

The rights of forced migrants in Islam



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Executive summary

Islam has a strong heritage of forced migrant protection, stemming from the original teachings of the Qur'an, as well as from historical examples taken from the lives of great Prophets – from Ibrahim (PBUH), to Musa (PBUH), to Prophet Muhammad (PBUH). This heritage includes strong – even stern – commands on the importance of seeking refuge if one is facing persecution, as well as on the duty of providing asylum to those who need it. It is a tradition which provides a robust and generous framework for the protection of and provision for forced migrants, enshrining rights such as the rights to dignity, non-refoulement, equal treatment, shelter, healthcare, family reunification, and protection of property.

Yet this tradition is not always applied in the modern context, despite Muslim countries currently hosting around 50% of the world's refugee population. There is a pressing need to nurture the theological discourse on the issue of forced migrant protection in Islam. Such traditions could play a vital role in helping such countries manage forced migrant crises in a manner that is compliant with Islamic principles, whilst also assisting forced migrants in recognising the rights and dignity conferred on them by God.

1. Introduction

Islam and forced migration

Forced migration has been a core element of the human experience throughout history. The Islamic tradition is rich with stories of forced migration and teachings on the importance of providing protection for those seeking refuge. Migration and escape from persecution has played a prominent role in the stories of many of Islam's great Prophets – such as Prophet Ibrahim (PBUH)'s migration to Canaan (Q29:26), or Prophet Musa (PBUH)'s migration to Midian (Q28: 20–28). Forced migration played a particular role in the life of the Prophet Muhammad (PBUH) and his first companions. In 615 AD approximately 100 early Muslims sought refuge with the Christian King Negus of Abyssinia to escape the brutal persecution of the ruling Qur'aysh tribe in Makkah (Ramadan 2007: 59). This was followed by a larger migration to Madinah in 622 AD, which the Prophet Muhammad (PBUH) joined (Rahaei 2009: 4). As this paper will discuss, Qur'anic narrations of these stories highlight the high status of both those who seek refuge from persecution, and those who provide refuge.

The International Association for the Study of Forced Migration defines forced migration as:

“... a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.”

Whilst there exists no exact linguistic equivalent of the term “forced migrant” within Islamic legal traditions, the term *hijrah* (migration) and its derivatives are mentioned 27 times in the Qur'an (Munir 2011: 4). Zaat notes that there a further 650 *ahadith* (sayings of the Prophet

Muhammad) on the topic of protection and assistance (Zaat 2007: 6-7). The centrality of migration to the Islamic tradition is perhaps best evidenced by the Islamic calendar system, for it is not with the Prophet's birth that the Islamic calendar starts or with the commencement of revelation, nor even the conquest of Makkah – but rather, with the *hijrah* of the Prophet Muhammad (PBUH) and his companions to Madinah ('Abd al-Rahim 2008: 19).

Religious scholars and leading international bodies alike recognise the leading role that Islamic teachings can play in international forced migrant protection frameworks. Over the centuries, Islamic scholars built up a comprehensive body of ethical teachings and legal injunctions regarding the protection of forced migrants, based on Qur'anic teachings, examples from the *sunnah* (practice) of the Prophet Muhammad (PBUH) and drawing from some of the cultural practices that became prominent across the Muslim world ('Abd al-Rahim 2008: 15). A 2007 conference on Asylum and Islam led by the United Nations High Commissioner for Refugees (UNHCR) spoke of Islam's “highly sophisticated tradition” with its “fundamental humanitarian spirit” having strong parallels with existing international law (Refugee Survey Quarterly 2008, p. 64). The 2012 Ashgabat Declaration on Refugees in the Muslim World by the Organisation of Islamic Cooperation (OIC) stated “We recognize that over fourteen centuries ago, Islam laid down the bases for granting refuge, which is now deeply ingrained in Islamic faith, heritage and tradition”. Rahaei speaks of how respect for asylum seekers and those who provide refuge have a “particular place in *shari'ah*” and that “Islam pays special attention to the suffering of forced migrants” (Rahaei 2009: 4).

The need for an Islamic framework on the rights of forced migrants

Unfortunately such traditions are rarely invoked today. Following the collapse of the Islamic caliphate in 1924, many Muslim states (a term which, in this paper, shall refer to the 57 member states of the Organisation of Islamic Cooperation) such as Turkey, Egypt and Tunisia underwent an immense process of secularisation, with “most Muslim governments [replacing] Islamic law with legal systems inspired by Western secular codes” (Esposito 2010: 51). Scholars were excluded or played a marginal role in advising on matters of state (ibid). As a result, Islamic scholarship has no longer been required to legislate on matters relating to Islamic protection frameworks, nor adapt classical Islamic teachings to the changing circumstances of the modern world. Indeed, modern phenomena such as increased restrictions on movement between states, or the growing prominence of the nation state as the primary gatekeeper and provider for citizens, which arguably has replaced the frameworks of community and individual obligations in which Islamic law evolved, may render some traditional rulings on protection irrelevant or impractical.

Perhaps as a consequence of this, our experience has indicated that whilst many Muslim states maintain strong cultures and traditions of hosting forced migrants, popular understanding and awareness of Islamic frameworks for the protection of forced migrants remains weak. Despite some apparent disjunctures between classical teachings and the modern context, we believe that reviving an awareness of such teachings amongst both host and migrant communities could play a powerful role in improving the condition of forced migrants globally, assisting in improving relations between host and migrant communities, as well as acting as a useful motivating factor for host communities.

Moreover, the need for a comprehensive framework of Islamic forced migrant protection has never been more pressing. According to 2005 statistics, approximately 50% of the world's refugees originated from OIC states (Zaat 2007: 36) – not including internally displaced people (IDPs) and asylum seekers. Moreover, the 57 OIC states have become home to some of the largest, most protracted and most complex forced migration situations in the world (OIC 2006: 5). Indeed, OIC states currently host approximately 10.7 million refugees (Ashgabat Declaration 2012: Article 4) – or 50% of the persons who are of concern to UNHCR, according to the UN High Commissioner for Refugees, António Guterres (UNHCR 2012). With the commencement of the Syrian crisis in 2011, which has resulted in approximately 2.6 million refugees (UNHCR, 2014) and 6.5 million internally displaced people (UNOCHA, 2014), such figures may be set to rise as states such as Jordan, Lebanon and Turkey increasingly find themselves at the forefront of global efforts to provide refuge and provision to forced migrants.

While the hospitality of such states should be commended, protection frameworks remain weak. Only 36 of the 57 OIC Member States are signatories of the 1951 Refugee Convention. Some such states also lack domestic legislation on asylum, meaning that refugees and other forced migrants are forced to live in a legal vacuum (Munir 2011: 19). Criticisms levelled by some such states at the 1951 Refugee Convention include concerns that it is not reflective of values and circumstances of non-European states (a summary of the main criticisms can be found in Zaat 2007: 4). These concerns serve to emphasise the need for greater discussion around the rights of forced migrants in Islamic traditions, and developing a protection framework that is rooted in the values of both host states and forced migrant populations themselves. While progress has been made on this in recent years – 2012 saw the UNHCR and the OIC jointly organise the International

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Conference on Refugees in the Muslim world (the first ministerial-level meeting to deal specifically with this issue) – the international community still lacks a framework that clearly outlines the rights and duties of those who seek and provide asylum within Islamic traditions.

For an organisation such as Islamic Relief, which has worked with forced migrants for nearly 30 years, a framework for forced migrant protection that is both rooted in Islamic values and applicable to modern challenges would have vital practical value. Developing such a framework will require further research and consultation with Islamic scholars, forced migrant populations, and states and communities hosting forced migrants. However, as a starting point this paper seeks to outline the overarching principles and classical practices on forced migrant protection within Islamic traditions which may guide our practice today.

Methodology

The purpose of this paper is to outline the principles that can form the foundations of a future protection framework, rather than providing juristic rulings on specific issues. As such, it will draw on primary Islamic sources such as the Qur'an and *sunnah*, as well as secondary works which have begun to comprehensively deal with the protection of forced migrants in Islam.

In seeking to extract general principles from such teachings, we have consulted with Islamic scholars to ensure that our interpretations and conclusions have a strong foundation in Islamic legal traditions. This is especially necessary given that some Qur'anic references to migration may appear to be highly context-specific.

Finally, this paper will use the term “forced migrants” to encompass both “refugees” and “internally displaced people” – the latter two of which have distinctly separate legal meanings in current international frameworks. It will later use the Arabic term *musta'min* to refer to all categories of forced migrants who have been granted protection by an Islamic state.

2. Seeking asylum

Defining a forced migrant

Islamic traditions do not offer a specific linguistic equivalent of a “refugee”, “internally displaced person” or “asylum seeker”. Unlike in international law, there is no legal distinction between the various categories of forced migrants (Zaat 2007: 13), in part due to Islamic law evolving in contexts of community rule or empire, while the international legal framework operates in contexts of states. However, the Qu'ran makes repeated reference to the link between persecution and forced migration, speaking of the “oppressed” (Q7:137, Q4:97), “those who have been driven unjustly from their homes” (Q22:40), and those “driven out of their homeland” (Q2:246) - indicating that much of Islam's tradition relating to forced migrants deals with those escaping persecution or oppression.

What form such oppression may take is not always clarified. The Qur'an and *sunnah* often refer to examples of religious persecution (as this was the persecution suffered by many of the Prophets). Abou-El-Wafa argues that “if a Muslim cannot pronounce his religion or perform his religious duties in a non-Muslim country, he shall be under an obligation to emigrate” (Abou-El-Wafa 2009: 114-115). Ibn Arabi, however, broadens the definition of persecution, claiming that asylum is obligatory from states where there is injustice, intolerance, physical persecution, disease and financial insecurity (Kirmani, Khan & Palmer 2008: 4). Drawing on Ibn Arabi's definition we could say that any person who is obliged to leave a place due to the factors named above could be considered a forced migrant, including those suffering from extreme poverty or disasters.

Nonetheless, the first Muslims who migrated to Madinah in 622 AD, despite being motivated by a desire to escape persecution, were simply named the *muhajirun*

(the emigrants). Thus *hijra* (migration) in contemporary legal terminology is the closest equivalent to territorial asylum i.e. the relocation of a person from a place where he fears for his life, family and protection, to a place where he avails himself of protection and security (Abou-El-Wafa 2009: 255).

The duty to seek asylum

This highlights a subtle, yet fundamental difference between Islamic and mainstream international understandings of forced migrants' rights. Shahrani and Malkki both argue that current efforts by international organisations to portray forced migrants as symbols of “shared humanity” and “universal suffering” lead to forced migrants being perceived as passive, powerless, de-politicised figures who are denied a sense of history, culture or nationality (Kirmani, Khan & Palmer 2008: 6-7).

Alternatively, Islamic teachings emphasise the fundamental dignity of mankind. In Surah Al-Isra of the Qur'an, God states that “We have honoured the children of Adam ... and favoured them specially above many of those We have created (Q17:70).

This honour given to mankind is unconditional and must be respected regardless of a person's gender, race, class, nationality or legal status. Likewise, forced migrants must be treated with the dignity and honour which God has bestowed upon them.

In Islam the seeking of asylum is rooted in the attributes of moral autonomy and free will – uniquely conferred by God onto mankind ('Abd al-Rahim 2008: 16). As such, within an Islamic framework we may speak of the “duty”, rather than the “right” to seek asylum. God says in Surah An-Nisa:

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“When the angels take the souls of those who have wronged themselves, they ask them ‘What circumstances were you in?’ They reply, ‘We were oppressed in this land,’ and the angels say, ‘But was God’s earth not spacious enough for you to migrate to some other place?’” (Q4:97)

As such, with the freedom bestowed upon mankind comes an obligation to preserve our human dignity by seeking refuge from oppression and persecution. The Islamic concept of a forced migrant does not merely imply a helpless victim of circumstance but rather one who has taken an active choice to preserve their life, as per the command of God. Such an understanding confers agency and dignity to forced migrants. The early Muslim migrants were defined as *muhajirun*, or ‘emigrants’, a definition which did not differentiate them from other categories of migrants and which emphasised their decision to emigrate, rather than their need for refuge.

The Qur’anic verse cited above underlines the moral obligation to protect one’s own life and seek refuge from oppression. The verse finishes by saying:

“These people will have Hell as their refuge, an evil destination. But not so the truly helpless men, women and children who have no means in their power nor any way to leave – God may well pardon these, for He is most pardoning and most forgiving. Anyone who migrates for God’s cause will find many a refuge and great plenty in the earth.” (Q4:97–99)

This verse refers to the specific context of the early Muslims’ migration to Madinah. Given the impossibility of practising Islam in Makkah, early Muslims were strongly encouraged to migrate to Madinah from 622 AD (Ramadan 2007: 76). The majority did so, obeying the encouragement of the Prophet (Lings 1984: 113). However, Ad-Dahhak states the stern warnings in this

verse refer to a minority of hypocrites who did not migrate to Madinah, but pretended to be weak in order to remain in Makkah and eventually chose to fight against the Muslims in the subsequent battle of Badr. Such people, he states, were committing injustice against themselves (Tafsir Ibn Kathir).

Nonetheless we can take from this verse the teaching that those who truly have the means in their power to escape persecution are morally obliged to do so. Failure to fulfil this duty is not only a denial of God’s mercy – His spacious and plentiful earth – but potentially a grave sin, in that such individuals may become complicit in the persecution committed against themselves (Agha 2008: 32). In Islam, persecution is considered one of the gravest acts of injustice, and is repeatedly cast as “worse than killing” (Q2:191, Q2:217). Whilst Islam encourages restraint and peaceful behaviour (Q5:32, Q8:61, Q43:89), the Qur’an calls on Muslims to “uphold justice ... even if it is against yourselves” (Q4:135), while the Prophet Muhammad (PBUH) famously taught:

“... if any of you see an evil, then change it with your hand, and if you cannot, then change it with your tongue, and if you cannot, then hate it in your heart, and that is the least of faith” (Muslim)

This verse serves as a reminder to those suffering persecution that they are not helpless, that many of them have both the power and agency to change their situation, and are therefore obligated to do so. Whilst such a verse may appear stern, it underlines the vital importance of protecting oneself, and the dignity conferred on those who do so. Of course, such sternness is only reserved for those who are capable of migration – “but not so the truly helpless ... who have no means in their power nor any way to leave.”

The Qur’an takes further steps to incentivise the persecuted to migrate by promising security and

abundant reward with God. Referring to the first Muslims, the Qur’an states “Remember when you were few, victimized in the land ... but God sheltered you and strengthened you with His help, and provided you with good things ...” (Q8:26). The first emigrants are promised “Gardens graced with flowing streams [i.e. heaven] ... a supreme triumph” (Q9:100). Those who emigrated in God’s cause after being wronged are promised “a good home in this world, but the reward of the Hereafter will be far greater” (Q16:41). The verse “anyone who migrates for God’s cause will find many a refuge and great plenty in the earth” (Q4:99) implies that the persecuted are not only promised a safe refuge, if they seek it, by God, but that they will also find “a great plenty” – meaning provision and wealth (Tafsir Ibn Kathir).



With the freedom bestowed upon mankind comes an obligation to preserve our human dignity by seeking refuge from oppression and persecution

3. The duty to give asylum

The verse at the end of section 2 (Q4:99) also highlights that whilst seeking asylum is a duty, being granted asylum is also a right. The verse implies that the persecuted have a right to find refuge on the earth, a right which has been conferred by God, and which their fellow humans have a duty to fulfil. This verse reminds us that we are simply custodians of the earth, not the owners – and thus do not have the right to deny territorial refuge to those whom God has promised it. This right to asylum may be claimed by Muslims and non-Muslims alike from a Muslim community (Munir 2011: 13). In Surah Taubah, God says:

“And if any one of the idolaters should seek your protection, grant it to him so that he may hear the word of God, then take him to a place safe for him.” (Q9:6)

The Arabic word for protection used here is *istijara* which literally means “protection”. This expression also refers to an old Arab custom of honouring and protecting one’s neighbour to the best of one’s ability (‘Abd al-Rahim 2008: 20). Discussions around forced migrant protection also focus on the use of the word *aman* at the end of the verse, which could be translated as “safe conduct” or an “assurance of protection” (Munir 2011: 6).

There are innumerable references in the Qur’an and *hadith* to the duty on Muslims to provide asylum to those seeking refuge and to protect the persecuted. Within the Islamic framework, providing refuge to a forced migrant is not an act of charity, but rather an act of justice. Referring to the case of persecuted Muslims who emigrated to Madinah, God says:

“As for those who believed but did not emigrate, you are not responsible for their protection until they have done so. But if they seek help from you against persecution, it is your duty to assist them, except

against with whom you have a treaty: God sees all that you do.” (Q8:72)

Consequently, there is a clear religiously mandated requirement to provide protection and assistance to forced migrants (the nature of what assistance and protection might look like will be discussed in section 4). This is reinforced by the aforementioned verses mandating Muslims to stand out for justice, and reminders that saving one life is the equivalent of saving all of mankind (Q5:32). Helping the oppressed is a core theme in Islamic teachings. The Qur’an speaks of how God wished to “favour those who were oppressed in the land” (Q28:5), and calls on Muslims to fulfil the role of protectors and helpers to “those oppressed men, women and children who cry out ‘Lord, rescue us from this town where people are oppressors!’” (Q4:75). The Prophet Muhammad (PBUH) repeatedly commanded his followers to help the oppressed (Bukhari, Book of Oppressions). The citizens of Madinah who first offered refuge and help to the persecuted Muslims of Makkah are called “the true believers” who “will have forgiveness and generous provision” (Q8:74)

Who is responsible for providing asylum?

There is consensus among both classical and modern scholars that Muslims are obliged to provide asylum to those who seek it. Arnaout claims that it is not permitted for “the asylum seeker to be refused access or admission to the territory of the country where he has requested refuge” (Zaat 2007: 19).

However, there is a difference of opinion regarding whether this is a communal obligation (*fard kifaya*) or an individual obligation (*fard ‘ayn*). Regardless, classical

traditions indicate that individuals played a central role in providing protection to forced migrants, with some academics even claiming that “refugee law in Islam is not an area in which the Muslim state and the non-Muslim state have much to do” – rather it is citizens who are involved in this area of law (Munir 2011: 2). Elmadmad argues that providing asylum is a duty upon any person living in an Islamic country (Elmadmad 2008: 54).

Such *aman* can be provided to a small group of men, women and children (according to the means of the individual providing protection), either Muslim or non-Muslim, and is not dependent on the political, civil, social cultural religious or economic characteristics of the person fleeing persecution (Zaat 2007: 20). Even enemy combatants are entitled to receive *aman*, provided they prove their non-combatant status first (Abou El Wafa 2009: 22). *Aman* can be given verbally or by gesture, by request or by invitation (Yacoob and Aiman in Zaat 2007: 20), and does not even require asylum seekers to prove their persecuted status (Elmadmad 2008: 54). Whilst these practices may not always be possible to implement in the modern context, they underline the individual obligation to protect and provide for forced migrants within Islamic teachings.

According to the leading Maliki jurist Ibn Juzayy, once granted, this *aman*, whether given to a Muslim or non-Muslim, would become binding on the Imam and other citizens of the state, provided there was no harm in it (Munir 2011: 7). Examples of this “individual” refuge are often cited in the *seerah*. The Prophet Muhammad (PBUH) himself was granted protection first by his uncle Abu Talib, and later by al-Mot’am ibn ‘Udayy, which prevented the Qur’aysh from attacking him as they had attacked his unprotected followers (Abou-El-Wafa 2009: 95). The Prophet Muhammad (PBUH) taught that “Muslims are equal in respect of blood; the lowest of them is entitled to give protection on behalf

of them, and the one residing far away may give protection on behalf of them ...” (Abu Dawud). Maliki, Shafi’i and Hanbali jurists have interpreted this to mean that *aman* can be granted by slaves as well as free men (Munir 2011: 7), and even by discerning children according to some classical jurists (‘Abd al-Rahim 2008: 20). This teaching indicates that whether *aman* is given by an individual or the state, it must be respected by all within that society.

The right to grant more general *aman* (e.g. for large groups of forced migrants, or protection agreements between states) would lie only with the Imam or relevant state representative (Munir 2011: 7). In Islamic history, anyone seeking refuge in *dar ul Islam* was granted *aman*. If protection was granted, they became a *musta’min* i.e. protected person (OIC 2006). There are only a handful of instances when an Islamic state may refuse asylum: firstly, if the migrant is a non-political criminal (particularly one who has committed grievances in their country of origin, and seeks refuge as a means to avoid punishment) (Abou-El-Wafa 2009: 181–184); secondly, if the migrant is an enemy combatant who has not revoked their combatant status (Zaat 2007: 20); thirdly, if hosting a migrant would contravene existing treaties with other states. An example of the latter could be the Hudaibiyah Treaty signed between the Prophet Muhammad (PBUH) and the Qur’aysh tribe of Makkah, which forbade the Muslim community in Madinah from accepting any further Muslim refugees fleeing Makkah. When one such refugee attempted to seek asylum with the Prophet Muhammad (PBUH), the Prophet responded to him “Abu Baseer, we had given those people what you know (a treaty) and in our religion treachery is not good for us” (Abou-El-Wafa 2009: 188).

4. The rights of forced migrants in the Islamic tradition

Aman does not simply consist of allowing an asylum seeker entry into a country, city or community. Rather, Islam provides a comprehensive framework for the *musta'min's* protection and provision, or what an Arab Parliamentarians' Symposium called "the rich traditions, customs and practices involved in Arab and Islamic values" which provide "a firm underpinning for the integrated protection of refugees and respect for their human integrity" (Abou-El-Wafa 2009: 52).

Once *aman* is granted a *musta'min* should benefit from all the rights granted to nationals (Elmadmad 2008: 54). Such a conceptual framework finds its foundations in the example of the Constitution of Madinah, which promised equal protections for all citizens of Madinah – be they migrants or indigenous, Muslims or non-Muslims (Ramadan 2007: 88). Equally, a framework of forced migrant rights would need to reflect the five "purposes" (or *maqasid*) of *shari'ah* (Islamic law), which form the foundation of Islamic governance and citizens' rights: the protection of life, religion, intellect, wealth and posterity (i.e. family) (Aminu-Kano 2014). These principles provide a comprehensive framework within which we can understand the rights due to a *musta'min*, stemming from the right to protection, the right to non-refoulement, the right to have their physical needs met, the right to freedom of belief, the right to do business and have their wealth protected, the right to marry and raise children, and the right of family reunification (Munir 2011: 14; 'Abd al-Rahim 2008: 21; Abou-El-Wafa 2009: 143). Such rights would be due to any *musta'min*, regardless of whether they were a refugee, an internally displaced person, or a stateless person (Zaat 2007: 13).

The obligation to fulfil the rights of forced migrants finds its roots in the broader ethos of Islamic teachings on human rights (a comprehensive analysis of which can be found in Aminu-Kano 2014). For Muslims, God is the source of human dignity and rights, leading to the notion that the fulfilment of rights of others is an

obligation upon all believers, for which individuals will feel the weight of divine accountability. Moreover, such obligations are a fulfilment of the rights of God over us, only manifested to us indirectly through our fellow man (Aminu-Kano 2014: 6–7). Although modern protection frameworks tend to place government as the primary guardian of such rights, Islam emphasises responsibility at all levels of society, from individuals, families, communities and wider civil society (ibid). Thus within an Islamic framework of rights, while the government must be the ultimate guarantor of protection and justice, it is only "the guardian of he who has no guardian" (Prophet Muhammad PBUH, Tirmidhi).

As such, it is primarily the duty of the host community to ensure that a *musta'min* is not denied these rights. The Qur'an repeatedly calls on Muslims to "give what is due to ... the wayfarer" (Q30:38, Q17:26). To do so should not be regarded as a burden, or be considered a source of resentment, but rather considered as a noble blessing conferred on us by God. The Prophet Muhammad (PBUH) reminds us that:

"Whoever fulfilled the needs of his brother, God will fulfil his needs; whoever brought his brother out of a discomfort, God will bring him out of the discomforts of the Day of Resurrection, and whoever screened [provided sanctuary to] a Muslim, God will screen [provide a sanctuary] to him on the Day of Resurrection." (Bukhari)

a. The right to protection

The first, and most obvious, right of a *musta'min* is the right to protection, for this is the fundamental purpose of seeking and providing refuge. This is implicit in the Qur'anic verse 9:6 which calls on Muslims to grant

protection (*istijara*) to those who seek it, while the juristic terminology of *aman* refers to an "assurance of protection" (Munir 2011: 6). The Prophet Muhammad (PBUH) taught his followers that:

"the asylum (of protection) granted by any Muslim is to be secured (respected) by all other Muslims; and whoever betrays a Muslim in this respect incurs the curse of God, the angels and the people." (Bukhari)

The protection of life is one of the key objectives of the *shariah*, and Islam provides firm teachings on the sanctity of life. God calls upon Muslims to not only refrain from murder, but to also actively strive to protect the lives of others - the Qur'an equates killing a person with "[killing] all mankind", while "if any saves a life it is as if he saves the lives of all mankind" (Q5:32). As mentioned earlier, Muslims are commanded to "uphold justice...even if it is against yourselves" (Q4:135) and provide protection to "those oppressed men, women and children who cry out 'Lord, rescue us from this town where people are oppressors!'" (Q4:75).

b. The right to non-refoulement (forced return to persecutor)

As part of this protection covenant, it is forbidden to force a *musta'min* to return to their country of origin against their will. This is rooted in the Prophetic teaching that "a Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor" (Bukhari). There is a consensus that this right extends to both Muslims and non-Muslims. Imam ash-Shaybani states that even if an enemy fighter came seeking *aman*, he should not be forced to return to his state if he fears being killed (Abou-El-Wafa 2009: 56). To do so would be considered treachery and a grave



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injustice, and jurists agree Islamic states should continue their protection even if the refugee's state of origin threatens to wage war should the *musta'min* not be extradited (Abou-El-Wafa 2009: 56).

Imam ash-Shaybani goes even further to state that even "if a person entered a Muslim state with *aman* and killed a Muslim intentionally or without intention, or committed robbery, or spied on the Muslims and sent it [the information] to the polytheists, or raped a Muslim or a non-Muslim woman [non-Muslim citizen of the Muslim state], or committed theft, then none of these amount to breach of his *aman*" (Munir 2011: 10), but rather that *musta'min* would be subject to the laws of the state.

The sanctity of non-refoulement has been endorsed by prominent modern jurists such as Shaykh Faisal Mawlawi (in a fatwa entitled "The Rights of Refugees in Islam", cited in Zaat 2007: 20), as well as the OIC (OIC 2006). Perhaps one of the most powerful examples of non-refoulement being practiced in Islamic history is the story of Negus, the Abyssinian king with whom early Makkan Muslims sought refuge (before their eventual migration to Madinah). When representatives of the Qur'aysh arrived, beseeching Negus to return the asylum seekers to Makkah where they may face justice for their treacherous behaviour, Negus responded:

"Nay, by God, they shall not be betrayed – a people that have sought my protection and made my country their abode and chosen me above all others! Give them up I will not, until I have summoned them and questioned them concerning what these men say of them. If it be as they have said, then will I deliver them unto them, that they may restore them to their own people. But if not, then I will be their good protector, so long as they seek my protection."

After assessing the case, he said to the refugees "Go your ways, for ye are safe in my land. Not for mountains of gold would I harm a single man of you" (Lings 1984: 83–84). Equally, when the Qur'aysh demanded that Abu Talib hand the Prophet over (thus betraying his pledge of protection), Abu Talib replied "I would not give up Muhammad; and we will fight tooth and nail for him. We would not surrender him before we have been killed around him and taken away from our sons and women. Then other people would arise with the same clattering swords against you" (Abou-El-Wafa 2009: 54).

C. The right to dignity

The Islamic protection framework emphasises the importance of ensuring that *musta'min* are able to maintain their dignity. This stems from the inherent dignity due to all humans, as God stated that He has "honoured the children of Adam ... favoured them specially above many of those We have created" (Q17:70). The Prophet Muhammad (PBUH) was "deeply aware" of the hardship and destitution faced by the Makkan emigrants when they first arrived in Madinah, for they had fled intolerable conditions and arrived bereft of property, belongings and income (Agha, 2008: 36). To counter this, the Prophet famously declared the Makkan emigrants (the *Muhajirin*) and their hosts in Madinah (the *Ansar*) brothers. He established a unique system of protection wherein each *Ansar* family would take responsibility for one *Muhajir* family, sharing with them their wealth, food, home and tribal protection. Such a system facilitated the integration of the *Muhajirs* into the society around them, providing them with a sense of belonging, as well as a source of spiritual assistance (Ramadan 2008: 92). Abou-El-Wafa notes that within Islamic history, "it is established that refugees, Muslim or non-Muslim, were accorded a treatment that was no less, if not better than

that accorded to nationals" (Abou-El-Wafa 2009: 245). While such generosity may be considered burdensome by many modern states, God commends those who:

"... show love for those who migrated to them for refuge and harbour no desire in their hearts for what has been given to them [the migrants]. They give them [the migrants] preference over themselves, even if they [the hosts] too are poor: those who are saved from their own souls' greed are truly successful." (Q59:9)

In the commentary for the verse above, the Tafsir Ibn Kathir states that Anas said,

"The Muhajirin said, 'O God's Messenger! We have never met people like those whom we emigrated to; comforting us in times of scarcity and giving us with a good heart in times of abundance. They have sufficed for us and shared their wealth with us so much so, that we feared that they might earn the whole reward instead of us.'"

Thus once assistance is given it should not be resented (Zaat 2007: 19) – rather, forced migrants should be treated with consistent love and generosity. Conversely the Prophet (PBUH) also encouraged the Makkan emigrants to utilise their experience in trade and commerce to build their own wealth, so as not to burden their hosts – demonstrating that it is also incumbent on the migrants to seek financial self-sufficiency, and ensure they are not the perpetual recipients of charity (Agha 2008: 38). Engendering an environment of genuine self-reliance, where forced migrants are provided with long-term support to utilise their own skills and experience, is a critical aspect of re-affirming a *musta'min's* sense of dignity.

d. The right to non-discrimination

As mentioned earlier, *musta'min* would be entitled to the same rights as citizens of the host state, regardless of whether they were an internally displaced person, a refugee, or a stateless person. However, it is also worth noting that within the Islamic framework forced migrants are entitled to receive *aman* regardless of religion, race, colour or fortune (Shaykh Othman ibn Foudi in Abou-El-Wafa 2009: 71). As a universal religion Islam honours humans from all backgrounds – indeed, "the diversity of [our] languages and colours" is "truly" a sign from God (Q30:22), Who "made [us] into races and tribes so that [we] should recognise one another" (Q49:13). This sentiment is reflected in Article 1 of the Cairo Declaration on Human Rights in Islam, which states that:

"All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection."

According to Imam Ash-Shaybani, a Muslim Imam therefore has a duty to rescue, protect and do justice to any *musta'min*, as long as they stay on Muslim territory (Abou-El-Wafa 2009: 174).

e. The right to freedom of religion

This is often a point of contention and misunderstanding. Surah At-Taubah clearly states that Muslims should grant protection to a non-Muslim "so that he may hear

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the word of God” (Q9:6). This may be interpreted as conflicting with current sensibilities regarding proselytisation towards vulnerable people. However, it must be made clear that *aman* is not conditional upon the faith of the recipient – as discussed earlier, both Muslims and non-Muslims are to be honoured under the covenant of *aman*, and afforded the full rights which they are due. The verse itself commands Muslims to take *musta'min* “to a place safe for [them]” regardless of whether the *musta'min* has become Muslim or not. Professor Wahbah Zuhaili argues that it is compulsory for the state authority to protect non-Muslims who are in need of sanctuary (Manuty 2008: 26).

There is a clear principle within Islam of freedom of religion – indeed, this is the essence of our humanity. God states that He created “jinn and mankind only to worship Me” (Q51:56), but that such worship must be based on belief, reflection and choice. God reminds us that there is “no compulsion in religion” (Q2:256), for “Had your Lord willed, all the people on earth would have believed. So can you compel people to believe?” (Q10:99). Throughout Islamic history, there are numerous examples of non-Muslims being granted *aman* by Muslim states. For example following the collapse of the Kingdom of Granada in 1492, and the rising persecution and anti-Semitism perpetuated within Spain by Ferdinand and Isabella, large numbers of Iberian Jews took refuge in various parts of the Muslim world (‘Abd al-Rahim 2008: 22). Russian Jewish and Christian refugees were again welcomed into the Muslim world following Ivan the Terrible’s imperial expansion in the 16th century, and again following the 1917 Bolshevik Revolution (‘Abd al-Rahim 2008: 22).

As such, to coerce any human being, whether by force, emotional blackmail, or bribery, into following Islam is fundamentally contrary to the commands of God. Rather we should interpret the verse 9:6 to mean that Muslims are encouraged to give asylum to non-

Muslims as a way of introducing them to Islam, but non-Muslim asylum seekers should feel under no obligation to accept Islam (Elmadmad 2008: 54).

f. The right to have their physical needs met (food, shelter, clothing and economic provision)

This is the right of any vulnerable citizen of a Muslim state, and is likewise a right of forced migrants (Abou-EI-Wafa 2009: 143). The Islamic institutions of *zakat* (compulsory annual almsgiving) and *sadaqa* (voluntary charity) help form a rights-based understanding of provision for the vulnerable (Zaat 2007: 23). The third pillar of Islam, *zakat*, calls on Muslims to offer a percentage of their annual savings as alms to assist eight categories of vulnerable people – one of which is “travellers in need” (Q9:60). Such compulsory alms can be used to provide food, shelter, clothing and transportation to travellers in need (al-Qaradawi 1999: 429-437). It would be the duty of the state, or relevant body, to collect such alms and ensure that they reach deserving recipients, such as forced migrants.

However, the Qur’an also exhorts Muslims to assist travellers in a voluntary capacity as well. God reminds us that “the truly good are those who ... give away some of their wealth, however much they cherish it ... to the needy, travellers ...” (Q2:177), and that “Whatever you give should be for parents, close relatives, orphans, the needy and travellers” (Q2:215). Examples of this can be found within original Islamic sources: as mentioned earlier, the citizens of Madinah shared their possessions with the emigrants from Makkah, and when the Prophet Moses (PBUH) fled to Midian to escape the persecution of Egypt he was taken in by an old man who reassured him “Do not be afraid, you are safe now from people

who do wrong” (Q28:25), and offered him shelter and employment.

g. The right to have property and funds protected

Along with the right to gain employment and develop economic self-sufficiency, a *musta'min* also enjoys the right to have any property and wealth brought with them protected. These must not be confiscated against their will, for this would be a breach of the trust and honour of the *aman* pledge. However, this protection can (for practical reasons) only extend to the property brought with the asylum seeker, and not that left behind in their country of origin. Imam an-Nawawi states that “if a disbeliever enters under a covenant of *aman* or *zimma* into a Muslim land, he shall enjoy security for the property, children and relatives in his company. However, he shall have no security for his property, children and relatives left behind in a non-Muslim land.” (Abou-EI-Wafa 2009: 158).

h. The right to non-separation from family

Prophetic tradition makes non-separation obligatory on all Muslims (Abou-EI-Wafa 2009: 155). The *shari'ah* and Prophetic traditions stress the importance of family unity, which plays an essential role in people’s moral and psychological needs (Abou-EI-Wafa 2009: 154) and it is the duty of the host state to keep families together, and assist *musta'min* in being reunited with their own families. The Prophet Muhammad (PBUH) taught that “whoever causes separation between a mother and



The *shari'ah* and Prophetic traditions stress the importance of family unity, which plays an essential role in people’s moral and psychological needs

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her child, then God will separate him from his beloved on the Day of Judgement” (Tirmidhi).

i. The rights of vulnerable groups

Within Islamic *shari’ah* vulnerable categories of people are often afforded particular rights of provision and protection. Vulnerable people may include the disabled, the elderly, children (particularly orphans), or vulnerable categories of women, such as widows, divorced women or mothers.

Aside from specific injunctions commanding individuals to care for their own parents, Islam repeatedly emphasises the importance of communal care for the elderly, with the Prophet Muhammad (PBUH) stating that “he is not one of us who does not show mercy to our young ones and respect our old ones” (Tirmidhi) and that “if a young man honours an older person on account of his age, God appoints someone to show reverence to him in his old age” (Tirmidhi). The Qur’an repeatedly calls on Muslims to respect the dignity of the ill or disabled (Q24:61), even chastising the Prophet Muhammad (PBUH) himself for failing to do so (Q80:1-11). In this vein, the Caliph Umar ibn ‘Abd al-Aziz conducted a census of people with disabilities, and appointed guides and servants to care for them (Equally Able Foundation).

Provisions for vulnerable women are enshrined in the Qur’an, with widows being entitled to maintenance (Q2:234, Q2:240, Q4:12) and “no expulsion from their homes” (Q2:240) for up to one year following their husband’s death, whilst divorced women are entitled to “such maintenance as is considered fair” (Q2:241). Mothers hold a particularly honoured status, and the Prophet (PBUH) taught us that Paradise is to be found

at the feet of a mother (Ibn Majah). Equally the Qur’an repeatedly commands Muslims to care for particularly vulnerable categories of children, such as orphans (Q4:36). However, the Islamic traditions provide a broader framework for child rights, including the right to life, identity, family, freedom, upbringing, education and culture, rest and activity, health, justice, freedom and so forth. The OIC have developed a Covenant on the Rights of the Child in Islam (OIC, 2004), which details further what children within an Islamic state should be entitled to. Article 21 of the Covenant on the Rights of the Child in Islam states that “States party to this Covenant shall ensure, as much as possible, that refugee children, or those legally assimilated to this status, enjoy the rights provided for in this Covenant within their national legislation”.

Following the principle that a *musta’min* is entitled to the same rights as citizens of the host state, such forced migrants are entitled to receive that which is promised to vulnerable groups of the host state, and should be provided for out of *zakat* (being both needy and travellers in need) and *sadaqa*.

5. Ending refuge

There is a difference of opinion as to whether *aman* can be temporary or permanent. Munir claims that “*aman* is not limited in time and the departure of the protected or *musta’min* from *dar ul Islam* or the place of his/her residence will depend on the individual’s decision” (Munir 2011: 14). Abou-El-Wafa, however, claims that *aman* only provides temporary protection in Islam, stating that the migrant is recognised as a *musta’min* for up to one year. After this, a sustainable solution must be found (Abou-El-Wafa 2009: 201), such as those outlined below.

a. Violation of *aman*

Abou-El-Wafa states that if a *musta’min* commits dangerous acts that particularly threaten the security of the state, then asylum should cease (Abou-El-Wafa 2009: 223). However, he makes it clear that asylum should not be ceased suddenly – the *musta’min* must be given prior warning, a clear explanation for why his protection has ceased, and a reasonable period of time to make arrangements to relocate (Abou-El-Wafa 2009: 224). Once the time period expires, he shall be escorted to where he feels safe (Q9:6), and should not be assaulted or harmed in any way (Abou-El-Wafa 2009: 203).

b. Integration into host communities

Aman may also end by the *musta’min* being formally integrated into the host community. This would entail the *musta’min* becoming a legal citizen of the state with right to long term stay. According to classical tradition both Muslim and non-Muslim *musta’min* would be

entitled to citizenship within a Muslim state, thus ensuring their continued protection. Non-Muslim citizens of Islamic states (known as *zimmis* in classical Islamic terms) were traditionally entitled to the same rights and obligations as their fellow Muslim citizens (the only differences between the two being that Muslim citizens were obliged to fight to defend the territory in wartime, whilst *zimmis* were exempt; Muslims were required to pay *zakat* whilst *zimmis* were not; and in exchange for freedom from these two obligations *zimmis* were required to contribute a small tax, or *jizya*) (Abou-El-Wafa 2009: 214). As *zimmis* the non-Muslims’ property would become inviolable. Imam Abu Yusuf wrote a letter to Haroun Ar-Rasheed stating “Prince of Believers, may God support you, you might have to show lenience to *zimmis* who enjoy the protection of your Prophet and cousin Muhammad (PBUH) and to see that they are not oppressed, injured, overtasked beyond their capacity or stripped of any of their property save for a right owed by them” (Abou-El-Wafa 2009: 212), whilst on his deathbed the second Caliph of Islam, Umar (PBUH), enjoined his successors to “take care of *zimmis* under the protection of Prophet Muhammad (PBUH), to honour the covenant of *aman* granted to them, to fight in defence of them, and not to overtask them” (Abou-El-Wafa 2009: 213).

Muslim forced migrants may equally choose to integrate into non-Muslim host communities. Muslims are encouraged to live within states that enable them to practice their faith fully, and adhere to the principles of the *shari’ah*. Traditionally, this would have meant the *dar ul Islam*. Whilst historically the *dar ul Islam* was clearly defined, in the modern context it has become less so. Shaykh Faysal Mawlawi points out that if *dar ul Islam* is where Islam is practiced, then most Muslim countries can no longer be considered *dar ul Islam* (Abu Salieh 1996: 51). As such, the Islamic Fiqh Academy of the OIC have deemed that if *shari’ah* is not practiced in a Muslim’s country of origin, then it would be permissible

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for them to seek citizenship in a non-Muslim state, with Hajj Abdullah Bah adding “provided that such naturalisation would not lead to disruption or detraction from his religious duties” (Abou-El-Wafa 2009: 217).

C. Voluntary repatriation

Alternatively the *musta'min* may choose to end the asylum voluntarily and return to their country of origin. This may be the result of changing circumstances, for example if the reasons motivating asylum were to cease (Abou-El-Wafa 2009: 226). For example, following the Hudaibiyah truce, the Prophet (PBUH) dispatched 'Amr ibn Umayyah ad-Dhimari to Negus requesting him to send back the Muslims who had taken refuge with him (Abou-El-Wafa 2009: 206). As mentioned earlier however, it is incumbent on the host state to ensure that it is safe for the *musta'min* to return to their country of origin and to facilitate their safe passage (Q9:6).



Little remains in practice of a forced migrant protection framework that spanned centuries of Islamic history

6. Conclusion

Muslim countries such as Afghanistan, Pakistan, Iraq, Sudan and Syria are among the greatest sources of forced migrants globally. Moreover, Muslim states and Muslim communities play a central role in hosting approximately 50% of the global refugee population. Nonetheless, little remains in practice of a forced migrant protection framework that spanned centuries of Islamic history. Twenty-one countries in the Muslim world have still not acceded to the international refugee instruments; only a few countries have developed comprehensive national policies for displaced people; many refugees are still denied basic rights and legislative protection in Muslim countries; sexual and gender-based violence are still a problem in IDP camps; educational provisions for refugee children are insufficient, while unaccompanied and separated children lack protection; and there remains a fundamental lack of durable solutions, with refugees remaining on the fringe of society in fragile environments (OIC 2006: 10–11).

As demonstrated, Islamic teachings – from the Qur’an, the life of the Prophet Muhammad (PBUH), and the actions of the early Muslims – provide a wealth of evidence to support a protection framework for forced migrants that is grounded in Islamic values. Whilst legal rulings may have been developed on these issues in the past, such rulings may need to be re-evaluated so that they may be adapted to the modern context, particularly on issues relating to the obligations of states versus individuals or communities, and the unprecedented scale of mass migration. In recent years the OIC have made progress in developing an understanding of these general principles (OIC 2006, 2012). However, more could be done to further develop theological understandings to enable the adaptation of classical teachings to the challenges of the modern context and to support protection practice. Such traditions could play a vital role in helping such countries manage forced migrant crises in a manner that is compliant with Islamic principles, whilst assisting forced migrants in recognising the rights and dignity conferred on them by God.

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Acknowledgements

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Contributors and reviewers (Islamic Relief unless stated otherwise): Atallah Fitzgibbon, Lucy Moore, Mehdi Ben Mrad, Mohammed Alsousi, Imran Madden, Fahimul Anam (Beacon Institute), Dr Mohammad Akram Nadwi (Al-Salam Institute)

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Registered charity no. 328158
Registered company no. 02365572
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