

Waqf and zakat: alleviating poverty

In the first of a two-part analysis, Dr Renat Bekkin, researcher at Moscow State Institute of International Relations, Ministry of Foreign Affairs of Russia, ponders the issue of poverty alleviation by the means of waqf, in the case of Russia.

Islamic finance in Russia: overview

At the dawn of Islamic finance, when there were no Islamic banks, some of the scholars were writing that it would be enough to create an effective mechanism of collecting and distributing zakat and to restore waqfs in order to set up a fair economic system in the Muslim world. However, even today only a handful of countries have set up working zakat systems and effective waqfs. Even in the countries with developed Islamic banking, investment and insurance systems zakat and waqf do not play a key role in economic development.

Russia, which according to various sources is home to between nine and 25 million Muslims, is a country with a conventional banking system, where Islamic financial institutions do not enjoy any special status. Moreover, in December 2006, the central bank revoked Badr-Forte Bank's licence, the only Islamic bank in the country. And since then Russia has not been deemed the best place for developing Islamic economics, at least in comparison with Europe.

At the same time one should not be excessively pessimistic about the prospects of Islamic financing in Russia due to the following reasons:

❑ The establishment of Islamic banks and Islamic banking windows in Europe at the end of the 1990s and the early 2000s was a response to a firm interest European Muslims showed in such services. Badr-Forte was thus unique not because it was the only Islamic financial institution in Russia but rather because it was established when there

was practically no demand for Islamic financial services domestically. Time is needed to create this kind of demand. In a number of Russia's regions (Moscow, Tatarstan, Dagestan, Chechnya, etc.) there is constantly growing interest in Islamic financial services from potential Muslim clients.

❑ Europe has almost 30 years of experience in Islamic finance. Over this time there were both successes and noticeable failures. In Russia, Islamic financial services were provided by Badr-Forte since the late 1990s. In other words, an Islamic bank with a limited number of products consistent with Shari'ah worked in Russia for just over six years. This time span is too short to seriously discuss the prospects of Islamic banking.

Some experts note that one substantial obstacle to the development of Islamic finance in Russia is lack of demand from the Russian population for such services. This is true only in part. Many Muslims realise that conventional financial institutions build their operations on the basis of charging interest. However, they don't know how they can avoid participating in interest-bearing transactions. To resolve this problem it is necessary that as many people as possible have access to information on Islamic financial services.

However, even when Islamic financial bodies start fully functioning in Russia, they will not be able to satisfy the demand of all those in need of this kind of service. As the experience of other countries demonstrates, few Islamic banks in a post-industrial society want to work in rural areas providing microfinancing. Moreover, one should not forget

that any bank, be it Islamic or conventional, is not a charity organisation – its main goal is maximising profit.

In recent years a number of banks in Russia have been lending to SMEs. However, this co-operation is hardly mutually beneficial. For example, even before the US mortgage crisis influenced Russia's economy, a number of banks raised interest rates on previously granted loans, basing their decisions on the clauses in the loan agreements that covered possible changes in the macroeconomic situation. As a result, many SMEs were unable to service their debts and went bankrupt. It is obvious that in this situation banks need help from other classical Islamic financial institutions that for centuries have been proving their effectiveness in resolving the problems of economic development, including a major issue of alleviating poverty. Waqf and zakat are among these institutions. Nevertheless, it is fair to note that by the mid-twentieth century waqf and zakat did not play a key role in economic development in most of the Muslim countries.

Russia can be viewed as one of the countries with historically developed waqf usage, which was seemingly lost in the Soviet era. This study attempts to determine whether this is true and, if so, whether there are objective preconditions for setting up waqf and zakat systems anew in Russia.

Waqf in Russia

Waqf is property alienated for charity. When certain property is made waqf (or, according to some Muslim theologians, when the intention is announced), it no longer be-

longs to the waqf institutor (waqif), but nor is it transferred as property to those who receive the waqf and manage it in the interests of the receivers (designated by the waqif) of waqf-created profits. Using waqf property for purposes other than those designated by the waqif is prohibited.

The renaissance of waqfs in the Muslim world happened in the eleventh century. History testifies to the existence of a broad range of waqf, contributing to the development of medicine, education, and enabled the provision of food essentials to the needy. For centuries, waqf was the only regular source of funding for higher education in Muslim countries.

A few years ago, Kazan hosted ‘Waqf and Its Prospects in Modern Russia’ – an all-Russian seminar of the heads of Muslim religious boards. According to the imams who spoke at the event, today, waqf is the only chance for Russia’s Muslim religious organisations to preserve their financial independence. Judging by what was said at the seminar and by the information presented at previous similar seminars, the Muslim spiritual leaders do not always clearly understand the purpose of waqf.

Sometimes waqf is confused with other Islamic institutions: gyshar (‘ushr is the more correct name, that is, tithe, or a tenth part of the yield), zakat, as well as the revenues produced by some religious rituals: khatemlar (gatherings that pray for the dead), janaza (burial rites), etc.

Quite often waqf is treated as a fund for financing of the operational expenditure of mosques and Muslim clergymen. It is hard to start a constructive dialogue if those who want to develop the waqf system have vague ideas about it.

Significantly, similar problems also existed in Russia before the revolution: one of the first officially registered waqfs bequeathed in 1830 to the First Main Mosque of Kazan by merchant Gabdulla Yunusov did not specify the rules of its management and control over the revenue it produced. This was by far not the only example of misunder-

standing the waqf institution in the Volga area: the heirs of a rich industrialist, Utiamyshev refused to fulfill his will under which part of his money was intended for waqf, arguing that there was no specific procedure for executing the will.

Prominent Tatar enlightener of the 19th century, Shigabuddin Mardjani, resolutely rejected this interpretation of waqf exploited by rich merchants to control the economic life of the community (mahallya). It was mainly thanks to his efforts that the question regarding the direct purpose of waqf, which corresponded to the Shari’ah, was raised and a system of collective self-administration in individual Muslim parishes established. The number of embezzlements in the charity sphere decreased along with, first, the power of the patrons in the Yunusov brothers’ mahallya and then of other Tatar merchants who had been dominating their communities. Thus, approximately since the mid-nineteenth century in the Volga region waqf started being used for its main social purpose, that of an institute for protecting economic interests of Muslim communities and their individual representatives.

In the late 19th century, the mechanism for transforming property into waqf was legally registered. Under the newly established legal procedure, a waqf institutor applied in writing to the assembly of parishioners representing the community. He was duty bound to describe in detail the property to be turned into waqf, state its value, and enumerate the owners and the conditions for managing and disposing of this property. The community empowered the mosque leaders to apply to the governor with a request to seek permission from the Ministry of the Interior Affairs. The latter’s permission was sent to the Orenburg Mahomeddan Spiritual Assembly which, in turn, approved the permission and informed the parishioners of the ministry’s decision. After a dedicatory inscription was made on the property transferred to waqf, a notary procedure completed the process. The community was responsible for annual reporting about waqf management and book-keeping.



Russian Muslims, instead of restoring waqfs that are questionable from the point of view of Shari’ah, have a chance to set up new waqfs, capable of coping with the challenges of the 21st century, one of which is the demand of Islamic SMEs for financing.

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It should be said that in pre-revolutionary Russia, so-called cash waqf was very popular: the institutor allotted a certain sum, the interest on which was used by the mosques, Muslim clergy, students (shakirds) of religious schools etc. for which the waqf was intended. In this way, while one of the provisions of Islamic law was strictly observed practically everywhere, another, much more important provision, the ban on usury repeatedly formulated in the Quran, was violated.

In the Volga region a large number of Muslim parishes were financed by the interest from bank deposits. After the October revolution in 1917, waqfs were abolished in various regions of Russia, although this happened over time. Waqf institutions existed for longest in the North-Eastern Caucasus. Only ten years after the revolution, in 1927, a decree nationalising the waqf property was issued by the local authorities of the Dagestan Autonomous Socialist Soviet Republic.

The waqf issue is repeatedly discussed in present-day Tatarstan at the highest level. In the mid-1990s, at one of the first meetings, members of the Muslim clergy and the republic's president, Mintimer Shaimiev, discussed the possibility of setting up a waqf system badly needed for the construction and maintenance of mosques and madrasahs, and for public activities. The president set up a special commission to study the issue in depth. Specialists were sent to Turkey to gain experience. A few years later, a united congress of the republic's Muslims created the post of chairman of the waqfs, in the rank of first deputy mufti, and a waqf department under the mufti. The very concept of waqf was first introduced into Russia's legislation by the Law of Tatarstan on the Freedom of Conscience and Religious Associations.

The provision on the waqf property and its inalienability, contained in this law, was just a declaration of intentions rather than a legal norm that was spelling out existing practices. However, even this provision over time has raised questions on its compliance with federal legislation, and the law was

subsequently amended. Nevertheless, the provision on waqf property, although non-existent in practice, was retained.

The deputies of the State Council of Tatarstan have insisted that all efforts to provide a legal framework for non-existent waqfs are useless unless necessary changes are made in federal laws. In June 2008, they came up with an initiative to include the notion of 'waqf property' into Russian legislation. Earlier that year, the chairman of the Muslim Religious Board of the Republic of Tatarstan, Gusman Iskhakov, proposed the same measures. There has been no reaction from the federal authorities so far.

The issue of spelling out the notion of waqf in federal legislation is also important in terms of restoring Muslim ownership of the waqf property, nationalised after the 1917 revolution. For example, in the Autonomous Republic of Crimea (Ukraine), when local Tatars argue for restoring their ownership of the lands confiscated in Soviet times, they refer among other things to the existence of waqf property in the tsarist times in Russia. As was mentioned before, work is done by Tatarstan historians and law scholars on finding previously existing waqfs in the Volga region. However, even if the notion of waqf is introduced in federal legislation, it will not guarantee the Muslims that their waqf property, confiscated after the revolution, would be returned, since the major part of documentation on setting up waqfs has not been preserved.

And in terms of setting up new waqfs, then, even without the notion of 'waqf property' spelled out in the Russian federal legislation, those willing to do so can use many other legal mechanisms at their disposal. For example, in order to set up the aforementioned cash waqf there is no need to create any institutional structure.

Cash waqfs exist in two forms. In the first case, cash turned into waqf is given to the beneficiary as a loan with no interest rate. This form raises no objections on the side of Islamic law scholars. In the other form money is invested not based on the mu-

darabah mechanism, but instead is provided as a loan with an interest rate, where the interest is transferred to the beneficiary.

The modern world provides plenty of other ways to use cash waqf in compliance with Shari'ah rules. One example is transferring shares that have been approved by Islamic scholars into waqf. The shareholder might decide that all of the dividends on shares or part of them will be used for charity purposes. An institute of waqf may also play



Kremlin of Kazan,
Tatarstan

an important role in dealing with Islamic bonds (sukuk).

In terms of Russian legislation, it is inadvisable to include cash waqf in the trust law structure. In accordance with the Civil Code of Russia, money cannot be an independent object for a trust, except for the cases specified by law (art. 1013, point 2, Civil Code of Russian Federation). An alternative solution is in acquiring shares and other equities, allowed by the

Shari'ah, in the name of the beneficiary.

As for the real estate as the base for waqf property, in 2004 the State Duma (Russia's legislative body) passed amendments to the Land Code, which transferred, free of charge, land under the buildings and other facilities used for religious and charity purposes to the religious organisations that owned them. Those religious organisations that do not own the buildings in which they function will receive the land under them

gratis for the entire period they continue using the buildings. These amendments were intended to favour the Russian Orthodox Church, but other faiths benefited from them as well.

Therefore, from a legal point of view, there are no problems with instituting waqfs in Russia or, to be correct, institutions close to waqfs. Neither were there such problems in the previous legislation, which was more vague about waqf property. However, this study refers to the institutions close to waqf, or so-called quasi-waqfs. Waqfs in their classical interpretation in the Muslim law cannot be set up in modern Russia – except for the cash waqf mentioned by a Hanafi jurist, Zufar ibn Hudhayl. When the status of all parties to a waqf is not clear, it is hard to guarantee that waqf will be used for the purposes it was initially set up for and that the rights and obligations of the parties will be within the Shari'ah.

Those who propose using a trust agreement (chapter 53 of the Civil Code) in order to set up a waqf forget that a trust agreement in contrast to a waqf is limited in time and cannot be concluded for a period over five years (art. 1016, point 2 of the Civil Code). Moreover, current legislation does not envisage any mechanism of managing the trust if it is managed by a citizen who is not a businessman or by a non-commercial organisation (art. 1015, point 1 of the Civil Code).

Naturally, this situation requires appropriate amendments to the legislation. Certainly it would be naive to talk about introducing provisions of Islamic law on waqf property into Russian legislation. And the problem is not even in the political complications. A more serious obstacle lies in the loss of Islamic legal culture in Russia.

After analysing the recent experience of reviving waqf property in the Republic of Dagestan (federal subject of Russia), where a few waqfs appeared here and there in the early 1990s, Russian researcher V. Bobrovnikov concluded that even this republic, which is arguably the most Islamic among Russia's republics, lacks the prereq-



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quisites for further development of the waqf system as it was known before the revolution. The most important reason is that the institution of waqf lost its former social and cultural meaning. Today, Muslim schools and higher educational establishments in Dagestan are mainly functioning on personal donations (sadaqah) and incomes derived from leasing out property and trade rather than on waqf-created incomes. The same is true of the Volga region where the waqf culture was lost even earlier than in Dagestan.

In view of the above, waqf today and tomorrow is a different phenomenon that has little in common with the classical waqf of the Islamic law. It seems that in the context of the lost Islamic legal culture in Russia as a whole (and Dagestan in particular), most waqf-related issues will be regulated by Russian legislation and adats, while Islamic law will no longer affect this institution in the old way.

Does all of the above mean that waqf in contemporary Russia has no prospects? Not at all. The author of this article believes that Russia losing its waqf culture, which existed before the revolution, is positive rather than negative. Contemporary Tatar historians often recall the experience of using waqfs in the Volga region in mid-19th century. However, the fact that a substantial part of these waqfs functioned in violation of a fundamental Islamic law on the prohibition of usury is omitted. A large part of waqfs in the Volga region were the results of usurious operations. That means that Russian Muslims, instead of restoring waqfs that are questionable from the point of view of Shari'ah, have a chance to set up new waqfs, capable of coping with the challenges of the 21st century, one of which is the demand of Islamic SMEs for financing. The process of creating new characteristics for the waqf institute is inevitable. In contrast to zakat, waqf is open to a wider interpretation within specific provisions of the Quran and Sunnah on charity.

Since the problem of waqfs is mostly raised by Muslim clerics and people associated with them, waqf in modern Russia is usually

associated with religious waqfs, not the philanthropic ones.

One of the leading contemporary waqf specialists, Monzer Kahf, divides waqfs into the following categories: philanthropic, religious (mosques, graves of the religious leaders, gravestones etc.) and private. At the same time, a waqf in any of the three groups can be direct or secondary. In the first case, waqfs directly perform their charitable, religious or social role: e.g. a well transferred into waqf is a free source of water for everybody. In the case of the secondary waqf, material objects or revenue from them are initially invested in various spheres and only afterwards are the revenues from these investments donated for charity purposes. An example of secondary waqf is cash waqf.

In modern Russia, direct waqfs are practically ignored while they are in fact an example of non-targeted help to the impoverished. For example, a waqf in the form of a public library, given the high prices of books, may practically be the only source for the poor to raise their social status by increasing their knowledge.

As is known, revenues from waqfs as well as from zakat and sadaqah can be transferred gratis to those who are not capable of providing for themselves (children, disabled etc.), as well as to those who are in temporary need of resources, including resources for implementing specific projects.

And as for the waqfs that have their primary goal as receiving revenues, there is no need to reinvent the wheel. The experience of Western states, where waqf and quasi-waqf enterprises effectively function, can be borrowed. The managing organisation, specialising in managing waqf property, plays the role of a collective mutawalli.

Although the main goal of the Russian Ummah lies in developing charity waqfs, the philanthropic enterprises that want to provide various services and not generate revenue should not be left unnoticed. It is hard to deny the importance for Muslim

people of a waqf in the form of a public library, where besides access to books the visitors can enjoy free access to the internet, including access to scientific and other articles on various aspects of Muslim faith.

The institute of waqf can prove to be effective in the sphere of helping Muslim migrants in Russia to adapt. It is common knowledge that there are large numbers of migrants from Central Asia working in the country: according to some sources between 500,000 and one million citizens of Tajikistan temporarily live and work in Russia. Most do not speak proper Russian, do not know basic information about the country, its laws etc. It is the migrants from former Soviet republics who are most actively involved in developing SMEs. Increasing their knowledge will undoubtedly facilitate an increase in the effectiveness of their businesses.

To help Muslims from other countries adapt to the Russian environment it is necessary to set up a non-governmental centre, where migrants can study the Russian language, Russian legislation, and even master a new profession. It is even possible to pay stipends to needy Muslim students from the funds of this quasi-waqf. The centre can be set up either by one legal entity or by a number of individuals.

The real support to SMEs belonging to Muslims in Russia is provided by their fellow believers. This way, given the high rent prices for commercial real estate, some owners or renters of the buildings provide them gratis. Specifically, there are known cases when publishers, specialising in Islamic literature, were given offices to sell books and other printed matters for free. Moreover, these premises can be used for an extended period of time. Statistics on this kind of activity are hard to find since businessmen try not to make it public.

In other words, help for SMEs does not have to take the form of cash, but can also be a substantial decrease in their expenses. In this respect, information and consultancy services financed through a waqf

or quasi-waqf can also be priceless. As for the financing of Muslim religious boards and mosques, at present the most effective sources of their financing in Russia are sadaqah and partly zakat, not waqf.

Main conclusions

❑ Banks are not reliable partners for SMEs in Russia. As a result of the global financial crisis, many of them increased the interest rates on loans, making businessmen unable to service their debt.

❑ Although the notion of waqf is absent in the federal legislation, Russia has a real opportunity to create institutions close to waqf (quasi-waqf).

❑ The fact that the waqf culture was lost in modern Russia is positive, since a large part of waqfs in pre-revolution times in the Volga region were functioning with violations of the Islamic law against usury.

❑ Raising the issue of returning the pre-revolution waqfs to the Muslims is pointless, since most of legal papers on setting up those waqfs have been lost.

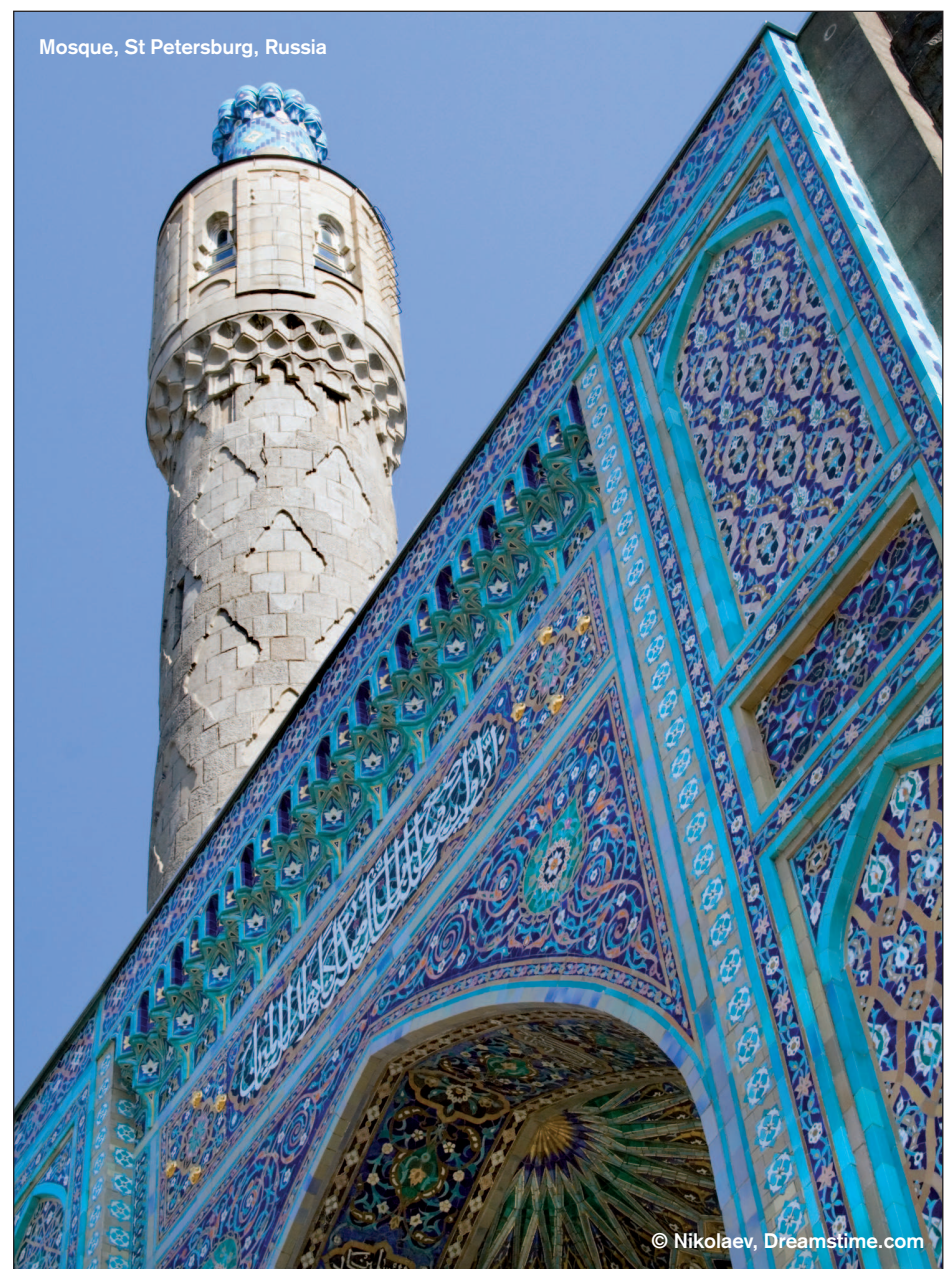
❑ When there is no clear definition of the status of all sides to the waqf agreement in the federal legislation, it is hard to guarantee that waqf will serve the purposes it is created for and that the rights and responsibilities of the parties will not violate the Shari'ah.

❑ Trust institutions, stipulated in the Russian legislation, do not suit waqf principles for a number of reasons. Many functions of a charity waqf can be performed by a charity fund, combining targeted help to the impoverished and the needy with educational and art sponsoring activities.

❑ Nowadays in Russia waqf is mostly perceived as religious waqf for Muslim religious boards and mosques, whereas the most effective waqf that does not require any amendments to the current legislation is the charity cash waqf that can be used for wide-ranging support of SMEs.

❑ Help for SMEs does not necessarily have to be expressed in cash, but can also be given in the form of decreasing the expenses of these entities. In this respect, free premises for business providing free information or consultancy services, financed through waqf or quasi-waqf, can be priceless. ☾

The second part of our perspectives of poverty alleviation series will focus on zakat, and will appear in the next edition of NewHorizon.



Mosque, St Petersburg, Russia

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