

ISLAM AND REFUGEES

INTRODUCTION

1. Islam requires believers to assist and protect vulnerable people and offers a number of mechanisms for their care and support. According to Islamic migration law (*hijrah*), individuals have the right both to seek and to be granted asylum in any Muslim state. Furthermore, it is the duty of Muslims to accept and protect refugees for as long as they seek protection. In comparison to modern refugee law, *hijrah* offers a broader definition of a refugee, and gives individuals, rather than states, the right to determine asylum. However, despite its significance in Islam, *hijrah* is rarely invoked by Muslim states today. The promotion of Islamic teachings on refugees could encourage Muslim states to widen their acceptance and protection of refugees.

Asylum and refugees in Islam

2. In Islam, asylum is a right of anyone seeking protection. In his study of asylum in the Arab-Islamic tradition, G.M. Arnaout argues that asylum 'is an integral part of the islamic [sic] conception of human rights'. Islam embraces people of different races, nationalities and ethnicities. Islamic ideas of asylum and refugees reflect the inclusiveness of this religion. Its most important scripture, the Holy Qur'an, speaks explicitly about the issue of asylum-seekers and refugees:

*And if anyone of the disbelievers seeks your protection, then grant him protection so that he may hear the word of Allah, and then escort him to where he will be secure.
(Surah 9:6)*

3. The Holy Qur'an also has numerous references to justice, particularly the importance of creating a just society, and provides a framework for justice in inter-personal relationships, toward the poor and needy, and connections between communities and nations. It speaks specifically to issues of justice surrounding asylum and refugee protection. These concepts were integral to the creation of Islam. In 662 AD, the Prophet Muhammad (PBUH)¹ fled persecution in Mecca and sought refuge in Medina. This *hijrah*, or migration, came to symbolize the movement of Muslims from lands of oppression to those of Islam. Moreover, the hospitable treatment of Muhammad by the people of Medina embodies the Islamic model of refugee protection contained in the Qur'an.

4. Islam obliges host societies to give asylum-seekers a generous reception, for which the hosts will be rewarded. Islamic law, or Shariah, affirms the practice of providing sanctuary to persecuted persons and the sacredness of places, such as the Kaaba in Mecca. Anyone who sought refuge in a mosque or in the home of a companion of the Prophet Muhammad (PBUH) was safe and secure.

5. According to Shariah law, asylum is not confined to sacred sites – it is also granted in homes and designated communal places under the protection of Islam. Asylum should be provided without

¹ Peace be upon him

discriminating between free persons and those who are enslaved, between rich and poor, men and women, or Muslims and non-Muslims.

6. This responsibility is formalized in the fourth *surah* of the Holy Qur'an, which states that: "He who emigrates in the path of God will find frequent refuge and abundance" [4: 97-99]. 'Migration'² may be necessary if one's life or beliefs are threatened and the Qur'an requires that the faithful also follow any agreements and treaties that they have signed on the rights of refugees [5:1].

7. The concept of *aman*, which is intrinsic in Shariah, encompasses the rights of refugees and asylum-seekers and the duties incumbent upon their hosts (ibid). *Aman* also refers to the refuge and safeguard offered to non-Muslims, even if they are in conflict with Muslims, and requires that host populations facilitate the voluntary return of refugees to their places of origin when considered safe. Such refuge remains inviolate even if the person who is being offered protection is in a conflict with Muslims [9: 6]. Islamic scholars of jurisprudence believe that *aman* creates an irrevocable bond.

8. Many instances of migration by the faithful and prophets appear in the Holy Qur'an and in history books. They not only refer to the migration of Muslims but also include stories from the life of Abraham and Moses. The Qur'anic verses show that migration can become a necessity for anyone in times of trouble or when one's life and beliefs are in danger. Some verses go as far as to require the faithful to choose migration in such circumstances (if they are able to do so) [4: 97-99].

9. The Holy Qur'an provides a set of instructions in dealing with refugees and migrants, praising those who go to the assistance of people in distress and requiring the faithful to protect refugees [9: 100 and 117]. It entitles refugees and internally displaced persons to certain rights and to humane treatment [8: 72-75, 16: 41] and it condemns people whose actions prompt mass migration, viewing them as lacking faith in God's words [2: 84-86].

10. The Holy Qur'an also puts forth certain regulations to lend additional support to women and children, who are considered more vulnerable [4: 2, 9, 36, 75, 98, 127, 17: 34]. Under the principle of justice, which is the basis of all Islamic regulations [42: 15, 16: 90], those who are more at risk as a result of migration and asylum should be offered extra support. This is also true of non-Muslims or those who oppose the Muslim faith [5: 8]. Required alms, such as *khums* (one fifth of income or of the spoils of war that Muslims are required to hand out as charity) and *zakat* (a portion of property that the faithful are required to give away for charitable causes), as well as optional alms, constitute a fund that can be used to meet the basic needs of refugees.

11. The medieval theologian Ibn al Arabi suggests that asylum is obligatory for those coming from states where there is injustice, intolerance, physical persecution, disease, and financial insecurity (Eickelman and Piscatori 1990). Additionally, Zaat (2007: 11) has argued that while the Qur'an implies that worldly consequences will befall those who do not give humanitarian assistance to those in need, those who do provide protection and assistance will achieve a 'special legal status' in Islamic law. Therefore, Zaat claims that 'Muslim states and non-state actors... have an obligation to guarantee the safety, security and unfettered access of those offering protection and assistance' (ibid). It is clear, therefore, that Islamic law encourages a humanitarian approach to refugees, asylum-seekers and internally displaced persons.

Challenges to overcome

12. However, principles in Islamic law regarding refugee assistance and protection remain largely ignored in academic and political discourse and certain challenges need to be discussed. For example, Islam recognises two types of rights: rights that humans are obliged, by virtue of being the creations

² Understood as 'flight'

of God, to fulfil and obey; and rights that they are entitled to expect from their fellow human beings. This may appear to have some contradiction with the Universal Declaration of Human Rights (UDHR) where the latter corresponds to what are elsewhere termed 'human rights'. The former are rights that stem from, and are obtained through, belief in God and religion. In this concept only, God truly has rights and the rights of humans are understood as their obligation to abide by God's commands. They are, first and foremost, the rights of individuals to abide by and adhere to the laws that God decreed and are only possible through this belief system, thus possibly excluding people who do not believe in God.

13. Another potentially difficult point to reconcile is the principle of equality between men and women. The UDHR affirms unconditionally the complete equality between the two sexes. Under *Sharia* law a woman can expect to be provided for, while men expect to inherit twice as much as the woman. In the situation of the rights of restitution of property to refugees, for example, this would raise questions. What are the implications, for example, for the many female-headed households trying to survive or rebuild lives and livelihoods after conflict and displacement?

14. It should also be noted that Islam does offer an array of rights that humans, by virtue of being human, are entitled to and which, from a modern perspective, seem no different from many of the rights listed in the UDHR.

15. It also appears that Islamic concepts of refugees and asylum hold two main distinctive, though not necessarily contradictory, characteristics to those of the international state system refugee regime. First, *hijrah* provides a broader definition of asylum and refugees than the definition of refugees in Article 1 of the 1951 Convention Relating to the Status of Refugees. In Islam, all refugees should be treated equally under God's sovereignty. In contrast, Western law, based on state sovereignty, divides displaced persons into refugees, asylum-seekers, stateless persons, internally displaced, returnees and persons at risk of displacement, and appoints these groups varying rights. Furthermore, modern refugee law only provides protection for those refugees defined by Article 1 of the Convention. It ignores the fact that certain refugees, such as women and children, are more vulnerable than others.

16. In contrast to the international refugee regime, the Holy Qur'an stipulates special regulations for the protection of female and child refugees, who are more vulnerable than the general refugee population. This is based on the principles of justice that are the foundation of Islamic law [42: 15, 16: 90] and that require the protection of those who are more at risk, even if they are non-Muslims.

17. Following the Prophet's declaration of brotherhood among the Muhajirun and Ansar and his statement that: "The rights of migrants are the same as those of their hosts," women and children refugees are given the same rights as the women and children of the host society [8:75]. These include the right to remain with their family or be reunited with them, as well as to be treated well at all times. Thus Islamic laws on refugees remain a significant source of protection for the rights of refugees, migrants and asylum-seekers. These laws could provide a faith-based guarantee of the rights of women and children in particular and, if explored, could answer some of the questions posed above.

18. Some rights in Islam of refugees and asylum-seekers, especially women and children (Rahaei 2009):

- All people fleeing persecution are entitled to asylum and the rights associated with that status.
- Measures to meet the needs of these individuals are a public duty.
- Refugees should not be left vulnerable to persecution and injustice.
- The rights of the women and children of the host country are the same as the rights of women and children who are taking refuge there [8: 75]. That was why the Prophet declared brotherhood among the Muhajirun and Ansar and stated that "The rights of migrants are the same as those of their hosts". In other words, such women and children, whether accompanied

by their families or not, should be offered the same protection as women and children of the host country, in keeping with local or international law.

- Any decision with regard to refugee children should take account of their basic interests [2:220]. They are entitled to a healthy upbringing and education. From an Islamic perspective, children are innocent, their talents should be fostered [4: 2-4] and they should not be discriminated against.
- Children and women, according some interpretations of Sharia, are more vulnerable, should be treated with affirmative action (positive discrimination). The Muslim Prophet reiterated the rights of women and children more than any other group. Refugee children and women are among the most deprived people in the world and Muslims should allocate part of their charitable efforts to their support. From a religious perspective, what is offered to these individuals is theirs by right [70: 24, 25]. If the guardian of a child is granted asylum, the child has to be offered the same status, thus preserving the right of children to remain with their family.
- The right of these individuals to be reunited with their families should be respected. If parents of these children are not found, the children's relatives should provide protection. They should be assisted to return to their place of origin when such movement is deemed safe [9: 6].
- They should be treated well at all times.

19. The second major contrast between modern refugee law and Islamic law is the designation of asylum-granting power. Modern international law lacks any stipulation that gives asylum seekers the full right to asylum. In international law only states have the power to grant asylum

20. In comparison, *hijrah* gives individual asylum-seekers the right both to *seek* and to be *granted* asylum by the society to which they have fled. While the 1948 Universal Declaration of Human Rights gives every human being the right to seek and enjoy asylum from persecution in their country of origin, it does not obligate states to grant asylum to refugees. The UDHR states that: "everyone has the right to seek and enjoy in other countries asylum from persecution"; however, the right to *enjoy* asylum does not equal the right to be *granted* asylum.

21. In Islamic law, all individuals, including non-Muslims, have the right to flee persecution and seek protection in an Islamic community. The provision of refugee assistance is obligatory to people who flee from "injustice, intolerance, physical persecution, disease, or financial insecurity" (Kirmani/Khan). Since these types of persecution interfere with a Muslim's religious practices, the line between religious and non-religious grounds for persecution remains blurred. Classic Islamic notions focus on the duty of Muslims to flee religious (and non-religious) persecution regardless of the degree of persecution. In Islam, asylum is not only the right of forced migrants. The asylum-seeker also has a duty to flee, and the host society a duty to provide protection. Muslims must seek refuge from injustice and abuse, and in turn they are obliged to accept and protect those fleeing.

Islam, refugee law and the state

22. Although asylum and refugees are integral to Islam, *hijrah* is rarely invoked by Muslim states today. Worldwide, there are currently over 1.3 billion Muslims, divided into two main sects, Sunni and Shiite. Most Muslim refugees flee from violent armed conflict or authoritarian regimes in their countries. However, despite their adherence to Islam or Sharia law, Muslim states rarely refer to *hijrah* when dealing with refugees. The original concept has seldom been applied throughout history. However, in spite of its lack of prior use by states, *hijrah* could provide an important framework for the treatment of refugees and asylum-seekers by Muslim and non-Muslim states.

23. The practicability of applying these principles remains problematic, however. For example, who is not a refugee in Islam? Or, what sort of mechanisms could be put in place to protect refugee rights rather than subjugate them to the will of host states? More study is needed into Sharia to see what is offered as a comprehensive legal system for the protection of refugees and IDPs, and to correlate it with current understanding of protection. For example, while there is a right to seek asylum, exemplified most notably by the Prophet's migration to Medina to avoid persecution, there is no overtly stated obligation on the part of Islamic states, in Sharia at least, to provide asylum.

II. CONCLUSION

24. Islamic rules and regulations constitute a valuable source for protection of the rights of refugees, migrants and asylum seekers. In addition to contractual responsibilities, they could serve as a faith-based guarantor of the rights of refugees, particularly women and children. Further exploration of respected Islamic sources could result in new mechanisms in this regard.

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