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ASYLUM IN PAST AND PRESENT MOROCCO

By Khadija Elmadmad

Morocco has always been a country of refuge and asylum and has received refugees and asylum-seekers throughout its history. The policy of asylum in Morocco was first based on the Islamic law of asylum and the Afro-African traditions and customs of receiving aliens. Since independence, Morocco has become party to most of international and regional instruments relating to refugees and human rights. Moreover, it has its own domestic legislation on refugees, though at present the number of registered refugees is very small. This paper examines the foundation of the concept of asylum, the historical development of the refugee phenomenon and the policies and laws concerning asylum and refugees in Morocco.

Morocco is a Moslem, an Arab and an African state. These three characteristics have shaped its history and influenced its state policies, notably those concerning asylum and reception of immigrants in particular and foreigners in general.

Asylum in Morocco has its origins in Berber and Arab traditions of hospitality and reception of guests, as well as in Islamic law and the principles of asylum. As in most traditional societies, Berber and Arab traditions that applied to foreigners and guests were based on the custom of respecting foreigners, who were treated as almost sacred. A foreigner or a guest had to be protected at any cost by the community or the tribe or the family where he or she sought asylum.

Before the arrival of Europeans, asylum in Morocco was religious as well as territorial: religious, because protection was granted in sacred places by religious persons; territorial, because protection was also given by community leaders who controlled the places where the asylum-seekers arrived. [1]

With the introduction of Islam in Morocco, the concept of asylum took a legal form. [2] According to Islamic Sharia Law, asylum is the duty of: (a) the persecuted to flee persecution by immigration (*hijra*) and seek protection elsewhere; (b) the leader of the receiving community to protect any asylum-seeker irrespective of his/her origin, race, religion or social status; and of (c) all members of the Moslem community as a way of promoting the humanitarian values of Islam and spreading the faith. Thus the protection (*al-aman*) granted is very broad and guarantees protected persons many rights. In case of violation of asylum, Islamic law recommends sanctions.

The concept of asylum in Islam is different from the concept of asylum in current international law. [3] According to international law, the state decides whether to grant asylum to an asylum-seeker or not. In the *Haye de la Torre* case (1951, ICJ Rep.71), the individual's right to be granted asylum seems not to have been the subject of a definite ruling by the International Court of Justice (Plender 1972). But the state practice has shown that the receiving state is not obliged to grant asylum. The only obligation of the state is *non-refoulement*, that is, not to send the asylum-seeker back to a country where he fears persecution. The state may even violate the protection granted without any control or sanction.

When the Europeans ruled Morocco, they gradually changed Moroccan laws and practices relating to asylum to suit their needs. In 1951, the French introduced the Western Refugee Law as found in the Geneva Convention and the 1967 Protocol relating to the Status of Refugees, ratified by Morocco. [4] Some of the shortcomings of the Geneva Convention were remedied in 1969 by the OAU Convention on Refugees to which Morocco also became party. However, neither of these conventions grants the asylum-seeker and the refugee a comprehensive protection as provided by Islamic law. But the Islamic traditions and customs of receiving foreigners have not completely disappeared from social behaviour in practice.

Morocco: A Land of Refuge.

Morocco has been a land of hospitality and refuge throughout its history. Granting asylum in Morocco was based on humanitarian customs and religious commands. Its geographical