<td><strong>Total Zakāhable assets</strong></td>
<td>CCC</td>
</tr>
<tr>
<td>Less: Zakāh-deductible liabilities</td>
<td>DDD</td>
</tr>
<tr>
<td>*Net Zakāhable assets</td>
<td>XXX</td>
</tr>
</tbody>
</table>

* Net Zakāhable assets must exceed the nisab amount and renders the Zakāh-payer a *sahib-e-nisab.*

*Figure 1*
Chapter 3

ISLAM & ZAKĀH

Zakāh cannot be seen in isolation from the broader precepts and civilisational goals of Islam. Zakāh, being the third pillar of Islam, is an integral part of the systems and sub-systems within Islam and has several dimensions, including spiritual, financial, political, and developmental which in turn impact on the individual, family, community and the state.

The fundamental goal of Islam is to provide humankind with guidance (“‘ḥudal-lin-naas”) so that true justice may be achieved in all walks of life. (Qur’an Baqara 2: 185) This means that peace on earth or in a community or society will only be achieved if there is justice. The purpose of human living and dying on the other hand, according to Islamic belief, is solely for the ibadah of Allah (swt), as the Qur’an states: ‘Wama-khalaqtul-jinna-wal-insa-illa-li-ya’buduni. (Thariyat 51: 56) This means that within the Islamic worldview or paradigm all human existence and behaviour should be brought into line with that which would please Allah (swt). Guidance for this ibadah existence is provided by Allah (swt) through a series of revealed scripture and a chain of prophets culminating in the Qur’an and Prophet Muhammad (s) respectively.

Islam is also deeply concerned about developmental issues. Islam approaches the problem of development holistically rather than viewing development purely from an economic perspective. As Khurshid Ahmad points out:

‘The primary function of Islam is to transform the individual morally and reconstruct his/her social environment with a view to guiding human development on correct lines and in the right direction. It deals with all aspects of human economic life but always in the framework of
total human development. This is why the focus, even in the economic system, is on moral and integrated development, with the result that economic development remains an indivisible element of moral and socio-economic development of the individual and human society.’ (Ahmad 1999: 3)

There are several institutions, precepts, values, and ideals that have been designed and ordained by Allah (swt) as guidance to achieve the goals of Islam and Islamic living. These include the performance of Salah and Hajj, keeping Saum, engaging in Jihad, Nikah, abstention from gambling, liquor/substance abuse, riba, pre and extramarital relations, and enjoining the right and just and forbidding the wrong and evil. Zakāh is also one such institution and is ranked as the third pillar of Islam after Shahada, and Salah. The word Zakāh has been mentioned 30 times in the Qur’an, 27 of which occurs in a repetitive mode ‘Establish Salah and give/practise regular Zakāh’ indicating the importance of the third pillar. (Kamal 1982:10; Kaandhlawi 1993:244; Al-Qardawi 1999:xlvii).

In the next chapter some of the issues that emanate from the definition of Zakāh are discussed.
Chapter 4

ISSUES IN ZAKĀH

There are several elements and issues to the definition of Zakāh. These include the following:

The liability for Zakāh: Who is liable to pay Zakāh, and when should the Zakāh be paid; to whom should the Zakāh be paid: directly to a beneficiary or to an agency; at what rate should Zakāh be calculated on the net Zakāhtable assets; is the rate the same for everyone; is the rate the same for all net Zakāhtable assets; is the level of nisab the same for all classes of Zakāhtable assets; what are the exempt amounts on the various categories of Zakāhtable assets; the level of nisab on net Zakāhtable assets; which assets are Zakāh-exempt; which liabilities are Zakāh-deductible; which persons and causes are the designated beneficiaries; when do non-muslims become beneficiaries; how much should beneficiaries receive; and in what manner should beneficiaries receive their Zakāh.

Some of these issues will be discussed below.

(a) Can one category of the eight beneficiaries be favoured over another?

According to al-Mawardi, collectors have the responsibility to divide the Zakāh collected equally in the eight categories of beneficiaries, if they exist. He also refers to Imam Abu Hanifa’s ruling which permits the distribution to only one category even if other categories exist. (al Mawardi 1996: 180) Sabiq sifts through different jurists opinions and argues that the Zakāh is distributable only to the eight categories of beneficiaries and that it is permissable to distribute to any one of those categories. According to Malik, quoted by Sabiq, it
is advisable ‘to investigate the needs of the groups, and each time, preference has to be given to those in need and in penury’ (Sabiq 1984: 59)

(b) Can Zakāh be distributed to non-muslims?
Al-Mawardi’s ruling seems to favour the view that Zakāh should only be distributed to Muslims although non-Muslims have been beneficiaries during the time of the Prophet (s) and also during the time of the pious caliphs (ra). (Al-Mawardi 1996: 183; Anwarullah 2000) The only exception, according to Imam Abu Hanifah, is that Zakāh may be given to a dhimmi (a non-muslim living in and under the protection of an Islamic State). According to Al-Qardawi ‘scholars unanimously agree that Zakāh cannot be paid to unbelievers who fight Muslims’ (1999: 447). Interestingly, Imam Abu Hanifa sanctions the giving of Zakāh al-fitr to non-Muslims on the condition that they are not fighting against Muslims. (Al-Qardawi 1999: 449) The only category of beneficiaries where there seems to be a difference of opinion is in muallafat-al-qulub where non-Muslims may become beneficiaries.

Al-Mawardi states:
‘This portion is for those whose hearts may be induced to come closer by giving to them, and they are four kinds: a) Those that are brought closer so that they may help the Muslims; or b) Those whom one brings closer so that they may desist from harming the Muslims; or c) Those brought closer because of their desire for Islam; those brought closer in order to stimulate the desire in their people and family for Islam. If those among these four are Muslims, it is permitted to give them from the portion of the Zakāh allotted to “those whose hearts may be brought closer”; those among them who are mushrikun are given the portion
allotted to public interest from fay and ghaneemah rather than from the Zakâh wealth’. (al-Mawardi:1996: 182)

However, according to Kamal, persons whose hearts are to be reconciled to Islam and in the interest of the Islamic State may be non-Muslims, or even the newly converted Muslims whose faith in Islam is not yet firm and strong enough to motivate them to serve the interests of Islam and the Islamic State. The new Muslim part seems acceptable but not so the non-Muslim part according to the Hanafi and Maliki view, although this was practiced by the Prophet (s) himself. (Kamal 1982: 44)

Sabiq argues that Zakâh may be given to two groups of unbelievers: (a) those who by giving them of the Zakâh, it is hoped would be won over and become Muslim; and (b) those whose antagonism is feared, and it is hoped that with gifts to them they would desist from being antagonistic. Sabiq quotes Ibn Mundhir as saying: ‘All the scholars who have learnt about it agree that the non-Muslim should not be given anything of the Zakâh property’. However, he asserts that ‘excluded from this are the muallafat-at-qulubuhum as outlined above. (Sabiq 1984: 62)

The question that follows from here is: can Zakâh be given to non-Muslims in South Africa with the strategic objective of bringing them closer to Islam and to win their hearts to Islam at best to influence them to embrace Islam and at worst to be sympathetic to the Islamic cause? While, the Prophet (s) gave Zakâh to non-Muslims for the protection and promotion of Islam and the Islamic State, for both religious and political objectives, the question also arises whether, we in a minority situation may give Zakâh to non-Muslims for the same reasons. From the foregoing, the only category of Zakâh that could possibly be distributed to non-Muslims is the muallafat-
al-qulub category. Anwarullah strongly recommends other resources e.g. awqaf rather than Zakāh for non-Muslims. (Anwarullah 2000) Scholars and ulama need to address this issue urgently to give guidance to organisations working in the field.

(c) Can Zakāh be used for building institutions that would generally benefit the poor and needy?

Institutions here refer to social or economic institutions that cater for the poor and needy or for any of the Zakāh beneficiary/recipient category. Transfer of ownership or *tamlik* of Zakāh to the recipient beneficiary from the Zakāh-payer is an important condition for the fulfilment of the Zakāh obligation.

According to Kamal, institutions, rather than individuals, are authorised as owners of Zakāh and caretakers of the poor and indigent to effect capital expenditure on constructing buildings, purchase vehicles, equipment, and appliances for the service of the deserving poor. Once Zakāh has been paid to an institution, the Zakāh-payers obligation has been fulfilled. The Zakāh-payer ceases to be the principal holder of the Zakāh and the institution, on taking possession of the Zakāh from the Zakāh-payer becomes the owner of the respective Zakāh. According to Anwarullah, the institution takes possession of the Zakāh as a trustee rather than as an agent. (Anwarullah 2000) According to the Jamiat, the distributor plays the role of agent and the Zakāh is not considered distributed if the agent fails to discharge the responsibility. (Jamiat 1996:8)

Ownership on the part of the beneficiary is then owning a right or being entitled to receive services from such institutions rather than having title to the institution. It follows that the poor and indigent will not have a share or
equity in those institutions but that the poor have a sort of collective right of use of the building or to its services.

Sabiq argues that Zakāh under the category of fisabeelillah can be used by the state for the purpose of purchasing armoury and equipment for the defence of Islam, but that these equipments must be returned to the treasury. This implies that ownership vests with the state or collection agency for the defense of Islam and that ownership does not pass to the user thereof. In the case of other categories ownership would vest with the beneficiary. (Sabiq 1984: 58)

Sabiq also states that under the category of fisabeelillah, Zakāh expended for dawah purposes is one of the more important heads of expenditure in our time. More particularly he argues that Zakāh may be spent for the training and despatch of daees to non-muslims under the jurisdiction of organisations that regularly assists them with funds. (Sabiq: 1994: 58) According to Anwarullah, Zakāh may be utilised to develop institutions that serve the beneficiary categories (Anwarullah 2000) This notion is also confirmed by contemporary fiqaha who have ruled that Zakāh may be utilised for the construction of water wells, schools and masajid in poor and destitute areas where the ownership does not vest in a single person. (Kuwait) On the contrary, although the Jamiat does not qualify its statement, it seems to suggest that ‘zakaah may not be used for hospitals, erection of schools…’ (Jamiat 1996:8)

Going by the foregoing view of scholars that Zakāh may be utilised for institutional purposes, it follows institutions that train daees would be eligible for Zakāh support and that tamlik would not necessarily vest in the daee but the institution that trains and despatches such persons. It follows also that where institutional help can be given in the form of
training skills and empowerment of beneficiaries, Zakāh may be utilised for such purposes, provided that such beneficiaries are drawn from the relevant Qur’anic categories.

(d) **How much must be given to a beneficiary?**
According to Sabiq, the amount that has to be given to a beneficiary, in particular the faqir/miskeen category should be enough to make him/her self-sufficient for life irrespective of other net non-Zakāhtable assets that the person may possess. (Sabiq 1984: 49) Other views indicate that the amount of Zakāh that should be given range from satisfying one-year needs (Imam Malik, Imam Ahmad ibn Hanbal) to self-sufficiency for life (Imam Shafi, Mawardi) to limitless (Abu Ubaid). (Imtiazi 1989:18) The point is that Zakāh needs to be given generously as an ideal position to enable the beneficiary to stand on his/her own. The reality is that organisations do not have sufficient Zakāh to achieve this ideal.

(e) **How should Zakāh be distributed in respect of the various Qur’anic categories?**
Ideally, all eight categories must be given an equal allocation, but the poor take priority. The ruler or administrators may decide on which categories to give. However, there are differences of opinion on the matter depending on need and public interest. (Al Qardawi 1999: 442) In terms of geographical priority of beneficiaries, the persons most entitled to Zakāh are those in the same locality as the Zakāhpayers. Only once the local community has eradicated poverty and satisfied needs there can Zakāh aid flow to the neighbouring Muslim community. (Imtiazi 1989: 14) According to the Jamiat, ‘Zakaah may be distributed to each one of the eight categories or to any one of them.’ (Jamiat 1996:8)
The next section deals with the notion of Zakāh and redistributive justice.
Chapter 5

ZAKĀH & REDISTRIBUTIVE JUSTICE

One of the many problems that communities face, and indeed the world, is the concentration of wealth in the hands of a few people. In order to ensure that wealth does not remain in those hands, various mechanisms have been established by Islam to ensure that there is an equitable redistribution of wealth not only within the Muslim community but beyond as well. As indicated earlier, Zakāh forms part of the system and sub-systems of Islam. Zakāh does not exist on its own to alleviate poverty or to cause growth in the Muslim community. It co-exists alongside other pillars and tenets of Islam. One area of Islam is the economic and monetary system within which Zakāh operates. In this chapter, a brief overview of the redistributive justice system will be discussed.

The primary aim of Islamic economic and monetary policy is the alleviation of poverty within the broader goal of seeking justice and peace. To achieve this aim, several institutions and laws have been put into place which together form the redistributive justice system. The redistributive system seeks primarily to transfer wealth from the “haves” to the “have nots”. Some of these institutions and laws will be discussed below.

(a) Hoarding and circulation of wealth

According to Islam, hoarding of wealth is not permissible and carries penalties if found guilty of such practice. (Humuza: 2-3) Wealth must be circulating within the broader community and not just among the wealthy. (Hashr:7) In times of inventory shortages, for example, a trader or trading concern may not take inventories out of circulation or off the
market in anticipation of higher prices later at which time superprofits may be made. The mechanisms of supply and demand and market forces should be left to determine prices. (Babikr 1999:18) Similarly, Muslims are not permitted to hoard currencies and precious metals like gold and silver. These too must be kept in circulation. The alternative to hoarding would be investment which in turn creates jobs, employment, and increases production and consumption. The investment may be in current assets, for example in inventories, or non-current assets, for example in fixed property or production plant and machinery. Current assets are usually Zakātable while non-current assets are usually exempt from Zakāh.

(b) Inheritance and redistribution
Every individual who has any possessions is required to make a will. The Prophet Muhammad (s) said that no two nights should pass on a person without making a will. But the distribution of those possessions is not a matter of whim and fancy. Individuals have the freedom to distribute only up to one third of their distributable estates to persons, organisations or causes of their choice, as in a waqf. The balance of two-thirds must be distributed according to Qur’anic prescriptions to parents, spouse, offspring, and in some cases siblings, in due proportions. For example, upon death a man has a house, some cash, shares, a business, personal assets such as jewelry, furniture, and household effects, and some liabilities. He has a wife, and three daughters. In terms of Islamic law, the wife will be entitled to one eighth of the estate whereas the three daughters will share equally from two-thirds of the remainder. (It is assumed that the wife has her own estate or alternatively, any debt due to her in terms of the accrual system has been accounted for as a debt in the husbands will.) In both cases after funeral
expenses, liabilities, and legacies up to one-third of the distributable estate have been settled. The assets are thus distributed so that those beneficiaries may enjoy the property, make investments, donations, or purchase durable goods. This in turn leads to further employment and expansion of productive facilities and is consistent with the principle of wealth circulation and redistributive justice.

Unlike the South African system where there is unbridled freedom of testation where an individual has the freedom to distribute or will his/her assets upon his/her death to whomsoever he/she wishes, irrespective of familial relationships, the Islamic system operates in a manner that allows maximum distribution to family members.

Inheritance is thus an integral part of the redistributive justice system of Islam.

(c) Awqaf and redistribution

Muslims are encouraged to establish awqaf (singular: waqf) or trusts as juristic entities for any worthwhile cause for the pleasure of Allah (swt) on a voluntary basis. It follows that the cause may be anything for the benefit of humanity or creation including the environment and animals, Muslims and/or non-Muslims. Throughout Islamic history Muslims have practised this Sunnah of waqf by, amongst others: establishing rest rooms for wayfarers; grazing grounds for cattle; schools and hostels for the community; orchards for jihad and the freeing of slaves; and investments for the payment of teachers in Qur’an schools or madaris. In Turkey, almost two thirds of arable land belong to awqaf. Turkey has also established an Awqaf Bank. (Cajee 2001)

In South Africa, several charitable foundations (awqaf) have been established to cater for the poor and needy in the form of provision of bursaries; provision of water wells; provision of temporary housing; building of community centres;
schools; clinics; masajid; trade and hawkers centres; and vocational training schools. Recent awqaf in South Africa have been the setting up of containerised clinics by Waqful-waqifin in several “black” townships, water wells by Africa Muslim Agency and Crescent of Hope in several remote areas of the country, and a trade market in De Deur, Gauteng by the Murabitun. Most of these awqaf have been set up in former black townships and rural villages benefitting largely African poor.

‘Awqaf’ transfers wealth from private ownership to a beneficial social collective ownership. The shari’ah has not made waqf obligatory but has encouraged it and left it to voluntary initiatives of individuals’. (Babikr 1999: 15)

(d) Other redistributive mechanisms of wealth in Islam

Other redistributive mechanisms have been put into place to ensure that wealth circulates as widely as possible and that the wealthy are kept in check. It is beyond the scope of this article to explore the merits of each of the following mechanisms.

However, these include:

- The prohibition of riba (interest)
- The prohibition of monopolies
- Zakāh al-Fitr – an annual payment for the benefit of the poor and needy on or before the day of ‘Id.
- Compulsory exchange at market prices
- Qard al Hasan loans (interest or profit-sharing free and only capital repayment)
- The prohibition of use of gold and silver for utensils and cutlery
- Zakāh on certain classes of assets e.g. any merchandise held for trade or re-sale purposes and
not on other classes such as productive fixed investments such as plant and machinery or real estate.

- Fai
- Ghaneemah
- Takaful – mutual co-operative fund.

(e) Zakāh and redistribution

The effect of Zakāh as a compulsory levy on the redistribution of wealth is that some portion of personal assets are transferred more widely in the community to Zakāh beneficiaries. Hence Zakāh is part of the redistributive justice system in Islam.

This leads to a discussion on Zakāh in South Africa.
Chapter 6

ZAKĀH IN SOUTH AFRICA

Muslims of South Africa have been making Zakāh payments for several decades, if not centuries, both privately and through public institutions. Thousands of poor and destitute have been assisted in cash and kind, both locally and abroad, and continue to be assisted.

Unlike certain Muslim countries, for example, Saudi Arabia, Pakistan, and Brunei where the collection and distribution of Zakāh is undertaken by the state, in South Africa this function is invariably performed by Muslim public organisations within the NGO sector. (Salama 1978: 349; Anwarullah 2000: 1) Major NGO’s involved in the collection and distribution of Zakāh in SA include the Central Islamic Trust, Jamiatul Ulama bodies of Transvaal and of Natal, Muslim Judicial Council, Africa Muslim Agency, and South African National Zakāh Fund. The new democratic state in South Africa has neither recognised Zakāh for income tax purposes nor has it put in place any mechanism for its efficient collection and distribution. In any event, SA Muslims have yet to come to terms with state involvement with this pillar of Islam.

There are no figures available as to the amount of Zakāh collected and distributed in South Africa except for a few organisations which publish their results on an annual basis. No research or attempt has been made to arrive at any consolidated figure neither is there any organised way in preparing and disseminating such data. The problem is compounded when Zakāh is also distributed privately by individuals and families rather than only by organisations.
The lack of such data makes it virtually impossible to arrive at some estimate of the total Zakāh liability or the total amount collected and distributed on an annual basis. More importantly, very little, if any, published information is available on the “how” of Zakāh distribution i.e. what mechanisms are used for effective Zakāh distribution.

Zakāh is becoming an important element in the lives of Muslims in South Africa as (a) more and more people become aware of their religious obligations; (b) more and more persons from the previously disadvantaged and largely poorer African communities embrace Islam; and (c) Islam being under threat from antagonists both locally and abroad.

Organisations such as SANZAF, AMA, and others have done much to contribute to that awareness, while organisations such as the Islamic Dawah Movement, and Al Tauheed Islamic Centre are spreading the message of Islam among African people. For example, since 1974, SANZAF has increased its Zakāh and voluntary donations (lillah) collections and distributions from around R100000 to around R9million in 1998. (SANZAF: 1999)

No statistics are available of poverty and unemployment amongst poor and destitute Muslims in South Africa. However, the amount of Zakāh cases handled and the amount distributed suggests that a substantial number of Muslims do not have the minimum nisab and therefore have a God given right to receive Zakāh from Zakāh distribution agencies. The number of potential beneficiaries is also unknown as organisations do not keep detailed statistics of pending cases or cases that they are unable to assist.
The specific categories of beneficiaries is also not readily available from existing organisations. This makes it difficult to plan economic projects that would cater for those fuqara and masakeen (poor and destitute) that are willing and able to work but are prevented from doing so because of lack of employment opportunities, lack of marketable skills, lack of capital, or other resources. This person could be male or female, young or elderly, and, with or without physical disabilities. The essential criterion is “being willing and able to work” having due regard to their specific circumstances.

It is contended that this category of person should not receive handout packages but that the Zakāh ‘assistance’ given should be more meaningful to the extent that it actually provides the person with a job, an income, or a small business that would eradicate his/her sub-nisab status and make him/her a Zakāh-payer / muzakki instead.

From available statistics and data provided by organisations, it seems that Zakāh is generally paid to beneficiaries in cash or kind to satisfy immediate needs rather than creating avenues for enduring self-sufficiency and empowerment as is expected. It is argued here that Zakāh be used to create self-sufficient persons who in turn and in due course would become Zakāh-payers rather than Zakāh beneficiaries. It follows then that a portion of Zakāh could legitimately be used for developmental purposes. (SANZAF 2000; AMA 2000)

The following is an attempt to provide some detail on the activities on two organisations which also operate as Zakāh agencies.
SANZAF, which was established in 1974, is a dedicated organisation that was set up by concerned individuals and which ‘strives to facilitate the empowerment of Muslim families through the efficient collection and effective distribution of Zakāh and other Sadaqah – in a proactive and cost effective way through projects – with dignity, sincerity and a shared responsibility. All in the service of the Ummah and for the pleasure of Allah (swt)’. (SANZAF 1999)

Although Zakāh has probably been collected and distributed for generations in South Africa, as a pillar of Islam, the practice of Zakāh is not established as it ought to be established as a multifaceted institution in this country.

In this section I will highlight the historical background of the institution of Zakāh and to focus on its current operation in South Africa with particular reference to its distribution.

(a) Historical perspective.
Although the early Muslims came to South Africa in the 17th Century and later in the 19th century very little is in fact known about how Zakāh was collected and distributed then. What can be said with circumspect is that despite the slavery and destitution of the early Muslims, they discharged this responsibility, probably through some or other organisation or through individuals. Until 1974 there was no dedicated institution, either nationally or locally, that specialised in the collection and distribution of Zakāh.

(b) Current Situation
A cursory survey of the institutions in South Africa indicates that there is currently only one national organisation viz SANZAF that focuses on the collection and distribution of Zakāh on a dedicated basis. The Jamiat, for example,
established a “Zakāh & Lillah Fund” as recently as in 1996 amongst its various other activities. (Jamiat 1996) Others treat Zakāh as one of its subsidiary activities. For example, a local masjid which focuses on maintaining the affairs of the masjid may also have a small Zakāh fund that it administers. Another example may be a community welfare and educational organisation which has its main aim in serving the local Muslim community’s educational needs. It may also have a small Zakāh fund which is used for the benefit of the indigent.

(c) Geographic distribution
Geographically Zakāh is distributed not only in South Africa but both individuals and organisations distribute Zakāh in traditional home villages for example in India and also to famine and more stricken persons as in Somalia, Bosnia, Kosova, Palestine, Afghanistan, Chechnya, Malawi, Mozambique, Kenya, Sudan and Ethiopia.

(d) Amount collected and distributed
Generally speaking collectors of Zakāh would distribute Zakāh within a year. Traditionally Zakāh is collected mainly in Ramadaan and Muharram. So by the beginning of the next Ramadaan and Muharram respectively, the amounts collected in the preceding months have been distributed. Because there is no central data collecting agency within the Muslim community there is no way of telling just how much is collected and/or distributed. Furthermore not all organisations publish their annual financial statements in the general or Muslim media, neither do individuals disclose how much Zakāh they have paid. Furthermore, there are no accounting or reporting standards specifically relating to Zakāh collection and distribution organisations as for example Generally Accepted Accounting Practice or South
African Auditing Standards statements that guide accountants and auditors. Perhaps if Zakāh becomes a tax deductible expense, the South African Revenue Service may be able to advise us of the aggregate numbers of Zakāh-payers as well as the amounts. In the absence of figures, it is anyones guess. Two organisations surveyed collected the following amounts of Zakāh during the respective financial years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>SAR 9 172 170</td>
</tr>
<tr>
<td>1997</td>
<td>SAR 7 212 243</td>
</tr>
<tr>
<td>1996</td>
<td>SAR 6 607 406</td>
</tr>
<tr>
<td>1995</td>
<td>SAR 5 120 645</td>
</tr>
<tr>
<td>1994</td>
<td>SAR 3 779 636</td>
</tr>
</tbody>
</table>

The above amounts are not a true reflection of the total annual collections. Theoretically, the above amounts should represent about 2,5% of net Zakāhtable assets. The 1998 figures above capitalised at 2,5% translates to net Zakāhtable assets of SAR 366 886 800. It is estimated that the Muslim Community of South Africa has cash resources of approximately SAR60 billion in SA banks. (Oasis 2001) Assuming that this figure represents net Zakāhtable assets, the total Zakāh should theoretically be around SAR 150 million.

**(e) Categories of Zakāh receipients**

Zakāh money has been traditionally utilised largely for serving the fuqara and the masasakeen as is evident from the responses of one organisation that was surveyed. The following table illustrated the % Zakāh distribution over the prescribed Qur’anic categories. These figures are for 1996 and are based on a survey carried out by that organisation. It is unlikely that the pattern has changed significantly, if at all.
Fuqara: 35%
Masakeen: 41%
Aamileen: 4%
Muallafat-al-qulub: 0%
Fi-al-riqaab: 0%
Gharimeen: 2.2%
Fi-sabeel-lillah: 15.5%
Ibn-sabeel: 2%

Within the fuqara and masakeen categories, Zakāh is mainly distributed for food, clothing, rent, lights and water, travel, and education. Within the other categories too, food and clothing features as the major item of expenditure. Again accurate statistics are not available. One organisation spent a large portion SARand 3 million on a relief crisis in Africa and usually spends approximately 50 SACents per meal to feed the hungry and destitute. (SANZAF 2000; AMA 2000)

The above indicates that South African organisations are generally trapped in a narrow range of understanding the purpose of Zakāh. One finds the lack of distribution for the purpose of empowering the fuqara and masakeen in innovative programmes that would help them become self-reliant and self-sufficient rather than creating a dependency mentality.

However there are positive signs that this culture might be changing, SANZAF has now embarked on establishing a skills centre, and a similar move has been undertaken by the Africa Muslim Agency with the establishment of its Technical Training Centre which has been built with the assistance of
the Jeddah based Islamic Development Bank. Other notable initiatives are the FARD self-help scheme of SANZAF, and bursary schemes of SANBUF and IDB.

The next section deals with the notion of Zakāh as a tool for empowerment.
ZAKĀH AS TOOL FOR EMPOWERMENT

The focus in this section of the article is on that person, male or female, young or old, physically able or disable, whose net Zakāhable assets are sub-nisab. This person is potentially economically active but due to some misfortune or circumstances in his/her life, has become impoverished.

In terms of the prescribed Qur’anic categories, this person may primarily be in the following two categories:

- fuqara/masakeen
- muallafat-al-qulub

With regard to the first category, a person who does not possess nisab is either faqir or miskeen. In other words, that person is not self-sufficient but is capable of becoming self-sufficient, given the necessary support to do so. The sub-nisab status would render the person a rightful beneficiary of Zakāh. The question raised here is how should Zakāh be given to this type of person. Should it be a handout or should it be something else that would have the effect of making that person self-sufficient for life, as stated by Sabiq.

As to the second category, this would apply to new Muslims as well as to non-Muslims who are sympathetic or potentially sympathetic to Islam and/or to the local and international Muslim ummah. In the former case, the purpose would be to strengthen the bonds of brotherhood with new Muslims with the necessary support of the established Muslim community. Often new Muslims have to break off ties with their home communities and may even face isolation. In the latter case,
the Muslim community will need to create strategic alliances and partnerships with non-Muslim individuals as well as communities to enable the Muslim community to pursue their religious as well as ideological objectives within that community with the support of non-Muslims.

From the foregoing, it is clear that Zakāh may be given in cash or in kind. The former may be in the form of money or other form of negotiable instrument that could be converted to cash whereas the latter may take the form of tools, implements or equipment. Essential is that absolute unconditional ownership must pass to the beneficiary or that where ownership vests in the institution, the fuqara, masakeen, and other authorised categories only are the sole beneficiaries. The latter become beneficiaries of services rendered to them at a Zakāh subsidised cost. Ownership here would take the form of skills and capabilities rather than money or meal vouchers, but could be a combination of the two. There is nothing to suggest that one excludes the other or that they are mutually exclusive ways of distributing Zakāh.

It is contended that the current practice amongst Muslim organisations is to provide the fuqara and masakeen with food vouchers, a regular monthly allowance, pay his/her rent or water and lights account in order to alleviate more immediate difficulties. Organisations surveyed do not have a structured programme of empowerment. By this I mean that the Zakāh beneficiaries’ personal condition has not improved except that his/her immediate and most pressing needs have been satisfied. The person may be jobless for several months and even years and becomes dependent on Zakāh. In this instance, the organisation would be going against the grain of prophetic advice of endeavouring to make ‘beggars’ self-
sufficient as soon as possible rather than creating dependents on small resources which could be used for more deserving cases.

The key question then is: how should the process of empowerment be fostered through Zakāh? It is suggested here that empowerment may be fostered at two levels viz (a) at the personal level and (b) at the community level.

(A) Personal level
In terms of Zakāh, empowerment at the personal level refers to the unfettered ownership and control of resources that enables the individual to eradicate the condition of impoverishment, improve his/her quality of life, and becoming self-sufficient. At the point of becoming self-sufficient the beneficiary ceases to be entitled to Zakāh and simultaneously attains the status of sahib nisab i.e. he/she becomes a potential Zakāh-payer.

(B) Fostering empowerment at the personal level
(a) Provision of merchandise for resale purposes
(b) provision of funding for the acquisition of marketable skills
(c) provision of rent free space to conduct small scale trade
(d) provision of equipment and relevant training
(e) provision of space to conduct small scale industry
(f) provision of support services
(g) provision of continuous evaluation and monitoring processes
(h) provision of employment in institutionally owned and managed enterprises or factories
(i) provision of employment in co-owned and managed enterprises in corporate structures
(j) provision of capital.

Because institutions are free to distribute Zakāh in cash or kind, several options other than handouts, are open to institutions distributing Zakāh funds to promote empowerment at the individual and personal level. Ideas that come to mind are the following: Each of the above are discussed below:

(a) Provision of merchandise for resale purposes
The Zakāh institution may make arrangements with several suppliers of goods and general merchandise. Individual beneficiaries may be given negotiable vouchers to purchase merchandise at wholesale prices. The beneficiary may choose particular products that are likely to have a market and resell at a flea market or on a door to door basis or from his/her home.

(b) Provision of funding for the acquisition of marketable skills
The beneficiary may be given an amount sufficient to cover fees, travel, and subsistence in order to acquire marketable skills such as brick-laying, plumbing, electrical, air-conditioning technician, bookkeeping, and other short courses which can enable the beneficiary to obtain skills-related work or set him/herself up in business in that particular trade. In terms of empowerment, the beneficiary would be obtaining lifeskills which will enable him/her to become self-sufficient for life.
(c) Provision of rent free space to conduct small scale trade
The institution may own premises that can be given to beneficiaries in order to conduct their trade. This concept is similar to the bee hive of the SBDC except that the beneficiary will not pay any rent for a period until such time that he/she is self-sufficient. Beneficiaries from various localities may be based at the institution owned ‘empowerment zone’. Once they are self-sufficient, they may be moved to space, which may be owned by an Awqaf organisation, that they have to pay for.

(d) Provision of equipment and relevant training
Beneficiaries may be skilled people but may not have the tools of the trade to enable them to function properly or to carry out their trade in the most efficient way. For example a carpenter may not have the correct saw or he/she may even be in need of an electric saw. A dressmaker may be in need of a good sewing machine. A bricklayer may be in need of a spirit level, trowel and ancillary tools. In addition to providing the beneficiary with tools he/she may be in need of training in the proper and efficient use of those tools and equipment. The institution should pay for such training as well.

(e) Provision of space to conduct small scale industry
This concept is similar to (c) above except that it does not involve selling of merchandise but rather the manufacture of merchandise for resale purposes. Here again, free space is provided so that the beneficiaries’ equipment could be safely housed and he/she has sufficient space, perhaps with one or two assistants to carry out his/her mini manufacturing concern.
(f) Provision of support services

Very often, businesses fail because they do not have adequate guidance and support throughout their ‘incubator’ and start up phases to their maturity phase. It is in the interest of the Muslim community that such mini businesses succeed. In order to ensure success, a range of support services must be put into place. Here the institution may not do everything itself but may either outsource such services or utilise other public agencies such as those of Ntsika and its local business service centres. The institution may contract local accounting/bookkeeping firms, Muslim or non-Muslim, to provide consulting and support services to beneficiaries at nominal fees (perhaps paid by the institution) until such time that the beneficiary is self-sufficient. It may also become a condition of service provision that beneficiaries be obliged to maintain the support services at its own cost even after self-sufficiency has been attained.

The support services may include proper bookkeeping, attending to tax issues, making prompt payments to creditors, debt collection, budgeting and cash flow control.

(g) Provision of continuous evaluation and monitoring processes

The provision of support services is not enough. The institution must also receive regular reports on the progress of the beneficiary. A simple monthly income statement should be provided by the beneficiary, assisted by support services, so that the institution may be fully aware of the problems, deficiencies or progress of the beneficiary. Remedial measures may be taken in time before any further deterioration of the condition. Problems could be multifarious and the institution should be geared to assist such persons. Problems may be in cash flow, overheads may
be too high, suppliers may not be charging wholesale prices and so forth.

(h) Provision of employment in institutionally owned and managed enterprises or factories
The institution may as owner of Zakāh capital set up or acquire enterprises and factories that may create employment for beneficiaries until such time that they become self-sufficient and beyond. Such enterprises must have efficient management and administration and must be fully accountable to its trustees. Small pilot projects could be started such as a brick making plant, brick paver plant, concrete products for the building industry, knitting factories (see appendix E for a list of possibilities.)

The aim is always that the beneficiary becomes self-sufficient. If he/she has the potential to manage or become a full time employee of the enterprise he/she should be eligible to do so on the same terms and conditions as other employees.

(i) Provision of employment in co-owned and managed enterprises in corporate structures.
Following from (h) above, beneficiaries may even be given the option to own a portion of the enterprise which would be given to them as part of their Zakāh entitlement. In this case, the beneficiary becomes a co-owner of the enterprise together with others including or excluding the sponsoring institution. If the case warrants, there could be 20 co-owners cum employees of an enterprise. For example a bakery could be set up for the benefit of a group of beneficiaries. Zakāh would be used to buy their shares for them. They would have unfettered title to those shares and may even dispose of them after a period of time.
(j) Provision of capital
In this case, beneficiaries are provided with a lump sum of money that would be equivalent to nisab. Technically the nisab amount should be sufficient capital to start up a business or to make the beneficiary self-sufficient for life. Instead of providing the actual cash as a grant-in-aid, the institution may also set up a guarantee fund with clearly defined limits so that in the event that the beneficiary defaults in any way to creditors, the guarantee fund may be able to rescue the situation to a level where the beneficiary may be able to continue with trade activities.

(C) Community level
At the community level, Islam seeks to develop strong Muslim communities. Empowerment here would refer to institutional ownership of resources, training centres, and corporations that are dedicated to benefit the fuqara and masakeen. Benefits may be designed to enskill members of specific geographically located Muslim communities so that the effect of the Zakāh will be felt in due course on the whole community rather than on only individuals. Where emerging Muslim communities are targeted, the muallafat-al-qulub category of Zakāh distribution could also be used. Members of the respective Muslim community are assisted to the extent that individual members of that community become self-sufficient. Individual members are encouraged to support one another in purchasing and selling goods and services from/to one another.

In both instances self-sufficiency is measured by reaching ownership of net-Zakāhtable assets that are equivalent to nisab. The objective of providing such a person would also be to provide him/her with a means of sustainable living.
(D) Fostering empowerment at community level

In the context of community development, the term community empowerment can be defined as a process by which members of a community organise themselves to mobilise, own, control, invest, and manage their collective resources. Central to this process is the pursuit of integrated development in accordance with the community’s values and aspirations to improve the quality of life of its members. (Adapted from Korten (1990)) Empowerment here implies that communities mobilise themselves, take their futures and destinies into their own hands, determine what development they need, and how they will pursue their goals underpinned with a strong sense of self-reliance and self-sufficiency, with or without outside assistance. It further implies collective action and engagement for individual as well as community strength and benefit. (Cajee 1999: 10)

At the community level several ideas may be explored:

(a) Institution or community owned ‘empowerment zones’ used for trade, small scale industry, services
(b) Institution or community owned skill training centres
(c) Institution or community owned business support centre
(d) Institution, community, or individually co-owned business enterprises
(e) Development of other institutions within the community to provide facilities for holistic development

Each of the above is briefly discussed below:

(a) Institution or community owned ‘empowerment zones’ used for trade, small scale industry, services

The Zakāh fund may locate an empowerment zone in a particular targeted community. Here I am referring
specifically to emerging Muslim communities, or in the interest of Islam in the country or town, where muallafat-al-qulub category of beneficiaries exist.

In this case the Zakāh fund has an option as owner to retain ownership of the zone so that it becomes a continuous means of assisting persons from that particular locality, strengthening them economically. On the other hand, a trust may be set up which will be controlled and managed by the local Muslim community as an entity rather than individual ownership. The beneficiaries of the zone must be those persons entitled to receive Zakāh and may also be among those that can afford its services. However, the priority should always be those in need.

(b) Institution or community owned skill training centres
The Zakāh fund may operate its own skill training centre and perhaps transfer ownership to the local community at a later date when it has served its purpose to strengthen that community.

(c) Institution or community owned business support centre
The local business support centre could be owned by the institution or owned by the community collectively to provide continuous support to the mini entrepreneurs in the area.

(d) Institution, community, or individually co-owned business enterprises
Another way in which the Zakāh fund could contribute to the empowerment of the community is to set up businesses
in the local community which could be wholly owned by the institution, or the Zakāh fund could grant ownership to the community as a collective, or still, the Zakāh fund could give ownership to individuals within the community. The ownership structure could even be a combination of the three so that all the stakeholders have a stake in the enterprise. Corporatisation of projects will in the longer term be beneficial as it would comply with Islamic principles of devolution of ownership to beneficiaries. Ownership here would be in the form of shares in a juristic corporate body. Owners may sell, pledge, or negotiate such shares as they will. These enterprises have to be professionally managed and should also be provided with the necessary support services. They should be regularly monitored and evaluated.

(e) Development of other institutions within the community to provide facilities for holistic development.
A community does not only need a madressa and masjid for its Islamic development. Further, if we are looking at real empowerment, even going for economic empowerment is not sufficient to create a vibrant emerging Muslim community. Consideration should be given to create mechanisms whereby several social services are provided within the community that will benefit the whole community. Here there is room for co-operation with other organisations. For example, Waqful-waqifeen could be approached to provide a clinic. IDM could be approached to provide the madreasa and masjid. Yet another could be approached to set up youth recreational programmes in addition to the economic empowerment programmes that the Zakāh fund may launch in the area.
See Appendix B for examples of how ‘development’ Zakāh is presently being utilised in Pakistan, Brunei, South Africa, and elsewhere.

Having discussed various options that Zakāh may be used as an empowerment tool, I now turn to the concluding chapter.
Chapter 8

CONCLUSION & RECOMMENDATIONS

This article has attempted to elucidate concepts relevant to Zakāh within the worldview of Islam and particularly those concepts and ideas that are consistent with the promotion of justice and equity within a Muslim community and for the protection and promotion of Muslim interests in a predominantly non-Muslim but sympathetic and reversion friendly environment. It has been argued that extant organisations are not fulfilling their obligations in terms of Zakāh rules and the purpose for which Zakāh is distributed, in cash or in kind, to persons who are categorised as fuqara, masakeen, the muallafat-al-qulub, and for strategic reasons, in the category of fi-sabeel-lillah.

It is contended that Zakāh, as a pillar of empowerment, has to alleviate poverty not by giving handouts to potentially economically active persons, but by channelling Zakāh in such ways that would bring about a transformation in the lives of Zakāh beneficiaries so that they become self-sufficient and self-reliant on a sustainable basis for life. For this purpose, several other redistributive mechanisms have been encouraged within Islam so that the needs of all, including non-Muslims to a limited extent, are catered for by a Muslim community.

In order to maximise the benefit of Zakāh particularly for the beneficiary, a number of steps need to be taken to fill the gaps within present organisational structures. There needs to be focus and therefore a more dedicated organisational framework so that the aims and objectives not only of Zakāh per se but also the interests of Islam and Muslims in the
country are promoted and protected. It is with this in mind that the following recommendations are made:

(a) **Recommendation 1**

The foundation of a new organisation to serve the developmental interests of Muslims and Islam in South Africa. The new organisation would operate side by side with existing organisations rather than in competition with them. I would recommend the formation of a South African Islamic Development Agency (SAIDA) which would operate in South Africa and then spread out to other southern African countries. It is in the national interest of South Africa to develop communities in southern Africa and also in the interest of Islam and Muslims. Similar organisations may then be mooted with the help of international development agencies such as the Islamic Development Bank, OIC Solidarity Fund, and international Zakāh and charitable foundations in other areas of Africa and beyond. Foreign country support may also be solicited for the venture. The focus of SAIDA would be, as the name implies, community development. Its primary aim would be the holistic development and empowerment particularly of a) emerging muslim communities in Southern Africa and b) strategically selected non-muslim indigenous communities in South Africa. The funding sources of the projects of the organisation would be local and global and would include Zakāh, lillah, sadaqa, and the establishment of awqaf dedicated for empowerment purposes.

The details of the founding of such an organisation are beyond the scope of this booklet but ideas may be gleaned from other publications (Cajee 1999 and 2001) and generally books on organisational foundation and development.
(b) **Recommendation 2**
Local Muslim communities in towns and cities who already collect and distribute a substantial amount of Zakāh and lillah should also set up special community development focus groups which would focus on the development of their own communities as well as neighbouring indigenous Muslim communities and a targeted non-muslim community. For example, the Standerton Muslim Jamaat in addition to maintaining a masjid and a madrasa would also set up a dedicated Community Development Committee which would investigate and further the developmental needs of the community. The local jamaat should also incorporate and adopt a non-muslim community in the neighbourhood or in the neighbouring township to contribute to their development. Here, legitimate purposes would allow Zakāh, lillah and awqaf to be fully utilised. Local community organisations can plug into SAIDA for further resources and training if need be.

(c) **Recommendation 3**
Accounting firms and relevant professionals within and outside the Muslim community should be solicited to provide support services particularly to emerging Muslim communities and to those non-muslim communities that the respective organisations have selected on a nominal or gratis cost basis This would be their contribution in the evolution of vibrant Islamic organisations within the emerging muslim community sector and towards indigenous non-Muslims. Workshops and seminars should be held by SAIDA for these volunteer professionals so that they become fully acquainted with the aims and objectives of the empowerment programme, its structures, and administrative procedures.
(d) **Recommendation 4**
South Africans need to study Zakāh distribution abroad. While thousands of studies are done annually on secular tax systems, it is ironic that Muslims do not have the same vigour or will to sponsor post graduate research into developmental Zakāh. Organisations should allocate a certain some of money to sponsor Masters and PhD students to embark on studies in local and international trends in Zakāh distribution.

(e) **Recommendation 5**
A specialised Zakāh Institute, whose main function would be to encourage and sponsor research, seminars, workshops, and publications, should be established. This institute would also, with the co-operation of organisations involved in the collection and distribution of Zakāh, provide regular statistics to the Institute for collation, analysis, and publication. The Institute may also study and recommend accounting procedures for Zakāh collecting organisations. Evaluation studies may also be undertaken on the efficacy of their respective programmes and projects as a duty towards the muzakki.

The institutions of Zakāh and Waqf are important pillars of the Islamic Economy and should be developed on an ongoing basis to constantly improve the benefit to beneficiaries and donors alike.

**Further research:** Zakāh is a pillar of Islam and several issues have been debated, as indicated above, by scholars for centuries. It is not my intention to enter into any such debate about the uses or issues of Zakāh. There is a view which supports the use of Zakāh for developmental purposes based on the practice of the Prophet (s). It is this view that needs further indepth study.
Should there be any criticism on the content of the foregoing, it would be most welcome as it would enrich the literature. As a matter of courtesy, kindly address it in writing to the author.

**A final word:** This research article preceded my work done on the establishment of the National Awqaf Foundation of South Africa (*Awqaf SA*). Several ideas, including the establishment of a development agency (SA’IDA) have been adopted within the structures of *Awqaf SA*. (Cajee 2001)
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Appendix A

ACCOUNTANTS Q&A

Accountants who are mainly familiar with income tax often find issues of Zakāh intriguing and sometimes confusing. In this section, frequently asked questions are explored by myself. I will attempt to clarify certain issues from my understanding of Zakāh from the literature that I have reviewed.

Is Zakāh an income tax?
One of the most basic questions is about the nature of Zakāh. The confusion comes about when the literature refers to property ‘income’ being Zakāhtable or when it refers to income held for a period of one year. In some cases, the literature refers to deducting Zakāh at source. In other words, deducting 2.5% from salary earnings, dividend distributions, or rental distributions.

Zakāh is clearly not an income tax because it has nothing to do with the level of income, salary, property income or dividends earned or received. Any cash balances available from income received, less expenses, would become current assets. It is then the current asset that is Zakāhtable and not the income per se, provided further that the cash balance is above the threshold for Zakāh i.e. nisab. No income is specifically Zakāhtable except for certain exceptional items which may be referred to as ‘extraordinary item’ i.e. windfall gains that are made by individuals.

For example a person may have a salary package of R200000 per annum but at the end of the financial year does not
possess any net Zakāh table assets, even if that income was used to purchase a house. There would not be a Zakāh liability.

**Is Zakāh a capital tax?**
Zakāh is not a capital tax, unless capital means assets. From a balance sheet perspective, share capital and owners loans are represented by assets and liabilities. Only certain prescribed assets are Zakāhtable rather than the owners capital. By the same token certain liabilities are deductible in arriving at a net Zakāhtable asset position. Due care must be taken in ascertaining the classes of assets that are Zakāhtable and the corresponding liabilities that are Zakāh-deductible.

**What types of assets are generally Zakāhtable?**
As a general rule, assets classed as non-current or fixed assets are not Zakāhtable. For example assets comprising plant and machinery, property, patents and trademarks, and office furniture and equipment. These assets comprise of productive capacity and are capable of further producing income, creating employment, increasing consumption, encouraging spending, and in turn encouraging further production.

Assets classed as current assets are generally Zakāhtable. These in turn may comprise of liquid assets such as cash balances, gold and silver, and other near liquid assets such as inventories, debtors, loans receivable. It is important to note that these assets are Zakāhtable at the trade market value. In a sense, it is the net realisable value of that asset. Therefore provisions for obsolete inventory, bad debts, and irrecoverable loans should be taken into account as is the usual accounting practice.
An important point to note is that gold and silver holdings in whatever form are Zakāhtable and are treated as current assets and will remain so until qiyamat. Gold and silver are an international standard of wealth from an Islamic perspective until qiyamat and neither the UN nor any government can change that as it was wisely laid down by the Prophet (s).

**What types of liabilities are generally Zakāh-deductible?**

The matching concept is operative in the case of liability deduction. Those assets which are not Zakāhtable, the corresponding liabilities are also not Zakāh-deductible. For example, plant and machinery is not Zakāhtable. Any liability arising out of its acquisition is therefore also not Zakāh-deductible. On the other hand, liabilities arising out of the acquisition of current assets are Zakāh-deductible. For example, amounts owed to creditors for inventories purchased are Zakāh-deductible as the inventories are Zakāhtable.

**Are capital gains Zakāhtable?**

Unlike income tax, capital gains on current assets or Zakāhtable assets are Zakāhtable. On the other hand capital losses on current assets are also Zakāh-deductible. The reason behind this is that market forces are allowed to determine prices all the time. It would be unfair to levy Zakāh on the cost price of gold when the market price has collapsed. On the other hand it would be unfair if prices rose due to market conditions that the underlying asset be valued at the then prevailing market price and Zakāh be paid on the prevailing market price. In that way capital gains are Zakāhtable and capital losses are Zakāh-deductible.
Is Zakāh a wealth tax?

Before answering this question, the term wealth needs to be defined. Wealth from an Islamic perspective is the excess of net current assets (adjusted for exemptions) over the nisab. This excess is then referred to as net Zakāhtable assets. Effectively, net Zakāhtable assets excludes many items that would otherwise be considered as wealth. For example, owning a palatial residence, owning an expensive car, having state of the art plant and machinery, owning income producing properties would be considered as wealth in the traditional sense. Not so, in the case of net Zakāhtable assets. Zakāh is therefore in my opinion not a wealth tax as many writers describe, but rather a tax or levy on certain types of assets less corresponding liabilities. Zakāh is a levy on an individuals net Zakāhtable assets.

Are companies, trusts, close corporations, and other co-ownership structures liable to pay Zakāh on their net Zakāhtable assets?

Only individuals are liable for Zakāh. Any corporate body or juristic person is not liable for Zakāh nor is any co-ownership structure such as a partnership liable for Zakāh. Zakāh is an individual obligation and remains so. Individuals have to assess for themselves the value of net Zakāhtable assets owned by say a company or partnership and pay Zakāh on their share of those net Zakāhtable assets.

Are listed shares Zakāhtable?

A listed share is an investment held by an individual to obtain dividend income and capital growth. In terms of my understanding of non-Zakāhtable assets, shares would generally fall into that class with the proviso that the individual shareholder would have to ascertain the underlying net Zakāhtable assets that are owned by that entity. It is on
his/her share of the net Zakāhtable assets that would be included in the Zakāhtable assets of the individual. For example, if 50% of the shares of a property owning company are held by an individual, even 50% of the value of the property (whether at cost or market value) will not be taken into account of the Zakāh calculation as it constitutes a non-Zakāhtable asset.

**Are unit trusts Zakāhtable?**

The same principle that applies to owning listed or unlisted shares applies to unit trusts as unit trusts in turn may be invested in listed or unlisted shares. A property unit trust whose underlying investments are property will then not be a Zakāhtable asset whereas a unit trust that is invested in trading companies may have net Zakāhtable assets or net Zakāhtable liabilities. These should then be treated appropriately in the individuals Zakāh return. Certain unit trusts such as money market funds are clearly current assets and therefore Zakāhtable. The issue of long term/short term does not arise. Except that if the individual trades in unit trust units i.e. buys and sells to third parties and are held as inventories, then of course the principle of current asset applies. The same applies to holders of assets such as fixed property, plant and machinery which are classified as inventory and held for resale by the respective person or trader.

According to Mufti Taqi Usmani Zakāh is obligatory on the market value of the shares of every joint stock company. However, he holds that the proportion of fixed assets may be deducted from the Zakāhtable value of the shares. Omar adds that non-Zakāhtable assets such as plant and machinery, and fixtures and fittings, are not taken into account. There can therefore not be a blanket Zakāhability of
shares, listed or unlisted, or held through unit trusts. It may become a nightmare for a lay person to calculate Zakāh on unit trusts, and it may not be economically viable to obtain a professional computation of the net Zakāhtable assets of the underlying investment. However, the respective balance sheets must be obtained in order to obtain a correct computation of the Zakāh-payers share of net Zakāhtable assets from the unit trust, or listed or unlisted share.

What are the Zakāh implications on investments in shares as investment vs speculation?
The response to this question may be illustrated by way of the following example.
‘Zakāh epitomises the Islamic view towards speculation. Zakāh is levied on the same asset in two different ways according to the purpose for keeping that asset. For example, a share whose nominal value is R100, which has a market value of R1000, and which has a yield of R20 if purchased as an investment for its annual yield. Zakāh is then levied at only 2,5% of the yield which comes to 50cents. The same share if kept for the purpose of speculation then Zakāh is levied at 2.5% of its market value for it is considered an object of trade. The Zakāh in this case comes to R25.’ Further, arguing the case against speculation, Kamel concludes: ‘Thus, Zakāh encapsulates the value system of Islamic economics which views speculation as an irrational activity that has to be discouraged and kept away from the sphere of productive economic activity.’ (Kamel 1997: 27)

Are insurances Zakāhtable?
Most jurists regard short term insurance as an expense and therefore the liability incurred in respect thereof would be a Zakāh-deductible liability. With regard to long term insurances, and endowments, the cash amounts contributed
are treated as a cash amount and therefore a Zakāhtable asset. However, there seems to be a misunderstanding here because the long term insurances are in the category of investments and the underlying assets of insurance companies are unit trusts or shares. Therefore the principle applying to unit trusts/shares should prevail. Further, even if these were regarded as accumulated savings, insurance policies have a surrender value which would be the market value of the cash invested. The surrender value may be more or less than the original amount invested. Therefore there is a question of market value. The underlying reason of jurists, understandably is that insurance on life is generally haraam. Insurance policies are indirect investments in listed and unlisted shares.

This issue needs further study by our scholars and ulama to arrive at a decision consistent with the general rules of Zakāh.
Appendix B

CASE STUDIES

The following case studies indicate the variety of ways in which Zakāh is being utilised as an empowerment tool and indicates how it may be utilised. The first section has been extracted from my interview with Dr Anwarullah, and the second section has been kindly provided by the SANZAF office in Durban:

(A) Case studies ex Anwarullah Interview:
Provision of sewing machines to rural women.
(Pakistan) (Anwarullah 2000: 2)

Yellow Scheme: Provision of cars to poor who may utilise the vehicle for operating a taxi service or renting.
(Pakistan) (Anwarullah 2000: 2)

Labour as partners in small factories operated in rural areas. Labour has a 49% share while the Government Zakāh Fund or other shareholders have a 51% share.
(Pakistan) (Anwarullah 2000: 3)

New Muslims are housed in a special centre for a year given full board and lodge, tarbiyat and skills training, funded from Zakāh. (Brunei) (Anwarullah 2000: 14)

Surplus Zakāh, after distribution to various categories and meeting local needs may be invested. In 1999 more than 5 million Brunei Dollars was income from investment only. The income must also be used for the poor and Zakāh categories. (Brunei) (Anwarullah 2000: 29)
Low cost bazaars may be set up to provide poor people to trade either on a nominal rent or free of charge basis. The person must be from a Zakāh category. (Anwarullah 2000: 30)

(B) Case studies ex SANZAF
Case 1:
Mother (46), widow, and now single parent, 4 children :

a) male (27), not living with his mother. Has a severe drug problem. Whereabouts unknown

b) female (25), she has left home. Does not maintain contact with family

c) female (17), completed matric. Studying travel and tourism. Presently receiving a bursary from SANZAF

d) female (13) years, scholar at a high school – std 6

PRESENTING PROBLEMS
No income to sustain basic needs i.e. food, shelter and clothing. Mother chronically depressed as a result of 2 older children drifting from home and inability to provide for herself and her children. Inability to sustain employment.

INTERVENTION by SANZAF
- support, counseling and empowerment skills – assisted in her learning to cope with her role as a single parent.
- joined hawking and selling programme but failed due to her depressed state.
- Referred to a psychiatric clinic for her depressed state.
• Joined FARD’s contract floor - therapeutic purposes – building of confidence. Here she learnt several coping skills for 4 months – basic needs
• a sponsor adopted the family for a period of 4 months.
• Her disability grant application was finalised
• Linked daughter to a youth movement

Presently coping with income of disability grant and monthly groceries from SANZAF.

**Conclusion**
Without intervention daughter would have left school, mothers depression would have degenerated and family would have further broken down.

**Case 2:**
**FAMILY COMPOSITION**
HUSBAND: 35 years
WIFE: 29 years
CHILDREN: Female aged 8
Twins aged 5 (male)

**PRESENTING PROBLEMS**
Unemployed, discontinuation of husbands grant, low self esteem and confidence

Family coped adequately when they were on a grant from the state. The grant was discontinued as a result of the husband’s epilepsy being controlled. Couple had no skills, empowered themselves with selling skills by joining FARD’s hawking and selling programme i.e. starter kits were issued to them and the couple returned for feedback on a weekly basis. As a result of
the financial plight, they have been living without lights for many months prior to coming to SANZAF

The couple feel that they cannot do anything to earn an income. In fact they presented negative attitudes towards joining a programme. However, with motivation wife started at FARD’s Sewing Centre. She became confident in sewing and during the period of 8 months training she had material, a machine at her disposal and began making garments. She sold the garments and started making a contribution towards her rent. SANZAF assisted to connect her lights and update her rent. He husband had joined his brother-in-law with hawking, selling fruit and vegetables and he earns and income from this.

The wife is now employed as a qualified machinist and earns a salary of R1,600 per month. The husband brings in approximately an income of R600.00 per month. The wife comes in on Friday afternoons and Saturday mornings to use the Sewing Centre Facilities. She purchases job lot pieces of fabric, manufacturers garments and then on Sunday goes to a flea market to sell her items.

Although the couple are financially independent at this stage the couples keen interest is to open a sewing centre at home. She has been encouraged to gain factory skills whilst in employment. When she is assessed to be ready to cope with her own factory, including saving towards the infrastructure she will be assisted to set up her own venture and possibly encourage other women in this criterion.

**Conclusion**

The family is now self sufficient. However, the idea of starting their own business from home is in process and SANZAF will certainly assist with relevant machinery. It is
important for our clients to be carefully assessed and motivated for any progress to be made. I understand that this is very time consuming but there are no shortcuts to Social, Islamic and Economic upliftment.

**Case 3:**

**FAMILY COMPOSITION:**
MOTHER (64) unemployed on old age pension
SON (32) - unmarried, left school in std 7 to work to bring an income into the home

**PRESENTING PROBLEMS**
Unemployment of son, Financial difficulties.

This family would not manage on mothers old age pension. Sons employment history was erratic as he had limited education and no skills. Son agreed to join the hawking and selling programme. He defaulted twice and on the 3rd attempt he decided that he will be more committed to this as he was not successful in getting a job. He was given a third starter kit.

Son made very good progress and on a weekly basis began making a profit of R200.00 just selling plastic wares in different areas. He was issued an additional R50.00 for hiring a neighbours car and purchased plastic ware to the value of R800.00. He said his stock made a profit and felt that he was on his way. After a period of three months thereafter he purchased a bakkie and is full time selling plastic ware.

**Conclusion**
He no longer comes in for assistance. (FARD is skills training initiative of SANZAF)
Appendix C

TRANSCRIPT OF INTERVIEW WITH DR ANWARULLAH

23 January 2000, Johannesburg.

ZC: Dr Anwarullah, what are the basic avenues of Zakāh distribution?

DrA: (Quotes verse in Arabic, Qur’an: Tawbah: 60)

“Sadaqa are (1) for the poor and the (2) needy, and (3) those employed to administer the (funds); (4) for those whose hearts have been (recently) reconciled (to Truth); (5) for those in bondage and (6) in debt; (7) in the cause of Allah; and (8) for the wayfarer…. “

These 8 are heirs, or ways, where you may spend. Basically it is for the poor - as the Qur’an states: fuqara/masakeen. Two words have been used by the Holy Qur’an: faqir and miskeen. In English we don’t differentiate between faqir and miskeen. Both are poor. They can be either lower level or higher level – both are regarded as poor in English. In Arabic one is called faqir and the other is called miskeen.

Then also - aamileen - those who are working in the collection of Zakāh - they can also be paid from the Zakāh fund. Then we come to gharimeen. Suppose a person has taken a loan for personal consumption from a bank - say for marriage, or a motor car – something personal - not productive - and then s/he is not in a position to repay that loan, then that can be paid from the Zakāh fund. Wal gharimeen means - those who are borrowers and now they are not in a position to repay their loans.
Wabnassabeel – here it means that Zakāh can also be used for travellers who are in a stranded position during their journey. For example, you can establish a travellers lodge to provide them with either free or low cost food and/or shelter.

Wa fi sabeelillah - Zakāh can be used to promote the cause of Islam or used in the cause of Allah. This is the main head under which Zakāh can be utilised for many other purposes, including the poor. For example, we now have in Pakistan, Malaysia, and Brunei a new system of giving. It is not that you give Zakāh to a person only once and then s/he has no money thereafter. Suppose you give the person R100 or R200. That may not last the person for more than a few days. Allah does not mean this. Allah says: “remove their poverty by any substantial sources”. Either they have a source of monthly income - or they will be given such source of income. For example in Pakistani rural areas, we have given sewing machines of different kinds to poor women and destitute widows. So now they are with their machines and earn an income from there.

We also give some course or skills training programme which is used by the poor. We also have the ‘yellow scheme’ in Pakistan. Yellow scheme means: when a poor person comes to a Zakāh fund, and says: “I am poor but I don’t want any cash grant. Give me some source of income.” The Zakāh fund then investigates his/her case. For example the Zakāh fund may ask: “Are you a driver?” So the person replies: “Yes, I am a driver”. The Zakāh fund then says: “OK, take this car. This is yours – you can use it for rent as a taxi.”

The idea is to provide something from which the poor can earn. Another example is the “C” scheme in Pakistan. Here labour is made a partner in small factories which are usually
run in rural areas where labour has a 49% share and 51% is held by government or other shareholders. By this scheme you are making the fuqara shareholders and co-owners in the factory. Now the person is not in need of money every year. Giving a sum of R150 is not going to help sustain that person for a long time. The amount will be finished in a matter of days. So why don’t you give, in such instances, a substantial amount? Zakāh should be distributed in this way, but it depends on your funds - can your fund meet all these requirements? If it does not - then you should distribute it according to the funds at your disposal. In English we say something is better than nothing.

**ZC:** What you are saying is that the Zakāh fund should try to give so much that will enable the beneficiary to become skilful or to be able to earn from there?

**DrA:** Yes! What we call ‘self-sufficient’ for his/her own basic needs. The beneficiary must become self-sufficient. This is why Zakāh in the last two or three hundred years in Muslim countries has not been beneficial. This is because usually people give the Zakāh either to relatives or to the poor in such a way that they have not been able to become self-sufficient. The giver simply hands out a R100 or R1000.

**ZC:** In Muslim countries, is it the work of the state to collect the Zakāh?

**DrA:** Yes, it is basically. In the period of the Holy Prophet (s) - in the period of Khulafa Rashideen - in the period of Banu Ummayah - it was governments duty to collect Zakāh. Because, whenever you view anything in the private sector - its deduction is very difficult unless it is done at source. If a person has much wealth, s/he may pay the Zakāh on some wealth and will not pay on the other. This is why in the Holy Qur’an, Allah says: “Guth min aamwaalihim sadaqa…”(Surah
Taubah) “O Prophet take from their property sadaqa” (Zakâh). This means that it is the duty of the state. “… wal aamileen alayha” refers to the collector by the government.

ZC: Now being in the situation like ours in South Africa where we don’t have an Islamic government.

DrA: Yes. In India also, both within the period of Ramadan and before, they have private committees. During the colonial period the English were not in position to collect Zakâh. So the Muslims had to make their own management. This is allowed and especially so because you are not the government. So you are the ‘government’! So yes, this is your duty because this is one of the five pillars of Islam. Don’t miss it. You can make your own arrangement - you collect from - and this is why Prophet (s) said: “Tughiz min al riyahim, wa turadu fi fuqarihi ..Take it from the rich and give it to the poor.”

So it can be done by the private sector.

ZC: From what you are saying, Zakâh can be given in cash and/or in kind - can it also be given in the form of partnership?

DrA: Both are permissible. But it is according to the situation you are living in and the availability of funds.

ZC: Is Zakâh meant for consumption expenditure or for production expenditure?

DrA: It depends on the availability of funds. Because you know how human is. First s/he wants consumption. Suppose a person is hungry, s/he is not going to care about productivity. His/her want is consumption. This is where you say: it is a case to case situation.
ZC: But as soon as consumption needs have been fulfilled - in other words - the objective of Zakāh should be stage 1 - consumption - if satisfied, go to stage 2 - production.

DrA: Yes!

ZC: What is the situation regarding Non-Muslims?

DrA: Don’t call it Zakāh because we cannot take Zakāh from them. So how can we distribute it among the Non-Muslims. Rather create a fund – say a ‘poor fund’ as we call it. That fund can be invested, you can get returns from that, and then you can give charity from the returns. Don’t call it Zakāh.

ZC: So in another words what you are saying is that don’t use Zakāh funds to give to Non-Muslims.

DrA: As Zakāh has been taken from the Muslims, give it to the Muslims. In Pakistan, now we are charging the Non-Muslims some year (annual) amount. We don’t call it Zakāh. We call it ‘wealth tax’. Wealth Tax is charged at the same rate as Zakāh, 21/2%. When we take from them, then we also give back to them. But if you are taking only Zakāh which is taken from the Muslim – it would be best to distribute it among Muslims. On the other hand, if you make a special fund, the fund can be invested. When you have invested well, it can be distributed among Non-Muslims. When you give to Non-Muslims – don’t say it is Zakāh. Say it is your ‘financial aid’. In Islam we call it - Ghairaat sadaqa. The fuqaha say that Ghairaat can be given to Non-Muslims but Zakāh should not be given.

ZC: Are there any circumstances in which non-Muslims can be given Zakāh?
DrA: No. Not under any circumstances.

ZC: So what about the question of Muallafat-ul-quloob?
DrA: Aaah! I am coming to that. Muallafat-ul-quloob in the early period referred to those non-muslims whose conversion was expected. It means that you can attract non-muslims by helping them, so that they may come to Islam. And when they do come to Islam, then until they are not standing on their own feet, you can help them from Zakāh.

ZC: What about to protect and promote the political interest of the Islamic State or the Islamic/Muslim community?
DrA: I am coming to this. The situation has changed now. The situation now is that the political system throughout the world has changed. With regard to Muallafat-ul-quloob/non muslims, if we can take them in our financial care – we will give them aid from Zakāh, other funds, charity funds, waqf funds, trust funds etc. then naturally they will come. In Brunei, the ratio of conversion is 60%. Why? The king is very generous and he gives them everything… car, house, etc…and now, almost all have become Muslims in Brunei. So this can be used under Muallafat-ul-quloob.

ZC: Now in SA, we, as you understand, we are in a minority situation. If Zakāh is utilised under Muallafat-ul-quloob to non Muslims in this country, the possibilities are that (a) it could attract the Non-Muslims to Islam and/or (b) it could create sympathy from Non-Muslims towards Islam. How do you see that working in South Africa?
DrA: We should rather be careful. This is our main aim, but it does not depend only on Zakāh. Charity, any other trust, etc may be used. If you restrict it only to Zakāh - then people who do not have a broad sense, your Islamic people
will blame you even if you are doing Islamic work. So in order to be on the safe side, we will say - invest it in Zakāh or any charity - we will help the Non-Muslims - this is our duty. Because in the early period Muallafat-ul-quloob were there and were being helped, and many non Muslims became Muslims. Now we are faced with a similar situation in South Africa and everywhere else – eg in Malaysia - there are non-Muslims also. Your situation is more critical. You can help them - and you must help them - otherwise you will not be successful to convert them. Nowadays the world is suffering from economical problems rather than other problems. If you give them economical resources they will become Muslims and then later on you fully convert them. My position is that if you convert a non-Muslim, you must support him/her for one or two years. Because when the person left his/her family, s/he came into your community and was deprived of his/her community sympathy and other things. So aid is not only for conversion but also after conversion, there should be some centre – as in Brunei. We have centres where we train new Muslims and we keep them there along with their families and provide them subsistence and then after one year we say OK then you ready to leave as Muslims.

ZC: Another issue: Should Zakāh be given directly to individuals or can it be utilised / given for institutional purposes. In other words, for example, to build a training centre where poor people can benefit by coming there, by learning skills, maybe bricklaying, electrical, plumbing - can you build an institution with Zakāh.

DrA: Yes. The answer is in both ways: it can be paid by cash in hand and it can be utilised in an institution which is meant for the poor. But I told you at the start of my answer that a better way in this is there is the second way: if you develop
such institutions, then there will be permanent sources for the poor. And if you prefer to give cash, the question is: how much cash can you give. Zakāh is paid once in a year. So how much cash and for how long will you give Zakāh to a person - one month…two months… what will the person do in the following months? Though in the early years some ulama were not in favour of this, later on when the fuqaha, saw the need, many scholars everywhere now believe it should be invested, or spent, in institutions which are meant for the poor.

ZC: So there is a shift. This whole notion of tamleek where the ownership should go to the beneficiary - now it is not directly to the beneficiary, but it is also now through the institution.

Dr A: Yes, through the institution. But there is tamleek. You are going to make him the owner. But not on the spot. And nowadays you know this is a very advanced country. Suppose money came into your account in the bank - we will suppose that you are the owner of that though it has not been given to you in your hands. So similarly institutional money, when it comes to him - that is also tamleek. Tamleek does not take place only when remitted to you.

ZC: So when the Zakāh-payer gives it to the collection agency, does tamleek actually take place… is the collection agency acting as a trustee or as an agent?
Dr A: The collection agent acts as trustee.

ZC: When the Zakāh-payer has given his/her Zakāh to the agency is his liability is finished?
Dr A: Yes. It is finished.
**ZC:** I've been reading some questions and answers on Zakāh by Mufti Taqi Usmani. There is one area that I feel I have a problem: the question of owning shares – equity - owning shares in a factory or stock exchange. What he is saying, if you own shares then that asset becomes Zakāhtable. What is your view on that.

**DrA:** Any kind of ownership is subject to Zakāh. According to me there should be a levy of 21/2%, though sometimes there are exceptions.

**ZC:** For example, ownership of fixed property is not Zakāhtable.

**DrA:** That is correct. It is not Zakāhtable.

**ZC:** It is a productive asset - either you using it yourself - or it is earning rental income.

**DrA:** That rent will be subject to Zakāh. Suppose you have a house and the monthly rental income is more than the nisab, along with your other properties - then it is Zakāhtable.

**ZC:** But do you take nisab on every single item or do you take collectively?

**DrA:** In the past when these rules were made by the fuqaha, the system of life has rather changed since. Now we say that it must be taken as whole because all your assets are yours. You are the owner of your house, you have a salary, you are earning money and then the main thing nowadays - we are also giving charities and other things either to the government or NGO's.

**ZC:** But from what I've seen, there are two categories of assets.

1) certain assets are Zakāhtable
2) certain assets are not Zakātable for example property is not Zakātable, any productive asset - eg machine, plant and machinery is not Zakātable.

DrA: That is not Zakātable in that form. The Zakāh is now on what is produced. Zakāh is there but not on the asset but what it produces: on the merchandise or harvest. Now suppose there is a plant, no Zakāh on this but if you bring it into the market then it would be Zakātable.

ZC: But the plant and machinery in a factory?

DrA: They are manufacturing something. These are sources of what is produced. Zakāh is payable on the produced items.

ZC: Would it be correct to say that one of the purposes of Zakāh is to encourage investment in productive capacity.

DrA: Yes

ZC: Because at the end of it you are not actually paying Zakāh on your investment.

DrA: Specially nowadays - before this ‘concession’ was very small because everyone was sufficient on his own. Now our needs are so much - the poor also need round about R100 or R50 per day. Now from where will you get the funds unless you are investing somewhere. So this is now very important.

DrA: The aalim who answers these things must be aware of the present situation. The fuqaha write, but if the situation has changed - he can take the code of Hanafi. If the Hanafi code does not fit, he can take the code of Hanbali, Maliki, Shafi’i, or Jaaferi.
**ZC:** Coming back to investment in stock market or stock exchange. For example: When you invest in stock exchange you basically invest in a company, there is no Zakāh on the company itself.

**DrA:** No

**ZC:** The individuals are liable for Zakāh in their own individual capacity. So what I would do then is I would say, right I’ve invested in XYZ Co and I would have to have a look at what that company owns – it’s assets, look at it’s liabilities - and then at what assets are Zakāhtable, what are not Zakāhtable. Then take my proportionate share and calculate my own Zakāh on that.

**DrA:** Yes.

**ZC:** Therefore I can’t simply take my capital investment into that company and include that as a Zakāhtable asset.

**DrA:**.. Unless it is determined that your share is this.

**ZC:** Assuming that I can’t determine that. Nowadays people are investing in unit trust funds, and all sorts of investment vehicles. Unless they are actually able to get that information and do a proper calculation - which really speaking should be – because in principle, I find it a problem to say I must include my unit trusts as a Zakāhtable Asset. Because the underlying investments of those funds may not be Zakāhtable. It may be in a property unit trust, they own only fixed property and fixed property may not be Zakāhtable. That company may have lots of Zakāhtable assets but it also has lots of creditors - non Zakāhtable also. So I can’t look at my capital investment and say; it is Zakāhtable. I have to look at the underlying investment - what does it represent.
**DrA:** I think your view and Usmani’s view is not basically different. I have not seen what is his fatwa. Some property is not Zakāhtable. I think according to my opinion there should not be Zakāh on shares on the stock exchange unless your share is then determined.

**ZC:** Maybe you could tell us something about Zakāh in Brunei. How is it actually organised? Do they deduct from peoples salary? Do they pay every year?

**DrA:** As there is government management, not private, so every January they have assessment forms printed. They send it to everybody. They have it on their computer as to who are Zakāh-payers. That form is sent to the Zakāh officer. Then they calculate according to the information you have given. Some would say: “I only have a bank balance” - the other, “I only have a salary for my daily living” - or “I get rent but is not much - only about R2000 and that gets used up” - then we deduct from your bank balance if there are more than 1 000 Brunei Dollars – that is nisab. So if it is more than 1 000 BD we deduct 21/2% only from that account and not from any other item. But the main source is the person him/herself as in the income tax system.

**ZC:** Does Brunei have a separate Zakāh agency?

**DrA:** No, there is a separate Zakāh Department. Every imam of the area also is with them. The imam is also the aamil. We call it ‘collector’ in English. In Arabic/Malay it is aamil. They are government paid. They also use some officers who earn 5000 Brunei Dollars per month. The salary of the District Zakāh officer/aamil is BD5000 per month. His only work is to administer the Zakāh. There’s the bank also. There are government Zakāh accounts. You can go and deposit in there and they will give you a receipt.
ZC: So the aamileen, do they get paid from the Zakāh?
DrA: Yes, from the Zakāh. Every year when the surplus remains, we place it in some investments.

ZC: Ok, very good question: Can Zakāh be invested?
DrA: Yes, if it is surplus from the local needs. If a person is dying - first give him, but if there is no such case you collected R1 million and you gave 700 or 800 the remaining 200 should be invested.

Yes, we in Brunei invest Zakāh funds and last year (December 1999) more than 5 million BD was the income of the investment only. So investment is permissible.

ZC: What you are saying now, actually some Ulama may not agree as general view.
DrA: I will give you an example of a Muslim government. They are doing this. Malaysia is also doing this. First give to the hungry and thirsty. But if there is a surplus, invest it – for the investment is in favour of the miskeen and poor. Why? It will be double next year.

ZC: So in other words, if I have surplus Zakāh, I can, for example, buy a property?
DrA: Yes.

ZC: This means that the institution gets rental income and use that also for the benefit of miskeen?
DrA: He will earn from the property - you plant this year, next year it will give fruit.

ZC: What if I do this: I take the surplus Zakāh and put up a small, very cheap constructed bazaar, just a place where
people can bring their things and trade. And we don’t charge them a cent, or we can charge them also a small amount of rent. Can we do things like that?

DrA: Yes it can be done for the benefit of these poor people.

ZC: And especially the mualafat-ul-quloob?
DrA: Suppose you buy a plant this year - 100 000 Pakistan rupees - next year it is 300 000 PR. Any investment - that increases productivity can be done. You build low paid houses for the poor.

ZC: That is if you build it and give it to them?
DrA: In Pakistan you call it ‘Apra Ghar’. You are the owner of this house after 5 or 10 years.

ZC: But you see these little bazaars that I am thinking of, I don’t want to give tamleek to them. I want to give tamleek to the institution. They must become self sufficient and from there they must go elsewhere.
DrA: We only give you the shari’ah point of view: that you can do.

ZC: How do you do it, and structure it is up to you.
DrA: This is up to your requirements, availability of funds, people who are mustahiq of Zakāh - but shari’ah will not prevent anything which is beneficial for the poor in the present circumstances. These are only my views.
Personal details: Maulana / Dr Anwarullah, (was also conferred the title Dato Seri Laila Jasa (The Most Distinguished Order of Merit of Brunei)

Islamic Legal Specialist,
Ministry of Religious Affairs, Brunei Darus Salaam.
On deportation from the Government of Pakistan.
Former Chairman of the Islamic Religious Council of Brunei – Darus Salam, now retired.)
Appendix E

POSSIBLE MICRO PROJECT & SERVICE IDEAS

The following are possible empowerment ideas for micro entrepreneurs that can be funded through Zakāh and/or Waqf. Each of these is a turnkey micro production enterprise.

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| Chicken Production  
| Catering | Basic  
|    | Electrical/Wireman  
|    | Basic Plumbing  
|    | Dressmaking/  
|    | Tailoring  
|    | Childminding  
|    | Caregiving  
|    | Yoghurt Production  
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|    | Laser printing &  
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Glossary & Abbreviations

- AWQAF SA – National Awqaf Foundation of South Africa
- Dua — a sincere prayer, supplication, imploration to Allah.
- Fiqh – jurisprudence
- Fatwa (pl. fatawa) – an edict provided on an issue by a qualified person.
- Faqih (pl Fuqaha) – a person who is qualified to issue a fatwa.
- IFAI – Islamic Fiqh Academy of India
- IIFA – International Islamic Fiqh Academy (A Subsidiary organ of the OIC
- Nisaab – the minimum threshold of wealth that one possesses that creates the obligation to pay Zakāh.
- OIC – Organisation of Islamic Co-operation
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- SANZAF - South African National Zakāh Fund
- SIRC - State Islamic Religious Council (each state in Malaysia has a SIRC)
- Waqf (pl. Awqaf) – a voluntary Islamic charitable endowment dedicated to Allah for shari’ah compliant purposes
- Zakāh – a wealth purifying obligatory duty upon all Muslims who have a certain threshold of wealth.
Zakāh & Waqf: A Paradigm Shift Towards Synergisation delves into the issue of investing a portion of Zakāh funds into long-term investments for the benefit of zakāh eligible beneficiaries. Both Zakāh and Waqf are important pillars of the Islamic Economy and current trends point towards closer collaboration between these two vital institutions that serve the Ummah. This book comprises of research articles and fatwās from a range of scholars and jurists, discussions, and hypothetical proposals for practical implementation. An earlier publication by the author Zakāh: The Pillar of Empowerment is also included. May this spur debate and further research. May it enrich the literature and clear the way for a paradigm shift towards synergisation of Zakāh & Waqf. And Allah knows best.

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