



## Sharia Law Asylum Seeker/Refugee Protection Scope within some Muslim States ahead of International Refugee Law and Human Rights Law

Usman Ibrahim Imam<sup>1</sup> & Aminu Muhammad Darma<sup>2</sup>

<sup>1</sup>PhD Candidate. Currently working with Ahmad Raji SAN  
No.65 Lamido Road, Nasarawa GRA Kano Office, Nigeria.

<sup>2</sup>PhD Fellow, Aminu Kano College of Islamic and Legal Studies Kano, Nigeria.

Corresponding Email: [imamusman251@gmail.com](mailto:imamusman251@gmail.com)

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### Abstract

*This paper attempts to explore some protection in terms of both quantities and qualities that have been available to Asylum Seekers/Refugees within shores of Muslim States, though this protection emanates from Sharia directly as opposed to both International and Regional Instruments that were drafted, in order to reflect or incorporate both International Refugee Law and International Human Rights Law, yet contemporary western scholars as well as pro-common law commentators are not satisfied with this type of Sharia protection only because it has been directly sourced and applied in its unadulterated form to those in need of International Protection not out of western fashion protection pattern, this is an indicative that international law in general is not ready for cross-fertilization to both Islamic jurisprudence and Arab Civilization. This article reiterates that Sharia Law is considered to supersede both International and Regional Treaties. This article would only see the light of the day upon a careful application of Doctrinal Methodology, which legalized the authors to garner relevant data while authors sitting on our respective chairs scrutinizing both the existing treaties and scholarly writings from which we could identify gaps of information, these gaps should also be addressed by the above-mentioned topic herein.*

**Keywords:** Asylum, Refugee, International Protection and Sharia

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### 1. Introduction

Islamic law has since then targeted solving the predicament of Asylum Seekers/Refugees within the shores of Muslim and Arab States, is forward-looking because of its generosity, which this paper intends to analyze, bearing in mind both International Refugee Law as well as International Human Rights Law are found grossly undersupplied in the eyes of Muslim State authorities, due to its gross inadequacy of available protection offered, such negative developments warranted each regional body to develop regionally

acceptable conventions aiming at bridging peculiar protection gaps of those people in need of International Protection under national laws as reiterated by a number of scholars, such protection gaps are much associated with definition conditionalities or shortcomings, which limit the chances or fortune of an Asylum Seeker processing refugee status on one of the five nexus conditions which are religion, nationality, race, political opinion, and membership in a particular social group as well as lack of precision of the term 'persecution' under



the refugee definition emanating from the 1951 Convention and its 1967 Protocol. However, Islamic law Asylum Seeker/Refugee protection has addressed some ever-emerging lacunae associated with the contemporary International Refugee Law and International Human Rights Law which are manifest justifications; those discourage both the acceptability and applicability of such International and Regional Enactments within sphere of some Muslim States. Our expectant result could be accomplished through a vital utilization of Doctrinal Methodology, which has dominated law scholarship in most of the developing nations as opposed non-Doctrinal methods, which allow an investigator to the field, therefore, this work is not an exception, we have identified the gaps within both International and Regional Treaties on Refugee and Human Right Laws, accordingly the primary and secondary scholars of the said fields have also done well to cure this persistent challenge. This enlargement compelled us citing from some long existing literature, which is readily available, for the reason that International Muslim scholars have exhausted their patience on the subject-matter, but few of African scholars have kept agitating towards an equal playing ground for Islamic Law, that would successfully carter for Asylum Seeker/ Refugee protection. Unquestionably, providing such equal playing ground for the divine law could within a shortest time convince the international community and state authorities towards recognizing and realizing the efficacy of Islamic law Asylum Seeker/ Refugee protection.

<sup>1</sup> 'Then We have put you (O Muhammad S.A.W) on a (plain) way of (Our) commandment [like the one which We commanded Our Messengers before you (i.e legal ways and laws of the Islamic Monotheism)] and follow you that ( Islamic Monotheism and its law), and follow not the desires of those who know not (Tafsir AT Tabari)

### Conceptual Analysis and Theoretical Framework

Substantiating unavoidable terms which the paper revolves around is central, this may necessitate us to ascertain the clearer pictures of the terms technically used herein, they include 'Sharia law', this has a divine meaning under Surah al-Jaathiyah verse 18<sup>1</sup>, whereas Kurawa in his book attempted to bring a comprehensive connotation on Sharia law, as totality of Islamic Laws emanating from Muslims' Majority acceptable sources, Quran and Hadith being the Primary Sources as well the Secondary Sources <sup>2</sup> Asylum seeker' and 'refugee'. The term 'Asylum Seeker connotes to an applicant for refugee status whose application is in the process of being determined. This does not change the position of any Asylum Seeker, whose application has been rejected. A term, 'Refugee' has attracted a variety of definitions both internationally and regionally, it has generally been defined by the Refugee Convention as:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>3</sup>

The term 'refugee' is also adopted for those who, having applied for asylum, have been

<sup>2</sup> Ado-Kurawa, I. (2000). *Shari'ah and the press in Nigeria: Islam versus western Christian civilization* . Kano: Kurawa Holdings Limited. P. 22

<sup>3</sup> 1951 UN Refugee Convention adopted on 28th July 1951 and entered fully into force 22nd April 1954 in accordance with Art. 43 of the same Convention (hereinafter, "1951 Convention)



given recognised refugee status. In addition, it also usually includes those who have obtained ‘exceptional leave to remain’ or ‘indefinite leave to remain’ (now included in the term ‘humanitarian protection’). This paper is underpinned by a Dismissive as opposed the Muslim popular Conformist Theory, which untirelessly conceded such alignment of Islamic law and International Rights Law. Notwithstanding fewer Law, the founder of Dismissive Theory had references are cited here for the sake of acknowledged some inherent similarities of precedent. Let us commence with the 1969 the two systems, though there are OAU Convention that aspires protection of uncompromising differences such as those displaced by both wars of liberation and casualties of subversion, in addition to sources of the two systems are fundamentally different because under the this refugee specific treaty there exists the Sharia Allah the Most High is the ultimate African Charter of Human and Peoples Rights which is broader in terms of Law-giver, while in the case of International Law is human beings humanitarian protections and coverage in exercising the power through different in the region, it also addressed some human recognised agencies.<sup>4</sup> With regard to lawful rights challenges including asylum seeking and unlawful acts under Islamic law what is across the region. With regard to Arab lawful, fundamentally remains so forever States in Middle East and North Africa had and vice versa, while under International on different occasions resolved drafting law what is unlawful, may later be declared both refugee specific treaties and human rights protection treaties, they included the lawful, depending on the human needs and 1965 Casablanca Protocol mainly on the desire or maximization of pleasure, likewise many unlawful acts in eyes of this treatment of Palestinian refugees, the 1992 system are lawful today such as same sex Arab Declaration on the Protection of marriage. He conclusively described Refugees and Displaced Persons in the International Law as ‘lizard hole.’ There are Arab World and the 1994 Arab Convention on Regulating the Refugee Status in the numerous International Law Treaties at both international and regional levels Arab Countries, all these Arab Treaties did respectively, though it has been both a not see the light of the day, because few unanimous and common saying, that the Arab States had ratified. The only working 1951 International Refugee Convention and regional enactment in these places has been its Protocol have attained the status of the Arab Charter, which is more of general Customary International Law due to their human right protections with a little bearing both widest acceptability and ratifications, of Asylum Seeker/Refugee protection. In respect to International Treaties most of the in addition its nonrefoulement provisions are contained in various treaties, more countries have ratified the 1951 Refugee Convention and its Protocol as stated above, especially in domestic laws of a number of as well as many human right treaties with countries, yet this does not hamper Global inclusion of International Covenant on Regions to come up with other treaties, in Economic, Social and Cultural Rights, the order to address their respectively peculiar Convention against Torture, the protection needs. Some of regional treaties are Asylum Seeker/ Refugee specific ones Convention on the Rights of the Child, and many are of International Human

Theoretical Framework coined by Ahmad Umar Kasule, who emphasized on the absolute existence and application of Sharia without aligning its values to that of the contemporary International Law

<sup>4</sup> Kasule, U. A. (2009). *Contemporary Muslims and humans discourse: A critical assessment*. Kuala Lumpur: IIUM Press. P. 74-5



International Covenant on Civil and Political Rights and among others.

### **Analysis of Some Major Enactments of both Muslim and Arab States**

Asylum Seeker/Refugee Protection has grown within the territories of Muslim States.<sup>5</sup> Neither League of Arab States<sup>6</sup> nor Muslim World has materialized any productively binding treaty, which stands the test of time for Islamically regional or international Asylum Seeker/Refugee Protections. To the liberal contemporary refugee scholars and International Human Rights Law advocates together with some policy makers and implementation actors as well as experts of International Criminal Law call for an urgent push, this is quite understandable due to the dynamism of Sharia Law. As opposed to views and voices of non-Muslim uncompromising scholars in the same fields, who have not expressed any goodwill on Islamic Law particularly whenever it comes to issues of International law as a whole.<sup>7</sup> Non-Muslim scholars held that any culture outside the ideological scope of the West, no matter how significant, it is there and then viewed as savage. This causes mistrust basically based on the non-recognition of provisions of contemporary conventional human rights law and other UN Conventions in the majority Muslim States, to them; Muslim leaders have many times referred to Islamic Law provisions, in order to circumvent International Law Treaty obligations. Relatively some contemporary Muslim scholars have tried to justify reasons for such circumvention of International Law

provisions, as one-side, prejudiced, biased and discriminatory, and then International Law only values the Western reasoning. Baderin in his classical article has affirmatively relied on the positions of some Muslim jurists; particularly Abdullahi Ibn Na'im, who opined that, for the international human rights movements attain universality that should recognize and respect other peoples' cultural values such would equally be incorporated into corpus of International Human Rights Law.<sup>8</sup> Kasule in his work has taken a different approach which is an antithesis to the above mentioned Conformist views whose main concern is to align the Islam law into the style of the contemporary International Human Rights Law. To him there is no space to compare and relate the two different systems, because International Law stands as a direct opposite of Sharia Law. The former does not recognize the existence of God only on human reasoning which set man free to do whatever he likes if he/she could not trespass another man's feelings.<sup>9</sup> With regards to regional efforts as well as community integration endeavor to expand their relevant Asylum Seeker/Refugee protections and at large extent human rights protections for their citizens and non-citizens, though on this estimation refugee experts have called for continuous tailoring refugee specific instruments, so their protection would not sink into wide-ranging protections of the general human rights law, nonetheless it is not wrong that refugee protections may be supplemented by

<sup>5</sup> This is a legal status conferred upon States that are Members of the Organization of Islamic Conference and received legal personality in line with the OIC Charter. They are 57 States, is the second largest union apart from UN membership. Its aims are stated under its preamble within Art. (A) (1) such as promoting Islamic spiritual, ethnical, social, and economic values among the member states

<sup>6</sup> The 22 member States of the League of Arab States are: Jordan, United Arab Emirates, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syrian Arab Republic, Somalia, Iraq, Oman, Palestine, Qatar, Comoros, Kuwait, Lebanon, Libyan Arab

Jamahiriya, Egypt, Morocco, Mauritania, and Yemen. Most of the member states here are also members of OIC.

<sup>7</sup> Baderin, M. A. (2010). Islam and the realization of human rights in the Muslim world in Joseph, S. & McBeth, A. (eds) *Research handbook on international human rights law*. London: Edward Elgar.

<sup>8</sup> Ibid, p.443

<sup>9</sup> Umar Ahmad Kasule, op, cit note 4



International Human Rights Law and. ‘Still other refugees will be received in parts of the world that have adopted regional human rights conventions...’<sup>10</sup> The Muslim World had so far attempted to come up with a number of regional instruments which have remained in their draft forms while some may have attained a persuasive force, it is worth noting the efforts of UNHCR towards facilitating indigenous, culturally viable Islamic protection frameworks that should derive profoundly on the long-held models, it was said that such regional instruments would emanate from Quran, Sunnah as well as other combining secondary rules. However, we are only bound to analyze Muslim instruments that saw the light of the day, though these are persuasively binding laws.

The Arab Charter<sup>11</sup> has 43 Articles, it has some more ascertainably relevant features such as on its recognition of UN international instruments,<sup>12</sup> its protections are typically based on citizenry of Muslim States, and moreover it protects Asylum Seekers/Refugees under Article. 23 that: ‘Every citizen shall have the right to seek political asylum in other countries, in order to escape persecution. This right shall not be enjoyed by persons facing prosecution for an offence under the ordinary law. Political refugees shall not be extraditable.’<sup>13</sup> From the stipulation of Article 1 (b) the Charter in clearer terms condemns Racism, Zionism and any other form of occupation and foreign domination, which becomes obstacles to the realization of human right.<sup>14</sup> With a deep community reading of other UN Human Rights

Conventions and International Refugee Law Instruments, each and every one may agree with us such treaties could serve as refugee generating factors.

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<sup>10</sup>Hathway, C. J. (2005). *The rights of refugees under international law*. New York: Cambridge University Press. P. 7-8

<sup>11</sup> Arab Charter on Human rights Adopted in Cairo on 15 September 1994 by the member States of the League of Arab States, it has 43 articles

<sup>12</sup> Ibid, its preamble pronounces that “Acknowledging the close interrelationship between human rights and world peace, Reaffirming the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International

Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Cairo Declaration on Human Rights in Islam”

<sup>13</sup> Ibid

<sup>14</sup> Ibid, ‘Racism, zionism, occupation and foreign domination pose a challenge to human dignity and constitute a fundamental obstacle to the realization of the basic rights of peoples. There is a need to condemn and endeavour to eliminate all such practices.’





Universal Islamic Declaration of Human Rights,<sup>15</sup> this Islamic Declaration is best of its kind because it does not give a way to temper with the sanctity of Islamic Law, since at the face of its preambular note, it is stated that the document is based on the Holy Quran and Sunnah. It contains 22 Articles. They are right to life,<sup>16</sup> right to

*(a) Every persecuted or oppressed person has right to seek refuge and asylum. The right is to be guaranteed to every human being irrespective of race,*

freedom,<sup>17</sup> right to equality and prohibition against impermissible discrimination,<sup>18</sup> right to justice,<sup>19</sup> right to fair trial,<sup>20</sup> rights to protection against abuse of power,<sup>21</sup> right to protection against torture,<sup>22</sup> right to protection of honour and refutation,<sup>23</sup> right to asylum, states that:

*religion, colour and sex.  
(b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims. Islamic Law International Law.<sup>24</sup>*

Others are right of minorities,<sup>25</sup> right and obligation to participate in the conduct and management of public affairs,<sup>26</sup> right to freedom of belief, thought and speech,<sup>27</sup> right to freedom of religion,<sup>28</sup> right to free association,<sup>29</sup> the economic order and the right evolving therefrom,<sup>30</sup> right to the protection of property,<sup>31</sup> statues and dignity of workers,<sup>32</sup> right to social security,<sup>33</sup> right to found a family and related matters,<sup>34</sup> rights of married women,<sup>35</sup> right to education,<sup>36</sup> right to privacy,<sup>37</sup> and right to freedom of movement and residence. This Islamic international Declaration is very all-encompassing, certainly it may be used by respective Muslim leaders to enrich Asylum Seeker/Refugee reception, because the Declaration made no discrimination between Muslims and non-Muslims, it is built upon self-worth of human beings. What probably anti-Islamic Law experts

may become critical to it containing a statement that may sound strange, that ‘right to equality and prohibition against impermissible discrimination.’<sup>38</sup> A simply interpretation may be employed to mean that this Article reiterates islamically inherent discriminations, which mostly revolve around Islamic personnel status between men and women. Yinka in his books quotes a woman participant, who stated that: it is inherent for a man to be a family head, this puts him into a position to both provide and carter, this position would remain fixed even where his wife is financially buoyant, she has never been mandated to provide except out of her own wish as a gift, this justifiable ground positions a man a to double share of a female competitor under Islamic law of inheritance, her share divine guaranty is

<sup>15</sup> Proclaimed by the Islamic conference held in Paris on September 1981 marking the beginning of the 15<sup>th</sup> century of Islamic era

<sup>16</sup> Art. I

<sup>17</sup> Art. II

<sup>18</sup> Art. III

<sup>19</sup> Art. IV

<sup>20</sup> Art. V

<sup>21</sup> Art. VI

<sup>22</sup> Art. VII

<sup>23</sup> Art. VIII

<sup>24</sup> Art. IX

<sup>25</sup> Art. X

<sup>26</sup> Art. XI

<sup>27</sup> Art. XII

<sup>28</sup> Art. XIII

<sup>29</sup> Art. XIV

<sup>30</sup> Art. XV

<sup>31</sup> Art. XVI

<sup>32</sup> Art. XVII

<sup>33</sup> Art. XVIII

<sup>34</sup> Art. XIX.

<sup>35</sup> Art. XX

<sup>36</sup> Art. XXI

<sup>37</sup> Art. XXII

<sup>38</sup> Art. III



much better than nothing.<sup>39</sup> Another reason forwarded by Hammudah Abdalati in his digested work that, it is solely and purely male responsibilities that puts him on an identified level above a female counterpart due to some financial burden he discharges as opposed to the Western perspectives that accused Islam, which has granted a higher level in both compassion and personality to a man than his woman counterpart.<sup>40</sup> Such permissible discriminations are viewed as unjustifiable constraints within the feminism jurisprudence which originated fully from lenses of the 1979 Convention on they: ...<sup>42</sup> it is significant of noting that these two international legal frameworks have gender specific and additionally other international human rights instruments have somewhat similar provisions which have frowned at their self-perceived permissible discriminations. It is not within the scope on this work to be superfluous on the feminism jurisprudence we only delved little, in order to substantiate our position that Islam Law has done well to international refugee law protections under the provisions of Universal Islamic Declaration of Human Rights.

Another milestone stride is Ashgabat Declaration on the International Ministerial Conference of Organization of Islamic Cooperation on Refugees in the Muslim World.<sup>43</sup> It has 19 paragraphs; each one is dealing with important aspects of refugee treatments across Muslim World, though there are introductory paragraphs and core stipulation paragraphs, like paragraph 2 states that '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.'<sup>44</sup> This provision reiterated the

the Elimination of all forms of Discrimination against Women (CEDAW), with wording of Article. 2 that states, that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake...<sup>41</sup> while Article. 2 of the Maputo Protocol also repeats that, 'States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures, in this regard importance of the Islamic well rooted practice of honoring the application of refugee status prior to the advent of Islam and it also became an Islamic practice during the progressively continuous growth of Islam in the Arabia and across the world. The Declaration exposed that Muslim States have played both refugees producing and hosting ones. This is also confined under the provisions of paragraph 3 of international document in question, that 'We express our deep concern over the situation of refugees in the world, particularly that most of them are hosted by OIC Member States.'<sup>45</sup> The document has as well considered the importance of the 1951 Refugee Convention and its 1967 Protocol, at the same Member States are argued acting upon their inevitable significance, 'We note that the 1951 Convention relating to the Status of Refugees and its 1967 Protocol have enduring value and relevance in the twenty-first century. We also note the importance of respecting the principles and values that underlie these instruments.'<sup>46</sup> This is a watershed protection provision, because it may help to widen the refugee protections in some Member States whose

<sup>39</sup> Olomojobi, Y. (2015). *Human rights on gender, sex and the law in Nigeria (2nd Ed.)* Lagos: Princeton. P.224-5

<sup>40</sup> Abdalati, H. (1986). *Islam in focus*. Kuwait: National Offset Printing Press. P. 215

<sup>41</sup> CEDAW

<sup>42</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003

<sup>43</sup> This Declaration was adopted in Ashgabat, Turkmenistan on 12 May, 2012.

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid, paragraph 5



Islamic Law Asylum Seeker/Refugee managements have not appropriately applied or where UNHCR has not carried out its mandates very well for some uncertainties by ratifying such international documents UNHCR may have a well-playing ground. The said Declaration has some peculiar stipulations about the refugee challenges across the Muslim World. Finally everlasting solutions to such persistent challenges, as in ‘the Arab-Israeli conflict, and stressed the need to resolve the issue of Palestinian refugees in accordance with international law and other relevant international legitimate resolutions, particularly United Nations General Assembly Resolution 194 and the Arab Initiative’<sup>47</sup> other paragraphs have tried to address such plights of refugees from Republic of Azerbaijan as well as the

generality of protracted refugee situations across the Muslim World. Another essential proviso is paragraph 10 of the Declaration, which has emphasized the important roles played by UNHCR within the territories of Muslim world,<sup>48</sup> in short all other targeted goals set to be achieved by the OIC in the Declaration in question, calls are made in collaboration with UNHCR, that voluntary repatriation being the most viable option to the OIC Member States, followed by reintegration and settlement of refugees into the selective territories of resettlement states. Paragraph 18 is also another bedrock proviso, because it may help us to evaluate our symbiotic interface assertion between Islamic Law provisions and that of International Refugee Law. This is because the Declaration has publically and categorically made that:

*We express deep gratitude to the Member States hosting refugees in spite of their limited economic resources, in affirmation of their noble Islamic values. We acknowledge the donation of Member States for their donations to international and regional organizations active in the field of refugees...*<sup>49</sup>

This paragraph has to be our point of reference where it is necessarily relevant throughout this paper, particularly where it is said ‘in affirmation of their noble Islamic values’ this may also put to the agitation of an Islamic Treaty on Asylum Seeker/Refugee treatments to race. It also affirms the roles which have been played by Islam, notwithstanding it is a convincing. For now we are right to say Islamic Law provisions for Asylum Seeker/Refugee

Protections stand the test of time, because some political leadership across some Muslim States has argued their populace to apply Islam Law towards sheltering refugees, despites the external pressures. It is very supportive and reflective by a clear demonstration brought into light by AKM, that the Morsi government in Egypt received Syrian refugees the administration and the Muslim partners treated refugees sympathetically’<sup>50</sup>. One of the conspicuous

<sup>47</sup> Ibid, paragraph 8

<sup>48</sup> “ We remain deeply concerned that too many refugee situations in the OIC countries have become protracted and need sustained and profound engagement of the international community and UN agencies to work in conjunction with UNHCR and other UN actors, as appropriate, to resolve the refugees’ plight and realize durable solutions consistent with international law and relevant UN General Assembly resolutions. In addition, we

recognize the need to step up efforts to address the root causes of refugee situations in accordance with international law, while respecting the sovereignty of Member States.”

<sup>49</sup> Ibid

<sup>50</sup> Ahsan, A. U. (2014). *Refugee politics in the Middle East and North Africa human rights, safety and identity*. Cairo Egypt: Palgrave Macmillan. P. 155





shortcomings of Asylum Seeker/Refugee protection mostly is the absence of any institutional framework across the Muslim world for the implementation of Islamic Law protection to the helpless persons. Such non-existence of institutional framework has hindered the successful implementation of Sharia law Asylum Seeker/Refugee protection needs. 'Islam is compatible with a prevailing system of nation or Statehood status in which all states, Muslim States and Non-Muslim States stand on the equal footing. It follows that Muslim States are capable of entering into binding agreements and abide thereby as long as they corroborate with Islamic principles and values,<sup>51</sup> in addition there is a draft International Islamic Court, which was discussed during the third Islamic Summit in Saudi Arabia at Taif in 1981.<sup>52</sup> Aiming its jurisprudence would be based on the primary and secondary sources of Sharia. To the significance of Islamic teachings to these people in need of protection centred on the experiences of the first Muslim generation, that some Muslim civilian population was advised by the Prophet Muhammad to flee before He joined them, the Holy Prophet was a typical asylum seeker in need of a humanitarian protection,'<sup>53</sup> noting that mass departure to Abyssinia was the first united movement in Islam, which preceded the fleeing to Madina by eight years, the cloud of persecution that forced Him to flee from Mecca was intense, because he was rejected by fifteen tribes in most of the cases He was harassed and mocked. Fleeing to Madina remained so important since it saved as disconnection between the reality and fabrication.<sup>54</sup> Muslim States have offered significant protections to these persons

beyond the letters and spirit of the 1951 Refugee Convention and its Protocol in solidarity of the religious teachings as stated above. That 'Even though some of those countries are not yet to agree to the Convention and its Protocol but they have generally done a tremendous contribution towards the protection of refugee.<sup>55</sup> For instance most of the leading refugee hosting Muslim States, like Turkey, 'Although Turkey signed the 1951 Refugee Convention, according to the spirit of the said Convention, it could only receive refugees from European States but out of its Islamic liberality such protection has been extended beyond the non-European Member States to non-Member States of the said Convention, it is hosting millions of Afghan refugees over three decades.'<sup>56</sup> Jordan is not a signatory to both 1951 Convention and its Protocol yet 'it has also received a large number of refugees from any jurisdictions particularly from Palestine and Syria. These cited Muslim States imitated the best form of asylum treatment in the history of human race which being based on in Islamic provisions where Allah the Most High says that: 'And if anyone of the Mushrikun (polytheists, idolaters, pagans, disbelievers in the oneness of Allah) seeks your protection then grant him protection so that he may hear the Word of Allah (the Qur'an) and escort him to where he can be secure, that is because they are men who know not.'<sup>57</sup> This undisputed authority has been construed as an indispensable injection on Muslims to offer such protection. And another important aspect of Sharia protection under scrutiny is the mandatory nature of hosting refugees by the officials of Muslim States, this has

<sup>51</sup>El-Dakka, M. S. ((2000). *State's crimes against humanity, deportation, and torture from the perspectives of international and Islamic law*. Kuala Lumpur: A.S. Noordee. P. 222

<sup>52</sup> Ibid

<sup>53</sup> Shoukri, A. M. (2011). *Refugee status in Islam concepts of protection in Islamic tradition and international law*. New York: I.B Tauris. P. 22

<sup>54</sup> Ibid, p. 33

<sup>55</sup> Ishan Jan, M. N. et al (2017). *International refugee Law practice and procedure*. Kuala Lumpur: UIIM. P. 147

<sup>56</sup> Ibid, p. 149-150

<sup>57</sup> Q 9V6



been seen in the Quranic provision where Allah the Most High says:

*... as they stayed among the disbelievers even though emigration was obligatory for them) , they (angels) say (to them): ‘‘ in what (condition) were you?’’They reply: ‘‘We were weak and oppressed on the earth.’’ They (angels) say: ‘‘Was not the earth of Allah spacious enough for you to emigrate therein?’’ Such men will find their abode in Hell—What an evil destination!,<sup>58</sup>*

Some scholars unanimously held that such obligation to flee is exercisable by people under persecution. Ahmad Abou-El-wafa reported that Sheik Usman bn Fodio who maintained that Hijra is necessitated on Muslim civilian population as categorically enshrined in the Holy Qur’an except on the vulnerable ones, who became incapacitated among the Muslim population.<sup>59</sup> It is worth mentioning, this specification defeats relevant intention of Article 31 of the 1951 Refugee Convention which exempts Asylum Seekers from harsh penalties for unlawful entry which violates immigration, because Sharia mandates admission of

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be

Asylum Seekers, similarly under International Law Asylum Seekers are at the mercy of the host states, which should subject them to multiple refugee status screenings.<sup>60</sup> The non-refoulement obligation is the cornerstone of International Refugee Law and International Human Rights Law which is available to persons who meet the definition requirements or nexus conditionalities of the 1951 Refugee Convention and its 1967 Protocol, which says: **Article 33. - Prohibition of expulsion or return ("refoulement")**

*claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*

<sup>58</sup> Q 4V97

<sup>59</sup>Abou-El-wafa, A. (2009). *The right to asylum between Islamic Sharia and international refugee law*. Cairo: UNHCR. P. 111

<sup>60</sup> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities

and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

expression into a number of International instruments such as the 1966 Principal Concerning Treatment of Refugees, adopted by the Asian-African Legal Consultative Committee, Article III (3). The 1967 Declaration on Territorial Asylum adopted unanimously by the United Nation General Assembly (UNGA) as Resolution 2132 (XXII), 14 December 1961, Article 3. The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, II(3). The American Convention on Human Rights, Articles 22(8). The Cartagena Declaration, section III, paragraph.<sup>61</sup> yet it does not have force of legal strength as Sharia mandates the Muslims to admit such Asylum Seekers, ‘when ending refugee status, verse 9:6 places responsibilities on Muslims to ensure that refugee reaches his place of safety. This means that the Islamic State shall accept all the charge and take all required safeguard to secure his/her passage to the safety place. This is one of the aspects of Sharia Asylum Seeker/Refugee protection, which has been more widely practised by the authorities of Muslim States, than any aspect of Asylum/Refugee protection.

### **Recommendation**

Sharia is initially different system of its own, developed out of its realities and meant for providing a peaceful human co-existence regardless of our divergences, it must be allowed to develop and be applied in its purest form reflecting Dismissive Theoretical Approach. If this is genuinely achieved, should eliminate most of the factors that force people to seek asylum and it would also permit the Muslim receiving States achieve some durable solutions within the ambit of Sharia for Asylum Seekers/ Refugees.

### **Suggestions**

It is undisputedly revealed there is no any binding refugee specific treaty in the Muslim World all efforts are in futility, it is our submission that whenever the Muslim World is determined to come up with another Refugee Convention, that would retain the high protection reach as it was contained in the proposed 1994 Arab Convention on Regulating Refugees in the Arab Countries, because it had also been extended to protect victims of natural disasters. This protection target could be released when there is an impartial institutional framework, which may support or compete with UNHCR, due to admitted facts that were in the public domain. We are hoping that when leaders concerned converge for drafting of such a document, they should not forget incorporating such institutional framework. This would also be positive to UNHCR, since the proposed body could reduce the refugee protection burden shouldered by the UNHCR. We may also opine, that the international community to encourage drafting another Additional Protocol, that may incorporate some non-Western refugee protection values that could also serve as a center of attention to Muslim States for an accelerated ratification of the 1951 Refugee Convention and its Protocol.

### **Conclusion**

Islamic Law protection on Asylum Seekers/Refugees hinders the development of regional Asylum Seeker/Refugee protection in the Arab World as well as Muslim World on conventional bases, because the Sharia grows unwaveringly. Some Western refugee scholars have admitted the effectiveness of both broadening the scope of approaches in principle as opposed to charity basis, which

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<sup>61</sup> Lauterpacht, E. The scope and content of the principal non-refoulement in Erika, F. *etal* (2003). *Refugee protection in international law*. United

Kingdom: UNHCR'S *Global Consultations on International Protection*. P. 98-93



has been well honoured by many donor nations and through regional actors/organizations, this may serve as a solution to more protracted refugee situations,<sup>62</sup> to lingering displacements and displaced people are deeply provided in Islamic Law provisions. Acceptably, the authors of this paper are not disputing about the effectively best Asylum/Refugee protection, which is mostly rewarded by the industrialized receiving States, yet the same may be achieved in some Muslim States if the international community takes steps recognizing Islamic law as a distinct legal system creditable of emulation and application towards both universal application and realization of International Refugee Law Regime.

### Bibliography

- Abdalati, H. (1986). *Islam in focus*. Kuwait: National Offset Printing Press.
- Abou-El-wafa, A. (2009). *The right to asylum between Islamic Sharia and international refugee law*. Cairo: UNHCR.
- Ado-Kurawa, I. (2000). *Shari'ah and the press in Nigeria: Islam versus western Christian civilization*. Kano: Kurawa Holdings Limited
- Ahsan, A. U. (2014). *Refugee politics in the Middle East and North Africa human rights, safety and identity*. Cairo Egypt: Palgrave Macmillan
- Baderin, M. A. (2010). *Islam and the realization of human rights in the Muslim world* in Joseph, S. & McBeth, A. (eds) *Research handbook on international human rights law*. London: Edward Elgar.
- El-Dakka, M. S. ((2000). *State's crimes against humanity, deportation, and torture from the perspectives of international and Islamic law*. Kuala Lumpur: A.S. Noordee.
- Hathway, C. J. (2005). *The rights of refugees under international law*. New York: Cambridge University Press.
- Ishan Jan, M. N. et al (2017). *International refugee Law practice and procedure*. Kuala Lumpur: UIIM. P. 147
- Kasule, U. A. (2009). *Contemporary Muslims and humans' discourse: A critical assessment*. Kuala Lumpur: IIUM Press
- Lauterpacht, E. The scope and content of the principal non-refoulement in Erika, F. et al (2003). *Refugee protection in international law*. United Kingdom: UNHCR'S Global Consultations on International Protection.
- Loescher, G. (1993). *Beyond charity international cooperation and global refugee crisis*. New York: Oxford University Press
- Olomjobi, Y. (2015). *Human rights on gender, sex and the law in Nigeria (2nd Ed.)* Lagos: Princeton.
- Shoukri, A. M. (2011). *Refugee status in Islam concepts of protection in Islamic tradition and international law*. New York: I.B Tauris.

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<sup>62</sup>Loescher, G. (1993). *Beyond charity international cooperation and global refugee crisis*. New York: Oxford University Press. P. 205