



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**UNHCR Recommendations
for the Third Ministerial Conference of the Euro-African process on Migration
and Development, Dakar, 23 November 2011**

Introduction

1. Since its inception in 2006, the Euro-African process on Migration and Development has offered an important platform for the region to develop more coherent and comprehensive strategies for migration management. The Third Ministerial Conference in Dakar on 23 November 2011 is an opportunity to take stock of progress achieved thus far and to agree on new objectives and joint activities, particularly in view of the political transitions occurring in North Africa.

2. UNHCR welcomes the references to key international protection principles in the draft statement for the Dakar Conference. The process recognizes the interconnectedness of asylum and migration, and the specific international protection needs of asylum-seekers and refugees within mixed migratory movements.

3. UNHCR has prepared a set of recommendations which would help to ensure that international protection considerations are sufficiently integrated into the strategies and activities emerging from the Euro-African process on Migration and Development. These are presented for each of the themes addressed by the process: legal migration, irregular migration and migration and development.

UNHCR's 10-Point Plan of Action on Refugee Protection and Mixed Migration – a tool to facilitate to development of regional approaches

4. Refugees have a distinct status under international law. Their rights and the responsibility of states for their protection are governed by the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (1951 Convention). These instruments are complemented by international human rights law and, on a regional level, by the 1969 Convention of the Organization of the African Unity Governing the Specific Aspects of Refugee Problems in Africa.

5. In response to the many challenges inherent in identifying and protecting refugees traveling within broader movements of persons, UNHCR developed in 2006 a *10-Point Plan of Action on Refugee Protection and Mixed Migration*.¹ The Plan, which offers suggestions for the development of comprehensive and protection-sensitive approaches to managing mixed migratory movements, was in fact first presented by UNHCR at the Ministerial Conference of the Euro-African process in Rabat in 2006.

¹ UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

6. Today, UNHCR's 10-Point Plan enjoys broad global recognition and has provided a framework for regional cooperation on migration management in many regions, including in Africa. UNHCR therefore recommends exploring the relevance of the 10-Point Plan as a framework for translating the conclusions of the Euro-African process on migration and development into concrete action.

Legal Migration

7. *Diminishing pressure on asylum systems through legal migration channels:*

Abuse of an asylum system is more likely to occur when no legal alternatives exist for people without international protection needs to normalize their stay in a country. Opening legal migration channels can reduce pressure on asylum systems and preserve the integrity of asylum more generally.

8. *Enhancing protection space for refugees through migration instruments:*

The relevance of migration instruments needs to be further explored without prejudice to the specific rights of refugees. Refugees are distinct from migrants. They cannot return to their country of origin without serious risks for their lives and fundamental human rights. Guarantees against their *refoulement* are paramount. Nevertheless, migration instruments can enhance in some situations the protection space available to refugees. By way of example, refugees in some ECOWAS member states were able to benefit from the right of citizens of ECOWAS member states to obtain a legal residence and work permit in another ECOWAS member state as an alternative to repatriation after the cessation of their refugee status.

9. *Explore inclusion of refugees in legal migration schemes:* Some refugees, especially those with specific skills, can qualify for the legal migration schemes that exist between their host country and a third (destination) country. In this sense, legal migration schemes can offer a temporary, or even a durable solution, for refugees.

Addressing Irregular Migration

10. *Tackling the root causes:* It is important to address the root causes of irregular migration (e.g. lack of social or economic development, lack of good governance, conflict, human rights violations etc.). While this approach inevitably requires more time and investment, it needs to be an integral part of any migration management strategy. The real or perceived need to leave one's country at any cost, irrespective of the dangers, can only be mitigated by improving the situation that ultimately gives rise to such movements.

11. *Enhancing protection of people in distress at sea through better cooperation:* More than 2,000 people have lost their lives this year alone attempting to access Europe's territory from North Africa by sea. This tragedy points to the urgent need to strengthen the Search and Rescue regime in the Mediterranean region. In particular, states need to cooperate more closely and show greater solidarity vis-à-vis disembarkation and the consequent reception of persons rescued at sea. UNHCR has been developing with experts from different

regions a number of proposals to facilitate this cooperation among states, including a *Model Framework for Cooperation*.²

12. Establishing protection sensitive entry systems: UNHCR encourages states to ensure that measures taken to control irregular entry are “protection-sensitive” and do not prevent asylum-seekers, refugees and other persons in need of international protection from reaching safety, being protected against *refoulement* and accessing asylum procedures. Furthermore, a protection-sensitive entry system needs to be considerate of persons with specific needs.³ Addressing irregular migration solely through enforcing the law risks neglecting the specific protection needs of groups like asylum-seekers and refugees.

13. Vigorous action against human traffickers and smugglers and better protection of victims: Irregular migration is frequently facilitated by human smugglers and traffickers, thereby exposing people to great risk and abuse. Human trafficking and smuggling for purposes of profit are serious (international) crimes and perpetrators must be brought to justice. At the same time, victims of trafficking and smuggling need to be exempted from criminal sanctions. They often require protection and assistance because of the exploitation and abuse they have experienced at the hands of traffickers and smugglers. This is reflected in the Protocols to the UN Convention against Transnational Organized Crime on smuggling and human trafficking.⁴ In addition, Article 31(1) of the 1951 Convention specifies that Contracting States shall not impose penalties on refugees on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

14. Outreach campaigns that raise awareness, particularly among youths, on the dangers associated with smuggling and trafficking and at the same time provide information on options for legal migration can serve as a deterrent against irregular migration

Migration and Development

15. Capacitate refugees to become agents of development: Refugees can become agents of development if they are provided with an opportunity to make use of their skills and productive capacities while living in a country of asylum. Host countries are encouraged to ensure that refugees are enabled to participate in national labour markets and to engage in income-generating activities, including through proper documentation and recognition of the qualifications. At the same time, UNHCR encourages the international community to target development

² UN High Commissioner for Refugees, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond?*, October 2011, available at: <http://www.unhcr.org/refworld/docid/4ec211762.html> . The Summary Conclusions of this meeting will be available shortly.

³ Persons with “specific needs” could include: unaccompanied and separated children, victims of trafficking, elderly persons, women-at-risk, persons with physical and mental disabilities etc. (also referred to as vulnerable persons).

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea or Air, supplementing the United Nations Convention against Transnational Organized Crime of 2000.

assistance in refugee-populated areas and to ensure that such areas are incorporated in national development plans.

16. Large-scale repatriation movements present the international community with both challenges and opportunities in the areas of development and peace building. In order to capitalize on the opportunities, states need to provide more sustained support to the return and reintegration of refugees and IDPs, including efforts to promote new livelihoods, to rebuild shattered infrastructure and to foster harmonious social relations amongst different groups of citizens. It is equally important to engage development actors in planning for return and reintegration and in examining ways to ensure that short-term humanitarian aid is linked more effectively to longer-term development initiatives in returnee-populated areas.

Conclusion

17. Migration strategies can only be successful if they take into account the complexity of migratory movements, which often include people who have been forced to flee. The draft Ministerial statement offers a good basis for comprehensive and differentiated migration strategies, taking into account the specific international protection needs of people such as refugees and asylum-seekers. UNHCR looks forward to working with States and other actors on the translation of these protection considerations into action.

UNHCR
Division of International Protection
November 2011