

Moroccan Association for Human Rights
الجمعية المغربية لحقوق الإنسان
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HANDBOOKS

on the rights of Migrants, Refugees and Asylum seekers

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Guidebook

**on the Asylum Law and the
United Nations High
Commissioner for Refugees
in Morocco**

Introduction

Since the end of the twentieth century, the Kingdom of Morocco is facing mixed or composite migratory flows in which refugees and other categories of migrants travel together. This human mobility is facing security policies which fight against migrants without discrimination. However, refugees are a category of migrants for whom International law provides a special protection.

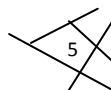
As a rule, Governments have the primary responsibility in protecting their citizens. International refugee protection is needed only in cases where states are unable or unwilling to protect them.

In spite of the saying "*ignorance of the law is no excuse*"; the asylum law is sometimes, a complex world. Consequently, asylum seekers and refugees do not always have practical information about asylum, its procedure and the legal instruments governing it.

It is not uncommon to find in some Moroccan areas, migrants whose position corresponds to the international definition of the refugee but ignore the existence of an international institution such as the United Nations High Commissioner for Refugees hereinafter UNHCR.

The main objective of this Guidebook is to put at the disposal of the reader, especially asylum seekers and refugees, a mass of practical information, a simplified and summarized presentation of the main international conventions and the Moroccan law relating to asylum.

In this perspective, it clarifies firstly, the legal framework for asylum and the UNHCR's mission in Morocco by studying the main international treaties signed and ratified by Morocco and its national law related to asylum (first part).



Secondly, the Handbook on asylum and the UNHCR in Morocco describes the mechanisms or institutions dedicated to asylum in Morocco (the Office of the UNHCR and the Bureau des Réfugiés et Apatrides), the legal status of these institutions, their mandate, their functioning, etc. (Second part).

In order to simplify and streamline the reading and understanding of the Guidebook, we will simultaneously use the method of Frequently Asked Questions (FAQ) by trying to answer the most frequently asked questions by refugees and migrants. A glossary of concepts relating to asylum is also annexed to the Guide.

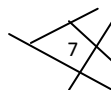
First part The legal framework for the right of asylum in Morocco

It exists in International Law, a multitude of treaties that refers to Refugees. As non-exhaustive examples, one can mention the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (article 44) and its Additional Protocol I, the 1989 Convention on the Rights of the Child (article 22), the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 3), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the African Charter on the Rights and welfare of the Child, etc.

However, international conventions specific to asylum are not many: the 1951 Geneva Convention relating to the Status of Refugees, its 1966 Additional Protocol and the Convention of the African Union (AU) governing the Specific Aspects of Refugee Problems in Africa. These conventions form the specific legal instruments governing asylum on the global level.

As regards the Kingdom of Morocco, the right of asylum is governed both by the national legislation (domestic law) specifically the 29th August 1957 Dahir (Royal Decree) on the modalities of the application of the 1951 Geneva Convention relating to the Status of Refugees and the international treaties signed and ratified by Morocco. The 1957 Dahir is the prototype of specific national law on asylum.

The first part of this Handbook focuses on the essential rules of the legal instruments that define the legal status of the UNHCR, legitimizes its mission in Morocco and the texts governing the right of asylum in this country in general.



The Law No. 02-03 governing irregular and regular migration¹ in the Kingdom of Morocco will not be discussed here since it is not a specific text to the right of asylum although it contains some provisions relating to Refugees and asylum seekers (articles 17, 38.1, (5) 29. a); the same for the new Moroccan Constitution of 2011 which article 30 stipulates that "the conditions for extradition and granting asylum are defined by law."

International treaties and Moroccan legislation related to asylum.

Title of the convention or national law	Date of signature or adoption by Morocco	Date of ratification by Morocco or entering into force
The 1951 Geneva convention relating to the Status of Refugees	1956	1957
The 1966 Protocol relating to the Status of Refugees	1966	1967
Convention of the African Union (AU) governing the Specific Aspects of Refugees Problems in Africa	1969	20 juin 1974
The 1957 Dahir on the modalities of the application of the 1951 Geneva Convention relating to the Status of Refugees	29 August 1957	29 August 1957
Headquarters Agreement between Morocco and the UNHCR	20 July 2007	21 October 2008
Dahir N° 1-08-90/ 20 October 2008)	20 December 2008	18 December 2008

¹ The Law 02-03 governing irregular and regular migration in the Kingdom of Morocco, à published in the official Journal Bulletin N°5160 of the 13th November 2003.

Chapter 1 : The 1951 Geneva Convention and its 1966 Protocol relating to the Status of Refugees

The Geneva Convention on the Status of Refugees² has been adopted in a special historical context specifically the displacement of several millions of people within the European continent after the Holocaust and the Second World War.

At the beginning, the Convention was intended to solve only the problems of refugees in Europe. Starting from 1960, the international context has undergone important changes with the proliferation of decolonization wars and other conflicts around the world.

This modification has created new refugees and challenges that forced the United Nations³ to expand the field of the 1951 Convention in order to adapt it to the new realities by adopting in 1966, a Protocol on the Status of refugees which removes the spatial and temporal limitation of the 1951 Convention. The Protocol relating to the Status of Refugees entered into force on the 4th October 1967. Since the adoption of this Protocol, the 1951 Geneva Convention is applicable without the 1951 dateline.

1. The definition of the Refugee according to the 1951 Convention

In accordance with the 1951 Geneva Convention relating to the Status of Refugees, the word Refugee means any person fleeing his country for "fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political

² The Geneva Convention on the status of refugees has been adopted on the 28 of July 1951. It entered into force on the 22 of April 1954. Accessible on line: <http://www.unhcr.fr/4b14f4a62.html>, consulted on the 29/07/2013.

³ NU, GA, Resolution N° 2198 (XXI), 1495th Plenary meeting, 16/12/1966.

opinion, the color of his skin, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to return because of this fear" (Article 1.2.). This definition is essentially based on the notion of persecution.

2. The rights and obligations of the Refugees according to the Geneva Convention

The 1951 Convention recognizes Refugees, a number of specific rights such as the criminal immunity of entry and residence in the territory of a country, the protection against deportation or expulsion, freedom of movement, the right to get identity papers and travel documents, property right, etc. The convention also lists the obligations of Refugees. The provisions of the Geneva Convention apply to refugees without discrimination based on their origin, religion etc. (article 3).

2.1. The personal status

According to the 1951 Geneva Convention, the personal status of a refugee shall be governed by the law of the country of his domicile (country where he or she lives). However, the treaty specifies that the host country shall respect the rights previously acquired by Refugees particularly those attaching to marriage (article 12.2).

2.2. Unlawful (illegal) entry and presence

- **Can an asylum seeker or a Refugee enter and stay illegally in a country?**

Pursuant to article 31.1 of the 1951 Geneva Convention, the Contracting States will not impose penalties on Refugees on account of their illegal entry or presence on their territory.

This immunity (protection) is justified by the fact that asylum seekers do not always have the opportunity to obtain a travel or residence document (passport, visa) while they flee persecution or other events that forced them leave their home country.

2.3. Prohibition of expulsion or return (“refoulement)

- **Can an asylum seeker or a Refugee under the protection of the UNHCR in Morocco be deported or expelled?**

Morocco is signatory to the Geneva Convention relating to the Status of Refugees and its 1966 Protocol. According to article 33 of this Convention, “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”.

Refugees who are under the protection of the UNHCR in Morocco can not be expelled or retruned save on grounds of national security or public order.

- **What to do in case of expulsion/refoulement or other emergencies?**

In case of arrest or risk of expulsion/refoulement, it is strongly recommended to Refugees and asylum seekers who are registered by the Office of the UNHCR in Rabat to inform it as soon as possible by communicating their identity and the location of the incident for a quick response. To do this, the UNHCR has stelled an emergency phonenumber that works round the clock, seven days a week: 06 61 48 44 68.

2.4. Freedom of movement

Refugees have the freedom of movement within the host country (signatory of the Convention), the right to choose their place of residence and the right to freedom of movement (article 26).

• **Are there any travel facilities for asylum seekers and Refugees registered by UNHCR in Morocco?**

In case of arrest or expulsion, the UNHCR provides Refugees and asylum seeker under its protection, travel facilities to return to their city of residence.

2.5. Public education

"The Contracting States shall accord to refugees the same treatments as is accorded to nationals with respect to elementary education" (article 22.1). Refugees have also the right to secondary education and university studies in the same conditions as foreigners residing in the host country (article 22.2).

2.6. Identity Papers and travel documents

Pursuant to article 27 of the 1951 Geneva Convention, the host country (signatory) grants identity papers to any Refugee on its territory who does not have a valid travel document. Likewise, "the Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require" (article 28).

• **Can Refugees get a residence card or a passport in Morocco?**

Although the 1951 Geneva Convention recognized refugees the right to get identity documents (national identity card or residence permit) and a travel document (passport or other), refugees who are under the protection of the UNHCR in Morocco

do not have the opportunity to get residence permit or travel document since 2004.

Nevertheless, there are rare cases of refugees who have obtained a residence permit in Morocco because they married a Moroccan citizen.

2.7. Administrative assistance

According to the Geneva Convention, the host State shall assist refugees regarding the delivery of official documents and certificates (article 25). The documents delivered by the Contacting State replace those issued by the country of origin.

3. The right to work (employment)

The Contracting States will accord to refugees, a treatment not less favorable than that accorded to aliens generally regarding salaried occupations, self-employment and liberal professionals (articles 17, 18 and 19). Generally, the Moroccan legislation allows foreigners to work with the authorization of the Ministry of Employment (aliens' employment contract and employment contract visa). Refugees who have a residence permit or a passport can work legally in Morocco. In this perspective, they must get the permission of the Ministry of Employment and Professionnal Training/Ministère de l'Emploi et la Formation Professionnelle (Employment Contract and Work Visa). It is important to emphasize that refugees are exempt from the certification of the National Agency for the Promotion of Employment and Skills (ANAPEC) concerning work permit application.

3.1. The general obligations of refugees

In any country in which they find themselves, refugees have duties to conform to its laws and regulations as well as to measures taken for the maintenance of public order (article 2).

3.2. Refugees access to courts

The access to courts is the possibility for a person to bring an action before a court or tribunal. The 1951 Geneva Convention recognizes refugees the access to courts in the host country (article 16).

Chapter 2 The Convention of the African Union governing the Specific Aspects of Refugee Problems in Africa

The convention governing the Specific Aspects of Refugee Problems in Africa has been signed by 41 African states on the 10th September 1969 in Addis Ababa (Ethiopia). It entered into force on the 20th of June 1974. With regard to the African continent, the 1951 Geneva Convention, its Protocol and the 1969 Convention of the AU 1969 must be considered a whole. This means that the Convention of the AU is a complement to the 1951 Geneva Convention. Nowadays, 45 African States have signed and ratified the Convention Governing the Specific Aspects of Refugee Problems in Africa. Morocco has signed the Convention of the AU Governing the Specific Aspects of Refugee Problems in Africa in September 1969 and ratified it in 1974. In 1984, Morocco has withdrawn from the Pan-African organization (AU).

• Is the Kingdom of Morocco bound by the Convention of the AU Governing the Specific Aspects of Refugee Problems in Africa?

Despite its withdrawal from the AU, Morocco is bound by the Convention of the AU Governing the Specific Aspects of Refugee Problems in Africa: the Convention of the AU is a regional complement to the 1951 Convention (article 8.2) and is recognized by the UN General Assembly, Morocco has signed and ratified the AU Convention and has never denounced it (article

13). As an African State, Morocco is into the regional geographic scope of this convention. Morocco has withdroan from AU as an institution but not from Africa (the Convention of the AU refers not only to its members but to all “African States” (article 8.2). On this point, the role of the OAU/AU in the elaboration and the adoption of the Convention must be interpreted as that of an institutional facilitator.

1. Some specificities of the Convention of the AU Governing the Specific Aspects of Refugee Problems in Africa

The convention governing the Specific Aspects of Refugee Problems in Africa is currently the newest and most flexible multilateral treaty relating to asylum and the protection of refugees in general. It is well-advanced than the 1951 Geneva Convention relating to the Status of Refugees on the following points:

1.1. The definition of the term refugee

Pursuant to the Convention of the AU, “the term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (article 1.2.).

This definition of the term refugee is much wider and extensive than that of the 1951 Geneva Convention. The definition of refugee elaborated by the 1951 Convention (article 1.2) is overly focused on persecution while that of the AU recognizes other situations such as aggression and foreign domination as reasons that may force persons to seek for asylum in another country.

1.2. Updating and regional adaptation

The Convention of the AU Governing the Specific Aspects of Refugee Problems in Africa completes the 1951 Geneva by adapting it to the problems of refugee in Africa and the new international context.

At this regard, the Convention stipulates clearly in its article 8.2 that it “shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees”.

In the same way, the preamble to the AU Convention is based on the principle that African refugees are essentially an African responsibility: “Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context”.

Chapter 3 The Dahir establishing the application modalities of the 1951 Convention relating to the Status of Refugees

In Morocco, the word Dahir means a royal decree which has the character of a legal act. The 1957 Dahir organizes the modalities of the application of the Geneva Convention. Although obsolete, this seven-article text sets out the legal and institutional framework for the protection of refugees in Morocco and organizes the national procedure for asylum.

1. The Office of Refugees and Stateless persons

According to the Royal Decree establishing the modalities for the application of the Convention relating to the Status of Refugees, the Office for Refugees and Stateless Persons (Bureau des Réfugiés et Apatrides/BRA) is the Moroccan institution responsible for the legal and administrative protection of the persons covered by the 1951 Geneva Convention, that is to say, refugees.

The BRA is under the authority of the Ministry of Foreign Affairs and Cooperation. It has an appeal body (Appeals commission) composed of the Minister of Justice or his representative (as Chairman), the Minister of Foreign Affairs or his representative and the representative of the UNHCR in Morocco. It is important to note that the BRA is no more operational since 2004. As we will see later, it is the Office of the UNHCR that deals currently with the protection of the refugees. Though this remark, it is useful to present the BRA as national institutional framework for asylum.

2. Competences and functioning of the Office for Refugees and Stateless Persons

The BRA has been established for the following attributions:

- Recognition of refugee status to any person under the mandate of the United Nations High Commissioner for Refugees or enters in the definition of article 1 of the 1951 Geneva Convention,
- Issue to the persons mentioned above, documents necessary to accomplish various acts of civil life, or to enforce the application of domestic law or international agreements relating to their protection;
- Authentication of acts and documents.

The appeal commission examines appeals submitted by those whom the BRA would have refused to recognize the refugee status, formulate an opinion concerning the application of the measures provided for by articles 31, 32 and 33 of the Geneva Convention and on appeals submitted by persons falling within the scope of these measures or at the request of the Moroccan authorities.

• Is it possible to submit one's application for refugee status to the Office of Refugees and Stateless persons (BRA)?

As stressed above, the activities of the BRA have been suspended since 2004. Thus, it is not possible to submit currently, an application for asylum to the BRA. The 1957 Royal decree certainly reflects a strong commitment to protect refugees but its provisions are obsolete. Therefore, the fulfillment of the mission of the BRA requires an upgrade of the Moroccan legislation regarding asylum.

Chapter 4: The Headquarters Agreement between Morocco and the United Nations High Commissioner for Refugees

The headquarters agreement or cooperation between the Government of the Kingdom of Morocco and the UNHCR was signed on 20 July 2007 in Geneva. The agreement has been published in the Official Gazette No. 5692 of the 18th December 2008 after its promulgation by the Dahir No. 1-08-90 of the 20th October 2008 promulgating the Law No. 37-07 approving, on principle, the ratification of the Cooperation Agreement by the Kingdom of Morocco.

The headquarters agreement allows the UNHCR to have a fully fledged representation in Morocco and defines the terms of this representation in the context of its mandate of protecting refugees: the opening of office (s) access to refugees, privileges and immunities of UNHCR, UNHCR's staff, etc.

1. Cooperation between the Government of Morocco and the High Commissioner for Refugees

In accordance with the Headquarters Agreement which organizes the framework of cooperation between UNHCR and the Moroccan Government in the field of international protection of refugees, UNHCR develops and examines projects relating to Refugees or other persons within its jurisdiction in close consultation and cooperation with Morocco. In accordance with its national laws, Morocco gives to UNHCR staff, free access to refugees, other persons of concern and the execution sites of UNHCR projects.

2. The office of the High Commissioner for Refugees

The cooperation agreement grants the UNHCR, the possibility of opening on the Moroccan territory, one or more offices. The decision to open office (s) is taken with the agreement of the Government of Morocco (articles 2 and 4). UNHCR may also refer to Morocco; the office that will have the quality of regional office after consultation with the Government. UNHCR premises are inviolable (article 6.3).

Part Two Mechanisms or institutions related to the asylum procedure in Morocco

In Morocco, the asylum procedure has some specificity to the extent that there are theoretically two relevant structures in this field: a national institution (the Office of Refugees and Stateless Persons (BRA) and an international organization (the Office of the UNHCR). On the practical, only the UNHCR office is operational since 2004. Pursuant to the 1957 Dahir on the modalities of implementation of the Convention relating to the Status of Refugees (article 4) and the Convention of the AU governing the Specific Aspects of Refugee Problems in Africa (section 8.1), there is collaboration between the two institutions. Besides, the UNHCR Office is member of the Appeals Commission of the BRA.

Chapter 1

The Office of the United Nations High Commissioner for Refugees in Morocco

The UNHCR office in Morocco is a representation of the United Nations High Commissioner for Refugees office which is based in Geneva and whose French name is Haut Commissariat des Nations Unies pour les Réfugiés. The High Commissioner for Refugees (UNHCR) is a subsidiary body of the United Nations (UN) established on the 15th of December 1950 by a resolution of the General Assembly of the UN. UNHCR works under the authority of the General Assembly of the United Nations and takes within its mandate, functions of seeking permanent solutions for refugees, helping States and, subject to the agreement, the concerned Government, to facilitate and promote the voluntary repatriation of refugees or their assimilation into the host country.

1. The headquarters of the United Nations High Commissioner for refugees in Morocco

The Representative Office of UNHCR in Morocco is located in Rabat (capital of Morocco). Its address is: 26, Avenue Tarik Ibn Ziyad, District Hassan. The UNHCR's building is located between the Embassy of the United States of America (USA) and the Moroccan Ministry of Foreign Affairs and Cooperation.

UNHCR's Contacts are: Tel: 0537 76 76 06/0537 76 61 23, Email: morra@unhcr.org, Fax: 0537 76 61 96.

How to access (Google Maps):



2. The legal status and mandate of the United Nations High Commissioner for Refugees in Morocco

For nearly half a century (1965-2004), the Office of the UNHCR had the status of an honorary representation (symbolic) in Morocco. A representation is called honorary when the delegate or representative of the mission is not a professional and can be

citizen of the host country of the mission. It is only from 2008 that this office has become a full-fledged representation in Morocco with the promulgation of the cooperation agreement (Headquarters Agreement) signed by UNHCR and Morocco.

Therefore, the legal basis of the UNHCR Representation in Morocco is the international protection mission of refugees assigned by the United Nations and the cooperation agreement between Morocco and the Agency. The UNHCR in Morocco enjoys the privileges and immunities accorded by the Convention on the Privileges and Immunities of the United Nations adopted by the UN General Assembly on the 13th of February 1946.

• In what context can the High Commissioner for Refugees open a representation in a country?

As part of its international protection of refugees mandate, UNHCR may have a representation (office) in a state with its consent and in the following cases: the state in question does not have a procedure or national law relating to asylum, the state is not a signatory to the 1951 Convention relating to the Status of Refugees, the State has a national asylum procedure but this procedure is not effective or operational.

• Can an asylum seeker choose the country where he/she wants to take refuge?

The asylum seeker has the legal right to choose the country where she/he wants to take refuge.

To that end, there are several possibilities: get to the target country and submit one's application to the competent authorities; submit one's application for asylum to a diplomatic mission (embassy or consulate) of the target country in default of an access to that State or get registered to the UNHCR to facilitate contact with the authorities of the country of destination. Some regions of the world apply policies that do not allow asylum

seekers to choose the country where they want to take refuge. It is the case of the European Union (EU) member states which, on the basis of the 1990 Dublin Convention and the Dublin II Regulation of the Council of Europe compel asylum seekers to submit their demand in the country by which they have acceded to the European territory.

Is it possible for someone who is already recognized as refugee in a country to apply for asylum in another state?

It is not possible to get the refugee status in several countries at the same time. Likewise, it is prohibited in the EU member states to ask for asylum in several countries concurrently. Moreover, the Dublin II Regulation aims to ensure that asylum seekers are sent from one European country to another or to prevent abuse of the system by asylum seekers through the presentation of several applications by one person.

3. The determination of Refugee Status by the United Nations High Commissioner for Refugees in Morocco

Determination of refugee status is the first step in protecting refugees' rights. It is one of the central functions of the UNHCR. To get the UNHCR refugee status, the asylum seeker must go to the UNHCR office in Rabat on a working day for the registration provided of all documents in his possession. He/she must be accompanied of all his family members if the family is with him/her. The applicant fills (with the assistance of an UNHCR agent if necessary) a form or appointment sheet for the application (see appendix).

After completing this form, the applicant will be received by an UNHCR staff for a registration interview. On the basis of the

previously filled appointment form, the agent asks some questions to the applicant.

During the registration interview, the asylum seeker can get access to an interpreter provided by the UNHCR and supply additional information concerning his/her request. During the interview, the applicant must be sincere, precise and avoid false declarations.

If the reasons given during the registration interview correspond to those provided by the 1951 Geneva Convention, the Office shall issue the applicant, a certificate (see appendix). The UNHCR official gives the holder of this certificate, an appointment for more information about the request. Otherwise, the request is rejected with the opportunity to appeal within 48 hours after the rejection. The claim is legally considered by the Office of the UNHCR, which verifies the information provided by the applicant to make a decision. If the answer is positive, the refugee card is given to the applicant. In case of rejection (rejection of the request), UNHCR motivates its decision and explains the way forward. The appeal against the decision of the UNHCR should be done within 30 days. If the appeal is accepted, the applicant gets the refugee card.

If rejected, the Office shall provide the applicant, a decision on the rejection and explains the consequences related to its decision.

a) The refugee card

The refugee card is a secure document more sophisticated than the certificate for asylum seekers (see model in appendix). It allows the identification of the refugee. Any person to whom the UNHCR offers the refugee card is placed under its protection. Members of the refugee's family enjoy the same protection.

b) The asylum seeker certificate

The asylum seeker certificate is a document printed on paper with a watermark borrows "Touch Safe" (see appendix). The holder of this certificate is under the UNHCR protection until a final decision on his application.

4. The resettlement in a third country

Resettlement is a protection tool that consists in transferring the refugee from the country where he/she was granted asylum to another country with its consent and with the assistance of the UNHCR. The resettlement country grants the refugee, legal and physical protection. In principle, refugees can not ask for resettlement except in cases of family reunification. Resettlement is on demand of the states and obeys profiles sought by them. UNHCR in Morocco examines resettlement applications according to eligibility criterias based on particular vulnerability and makes a "matching" with the required profiles.

5. The UNHCR assistance programs for refugees

As part of its mission to protect refugees, the UNHCR agency in Morocco has implemented a wide range of assistance programs for refugees in cooperation with its partner associations in order to facilitate their integration. These programs are: the legal and administrative assistance Program, the health Program, the training Program for small profession, individual reception Program, education and languages Program, the Program for promotion of income-generating activities, the Program of specialized professional training (internship) , Women refugees host Program , financial assistance Program to the poorest refugees, etc.

5.1. The legal and administrative assistance

The UNHCR legal and administrative assistance to refugees includes: information relating to the determination of the status of refugee, representation by a lawyer in the event of a trial or police interrogation, the accompaniment in administrative procedures such as obtaining of document (loss statement) support (full or partial) of legal fees in case of trial, the intervention besides authorities in case of arrest, postal domiciliation, listening and legal advice etc. As part of the legal and administrative assistance, the UNHCR office in Morocco works with the Moroccan Organization for Human Rights (OMDH) in Rabat and Oujda through their centers for Legal Assistance to Refugees and Asylum seekers.

Address and contacts for legal and administrative assistance (OMDH):

Oujda: 3, Rue Ziyani, Quartier Elmahata, 1^{er} étage, Appt. N. 6 (près de l'école Ibn Sina),

Rabat: 10, rue Ghana 3, quartier Océan, Rabat.

5.2. The healthcare Program for refugees

The UNHCR medical assistance Program is managed in partnership with the **Pan-African organization for the fight against AIDS (OPALS)**. It is worth noting that OPALS is not concerned exclusively with Sexually Transmitted Infections and HIV/AIDS, contrary to popular belief among refugees. The UNHCR medical assistance to refugees includes: facilitation of access to medical care in public hospitals, provision of drugs and free medical consultations, sensitization and access to testing and condom distribution regarding Sexually Transmitted Infections and HIV/AIDS, facilitating the vaccination of children, monitoring pregnant women during the period of childbirth, registration of children to UNHCR services and to the registry office, etc.

Regarding the registration of children, refugees must take from hospitals, birth certificates for newborns. The healthcare program also offers other medical services such as dentalcares and optical glasses which may be granted only on the recommendation of UNHCR partner (OPALS). The medical assistance is offered for free according to the budgets.

OPALS address and contacts:

Rabat: 25, Youssoufia Est.

Telephon: 05 37 65 71 21; 080 100 30 40 (HIV/AIDS)

Email: opalsmaroc@hotmail.com

Emergency phone numbers:

0671 43 01 81/ 0534 04 91 46

Casablanca: Centre de santé Hank, La Corniche,

Telephon: 0522 39 19 70.

5.3. The income-generating activities promotion Program

The income-generating activities promotion program supports the implementation, the creation and the reinforcement of microprojects or income-generating activities for refugees. This program is implemented in partnership with the Moroccan Association for Support to the Promotion of Small Business (Association Marocaine d'Appui à la Promotion de la Petite Entreprise/AMAPPE).

Applicants must develop a microproject (individual or collective) and submit their application to AMAPPE. The project will be valued by AMAPPE members and validated by a validation committee composed of representatives of UNHCR / AMAPPE that takes a decision concerning the financial assistance to the microproject.

AMAPPE's Address in Rabat:

7 Rue Jbal Tazaka, Apartment No. 2, Agdal

Phone: 0537 68 29 88

Email: amappe@mtds.com

5.4. The school and language Program

In partnership with the Fondation Orient Occident (FOO) in Rabat, UNHCR assists refugees in the enrollment of their children in public schools, takes charge of admission fees to public schools and school supplies. The program also offers to adults and children, classical and colloquial Arabic courses.

FOO's Address ad contacts:

Centre Yacoub El Mansour, Avenue des

FAR, Massira, Rabat

Telephon: 05 37 79 36 37

Fax: 0537 29 15 43

Email: fondationorientoccident@yahoo.fr

Site <http://www.fondation.orient-occident.org> (website).

How to access (Google Maps):



5.5. Individual reception

The individual reception is a program that offers refugees, listening, counseling, coaching, social and psychological counseling and visits to the refugee community. This program is also implemented in partnership with the FOO.

5.6. Profession learning and specialized training program

In partnership with the FOO, UNHCR provides refugees, a sixmonth training program on small trades learning such as plumbing, mechanics, hairdressing, tailoring, shoemaking, etc.

5.7. The reception of refugee women

In partnership with the FOO, the Office of the UNHCR has set up a center for refugee women. This center consists of several workshops: sewing, pastries, hairdressing and esthetic, computer science and day nursery for the children of women who go to the center.

Appendix

I: Glossary of terms specific to asylum

- **Stateless/Heimatlos:** A stateless person or heimatlos is a person who has no nationality. Both terms are used to call a person that any country considers as its national in accordance with its national law.
- **Asylum:** The word asylum refers to a protection, a refuge or shelter granted by a State to a person. There are two forms of asylum: diplomatic asylum and territorial asylum. Asylum is called diplomatic when the applicant is hosted in the diplomatic and consular premises of a State outside its territory. The territorial asylum is a protection granted to a person on a state's national territory under the mandate of the High Commissioner for Refugees or a national asylum procedure.
- **Convention:** Convention is a written international agreement between state entities or international organizations and states. The words agreement, convention, treaty and charter are synonyms.
- **Asylum seeker:** The word asylum seeker refers to both a person provisionally registered by the UNHCR or a competent national structure and whose application is on examination and a person who falls within the definition of the refugee but who has not yet submitted an application for asylum. Asylum seekers are potential refugees.
- **Contracting State:** These words denote a State that has signed and ratified a convention.
- **Externalization of asylum:** Externalization of asylum is a policy in a country or region that results in the creation or the

desire to create a sort of outside outpost in this country or this region for the examination of applications related to asylum.

- **Immunity:** Immunity is a form of protection. It may be legal (protection against lawsuits), criminal etc.
- **Migrant:** The word migrant describes a person who moves from one region or country to another for work or other reasons. In its broad sense, the term migrant means asylum seekers, refugees, economic migrants, etc.
- **Refugee:** Is considered as refugee, a person who has left his country and can not return for fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinions. The term refugee refers also to a person who is forced to leave his/her usual place of residence to seek refuge in another country because of aggression, foreign occupation, foreign domination or events disturbing seriously public order in his/her country of origin or the country of his nationality.
- **Repatriation:** Repatriation is the free and voluntary return of the refugee in his/her country of origin where, the use of the term "free and consent repatriation. Repatriation is one of the UNHCR's essential missions.

II-Model of appointment form for registration

جميع الخدمات المقدمة من قبل مكتب المفوضية مجانية
All UNHCR services are free - Tous les services du HCR sont gratuits



HCR RABAT
Feuille de rendez-vous pour les personnes relevant
de la compétence du HCR

The UN Refugee Agency
مذكرة تحديد موعد لشخص موضع اهتمام
مكتب مفوضية الأمم المتحدة لشؤون اللاجئين بالرباط

The UN Refugee Agency

Name/Nom: الاسم:
Contact: الهاتف:
File Number/Num Dossier: رقم الملف:

Vous trouverez ci-après les informations de votre rendez-vous avec l'UNHCR Rabat
Dear Sir/Madam, please find below information on your appointment with UNHCR Rabat

تفضلوا بالإطلاع في ما يلي على معلومات حول موعد القابلة مع مكتب مفوضية الأمم المتحدة لشؤون اللاجئين بالرباط

App, Type/Type Rendez-vous: نوع القابلة:
Date: التاريخ:
Time/Heure: الساعة:
Commentaires: ملاحظات:

26, Avenue Tariq Ibn Ziad - Hassan - Rabat, PostCode:10010, Fax:0537766196/ Hotline: 0537766123
المملكة المغربية، الرباط،
ص.ب 10010 فاكس: 0537766196 الخط الساخن: 0537766123
إذا كنت تتصل من أجل مسألة تتعلق بعملية التسجيل أو الرعاية الاجتماعية يرجى الاتصال بـ 0537766123.
If you have any questions regarding Registration or Community Services, please contact : 0537766123.
Si vous avez des questions concernant l'enregistrement ou les services sociaux, prière de contacter : 0537766123.

إذا كنت تتصل من أجل مسألة طارئة تتعلق بالاحتجاز أو الترحيل أو أي نوع من العنف يرجى الاتصال بالخط الساخن 0537766123.
If you have any questions/concerns regarding arrest, detention or deportation, please contact : 0537766123.
Si vous avez des questions concernant arrestation, détention ou refoulement, prière de contacter : 0537766123.

هذه الوثيقة لا تعد بطاقة هوية. يمكن توجيه أي سؤال يتعلق بالمعلومات الواردة في هذه الوثيقة إلى مكتب مفوضية الأمم المتحدة لشؤون اللاجئين على العنوان المذكور أعلاه.
This is not an ID. Questions regarding this document may be directed to the United Nations High Commissioner for Refugees at the address above.
Ce document n'est pas un document d'identité, pour tous vos questions concernant ce document, prière de contacter le HCR.

This appointment slip is issued by UNHCR to persons applying for asylum in Morocco. The bearer of this appointment slip is a person of concern for UNHCR and lies under its protection.
Cette feuille de rendez-vous est délivrée par le HCR pour les personnes qui demandent l'asile au Maroc. Le porteur de cette feuille de rendez-vous est une personne relevant de la compétence du HCR et se trouve sous la protection du HCR.

تذكركم المفوضية أن جميع خدماتها مجانية



III- Model of certificate for asylum seeker

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**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**

Haut Commissariat des Nations Unies pour les Réfugiés à Rabat
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26 Avenue Tariq bin Ziyad Hassan, Rabat-Marrakech



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS**

مكتب المفوضية السامية للأمم المتحدة لشؤون اللاجئين في الرباط
هاتف: +212 537 76 01 23
فاكس: +212 537 76 01 96
26 شارع طارق بن زياد، مكناس، الرباط، المغرب



CERTIFICAT DE DEMANDEUR D'ASILE DU HCR وثيقة إثبات طلب اللجوء لدى مكتب المفوضية السامية للأمم المتحدة لشؤون اللاجئين
تاريخ الإصدار: 04-01-2013

Date de Délivrance: **04-01-2013**

N° du dossier: **918-05C011154** رقم الملف: **918-05C011154**

N° de l'individu: **918-000013335** الرقم الشخصي: **918-000013335**

Nom: **John Smith** الاسم: **John Smith**

Date de Naissance: **25-01-1969** تاريخ الميلاد: **1969-01-25**

Lieu de Naissance: **Kinshasa** مكان الميلاد: **Kinshasa**

Nationalité: **Russian Federation** الجنسية: **Russian Federation**

A QUI DE DROIT إلى من يهيمه الأمر

Ce document certifie que la personne susmentionnée est un demandeur d'asile dont la demande de statut de réfugié est en cours d'examen par le Bureau du Haut Commissariat des Nations Unies pour les réfugiés à Rabat. ويشهد مكتب المفوضية السامية للأمم المتحدة بأن الشخص المذكور أعلاه هو طالب لجوء ويتقدم مكتب المفوضية السامية للأمم المتحدة لشؤون اللاجئين في الرباط بدراسة طلبه (تقرير وضعه).

En tant que demandeur d'asile, elle relève de la compétence du Haut Commissariat des Nations Unies pour les réfugiés et doit notamment être protégé(e) contre tout retour forcé vers un pays où elle craint d'être exposé(e) à des menaces contre sa vie ou sa liberté, tant qu'il ne sera pas définitivement statué sur sa demande de statut de réfugié. وبصفته طالب لجوء، فإنه يعتبر من الأشخاص المشمولين باهتمام مكتب المفوضية، و يتوجب بشكل خاص حمايته من العودة القسرية إلى بلده حيث يدعي أنه يواجه تهديدا لحياته أو لحرية، إلى أن يتم اتخاذ قرار نهائي بشأن طلب الحصول على صفة اللجوء.

Toute assistance accordée à la personne susmentionnée serait hautement appréciée. ونقدر عاليا تقديم أية خدمة إلى الشخص المذكور أعلاه.

Les questions portant sur des informations qui figurent dans le présent document peuvent être adressées au Haut Commissariat des Nations Unies pour les réfugiés, à l'adresse ci-dessus. يمكن توجيه أي سؤال يتعلق بالمعلومات الواردة في هذا الكتيب إلى مكتب المفوضية السامية للأمم المتحدة لشؤون اللاجئين على العنوان المذكور أعلاه.

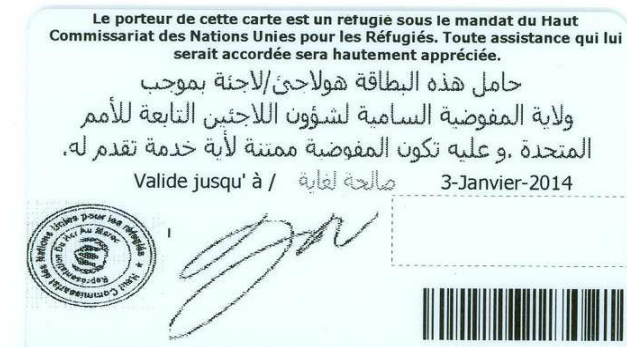
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Secure Paper Serial No: **AC 617999**

IV-Model of refugee card (front and back)



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- African Union: <http://www.au.int/fr/> .

Guidebook

**on the Moroccan policy and
legislation relating to asylum**

Introduction

Morocco has ratified the 1951 Convention relating to refugees in 1956. Since then, there has been an evolution of the situation but the Moroccan political situation remains confused concerning asylum. In the early 2000s, many upheavals erupted between UNHCR and Morocco regarding asylum. This for many reasons but the lack of a Headquarters agreement between Morocco and UNHCR had served as a pretext to show the real political face of Morocco concerning asylum.

Wishing to respect international standards on the rights of refugees, UNHCR continues to work in Morocco despite a policy of variability due to geopolitical uncertainties intermittently. This situation can be explained by the lack of a coherent Moroccan policy on asylum.

Our plan is as defined:

- 1- The Moroccan national legislation,
- 2- Political and legal pretexts of Morocco regarding asylum;
- 3- The European pressures and their impact on the Moroccan policy of asylum;
- 4- "Post policy" reality and recommendations.

1- Moroccan legislation relating to asylum

Morocco has elaborated a legislation relating to the right of asylum since it became member state to the Geneva Convention. Thus, it has adopted a Decree establishing the implementing rules of the Convention relating to the Status of Refugees.

- The creation of an Office for Refugees and Stateless persons (Bureau des Réfugiés et Apatrides/BRA) under the authority of

the Ministry of Foreign Affairs: This office is responsible for recognizing refugee status to any person who is under the protection of the UNHCR or responds to the definition of the refugee in accordance with the of article 1 of the 1951 Geneva Convention.

The BRAS is also responsible for issuing the persons mentioned above, the required documents to perform either various acts of civil life or allow the application of domestic law or international agreements relating to the protection of the refugees.

The decree has established an appeal committee which includes the Minister of Justice or his representative, the Minister of Foreign Affairs or his representative and the representative of the UNHCR in Morocco. The Commission is also responsible for considering appeals against the decisions of the BRA.

Regarding the evolution of this legislation on asylum, the Dahir has never been applied entirely. Since 2004, the BRA has no more activity in several fields of its competences. Thus, it is not possible to submit an application for asylum to this structure. In addition, the BRA does not issue documents to refugees recognized by the UNHCR.

Regarding article 17 of the Law 02-03, it should be noted that the residence card is given subject to a regular entry or stay stays on the Moroccan territory otherwise exception, to

5 - The foreigner who obtained the refugee status under the 2 Safar 1377 (29 August 1957) Decree laying down the detailed rules for the application of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 as well as his spouse and minor children, or in the year following their civil majority. The provisions of Article 29 relating to the foreigner who is subject to expulsion shall not apply to any person to whom the refugee status has been recognized or whose application has not yet been processed.

The stranger who enters Morocco by sea or air and is not authorized to do so or applies for asylum can be maintained in the waiting area of the port or the airport for the time strictly necessary to his departure or the examination tending to review whether his application is not manifestly unfounded.

2-The political and legal pretexts of Morocco regarding asylum

Like all other conventions, the 1951 Geneva Convention does not require signatories, a fixed way to implement it. It gives states the freedom to implement it in accordance with their legal systems. This could complicate the situation in the case of Morocco due to the absence of a legal framework for asylum, because all texts are focused on migration.

Despite the absence of an obligation to recognize refugees, the Convention obliges States to examine asylum applications without forcing them to grant the status of refugee. The examination of applications for asylum must be in accordance with restrictive criteria that emerge from the refugee definition adopted by the Convention.

Concerning the legal instruments, one can mention the Convention of the African Union (AU) Governing the Specific Aspects of Refugee Problems in Africa, the declaration of Carthage, the Arab refugee convention adopted by the Arab League in 1994 and the practice of the UNHCR which adopts a definition larger than that of its statut.

The freedom given to States in the adoption of mechanisms of their choice for the determination of the refugee status is based on their right to grant or deny asylum. Therefore, there is no provision in the convention that requires states the obligation to adopt legislation on refugees.

On this point, the authors of the 1951 Convention did not want to repeat the provision contained in Annex 1 of the constitution of

the International Refugee Organization. This organization provides an international quasi-judicial refugee status granting system under the definition adopted by its constitution. States did not take back this system because many had unilaterally renounced considering that it violates their sovereignty.

3-The European pressures and their impact on the Moroccan policy relating to asylum

It is necessary to go back to 1996, the signature of the Association Agreement between Morocco and the European Union and track the chronicles of the complex relations between Morocco, Spain and the rest of the Union, to see the emergence of the fight against refugees as central stake of the international scene where Morocco is obviously dominated: a country economically poor and dependent of the international aid for development mainly from Europe, dependent in many aspects of the situation and the income of its diaphora, particularly in France, attracted by the economic and political pole of the European Union and applicant for a privileged partnership with the EU, Morocco is not able to resist diplomatically to the pressures of powers coalition under the aegis of the European Union.

The Morocco-European Union Association Agreement has been signed while the Union was implementing a common area of free movement which means for aliens, the curing of the European common borders. It is in 1997 and 1998 that barbed wire barriers which surround currently the enclaves of Ceuta and Melilla have been built and a monitoring system of the southern borders of Europe including the Strait of Gibraltar has been settled.

From 1998 to 1999 Presidencies of the European Union were assured by states (Austria and the Netherlands) which, the national policy is particularly marked by the rise of the extreme right in the electoral ground. In 1998 Austria got the Presidency

and spread very quickly to the EU institutions, a Strategy paper on immigration and asylum policy.

4- The political role and protection of refugees in Morocco

A-Agreements and cooperation with political and restrictive vision:

The basic tool for the protection of refugees and asylum seekers in Morocco is the documentation provided by the UNHCR to the beneficiaries because it identifies the persons under its jurisdiction who enjoy the rights thereto. UNHCR provides three kinds of documents: certificates for asylum seekers, certificates for refugees and refugee cards that substitute certificate of refugee.

In the years 2005 and 2006 the Moroccan authorities have informed the UNHCR of their concern about the lack of reliability of the documents provided by the UNHCR which were likely to be easily falsified as printed on A4 format paper.

Considering this remark, the UNHCR printed from the 1st of January 2007, certificates for refugees and asylum seekers on a secured paper difficult to falsify. The document contains a serial number and a dry stamp. Moreover, from the 1st November 2007, UNHCR began to replace certificates of refugees with refugee cards which are more difficult to falsify.

All of these changes are due to the pressure of the Moroccan authorities who wanted more control over the number of refugees. Fact sheets explaining the methods for verifying the authenticity of documents have been printed and shared with various departments.

The issue of documents for refugees and asylum seekers has an important character in the Morocco because it helps to prevent arrests for failure of residence permit and subsequent return or expulsion. The principle of non-refoulement (non expulsion) exists indeed in international law (article 33 of the 1951 Geneva Convention of 1951) and in the Moroccan domestic law.

Although the documents produced by the UNHCR do not lead to the obtaining of a residence permit in Morocco, informal working relations were established in the practice between the UNHCR and many local authorities in order to verify the authenticity of documents in case of identity check. Thanks to these checks, many asylum seekers and refugees especially, can be released in case of arrest. Besides the cases of arrest for lack of residence permit, refugees are sometimes arrested for committing certain offenses.

Pursuant to article 2 of the 1951 Geneva Convention, refugees are obliged to respect the laws and regulations in force in the country where they are and can be prosecuted for violations of the law. The penalty must be consistent with national laws and punishment for a crime or misdemeanor committed in the territory of the country of asylum should not lead to an expulsion.

In Morocco, refugees are also victims of attacks or other crimes and wish to lodge a complaint. In order to ensure legal representation of all refugees in the courts, UNHCR has established a partnership with the Moroccan Organization for Human Rights (OMDH).

Lastly, the UNHCR has started in 2007, a mass of roundtable discussions with officials of the Ministry of Justice so as to promote the rights of refugees in the trial proceedings.

B-The national policies for sustainable solutions

There are three areas of concern to Moroccan authorities and UNHCR where cooperation is necessary:

- Local integration or integration on the spot, that's to say, installation in the country of asylum ,
- Repatriation freely consented by which refugees return to their country of origin in conditions of safety and dignity,
- The solution of resettlement in which refugees leave the country of asylum for a third State that accepts to welcome them definitely.

- **Local integration**

As long as the security situation in the majority of the refugees' country of origin remains the same, local integration is the sustainable solution for the majority of refugees in Morocco. Local integration is a gradual process that takes place at three levels.

1- The legal level: gradually, refugees should be given a wider range of rights that would lead to the granting of the right of residence or citizenship acquisition.

In Morocco, one of the first steps would be the granting of temporary residence permits to refugees after the approval by the BRA, of the refugee status recognition decisions taken by the UNHCR.

1- The economic level: Refugees should gradually become less dependent on aid and assistance of the host country or other organizations. They could become more autonomous, support themselves and contribute even to local economy.

2- The social and cultural level: the interaction between refugees and the local community should allow refugees to participate to social life without fear of discrimination or hostility.

In Morocco, the UNHCR works with Moroccan Non Governmental Organizations as partners which are well established in the country so as to ensure programs for refugees become part of existing programs for local people by taking into account the situation of refugees in Morocco. The majority of programs for refugees are in Rabat due to the concentration of refugees in the capital. Regarding health, UNHCR works in partnership with the Pan-African Organization against AIDS which provides consulting services to facilitate access to public hospitals and specialists to care for pregnant women and assistance with drugs, screening and prevention of HIV/AIDS. In terms of social assistance, UNHCR works in partnership with the "Association Départ pour l'éducation la communication et les œuvres sociales" which offers a listening service and social accompagnement including small direct financial assistance for the special needs of the refugees. This partnership also aims to promote education for refugees' children in public schools including provision of educational materials in liaison with the academic authorities. A major challenge for education especially for teenagers is language barrier.

Concerning professional training, UNHCR works in partnership with the East-West Foundation/Fondation Orient Occident) and ADECCOS. Different programs offer grants for small business (shoe repair, mechanics, hairdressing, dressmaking, carpentry) or specialized professional training related to callcenters. In terms of income-generating activities, UNHCR works in partnership with the Moroccan Association of Support for the Promotion of Small Business that finances and supports the creation of microproject after studying their economic viability.

For legal assistance, UNHCR is working with Moroccan organizations human rights.

- **The policy of repatriation and resettlement**

Voluntary repatriation is often the preferred solution provided that the standards for the return, security, restoration of national protection are respected and when the conditions are considered favorable for a return in safety and dignity.

In all cases, relocation involves the permanent departure of refugees to a third country. Throughout the world, relatively few refugees receive resettlement because of the limited number of places offered by resettlement countries (United States, Canada, Australia, New Zealand, Netherlands, Denmark, Finland, Norway, Sweden). However, a number of new states, particularly in Europe and South America also show interest in becoming a country of installation.

In collaboration with the Moroccan authorities, UNHCR has set up in Morocco, a small resettlement program to offer refugees whose life safety health and other human rights are threatened. In addition, the resettlement program is a mechanism for sharing responsibility for refugees between states in order to reduce the existing pressure on the country of first asylum.

Thirty-seven (37) persons have been resettled between 2005 and 2007, 20 people have already been accepted to go in 2008. They are generally victims of torture in their country of origin who need a suitable psychological counseling and residence in order to be integrated in society. The resettled persons are also single women, mothers who, due to lack of residence, are unable to survive independently.

Guidebook

**on the socio-economic rights
of the refugees and asylum
seekers: access to health and
work**

WHAT DO INTERNATIONAL LEGAL TEXTS SAY ABOUT THE INTEGRATION OF REFUGEES?

The 1951 Geneva Convention on the determination of refugee status is based on the fundamental principles of the international protection of refugees and the obligations of States. This agreement contains the definition of refugee which is universally recognized (Article 1). According to this convention, is considered a refugee, a person who has been forced to leave his/her country because of fear of persecution against him/her because of his/her political opinions, religion, ethnicity, nationality or membership a particular social group. The 1951 Convention sets out the criteria under which a person may be recognized as a refugee. It also contains the fundamental principles of international refugee protection and establishes in particular, the obligation of non-refoulement, that is to say, the prohibition of returning a person to a country where she/he would be in danger of persecution. This fundamental principle is now part of customary international law.

The provisions relating to refoulement and deportation applicable to aliens generally should not apply to refugees. Those who commit offenses in violation of national laws should be punished in the same way as nationals without being expelled or deported.

Every refugee has to respect in the country of residence, rules including the obligation to comply with laws and regulations (art. 2). Contracting States to the Convention agree to apply the provisions of the principle of non-discrimination to refugees regardless of race, religion or country of origin (article 3).

According to article 4, States shall accord to refugees, treatment no less favorable than that accorded to nationals with respect to freedom to practice their religion.

It also establishes the principle of immunity from prosecution for irregular entry or stay of refugees (article 31), that is to say that

states can not impose penalties to a refugee who enters their territory without permission.

Finally, the agreement provides that, in general and subject to more favorable provisions, States accord to refugees the same treatment as they accord to foreigners. The 1951 Geneva Convention incorporates the principles proclaimed in the 1948 Universal Declaration of Human Rights:

- Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

The 1951 Convention and the 1966 Protocol constitute the legal basis for the protection of refugees. UNHCR, through its statute adopted by the General Assembly in December 1950, has the mandate to provide international protection to refugees, to find sustainable solutions to their problems and to ensure the application of the Geneva Convention on Refugees.

Over the years, the (United Nations) General Assembly extended the protection mandate of the UNHCR to various groups of people who are not covered by the Geneva Convention and its 1966 Protocol, like stateless persons, returnees and internal displaced persons in some situations. Thus, UNHCR can determine the refugee status under the Geneva Convention or its expanded mission if the host country is not a signatory of the Convention or if its national law is not applied or is impricise.

THE NATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF REFUGEES IN MOROCCO

A number of international and national legal instruments govern the system of the protection of refugees in Morocco. The Moroccan constitution adopted in 1962 and amended in 1996 also states in its preamble that the kingdom of Morocco endorsed the principles, rights and obligations mentioned in international conventions and reaffirms its commitment to human rights as recognized universally.

Morocco has ratified most of the international instruments relating to the protection of refugees:

- The Geneva Convention relating to the Status of Refugees in 1956 and its 1971 Protocol;
- The Convention of the Organization of African Union/African Union Governing the Specific Aspects of Refugee Problems in Africa, Morocco withdrew from the OAU in 1982;
- The International Covenant on Civil and Political Rights (1979);
- The International Covenant on Economic, Social and Cultural Rights (1979);
- The International Convention on the Elimination of all Forms of Racial Discrimination since 1971;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1993);
- The Convention on the Rights of the Child (1993);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1993).

A royal decree setting the procedures for the application of the 1951 Geneva Convention was elaborated in 1957. This Royal Decree establishes the Office of Refugees and Stateless Persons (Bureau des Réfugiés et Apatrides) which functions are:

- Recognize refugee status to any person under UNHCR's mandate or corresponds with the definition of article 1 of the Geneva Convention;
- Deliver the persons referred above, documents necessary in order to allow them to perform various acts of civil life, or to enforce the provisions of national legislation or international agreements related to their protection,
- Authenticate the acts and documents submitted .

However, the activities of the Bureau des Réfugiés et Apatrides/BRA have never worked correctly and have even been frozen since 2004. Thus, it is the UNHCR which headquarters is in Rabat that is responsible of the determination of the status of refugee in Morocco.

The Law Number 02-03

Until the entry into force of Law No. 02-03 governing irregular and regular migration in Morocco in November 2003, the existing legal framework relating to the aliens was dated from the time of the Protectorate and clearly needed to be reviewed.

However, Law No. 02-03 appeared in a context of increasing pressures from the European Union to encourage Morocco in the fight against migration and in a climate of general suspicion consecutive to the 16 May 2003 terrorist attacks. It was adopted without discussion or debate, along with the Law N° 03-03 on terrorism. This law seems responding to an urgent need to show that Morocco is endowed with instruments of management and

control of migration than a real effort to adapt the national framework to the specific needs of the time.

Seven years after its entry into force, the provided application decrees are not yet entirely elaborated or adopted. This delay results in a high risk of partial and arbitrary application of the law by the authorities, often at the expense of human rights (1).

The decree entrust the Bureau of refugees and stateless persons (BRA) with the legal and administrative protection of the persons covered by the Convention, under supervision of the Ministry of Foreign Affairs.

- Rights of migrants and refugees in Morocco

Morocco or elsewhere, migrants, refugees and asylum seekers have the same fundamental rights as all human beings and can refer to all international conventions. The United Nations has established conventions protecting the particular needs of asylum seekers, refugees, and those of migrant workers and members of their families.

In Morocco, the law N° 02-03 governing irregular and regular migration is the legal framework relating to foreigners. However, foreigners (aliens) are concerned with other national legal texts (Labour Code, Family Code, Penal Code, etc.) which provide protective provisions (right to an interpreter, the right to a fair trial) that are sometimes specifically dedicated to them.

Sources: Gadem

The Convention of the Organization of the African Unity/ African Union Governing the Specific Aspects of Refugee Problems in Africa:

The Convention of the Organization of African Unity is a regional treaty governing the Specific Aspects of Refugee Problems in Africa. It is the only regional instrument specific to refugees and legally binding.

Morocco has left the OAU/AU in 1984 following the admission of Western Sahara in 1982 within the organization. However, Morocco has never denounced this convention that is normally impossible to it.

One of the main differences between the Geneva Convention and the OAU Convention lies in the definition of the word refugee.

The article 1.1 of the OAU/AU Convention adopts the definition provided by the article 1 of the Geneva Convention.

Sources: www.forumrefugies.org

Partners of the United Nations High Commissioner for refugees in Morocco

Fondation Orient Occident/Orient -Occident Foundation:

Offered services: counseling, vocational training, financial assistance only for refugees who fulfil the pre-established criteria.

AMAPPE: **Association Marocaine d'Appui à la Promotion de la Petite entreprise** /Moroccan Association for Support to Promotion of Small Business:

Services: advice, coaching and support the creation of very small enterprises (VSE), financing AGR that fulfil the criteria and procedures of the program: Refugee registered / recognized by

UNHCR and age (18 and over), refugee holding a feasible project idea on the Moroccan market.

Association Action Urgente/ Urgent Action Association:

This association provides medico- social actions such as medical consultations, complementary examinations, circumcision campaigns and giving medication.

- **Action of the Moroccan State Vis à Vis Refugees**

As regards the State, it assumes currently the principle of non-refoulement. With cards, refugees are no more deported for illegal stay as it was the case before. That is a big step forward but the balance sheet remains mitigated, because real challenges are persisting. The Government should establish a legal and institutional framework for managing refugee issues; the Government does not validate the decision of UNHCR relating the determination of the refugee status. Refugees can not exercise their rights (access to education, health care). Refugees work is tolerated but in the informal with all possible risks.

The paradox of Morocco and a number of North African countries is that they have ratified international legal instruments but have a problem with the application and implementation of these instruments at the national level. Morocco is very active in the international scene regarding human rights issues and must have the same attitude on the issue of refugees who are on its soil, a guarantee of credibility vis-à-vis the international community.

- **What is the role of the civil society?**

Moroccan civil society and UNHCR partners are involved in advocacy and assistance to refugees.

- The reluctance of the Moroccan State

Morocco has fear to establish an asylum policy because of its geographic position, fear of making an invitation to tender, and fear of not having the human and financial resources to manage an asylum policy because of the lack of regional cooperation in this field.

UNHCR has established a capacity building program for magistrates, judges, security forces and public administration conferring asylum. In Morocco, there is a problem concerning refugees and the management of irregular immigration. The estimated number of migrants living in an irregular situation in Morocco is between 10,000 and 20,000 persons. Another reluctance of Morocco is that refugees are a population who has special needs. There is also the problem of the increasing number of women, of minor victims of violence and elderly people among migrants.

- The precarious situation of refugees

If refugees live today, less in fear of being deported, their situation remains fragile. Some of them live in an extreme precariousness and forced to beg. Refugees recognized by UNHCR have a real need of protection. The recognition of refugee status by the Moroccan State allows refugees access to the labor market, to enhance their skills and reach a stage of self-sufficiency.

- Most urgent fields

One should not be content with providing only humanitarian assistance but also put in place a legal framework that respects human rights. Refugees can become development actor in their host communities if they are given their rights. It must be reminded that refugees have not left their country voluntarily, but were forced to do so. Migration should not be criminalized too.

It is urgent to decide the fate of refugees recognized by the UNHCR and who are still without legal status in Morocco. Refugees are human beings with their rights, their skills, their fears and their hopes.

Source: www.unhcr.org.ma

There is an international instrument on the fundamental rights of refugees in the world namely, the 1951 Geneva Convention of 1951 and its Protocol approved in 1967. This instrument is the main normative legal framework on the rights of refugees in the world.

In the years 1960, agreements specifying certain limits in the definitions of the Geneva Convention and the Protocol of New York have been developed to try to eliminate conceptual blurs left by the 1951 Convention, (the Convention of the Organization of African Unity in 1969, and the Cartagena Declaration of 1984). However, the signatories to the 1951 Convention and the 1967 Protocol are not obliged to ratify the OAU Convention or the Cartagena Declaration.

From 1980, other texts have emerged to take into account the status and situation of women, children and elderly persons as the Convention on the Rights of the Child in 1990 people. Indeed, they are often more vulnerable than men and therefore should receive particular attention and be subject to special measures.

- The 1951 Geneva Convention and the New York Protocol:

The Geneva Convention has been elaborated mainly for European refugees after World War II. It establishes a legal status for refugees worldwide.

The Geneva Convention has been elaborated essentially on the basis of the Universal Declaration of Human Rights (1948). However, it does not reflect all aspects of the Declaration but focuses only on some.

It was also inspired by the four 1949 Geneva Conventions on International Humanitarian Law. The New York Protocol was later drafted to supplement the 1951 convention and to adapt it to changes and new situations of refugees in the world. The signatories of the Geneva Convention must ratify and implement in their domestic legal system, the provisions recommended in the Convention and its Protocol.

Thus, each country has its own approach to the text, to interpret it and apply it according to its national legal framework. However, in many countries, it is the UNHCR that makes the selection of criteria for the examination of asylum applications.

- Fundamental concepts:

The Geneva Convention defines the basic concepts of the refugee protection regime and remains until today, the main instrument in that field. Since then, international community intervenes to protect the fundamental rights of refugees when they are not respected in their country of origin or in the host countries. The preamble to the 1951 Convention recommends that States "ensure the refugees the widest possible Human Rights and Fundamental Freedoms exercise" to be applied in a non - discriminatory way. Indeed, this "Convention shall be applied without discrimination based on race, religion or country of origin of the applicant. It contains various safeguards against the expulsion of refugees, as well as provisions for obtaining the documents they need, including a travel document which is in the form of a passport". This principle of non -discrimination, which forms the basis of

international law, is central in international law related to refugees. Some provisions of the Convention are considered so important that they should not be changed or discussed on any pretext: it is the case of the definition of the refugee and the principle of non-refoulement which means that "no Contracting State shall return or expel a refugee in any manner, against his will, to a territory where he fears persecution".

Thus, States that have ratified the Convention (as it is the case of Morocco) are required to protect refugees who are on their soil according to the contents of the text.

- **Essential rights to the protection of refugees**

Most of the essential rights to the protection of the refugees are also fundamental rights mentioned in the 1948 Universal Declaration of Human Rights namely:

- Right to life , liberty and security of the person ,
- Right to seek and enjoy asylum,
- Warranty against torture, cruel , inhuman or degrading treatments,
- Warranty against slavery and servitude,
- Recognition of the Legal Personality ,
- Freedom of thought, conscience and religion,
- Warranty against arbitrary arrest and detention,
- Guarantee against arbitrary interference in privacy, family and home,
- Freedom of opinion and expression,
- Right to education,
- Right to take part in the cultural life of the community.

Accordingly, the list of rights mentioned above is in part of refugees' rights.

Refugees have thus two sets of rights that partially overlap: first, the rights granted to them as individuals (rights guaranteed by

International Human Rights Law and the national law of each country), and specific rights related to their refugee status.

- Right of asylum and non-refoulement

The right to seek and enjoy asylum is recognized by the international human rights law and is of central importance for refugees. It is the core of the main mechanisms for the protection of refugees.

The asylum seeker is a person who emigrated on a territory that is not his/her territory of origin and asks for refugee status. In addition to the 1951 Convention which lays down the principle of non-refoulement as one of the central principles of international refugee law, conventions on Human Rights establishes the obligation of not returning a person to a territory where she/he would be in danger.

The 1987 Convention against Torture also stipulates the non-refoulement as one of its core principles. Finally, the International Covenant on Civil and Political Rights and the European Convention on Human Rights implicitly prohibit the expulsion or return of a person at risk of being subjected to torture.

- Individual status determination

The right of asylum means that people seeking asylum should get access to fair and efficient procedures for the review of their applications. States have the responsibility to identify refugees in connection with the 1951 Convention and to prevent their return/refoulement.

The methods used to recognize refugees vary from one country to another depending on the legal traditions, the local situation and

national resources. That is why UNHCR has established a general handbook on the minimum standards to be respected when determining refugee status.

- The Convention of the Organization of African Unity governing the Specific Aspects of Refugee Problems in Africa

The Convention of the OAU/AU is a regional treaty adopted in 1969. It governs the Specific Aspects of Refugee Problems in Africa. Morocco is a founding member of the OAU that signed and ratified this convention but did not transpose it in its national legislation. The OAU Convention completes and expands the definition of the refugee contained in the 1951 Convention in order to establish elements justified more objectively: Every person who, "owing to aggression, external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or the country of his nationality " is compelled to leave his habitual residence. UNHCR: Convention and Protocol relating to the Status of Refugees, 2007, p.15.

-The 1987 Convention against Torture and the Convention on the Rights of the Child

There are two international treaties on Human Rights which play a central role in international refugee law. First, there is the Convention against torture and other cruel, inhuman or degrading treatments. This Convention provides protection against refoulement in which the person would be subjected to such treatment. This provision is absolute (it can not be violated under any circumstances) and requires that the protection is related to fear of persecution because of race, religion, nationality, membership in a particular social group or political opinion.

Second, there is the Convention on the Rights of the Child. This Convention concerns to all children without discrimination, including refugees seeking asylum. Accordingly, the Convention stipulates that any child who is seeking refugee status should receive protection and humanitarian assistance provided in the text.

The UNHCR's role at the international level is to promote international agreements on behalf of refugees and ensure that governments comply with international refugee law.

In general, nothing obliges a State to accept foreigners on its territory. However, the exception to this rule is that States may not expel or return a refugee to territories where his/her life would be threatened on account of race, religion, nationality, membership in particular group social or political opinions. This exception embodies the principle of non-refoulement.

-What are the rights of a refugee?

A brief summary of the 1951 Convention and the 1967 Protocol:

A refugee has the right to a safe asylum.

International protection is not just about the physical safety of individuals. It implies that the refugee should enjoy rights and assistance at least equivalent, identical to those enjoyed by any other alien in a regular situation. Thus, as noted above, any refugee basic civil rights (such as freedom of thought, of movement, of not being subjected to torture or degrading treatment or punishment), etc.

The refugee must also have the same economic and social rights as everyone else: it must have access to medical care, the right to work (for adults), the right to education (for children), access to

adequate housing (they will be subject to the same treatment as nationals and foreigners residing in the country), the right to assistance etc. In addition, they will not be subject to the same restrictive measures imposed on aliens or the employment of aliens for the protection of the national labor market.

Refugees who are on the territory of a state also have legal rights: the right of association, the right to sue, etc. They also have the right, if they are lawfully within a territory, to move freely and choose their place of residence. In case refugees do not have an identity document identify; the contracting state will provide them an identity and a valid travel document allowing them to move beyond its national borders.

Refugees and asylum seekers should not be subject to discriminatory measures based on race, religion, political opinion, nationality or physical disability. Finally, in accordance with the principle of non-refoulement, a refugee can not be criminally sanctioned for entering a territory without permission because he/she fled a country where his/her life or freedom was threatened if she/he contacts the authorities as soon as possible. He/she can not be expelled or returned to a territory where his/her life and freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion. Respect for the family unity is fundamental and host countries should help reunite family members. More the time spent in the host country is long; more the family reunification becomes a necessity.

Additional Protection: it consists in protecting those who do not fulfil the criteria of the definition. The persons who do not fulfil the criteria of the refugee definition contained in the 1951 Convention need all the same protection. It is most often, people who have fled armed conflict, internal disturbances or other

serious damage and should enjoy for a while, a formal legal status with rights and obligations defined.

Minimum standards for refugees arriving in large numbers:

In case their status can not be determined rapidly, the minimum protection standards should include:

- Accommodation without discrimination,
- Protection against refoulement,
- Adequate housing installations
- A temporary right of residence in the country of asylum

A treatment in accordance with the minimum humanitarian standards set by the UNHCR, namely: Provision of shelter, provision of assistance or access to employment, access to primary health cares, access to education for children, respect of fundamental human rights, including access to justice and freedom of movement; the ability to reunite families which some are located in other asylum countries and mechanisms for research of missing relatives.

- **Legal representation and advice:**

An asylum seeker should be able to benefit in a language he/she understands, advice and legal information on the procedures, as well as its rights and obligations in case of trial. Women asylum seekers should be counseled about their rights, including the right to apply individually even if they are accompanied by their family members. The country of asylum should provide asylum seekers, all the facilities they need to complete the formalities, including free neutral and qualified interpreters.

- **Possibility to get in contact with the UNHCR**

National authorities should inform asylum seekers that they have the possibility to get in contact with the UNHCR and with a legal adviser or a representative of their choice. If necessary, asylum seekers are allowed to make contact with organizations assisting refugees and other Human Rightsn advocacy advocacy organizations.

- **Protect refugee women**

Women constitute almost half of the refugee population. They have the same rights as men. However, they also have specific needs throughout their refugee status because they are sometimes more vulnerable. Persecution based on gender is the term used in international refugee law to describe a range of status application, some of which may be presented by men. Claims based on gender cover, generally, sexual violence, domestic violence, forced family planning, female genital mutilation, punishment for transgression of social rules, and homosexuality.

A part from the international instruments of human rights which enforce all, a number of international standards cover the situation of women refugees and asylum seekers. The Convention on the Elimination of All Forms of Discrimination against Women and its Additional Protocol are an example.

This Convention sets standards that States are obliged to respect, namely:

- Supression of all forms of women traffic in and exploitation of prostitution,
- Nationality,
- Education,
- Employment,

- Healthcares,
- Specific problems of rural women,
- Equality before the law,
- All matters relating to marriage and family relations.

It should also be mentioned in this regard; the United Nations General Assembly's Declaration on the Elimination of Violence against Women which recognizes that refugees are one of the groups that are vulnerable to violence and calls upon States to adopt measures directed towards the elimination of violence against women.

- **Protect refugee children**

Minor population represents an extremely important part of the refugee population. Children should be subject to the same regulations as men, but given their vulnerability and their specific needs, they must be subject of a special protection and assistance.

They have the right to apply for asylum, like adults. However, they will enjoy a special attention. Children should not be detained - as well as their parents - unless there is no other means of preserving family unity.

Children who are separated from their families must be supported by a tutor who will defend their interests in the individual determination of the refugee status. Children affected by armed conflict are entitled to special protection and treatment due to their vulnerability. Refugee children are also entitled to education, adequate food and the highest attainable standard of health.

- **Detention of refugees**

What will happen if asylum seekers have entered illegally a country?

According to the 1951 Convention, refugees coming directly from a territory where their life or freedom was threatened should not be subject to criminal sanctions because of their entry or illegal residence provided that they present themselves immediately to the authorities after their arrival and expose the reasons recognized as valid. This provision also applies to asylum seekers (they are refugees who have not yet been recognized).

-The role of the Working Group on Arbitrary Detention

The Working Group works when asylum seekers or others are subjected to arbitrary detention. Indeed, the group established a special comment on "the situation of immigrants and asylum seekers" by defining 10 principles related to imprisonment and detention namely:

- Principle N°1:

Any asylum-seeker or immigrant must be informed at least verbally and in a language he/she understands, of the nature and grounds for refusal of entry or stay that is intended to oppose him/her, at the time of his arrest at the border or in the country in case of illegal entry.

- Principle N°2 :

Every asylum-seeker or immigrant must have during retention, the possibility of external communication by telephone, fax or email, and getting in touch with a lawyer, a consular representative and its close.

- Principle N°3 :

Any asylum-seeker or immigrant held in detention must be presented in a short time to a judicial or other authority.

○ Principle N°4:

Any asylum-seeker or immigrant, when he/she is being kept in detention, must sign in a register - or equivalent guarantees - to identity, the reasons for the retention measure and the competent authority who decided the retention, the date and time of entry and exit.

○ Principle N°5:

Any asylum-seeker or immigrant, when he/she is held in a detention center, must be informed of the internal rules and, where appropriate, the applicable disciplinary rules and any possibility of a regime of incommunicado detention and the guarantees that measure is coupled.

○ Principle N° 6:

The decision must be taken by an authority empowered to that end and having a sufficient level of responsibility. It must be based on criteria of legality established by law.

○ Principle N° 7:

Detention may in no case be unlimited or of excessive length. Its maximum period should be set by law.

○ Principle N° 8:

The detention measure must be notified in written form in a language understood by the asylum seeker with a statement of reasons and shall specify the conditions under which the asylum seeker or immigrant must be able to exercise a right of appeal to a judicial authority deciding within a short delay on the lawfulness

of the measure and, if appropriate, order the release of the applicant.

o Principle N° 9:

Retention must be conducted in a public establishment specifically intended for this purpose. For practical reasons, if this is not the case, the asylum seeker or immigrant must be placed in separate quarters of prisoners under criminal law.

o Principle No. 10:

The United Nations High Commissioner for Refugee (UNHCR), the International Committee of the Red Cross (ICRC) and where appropriate, entitled Non Governmental Organizations should be allowed access to the places of detention.

- What do international legal instruments mention about the integration of refugees?

Refugees, once recognized officially, may be allowed to stay permanently in the country in which they found asylum. This is what is called local integration by the international instruments.

In accordance with the 1991 Convention and its Protocol, States should facilitate as far as possible, the assimilation and naturalization of refugees.

Some countries simply provide a permanent residence permit for refugees (especially if they contribute to the local economy).

The integration process is a complex and gradual process, with three interdependent dimensions: economic, socio-cultural and legal. The understanding these dimensions by refugees must be facilitated by advice and guidance. . In this framework, States should review their laws and practices

to identify and eliminate existing obstacles to refugee employment.

- The integration of asylum seekers and refugees: a complex, gradual and reciprocal process

The 1951 Convention and its Protocol give considerable importance to the integration of refugees. The economic and social rights that facilitate refugees integration in the host society are also numerous. The article 34 calls upon States to facilitate assimilation and naturalization.

They see it as a dynamic and multifaceted gradual process requiring efforts from all, depending on the refugee and the host society: the refugee must be prepared to adapt to the society that receives him/her without renouncing to his cultural identity. In the same way, the host community and public institutions must accommodate the refugees.

International legal texts consider that the process of integration of refugees into the host society is a sustainable and beneficial solution both for refugees and the host society.

Refugees often face difficulties to integrate, particularly because of the discrimination of the host societies against them.

Therefore, public policies for refugee's integration should be the same as for aliens residing legally in a country. At the same time, public policies must recognize that each individual needs a specific form of care depending on particular circumstances to provide a more appropriate response.

Public policies of welcoming asylum seekers must be thought to minimize the isolation and separation of host communities. They must provide learning of the national language programs to choose a career and receive assistance in finding a job.

-Language

Language is a central element in the process of integration of asylum seekers and refugees. It facilitates the active participation of children in school, helps adults find work and integrate into their environment. According to UNHCR, asylum seekers should get familiar with the national language since the beginning of the asylum procedure. It is also by placing refugees in the host society, and associating people and communities that integration can be done more easily.

- Access to employment and recognition of basic rights

Access to work also offers significant opportunities for integration and socialization. It allows the individual to have a salary, gain independence, and acquire social status and recognition. Providing access to employment may also have positive consequences for the host society: it reduces the costs of receiving refugees by the host society, discourage undeclared work and facilitate the reintegration of refugees their country of origin.

International legal instruments emphasize the importance played by autonomy in the economic dimension of integration of refugees. In this regard, the international texts recognize that in all countries, protection of civil, economic and social rights, including freedom of movement and the right to conduct income generating activities, is essential to the process of the refugees' empowerment.

The texts also encourage host countries to consider ways to facilitate employment and active participation of refugees into the economy of the country, especially after going through education and vocational training. The importance of the legal dimension of integration is central. It

implies that the host country gives refugees a secure legal status and a range of broad rights equivalent to those accorded to its citizens and make possible naturalization after a while. Thus, refugees should get access to rights, services and programs offered by governments to their citizens without discrimination.

-The slowness of asylum procedures

The slowness of the asylum procedures is one of the main barriers to social, economic and cultural integration of refugees. Indeed, the determination of refugee status is most often characterized by insecurity and inactivity that may provoke mental and psychological consequences for individuals. The possibility to obtain legal status and get the right to accommodation is critical factors in the integration process.

-The presentation of refugees in Morocco and their statistic

Morocco is of the first Arab countries to adopt legislation on asylum. Upon ratification of the Geneva Convention relating to the Status of Refugees, Morocco has adopted a decree laying down the application modalities of this Convention. This decree establishes the Office of Refugees and Stateless Persons (Bureau des Réfugiés et Apatrides/BRA) under the authority of the Ministry of Foreign Affairs. The Office is responsible for recognizing the quality of refugee to any person under the mandate of the UNHCR or who fulfils the definition of article I of the 1951 Geneva Convention. The BRA is also responsible for issuing the persons referred above, the necessary documents that allow them to perform either various acts of civil life or to enforce the provisions of domestic law or international agreements related to their protection. This decree establishes an appeals commission comprising the Ministry of Justice or his representative, the Minister of Foreign Affairs or his representative and the representative of UNHCR in

Morocco. The said Commission is responsible inter alia, to consider appeals against decisions taken by the BRA. The decree that created the BRA has never been applied entirely. Since 2004, the BRA has no more activity in several fields of its competences.

Consequently, it is the Office of the UNHCR headquartered in Rabat that determines refugee status in Morocco. Moreover, it is not possible to submit a request for asylum to the BRA. The BRA does not issue documents to refugee recognized by the UNHCR.

Refugee status must be determined by an individual procedure. It is particularly the case with the procedure established by UNHCR in Morocco where it proceeds by examining the individual situation of each applicant.

Determination of the refugee status (DRS) is the procedure by which a government institution or the UNHCR seeks to determine whether a person who has filed an application for asylum is true enough a refugee, that is to say, whether his/her situation corresponds with the criteria set out in the definition of refugee provided by international conventions. To that end, the procedure established by UNHCR in Morocco is as follows:

- Submission of the application to the UNHCR office in Rabat in order to collect basic information on the applicant (name, date of birth, hometown, parents' names, phone number), give the applicant, an appointment form so that he/she can be registered in due form. The average waiting time for getting an appointment is two months.
- During registration, the personal data of each applicant are captured into a computer database: identity, itinerary, documents and other attachments. An electronic copy of this information is also done.

- Examination of the application by lawyers trained in the field of DRS through a personal interview with all applicants over 16 years: During the interview, the applicant has the opportunity to explain in detail, the reasons why he/she fled his country and can not return. All interviews are recorded electronically.
- Evaluation of the application by an officer of the UNHCR who knows the objective situation in the applicant's country of origin: the agent must evaluate the credibility of the applicant. Credibility is established when the introduced request is consistent. At the end of the evaluation, the agent takes a recommendation that will be reviewed by the Supervisor of the division. All decisions are seen by at least two agents.
- Notification: at the end of the evaluation, a final written decision will be notified to the applicant to make known whether he/she is or is not recognized as a refugee. For applicants recognized as refugees, the agent explains their legal status in Morocco; on the contrary, for applications rejected in the first instance, the agent explains the appeal procedure.

Within a month, an applicant whose request has been rejected by the first instance can appeal from the date of notification. If the appeal is not accepted, UNHCR will be obliged to withdraw the certificate of the applicant and close the file. UNHCR informed this applicant of the various programs of voluntary return to his/her country of origin.

Concerning statistics, the number of asylum seekers has increased significantly with the resumption of the UNHCR in Rabat in 2005. Most asylum seekers come from Ivory Coast (Côte d' Ivoire), Democratic Republic of Congo and Iraq.

Thanks to the increasing number of UNHCR staff, decisions on refugee status determination finalized were 686 cases of refugees on the 13 of July 2012 including 169 minors and 133 women, and the number of asylum seekers 1100, from Ivory Coast, the Democratic Republic of Congo and Syria. The number of asylum seekers has increased again in late 2012 following the war in Mali and Syria.

- Socio- economic methods via microproject and access to healthcares

Local integration is a sustainable solution envisaged by UNHCR and the Moroccan government to put an end to the difficult of refugees as the security situation does not improve in the majority of their countries of origin.

- Regarding health, UNHCR works in partnership with the Pan African Organisation for the Fight against AIDS (OPALS) and the organization Action Urgence (Emergence Action) that offer medical examination services, facilitation of access to public hospitals and with specialists, monitoring of pregnant women, support for drug charges, screening and prevention of HIV/AIDS.

- In the field of professional training, UNHCR works in partnership with the Fondation Oreint Occident (East West Foundation/FOO). For refugees, it is very important to work in order to live in dignity.

Different programs offer aid for training small trades such as shoemaking, mechanics, hairdressing, sewing, woodworking, jewelry, or specialized professional courses in the hotel business, computer science, marketing or orderly wok.

- In terms of income-generating activities, UNHCR works in partnership with the Moroccan Association of Support to the

Promotion of Small Enterprise (AMAPPE) that finances and supports the creation of microproject after a study of the economic viability.

- Regarding legal assistance, UNHCR works in partnership with the Moroccan Organization of Human Rights (Organisation Marocaine des Droits de l'Homme (OMDH)). Besides the service of representation by a lawyer in case of trial or during a hearing by the police, the program has established a center that offers a listening, reception and legal advice, postal domiciliation and support for administrative procedures. The program has also sets up a listening, reception and legal assistance center in Oujda.

-What documents are required to get a job? Is there a possibility for refugees to work in the public service?

Like all other migrants, refugees are vulnerable and victims of violation of their human rights sometimes. This vulnerability rises from the fact that they are not nationals in the countries of destination and have not very often, access to their fundamental rights that should be legitimately recognized.

Migrant workers in irregular situation are frequently employed in indecent conditions and are targets of exploitation. The following rights should be accorded to refugees under the most favorable treatment accorded to nationals of a foreign country or in any event, refugees should not receive a less favorable treatment than that accorded to aliens in similar circumstances:

- The right of refugees to the exercise of a paid employment must comply with the most favorable treatment accorded to foreigners. Restrictive measures that may be imposed on aliens or the employment of aliens for the protection of the national labor market shall not be applied to refugees in particular when they

have resided for more than 3 years in the country, when they have a spouse or a child who is of Moroccan citizen.

- The right to practise self-employment and liberal profession.

- Public Education in areas other than primary education, particularly as regards access to studies, the recognition of educational certificates, foreign diplomas and university degrees, reduction of fees and taxes and the award of scholarships. In the absence of a residence document, refugees face great difficulties in obtaining an employment contract once their training is completed and can not work in the public service.

- At the legal level, refugees should be given progressively wider range of rights that would lead to the acquisition of the right of residence and a temporary residence document.

- At the economic level, they should gradually become less dependent on the assistance of the host countries or other organizations; they would become more autonomous, could provide for their own needs and even contribute to the local economy.

- In the social and cultural level, the interaction between refugees and the local community should allow refugees to participate in social life without fear of discrimination or hostility. In Morocco, the refugee card, do not give them access to work. It only allows them to be free of any refoulement/expulsion or police hassle.

-Administrative support and recognition of qualifications

In accordance with the Convention relating to the Status of Refugees and its Protocol, qualifications and official documents obtained in the country of origin of refugees must be recognized

by the host society.
Thus, states must recognize, as far as possible, the equivalence of diplomas, school, university and professional certificates obtained by refugees before their arrival in the host country.

Documents and websites:

The 1951 Convention on the status of Refugees:
<http://www.unhcr.fr/4bl4f4a62.html>, accessed on the 25 th of November 2013.

Convention against Torture and Other Cruel, Inhuman or degrading available online:

<http://www.unhcr.fr/4bl4f4a62.html>, accessed 25 November 2013 .

Convention on the Rights of the Child, available online:
<http://www2.ohchr.org/french/law/crc.htm>,

Handbook on Integration for Refugees, available online:
<http://www.unhcr.fr/4bl51cc5e.html>,

Convention of the Organization of African Unity, available online :
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=488f08be2>, downloaded on the 25th November 2013,
Declaration on the Elimination of Violence against refugee women:

http://www2.ohchr.org/french/law/femmes_violence.htm.

Guidebook

**on the elaboration of
sensitization campaigns
concerning Refugees and
Asylum seekers's access to
work**

Foreword

CONVENTION RELATING TO THE STATUS OF REFUGEES

Geneva, 28 July 1951

Article 1:

Article first - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

2) 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.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in Article 1, Section A, shall be understood to mean either:

- (a) “events occurring in Europe before 1 January 1951” or
- (b) “events occurring in Europe or elsewhere before 1 January 1951” and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of Section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 32 - Expulsion

The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33 Prohibition of expulsion or return (“refoulement”)

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 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.

1- Why this Handbook?

The right to work is one of the rights that provides human dignity, decency and can not be separated from other rights. It is mentioned in several human rights conventions in particular, the International Covenant on Social Economic, and Culture rights. Every human being can enjoy this right without distinction/discrimination.

The government of Morocco has ratified the 1951 Convention and its Protocol. On the 26 of August 1957, a decree on the conditions of application of this Convention has been published.

- Morocco has ratified the International Covenant on Economic, Social and Cultural Rights, which recognizes explicitly the right to work.
- The Moroccan government has ratified the International Convention on the Protection of all migrant workers and members of their Families (1990) that focuses on migrants in regular or irregular situation. This convention recognizes the right to the enjoyment of fundamental rights.
- Morocco recognizes international human rights in the preamble to its 2011 Constitution which states its commitment to human rights as they are universally recognized.

- Moroccan law No. 02-03 prohibits the expulsion of refugees and asylum seekers.
- The Moroccan labor code mentions foreigners in its article 516.

Activities	Results	Observations
Organize meetings with the employers	The positive interaction to take initiatives and proposals by unionists and operators Reveal and lift constraints	Provide a reference document for refugees, asylum seekers, Morocco's commitments in the field of human rights and the importance of hiring refugees
The work of the Commission requires the diagnostic skills of refugees and asylum seekers, the types of work available (labor), the preparation of a questionnaire sent to refugees and asylum seekers and the investigation by sensitization campaign	Information bank for operators and unions. Diagnosis (realistic approach of employment).	The file: Personal Information on the refugee and the asylum seeker: name, nationality, duration of presence in Morocco, family status, information on the qualities, skills, and qualifications. Information on the scientific level and certificates available (cooperation with partners). Teach languages ...
Organizing roundtables on: Access to work, the right to work, constraints, the position of refugees and asylum seekers.	Exchanges of ideas... Lift constraints Evaluation / campaigns Take positive initiatives.	The contribution of trade unionists, of labor inspectors, operators, human rights activists. Journalists, public opinion Banners, distribution of brochures, advertising through media
Organize training sessions for trade union leaders in the field of human rights on: the right to work for refugees and asylum seekers	Field expansion and improvement of knowledge on the topic. Develop capacities to defend the right to work. Support sensitization campaigns.	Participation (engagement) of trade unions. Configuration and training for trade union headquarters.

Activities	Results	Observations
Plan how to refine the skills of refugees and asylum seekers Preparation of requests for jobs and accompaniment	Qualifications, development Facilitate job application.	Collaborators and partners
Organize a meeting of civil society organizations on the theme: supporting refugees and asylum seekers' right to work, meetings (demonstrations)	The expansion of quality and reinforcement of sensitization campaigns.	Demonstration in the tradeunion headquarters. Distribution of prospectus / leaflets distributed Media coverage
Preparation of brochures that define refugees and asylum seekers, their rights, Morocco's international commitments to the protection of refugees and asylum seekers. Preparation of a label with pictures, watchword ...	The definition of asylum as a human right requires protection. Solidarity	Copy brochures and flyers that will be distributed during campaigns.
Celebration of the World Labor Day (May 1), participation (engagement) of refugees and asylum seekers in the concerned cities. Participation of Refugees and asylum seekers in the preparations (event) signs with trade unions, posters, bibs, vests ...	The definition of the right to work for refugees and asylum seekers. Solidarity. Renewal dimension of ideas and change discriminatory behavior against refugees. Attract the attention of officials by advancing awareness campaigns.	Distribution of tracts and calls on the topic (the reflection of the paid time for refugees and asylum seekers). Choose slogan. Flyers / Distribution of eaflets.
The celebration of World Day for migration on the	Attract the	

<p>18th December. The celebration of World Refugee Day on June 20, Organization of an open discussion with representatives of refugee associations. Organization an artistic evening and a symbolic sit-in on the right to work, Organization of an open meeting on asylum, products exposition and film projection/documentary</p>	<p>attention of public opinion on the status and situation of refugees and asylum seekers, particularly in cities known as migration rotating palque Positive interaction with the public.</p>	<p>Involve refugees in the preparations. Organize activities to the trade unions headquarters (Events) Leaflets Media Investment Good selection of posters / slogan.</p>
<p>Organization of press conferences / press release when necessary.</p>	<p>Increase the frequency of campaigns, For clarification: Present the balance sheets and the importance of awareness campaigns</p>	<p>The presence of operators, trade unionists, journalists, associations, public opinion...</p>

Appendix

Refugees Social, Economic and Cultural Rights

MODULE 7

Refugees AND Economic, Social, Cultural rights (ESC)

Purpose of Module 7

This Module aims to summarize the international, regional and national standards for refugees ESC rights. The module examines the refugee definition, reviews the international and national legal standards that protect refugees ESC rights and addresses the problem of forced migration.

Introduction

Of all the world's refugees, whose number is estimated to 14.1 million, the vast majority is in the developing countries. At the end of the year 1999, the Middle East hosted the largest number of refugees (5.8 million) followed by Africa (3.1 million). Eighty percent of the refugees are women and children.

The ten countries that generated the largest number of refugees in 1999 are: Palestine, Afghanistan, Iraq, Sierra Leone, Somalia, Sudan, Yugoslavia, Angola, Croatia, and Eritrea. 1.

Human rights are not exclusively the rights of citizens or nationals. Refugees are also entitled to the protection provided by human rights instruments including in the field of ESC rights. This module focuses on the protection of refugees in the host country (or "host State "), but it also considers the role of ESC rights abuses as causes of refugee flight. It addresses the issue of the

protection of the refugees ESC rights as they flee to a host country and while their return to their country of origin.

Considering the situation of refugees in the host countries, this module highlights some of the legal rights and protection of refugees ESC rights.

In particular, it would consider:

- international legal instruments relating specifically to refugees: Convention relating to the Status of Refugees, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 3, and the Cartagena Declaration on refugees 4,
- International treaties on human rights, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR), and
- National legislation.

-Refugees and host countries

Like all individuals, refugees have the right to an adequate standard of living, adequate alimentation and housing, as well as mental and physical health. That said, the first need of the refugees is security-physical security- they are deprived in their country of origin.

Thus, the first obligation of States according to the conventions related to refugees it do not return (expel) them to countries where they would be in danger of "persecution"⁵.

The award of refugee status is often described as an international substitute to the protection a person should be able to benefit in the State of origin or in which which he/she lives usuly.

Because they were forced to flee and for the reasons of their flight, refugees often arrive in their host country traumatized, needing medical treatment, with or without means of subsistence. They generally do not speak the language of the host country. Very often in the 1990s, they have undergone the hostility of other residents. They are particularly vulnerable to exploitation and violence both during their flight and during their stay in the host country.⁶ They may have lost their "breadwinner" or find separated from him/her. That is in itself, a cause of trauma and real difficulties in ensuring their survival.

It is important to remind that about 80% of the world's refugees are women (a good many of them are widowed).⁷ and children.⁸

As mentioned by the United Nations High Commissioner for Human Rights: "[being] a refugee is not only being a stranger. It means to live in exile and depend on others for basic needs like food, clothing and accommodation ".⁹

Refugees are not a homogenous group; they may have very different experiences and practical problems each others in their host countries. There are many differences between the experiences of bosnian middle class family refuged infugee in Germany, a Palestinian of the second generation who has never lived in his/her country of origin and an afghan widow in Pakistan. However, whatever their origins and where they seek refuge, refugees have very often, a common problem: their ESC rights are threatened and they face practical difficulties in accessing to economic and social benefits which are their rights.¹⁰ In Great Britain for example, a governmental study revealed in 1995 that despite a relatively high level of education, most of the refugees suffered considerable from social regression and had a lot of difficulty to find a job with the same qualifications they had in their home country. ¹¹ In many regions of the world, refugees (and asylum seekers) may find themselves living in huge

refugee camps. They can also “settle spontaneously “among citizens of a neighboring country or people who have the same ethnic origin as them. The containment of refugees and asylum seekers in camps may have some implications for their ESC rights. This situation is like a double-edged sword: the concentration of refugees/asylum seekers on the same site can reduce their chances to find job particularly when the camps are located in remote or disadvantaged areas of the host country. However, it may facilitate their access to food, education and medical services provided by the host state/ International organizations and NGOs.

In other parts of the world, like the Western countries, refugees and asylum seekers are not confined in camps but are faced with a complex legal machine when they want to apply for asylum, permission to work and access to various benefits which they are entitled in the host country. They also face language problem and other factors of integration in the country. The ability of refugees to enjoy their ESC rights is often curbed by their inability to communicate in the language of the host country and their limited understanding of its systems. People with health problems or psychological trauma may face more difficulty to find freelance jobs or work, or access to social services.

-What is a refugee?

The legal definition of the term "refugee" is generally much restrictive than that accepted fluently. According to current meaning, the refugee is often perceived as a forced migrant namely a person who has been forced to leave his/her country of origin or his/her usual residence. The more legal and strictness definitions of the term are provided by international legal instruments (The United Nations Convention relating to the Status of Refugees) and two regional instruments (Convention of the

Organization of the African Unity African related to the problems of refugees and the Cartagena Declaration).

According to the United Nations Convention relating to the Status of Refugees, a refugee is:

“a person who, owing to fear of persecution 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”, (section 1 A.2).

Thus, the Convention relating to the Status of Refugees provides protection to a limited group of persons who are away from their country of origin or from where they usually live and can not return for one or more reasons specified in the Convention.

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa defines the refugee with extensive words and offers protection to a broader group of people. According to this Convention, a refugee is:

- A person who fulfils the criteria of the 1951 Genva Convention,
- “Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (article 1).

Many African countries are concerned both by the Convention Governing the Specific Aspects of Refugee Problems in Africa and the United Nations convention relating to the Status of Refugees. The African Convention should be regarded as complementary to the UN Convention on the Status of refugees.¹²

Latin American States have their own declaration on refugees, the Cartagena Declaration which has no obligatory character. The definition of the refugee which is in this declaration is similar to that of the African Convention.



According to the Cartagena Declaration, the term "refugee" includes the persons specified in the UN Convention, but also those who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (Part III , para . 3).

-International protection of ESC rights of refugees in host countries

The Convention relating to the Status of Refugees contains a range of provisions on refugees ESC rights that other legal instruments do not provide.¹³ According to this convention, the protection of the refugees ESC rights is not just a matter of humanitarian assistance. It is also an international legal obligation. However, as we will see, the Convention provides only limited protection of these rights.

These provisions are presented at the end of this module. Its article 7 (1) provides that " Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally."

This way, for most of them, the provisions relating to employment, the status of freelance worker and social benefits provided by the United Nations Convention stipulate that refugees will be "the most favorable treatment " accorded to other aliens "in the same circumstances".¹⁴.

Restrictions on aliens' employment should not apply to refugees who lived for more than three years in the host country, those who are married to a citizen of the host country and whose children have the nationality of the host country. Refugees seeking self-employment are in a slightly more enviable position. It must be granted to them, a "treatment as favorable as possible" and in any event, not less favorable than that accorded in the same circumstances to aliens generally. Refugees seeking to exercise a liberal profession and whose qualifications are recognized by the host country should be treated the same way as those seeking self-employment. In addition, refugees who manage to find a job" will be treated as the national "regarding salaries and working conditions." Refugees will be treated as nationals" concerning social security subject to restrictions provided by article 24.

Concerning housing and education under public control, other than primary education, refugees should receive a "treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in same circumstances". As for primary education, aid, public assistance, and the rationing of scarce commodities (where there is a rationing system), refugees should receive better treatment. The UN Convention provides that "refugees are treated as national" in this field.

The UN Convention also provides in its article 16 that the refugees shall have free access to the courts of law on the territory of their host countries. Contracting States Parties shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of "(Art. 34).

When a person has been recognized as refugee by a country, he/her can expect to get the nationality of this country in the short term and enjoy the same treatment as its citizens.

Although the article 34 merely requires States parties to "make every effort", some states allow refugees to become very quickly citizens.¹⁵

Some practical problems that refugees face to assert their ESC rights issues have been addressed above. Nevertheless, there is another problem in this area, namely: When a person becomes a refugee? This question may seem strange but it is of crucial importance in practice. The problem is due to the relationship between international and national legislation on Refugees. Although conventions define the quality of refugee, they do not provide mechanisms for the coming into force, and the task of deciding which falls within the definition is left to the national law and policy.

It is common that national law recognizes a person as an asylum seeker until the competent national authorities have decided that she/he is entitled to refugee status under the national law. National authorities may consider that the person should be recognized as a refugee from the date of request, his/her entry into the country or at a later date.

Accordance with international law, a person must be considered as refugee as soon as he/she corresponds with the definition formulated by the convention relating to the status refugees, regardless of the national status determination procedure.

The national authorities generally consider that asylum seekers are not entitled to specific protections provided by the United Nations Convention Relating to the Status of refugees.

Moreover, many states refuse refugee status give them a form of humanitarian residence that will allow the person to remain legally in the host country during a while granting him/her the rights provided by the United Nations Convention. National procedures for the determination of the refugee status are often very long. Indeed, several years may elapse before the refugee status of a claimant is decided.

The UN Convention provides only limited protection of refugees of ESC rights. First, it applies only to contracting states.

Secondly, it has no provision in respect of certain ESC rights - for example, the right to a standard of living or adequate physical and mental health and provides any obligatory provision concerning the role of the famille. 16.

Finally, refugees can enjoy the rights stipulated in this convention until they are formally recognized as refugees by the national authorities.

One can ask whether the provisions of other international treaties- in particular, the International Covenant on Economic, Social and Cultural Rights (ICESCR) - that provide better protection of ESC rights are applicable to refugees. Undeniably, both the Universal Declaration of Human Rights and the ICESCR refer to "all", not only to nationals. The provisions of non-discrimination provided by various international instruments can provide some clarification. Article 2 of the Universal Declaration of Human Rights (UDHR) is very general. It is the same for article 2 of the ICESCR:

States Parties to the present Covenant undertake to guarantee that the rights provided by this convention will be exercised without discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation.

However, "national origin" seems not to include non-citizens, because there are no specific reference is made to non-ressortissants. 17. That said, it seems at least arguable that the refugees (and other non - nationals) can be covered by the provision "other status", and the CESCR has certainly questioned the status of réfugiés.¹⁸ in addition, article 2 (3) of the ICESCR contains a specific reference to the situation of non- nationals:

The developing countries, taking into account human rights and their national economy, may determine to what extent they would guarantee to non- nationals, the economic rights recognized in the present Covenant. It is therefore possible that the industrialized countries, consider taking measures to ensure to non-citizens rights under the ICESCR.

Assistance may also be obtained based on the International Covenant on Civil and Political Rights (ICCPR), which clearly

applies to refugees. General Comment 15 of the Human Rights Committee addresses specifically to the situation of non-citizens.

Contracting states undertakes to respect and ensure all individuals within its territory and subject to its jurisdiction (ICCPR, art. 2, § 1). In general, the rights enshrined in the Convention apply to all depending on any reciprocity, and irrespective of whether they have a nationality or not.

General Comment 20 of the Committee of Human Rights also refers to non-citizens, stating that article 7 of the ICCPR prohibits States Parties to expose people “torture or to cruel, inhuman or degrading treatment or punishment” by returning to another country through extradition, expulsion or refoulement.

The general rule is that each of the rights listed in the ICCPR must be guaranteed without discrimination between citizens and aliens. However, some of the rights recognized in the Covenant are expressly applicable only to citizens (eg. art. 25), while others apply only to aliens (eg. art. 13).

On the issue of the non-discrimination under the ICCPR, there is a specific reference in this text but only regarding the situation of women and children. Ideally, one would have expected a reference to the situation of aliens, migrant workers, the elderly persons and people living with physical or mental disability. That said, it would be wrong to assume that the Covenant does not provide protection in this regard. Rights to which it refers are the rights of "all". The only unique personae limit is article 2 (3). Anyway, it is arguable that the particular concerns of these groups will be treated better with specific international instruments that examine these issues in the detail. 19.

However, concerning refugees, the specific international instrument seems to comprise some limits, and it is unlikely that a

specific instrument that expands refugee's access to ESC rights appears in a near future .20.

Regardless of the specific context of the ICESCR provisions on non-discrimination, even if aliens are not entitled to equal treatment in all respects, their rights are protected in a certain extend of the Covenant: " from the moment the Covenant defines the rights of " all " aliens should have the right to the minimum core content of these rights ".21.

It seems that refugees should have at least, the right to protection of their essential minimum ESC rights in the same way that aliens in general. This could be very consistent with the concern of the United Nations High Commissioner for Human Rights about the narrow interpretation of the term "refugee" iapplied in many countries, an interpretation which leads to the exclusion of many asylum applications on the grounds that they are "economic migrants ".

UNHCR has specified:

From the human rights perspective, the situation is very worrying. It will not always be possible to distinguish certainly a refugee

from an economic migrant.



One can be argue that if the emphasis is put on the danger to life and liberty, there is little difference between a person whose life is threatened by the lack of food and another threatened by arbitrary execution due to political opinion.

Aside from these considerations, regardless of whether a person is a refugee or economic migrant, a citizen or not, he or she flees persecution, armed conflict, a threat to his/her life or terrible misery, he/she is entitled to a minimum of human rights and quality of treatment. 22.

Although the concerns of the Office can be of great value, the question is whether those who satisfy the conditions to get the refugee status in accordance with the narrow interpretations of the term can benefit the additional protection of ESC rights as provided by international law.

-National protection of refugees ESC rights

Refugees ESC rights can also be protected by the host country's legislation. This legislation may include constitutional provisions, which do not apply only to citizens sometimes and national laws.

In addition to the legal reasons for using national legal provisions to assist refugees, there may also exist good political and practical reasons to satisfy their social and economic needs in the context of the ESC provisions foreseen by host country.

This may be important to ensure in exemple, that the refugees have the same treatment given to the community and not a preferential treatment. The massive arrival of refugees recent years occured in less developed countries. These movements have often weighed heavily on their economy and the environment. Even in industrialized countries, refugees have been perceived as an unacceptable financial burden on the population of the host country.

Although the presence of refugees may have a positive impact on the implementation of ESC rights in the host community, 23; this impact is often overlooked and the communities of the host country protest against the real negative economic effects, or perceived as such, of the of refugees presence.

In particular, when governments and non-governmental agencies give refugees services they deprive the population or when refugees are perceived by the local population as receiving preferential treatment, it may result animosity against them. 24.

-The role of ESC rights in connexion with forced migration

There is a growing consensus on the fact that human rights violations are a major cause of the flow of refugees. 25. This consensus is clearly extends to civil and political rights, and

perhaps even cultural rights (in example, violations of cultural rights of the Kurds in Turkey). However, the link between violations of economic and social rights and the generation of refugees is more problematic.

There is no doubt that social and economic problems generate at the same time, voluntary emigration and forced or involuntary emigration. The Special Reporter on the situation of human rights in Myanmar noted that during the first half of 1997, between 5000 and 25,000 Muslim refugees fled to Bangladesh to escape forced labor, the profession of bearer and hunger.²⁶ However, the conventions on refugees only protect individuals fleeing persecution for specific reasons defined by them. Around the world, there are frequent complaints against "refugees" who are not people fleeing persecution, but simply "economic immigrants" looking for a better life. This type of criticism shows that the debate on the link between violations of economic and social rights and the flow of refugees are a potentially difficult and dangerous task. One approach in this domain has been to emphasize the correlation between economic and social rights and civil and political rights, ²⁷ and to consider that the violation of economic and social rights can go hand in hand with civil rights violation and create a climate of persecution within particular groups.²⁸

Another approach has been to point out that violations of economic and social rights could constitute in itself, a form of persecution where, for example, a particular group may not have access to education, medical care, employment or independent work because of its race, religion, nationality, political opinion or membership in a particular social group.²⁹

Conclusion

Ideally, the refugee should not legally stay an *at vitam eternam* refugee. Rather, it should have access to a more normal legal status, either by settling permanently in the host country or in a third country (eg through naturalization) or returning willingly to his/her country of origin. On this point, the Convention of the United Nations relating to the Status of Refugees insists on access to citizenship, while the African Refugee Convention focuses in on voluntary return to the country of origin. However, the global tendency is more towards "temporary protection" of forced migrants and on the desirability of voluntary return to the country of origin as the best "durable solution" to the problem of forced emigration. Repatriation to the country of origin is a realistic option provided that the candidate has the opportunity to enjoy both physical and economic security, that is to say, his/her civil, political rights and ESC rights will be respected.

Recognition of this fact has led the United Nations High Commissioner for Refugees to participate in "development activities "in some countries like Mozambique³⁰ and Cambodia. 31. The protection of refugees ESC rights during their flight, their stay in the host country and in their country of origin if they choose to return, is not simply an intellectual matter. The Office of the United Nations Human Rights recently reported in Bangladesh and Pakistan, refugees were groups at high risk of mortality from malnutrition.³²

The most basic right of refugees to the protection.³³ - namely the right do not expel them or repatriate them without their consent - is seriously threatened when their economic and social rights are not guaranteed during their flight or during their stay in the host country. In practice, it means that even if they are not forced to go, the reason of the convention relating to refugees will be annihilated when refugees can not get the essential minimum rights to live in the host country. They would not have other choice than returning to their country of origin and face danger.

The protection of refugees ESC rights is a real problem that is preferable to solve in the context of legislations on refugees and the international and national human rights guarantees. Most of the time, the economic and social assistance to refugees are seen as a humanitarian aid coming from the generosity of a government or individuals. A detailed study of the described provisions shows that refugees have legally, the right to this assistance.

Provisions of the United Nations Convention on the Status of refugees relating economic and social rights

Chapter III

GAINFUL EMPLOYMENT

Article 17 - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those

refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any

event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on

his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV WELFARE

Article 20 - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23 - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: emuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of

acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of anormal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall

not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

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NOTES

1. *US Committee on Refugees, World Refugee Survey 2000* (Washington, D.C., 2000).
2. ONU Convention relative au statut des réfugiés, 28 juillet 1951, 189 UNTS 150, entrée en vigueur le 22 avril 1954.
3. Convention de l'OUA régissant les aspects propres aux problèmes de réfugiés en Afrique, 20 juin 1974.
4. Déclaration de Carthagène sur les réfugiés, « Coloquio sobre la protección internacional de los refugiados en América Central, México y Panamá: Problemas jurídicos y humanitarios » assemblé à Cartagena, Colombie, 19-22 novembre 1984.
5. Voir ONU Convention relative au Statut des réfugiés, articles 1A et 33; voir aussi, Convention de l'OUA/UA régissant les aspects propres aux problèmes de réfugiés en Afrique, article 2.
6. HCR, *Le mode des réfugiés du monde* (Oxford: Oxford University Press, 1997), 62-67.
7. Pour une brève introduction intéressante sur les problèmes spécifiques des veuves réfugiées, voir Margaret Owen, *A World of Widows* (Zed Books, Londres, 1996). Sur la situation des veuves afghanes réfugiées et leurs enfants, voir également le Rapport du Haut Commissaire des Nations Unies aux droits de l'homme, *Droits de l'homme et exodes massifs*, Commission des droits de l'homme, 45ème Sess., Partie I.B.2, ONU Doc.E/CN.4/1998/51 (30 janvier 1998) (ci-après cité comme Rapport du exodes massifs).
8. Voir, par ex., R. Ellis, *UNHCR Issues: Women, Help for Single Parent Refugee Families*, disponible sur le site Internet : <http://www.unhcr.ch/issues/women/rm09507.htm>.
9. Voir Haut Commissaire des Nations Unies aux droits de l'Homme, Fiche d'information No. 20, *Droits de l'homme et réfugiés* (1997), (ci-après cité comme Fiche d'information No. 20).
10. Pour un traitement de certains des problèmes particuliers que rencontrent les réfugiés dans leur pays d'origine, voir Rapport *Droits de l'homme et exodes massifs*.
11. J. Carey-Wood, K. Duke et T. Marshall, *The Settlement of Refugees in Britain*, Home Office Research Study No. 141 (Londres: HMSO, 1995).
12. Selon article 8(2) de la Convention africaine sur les réfugiés: « La présente Convention constituera pour l'Afrique, le complément régional efficace de la Convention de 1951 des Nations Unies sur le statut des réfugiés ».
13. La Déclaration de Carthagène inclut bien, néanmoins, la conclusion suivante en Partie III, §11: « Etudier dans les pays de la région qui connaissent une présence massive de réfugiés les possibilités d'intégration de ces réfugiés à la vie productive du pays, en affectant les ressources de la communauté internationale canalisées par le HCR à la création ou à la génération d'emplois, afin de permettre la jouissance des droits économiques, sociaux et culturels des réfugiés ».
14. Les termes « dans les mêmes circonstances » tels qu'ils figurent dans la convention de l'ONU relative au statut des réfugiés « impliquent que toutes les conditions (et notamment celles qui ont trait à la durée et aux conditions de séjour ou de résidence) que l'intéressé devrait remplir, pour pouvoir exercer le droit en question, s'il n'était pas un réfugié, doivent être remplies par lui à l'exception des

conditions qui, en raison de leur nature, ne peuvent être remplies par un réfugié » (art. 6).

15. Le gouvernement du Royaume-Uni a l'intention d'autoriser les réfugiés à instruire rapidement une demande de naturalisation. Voir « Fairer, Faster, Firmer - A Modern Approach to Immigration and Asylum », *Cm 4018 White Paper*, juillet 1998.

16. L'acte définitif de la conférence sur les réfugiés recommandait que les États signataires prennent des mesures pour garantir l'unité familiale des réfugiés. Voir *Manuel du HCR sur les procédures et critères pour la détermination du statut de réfugié*, section I, chap. 6, disponible sur le site Internet <http://www.unhcr.ch/refworld/legal/handfre/hbftoc.htm>.

17. Voir Matthew C. R. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), 172.

18. Craven, op. cit. 161-74.

19. Ibid.,

20. Il y a cependant eu une déclaration des Nations Unies sur les droits des personnes qui ne possèdent pas la nationalité du pays, adopté par l'Assemblée générale résolution 40/144 du 13 décembre 1985, ce qui proclame, à l'article 8, 1, « Les étrangers qui résident légalement sur le territoire d'un Etat bénéficient également, en conformité avec les lois nationales, des droits suivants, sous réserve des obligations applicables aux étrangers en vertu des dispositions prévues à l'article 4 (de respecter la législation nationale) . . . (c) Le droit à la protection sanitaire, aux soins médicaux, à la prévoyance sociale, aux services sociaux, à l'éducation, au repos et aux loisirs, sous réserve qu'ils remplissent les conditions requises au titre des réglementations pertinentes pour y participer et qu'il n'en résulte pas une charge excessive pour les ressources de l'Etat ».

21. Craven, op. cit., 174.

22. Fiche d'information No. 20, note 9 au-dessus.

23. Par exemple, en apportant de nouvelles compétences, connaissances, en attirant l'aide internationale et en donnant un élan économique à une région, comme cela a été souligné par Comité de direction du Haut Commissariat des Nations Unies pour les réfugiés, 6 janvier 1997, *Impact social et économique de grandes populations de réfugiés sur les pays en voie de développement d'accueil*, ONU Doc. EC/47/SC/CRP.7 (1997) (ci-après cité comme Rapport du Comité de direction).

24. Pour de plus amples informations, voir, par ex., Rapport du Comité de direction.

25. Voir, pour ex., Fiche d'information No. 20, note 9 ci-dessus.

26. Rapport sur les exodes massifs, note 7 ci-dessus.

27. Voir, par exemple, Fiche d'information No. 20, note 9 au-dessus; aussi la Contribution de HCR au Rapport du Secrétaire général sur l'application de la Déclaration sur le droit au développement, Commission des droits de l'homme, 53ème sess., 20 février 1997, ONU Doc. ECN.4/1997/21 (ci-après cité comme Rapport du droit au développement).

28. Selon le HCR dans *Les réfugiés dans le monde*:

La pauvreté et la polarisation économique ne produisent pas à elles seules les déplacements forcés de population. En fait, il existe un nombre important de pays qui, quoique très pauvres, ont été très largement préservés ces dernières années par les conflits de persécution et les abus à l'encontre des droits de l'homme qui

contraignent les gens à abandonner leur domicile: Le Lesotho, la Namibie, la Tanzanie et la Zambie, pour ne citer que quatre exemples dans le Sud de l'Afrique. Mais les cas de ce type sont l'exception qui confirme la règle. Dans l'ensemble, les preuves tangibles sont là pour démontrer que les pays à niveau de vie faible et en baisse sont particulièrement vulnérables aux situations d'urgence complexes, aux vagues d'émigration de réfugiés et autres formes de déplacement forcé. [16]

Il n'y a là aucune coïncidence au fait que les déplacements forcés de populations se produisent le plus fréquemment dans les sociétés dont une large proportion de la population souffre de pauvreté absolue ou dont le niveau de vie a baissé. Il existe, bien entendu, quelques sociétés à faibles revenus qui sont parvenues à conserver un système de gouvernement démocratique, pour maintenir des normes élevées en matière de droits de l'homme et d'éviter toute violence à caractère communautaire. Mais malheureusement elles sont peu nombreuses et éloignées. Lorsque de larges pans d'une population sont économiquement marginalisés, lorsqu'ils ont des attentes difficilement réalisables par des moyens légitimes, et lorsqu'ils sont contraints de se concurrencer entre eux pour un réservoir de ressources limité et, dans certains cas, en déclin, la violence, sous une forme ou une autre, est une conséquence prévisible. [269]

29. J. Hathaway, *The Law of Refugee Status* (Canada: Butterworks, 1991).

30. Voir Rapport du droit au développement, note 27 ci-dessus.

31. Voir pour ex. K. Grant, « Access to Land and Property Rights for Returnees to Cambodia », UNHCR Cambodge, mai 1999, pour de plus amples renseignements sur le retour des réfugiés; voir aussi: T. Allen et H. Morsink, *When Refugees Go Home: African Experiences* (New Jersey: Africa World Press, 1994).

32. Voir Rapport sur les exodes massifs, Partie I.B, note 7 ci-dessus. Il est à noter que ni le Bangladesh ni le Pakistan ne sont signataires de Convention relative au Statut des réfugiés.

33. ONU Convention relative au statut des réfugiés, article 33, note 1 ci-dessus.

34. Fiche d'information No. 20, note 9 ci-dessus.

