

***UNHCR Recommendations
to the United Kingdom Chairmanship of
the Committee of Ministers of the Council of Europe***

(07 November 2011 – 14 May 2012)

UNHCR encourages the United Kingdom Chairmanship of the Committee of Ministers to

- *take initiatives in view to improve solidarity and responsibility-sharing among European States in the field of asylum;*
- *encourage stakeholders to resolve the protracted displacement situation in the Western Balkans and to work towards durable solutions;*
- *lead discussions on local integration that acknowledge the special needs of international protection beneficiaries and place these individuals and their host communities at the centre;*
- *work on measures necessary to combat discrimination, intolerance, racism and xenophobia, for example through a Council of Europe wide campaign;*
- *work on measures aimed at taking into account the special needs of women and children in need of international protection and to promote the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;*
- *ensure that the reform of the European Court of Human Rights is not made at the detriment of persons in need of international protection;*
- *promote accession by all Council of Europe Member States to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; as well as to the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession and to the European Convention on Nationality;*
- *consider proposing to the Council of Europe that it come forward at the Ministerial Meeting (which will be held on 7-8 December in Geneva) with an ambitious and sustainable pledge with regard to preventing and reducing statelessness in Europe.*

The UNHCR Representation to the European Institutions in Strasbourg remains available to engage in a dialogue on these matters with the UK Chairmanship and the members of the Committee of Ministers and to provide its expertise/support.

1. Ensuring and improving the protection space in the context of mixed migration

The large scale arrivals in Lampedusa and Malta, the lost lives in the Mediterranean Sea, the M.S.S. judgment's¹ questioning of the implementation of the Dublin II Regulation by EU Member States, as well as the interception at sea issue are interconnected problems flowing from a lack of harmonization and responsibility-sharing among European States in the field of asylum.

Harmonization of asylum procedures and sharing of responsibilities among European States by means of e.g. an institutionalized burden sharing mechanism would be an important and necessary step forward to address swiftly situations of massive influx.

Council of Europe Member States shall engage in a process assessing their respective needs with a view to improving their detention and reception conditions, as well as their asylum procedures.

UNHCR hopes that the UK Chairmanship will encourage Council of Europe Member States to work on practical measures aimed at implementing relevant recommendations and resolutions issued by the Committee of Ministers or by the Parliamentary Assembly.²

The Council of Europe is the appropriate forum to enter in a dialogue with non-EU countries such as the former Yugoslav countries, Turkey and with countries on the Eastern border of Europe which are important transit countries for mixed migratory flows. The increase in mixed migratory flows through the Western Balkans makes asylum capacity-building in these regions all the more important with the aim of ensuring that national systems are in place that can handle increasing flows in a manner consistent with international and regional norms.

The UNHCR Representation to the European Institutions in Strasbourg stands ready, as UNHCR does in its daily relations with national authorities through its offices in the field, to support the UK Chairmanship in identifying solutions adapted to each country's needs and to contribute to any Council of Europe initiative in this area. In particular, the discussions that will follow the meeting held on 15 September 2011 (with *inter alia* the Council of Europe Development Bank) on "*Possible large scale movements of asylum seekers and migrants from South Mediterranean and the Middle East*" offer an opportunity to take a step forward.

¹ European Court of Human Rights, *M.S.S. v. Belgium and Greece* (Appl. No. 30696/09), Grand Chamber Judgment of 21 January 2011, available: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html>

² See for example, Council of Europe, Committee of Ministers, *Resolution 14(1967) on asylum to persons in danger of persecution*, adopted on 29 June 1967, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=583735&SecMode=1&DocId=630678&Usage=2>;

Committee of Ministers, *Declaration on territorial asylum*, adopted on 18 November 1977, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=595156&SecMode=1&DocId=659824&Usage=2>;

Committee of Ministers, *Recommendation on the harmonization of national procedures relating to asylum*, adopted on 05 November 1986, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=600460&SecMode=1&DocId=673554&Usage=2>;

Parliamentary Assembly, Resolution 1821 (2011), *The interception and rescue at sea of asylum seekers, refugees and irregular migrants*, adopted on 21 June 2011, available at:

<http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1821.htm>;

Parliamentary Assembly, Recommendation 1974 (2011), *The interception and rescue at sea of asylum seekers, refugees and irregular migrants*, adopted on 21 June 2011, available at:

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1974.htm>.

2. Addressing protection gaps in the Eastern neighborhood and working towards regional cooperation for durable solutions in the Western Balkans

Several Eastern and South Eastern European countries maintain reservations to important aspects of the 1951 Geneva Convention relating to the Status of Refugees (“1951 Refugee Convention”). This year’s 60th anniversary of the 1951 Refugee Convention would be a fitting occasion for remaining reservations to be lifted. While legal commitments are essential, it is also necessary to look at the practice of States. In that respect, much remains to be done to ensure the proper implementation of the 1951 Refugee Convention and its 1967 Protocol.

Significant protection gaps remain, and in some cases, political will appears lacking to ensure that asylum-seekers and refugees are treated with full respect for their fundamental rights. Instances of *refoulement* continue, including from countries to which asylum-seekers and refugees are returned under the terms of readmission agreements (thus amounting to indirect *refoulement*). Widespread detention of asylum-seekers in deplorable conditions, poor quality or non-functioning asylum procedures and lack of integration support all need to be addressed.

UNHCR has also welcomed Council of Europe support in addressing issues remaining from the break-up of the former Yugoslavia, including questions of civil documentation and statelessness.

UNHCR is currently working with representatives of the Governments of Bosnia and Herzegovina, Croatia, Montenegro and Serbia in order to promote durable solutions for approximately 438.000 refugees and other displaced persons and to resolve the protracted displacement situation that has prevailed since the 1991 – 1995 conflict. At the forthcoming Ministerial Conference on 7 November 2011 in Belgrade a Joint Ministerial Declaration will be adopted, declaring the political agreement on the resolution of the outstanding regional issues and inviting the international community to support their efforts, politically and financially. The estimated budget for the Regional Programme amounts to EUR 584 million and countries hope to raise EUR 500 million through a Donors’ Conference which will be held end of April 2012 in Sarajevo. UNHCR has welcomed the involvement of the Council of Europe Development Bank which will be managing the Multi-donor Trust Fund Mechanism.

UNHCR requests the UK Chairmanship and the members of the Committee of Ministers to encourage stakeholders to resolve the protracted displacement situation in the Western Balkans and to work towards durable solutions. UNHCR welcomes the continued support by the Council of Europe Development Bank.

3. Local integration as a durable solution

Unfortunately, many refugees find themselves trapped in protracted situations where they have lived for years or even decades without any possibility of returning to their country of origin. The timely and effective local integration of refugees lawfully residing in Europe should be a priority for the Council of Europe and its Member States.

Not only does local integration provide the individual refugee with a durable solution, it makes a strong contribution to social cohesion, and helps to reduce secondary migration.

UNHCR has observed that the lack of support for language acquisition and vocational training, failure to recognize refugees' qualifications, discriminatory employment and housing practices and family separation are elements that hinder integration, and would therefore merit more focused attention. Cultural diversity management should be an important part of these efforts.

UNHCR encourages the UK Chairmanship to lead discussions on steps necessary to support the local integration of beneficiaries of international protection, in particular by encouraging stronger engagement of the host country and civil society. Given access to social rights is key for ensuring local integration, UNHCR and the Council of Europe will be co-organizing a Colloquium on the right to work in September 2012.

4. Combating discrimination, intolerance, racism and xenophobia

UNHCR welcomes the priority of the UK Chairmanship to work on the implementation of the Council of Europe recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity.³

UNHCR has been constantly advocating for making asylum procedures and reception conditions gender sensitive and stands ready to provide its expertise and support to the UK Chairmanship.

Furthermore, the tone of political and public discourse on asylum and migration poses a major challenge. Public debate is often centred on questions of security, making it difficult to keep a focus on the fact that refugees are not a threat, but are people who are themselves threatened. The economic downturn and unemployment in many countries compound this challenge.

UNHCR encourages the UK Chairmanship to work on measures necessary to combat discrimination, intolerance, racism and xenophobia, for example by means of a Council of Europe wide campaign.

³ Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.

5. Support to vulnerable groups

The Council of Europe Strategy on the Right of the Child is about to be launched. UNHCR supports a very comprehensive approach that would also address the needs of children of concern to UNHCR, in particular when separated or unaccompanied.

UNHCR is also engaged in a Council of Europe project aimed at identifying areas where the transition to adulthood for young refugees could be facilitated and measures proposed for their local integration. This project, lead by the Council of Europe's Directorate of Democratic Citizenship and Participation with the support *inter alia* of the Parliamentary Assembly, is intended to address very practical aspects such as access to social rights or access to nationality.

A major step for the protection of women in need of international protection was the adoption this year of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. As a first step, UNHCR hopes the UK Chairmanship will encourage States to sign and ratify the Convention. Further actions could include the elaboration of guidelines aimed at making national asylum procedures and reception conditions gender sensitive.

UNHCR encourages the UK Chairmanship to work on measures aimed at taking into account the special needs of women and children in need of international protection and to promote the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

6. Reform of the European Court of Human Rights

In the context of the reform of the European Court of Human Rights, UNHCR remains concerned by initiatives possibly limiting access to the Court by persons falling under its mandate. The Court is a unique tool of protection for refugees and asylum-seekers, internally displaced persons and stateless persons, completing the other international and regional standards in this domain. Proposals currently discussed, such as introduction of fees and compulsory representation by a lawyer, should they be adopted, need to take into account the particular situation faced by persons in need of protection. A system of exemption could for example be foreseen.

UNHCR encourages the UK Chairmanship to ensure that measures adopted in the context of the reform of the European Court of Human Rights are not taken at the detriment of persons in need of international protection.

7. UNHCR's commemorations: an opportunity for Council of Europe Member States to fill protection gaps and make pledges aimed at preventing and reducing statelessness

In 2011, UNHCR is commemorating the 60th anniversary of the 1951 Refugee Convention, its own 60th birthday, and 50 years of the 1961 Convention on the Reduction of Statelessness.

UNHCR's mandate extends not only to refugees but also to stateless persons. In view of its responsibility to help resolve issues of statelessness, UNHCR is actively encouraging Council of Europe Member States, which have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons,⁴ and/or the 1961 Convention on the Reduction of Statelessness,⁵ to do so. Given as many as approximately 586.000 stateless persons⁶ are residing in Council of Europe Member States, UNHCR hopes the UK Chairmanship will promote accession by all Council of Europe Member States to these two important instruments, as well as to the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession⁷ and to the European Convention on Nationality.⁸

On December 7-8, 2011, the UN High Commissioner for Refugees António Guterres will convene a Ministerial Meeting in Geneva to mark the end of the commemorations year. At this event, participants, including the Council of Europe and representatives of its Member States, have been invited to make concrete pledges of action to improve international protection in law and practice, and to help to reduce statelessness. With this in mind, UNHCR invites the UK Chairmanship to encourage reflection on protection gaps within the Council of Europe Member States, and ways to fill them. The December meeting will also be a treaty event, where States will have the opportunity to formalize their accession to the refugee and statelessness conventions and/or remove any reservations to these important instruments.

UNHCR recommends that the UK Chairmanship encourage accession by all Council of Europe Member States to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; as well as to the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession and to the European Convention on Nationality. UNHCR encourages the UK Chairmanship to consider proposing to the Council of Europe to come forward at the Ministerial Meeting which will be held on 7-8 December in Geneva with an ambitious and sustainable pledge with regard to preventing and reducing statelessness in Europe.

⁴ As of 30 September 2011, 15 Council of Europe Member States have not acceded to the 1954 Convention relating to the Status of Stateless Persons.

⁵ As of 30 September 2011, 27 Council of Europe Member States have not acceded to the 1961 Convention on the Reduction of Statelessness.

⁶ UN High Commissioner for Refugees, *UNHCR Global Trends 2010*, June 2011, p. 40 & 41, available at: <http://www.unhcr.org/refworld/docid/4e01b00e2.html>.

⁷ As of 06 November 2011, 41 Council of Europe Member States have not acceded to the European Convention on Nationality, cf. chart of signatures and ratifications available at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=200&CM=8&DF=04/11/2011&CL=ENG>.

⁸ As of 06 November 2011, 27 Council of Europe Member States have not acceded to the European Convention on Nationality, cf. chart of signatures and ratifications available at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=8&DF=04/11/2011&CL=ENG>.